

**REQUEST FOR PROPOSALS #21134  
EVALUATION AND ASSESSMENT SERVICES**

Table of Contents

Section 1	General Information and Standard Terms and Conditions.....	Page 2
Section 2	Eligibility Requirements.....	Page 4
Section 3	Background Information.....	Page 5
Section 4	Scope of Services.....	Page 6
Section 5	Vendor Information and Qualifications.....	Page 8
Section 6	Bidder Responses and Evaluation Criteria.....	Page 9
Section 7	Additional Information.....	Page 10

Exhibits:

Exhibit A	Taxpayer Identification Form W9
Exhibit B	Purchasing Affidavit
Exhibit C	Title Page
Exhibit D	Agreement Addendum

Questions will be received until January 8, 2021 by 5:00PM EST

Proposals will be received until January 27, 2021 3:00PM EST

## REQUEST FOR PROPOSALS

### RFP #21134 – EVALUATION AND ASSESSMENT SERVICES

#### **SECTION 1: GENERAL INFORMATION AND STANDARD TERMS AND CONDITIONS**

1.1 Purpose: Development and Implementation of an Evaluation and Assessment Plan for a Research Infrastructure Improvement Track 1 Grant from the National Science Foundation's EPSCoR program. The Higher Education Policy Commission will submit a proposal by July 30, 2021 and if awarded, the grant will start in the summer of 2022. The grant has a lifetime of 5 years from the start date.

1.2 Schedule of Events:

Release of RFP: December 28, 2020

Question Deadline: January 8, 2021 by 5:00pm EST

Addendum/Response to Questions: January 15, 2021

Proposal Due Date: January 27, 2021 by 3:00pm EST

Target Award Date: February 15, 2021

1.3 Bidder's Point of Contact: The sole point of contact for questions, clarification and inquiries concerning this Request for Proposal (RFP) is:

Mary Blashford  
Director of Procurement  
1018 Kanawha Blvd., E  
Suite 700  
Charleston, WV 25301  
E-mail: [mary.blashford@wvhepc.edu](mailto:mary.blashford@wvhepc.edu)  
Phone: 304-553-1813

1.4 Posting of Information: This RFP and any addenda, including answers to questions, will be posted at: <http://www.wvhepc.edu/resources/purchasing-and-finance/>

1.5 Questions and Answers: Questions concerning this RFP will be received in writing (via e-mail is acceptable) by the point of contact until the deadline identified in Section 1.2. When submitting questions by e-mail, please reference RFP 21134 in the subject line. Questions, if any, will be answered by addendum and posted to the webpage identified in Section 1.4 above.

1.6 Proposal Submission: Deliver an original and one (1) copy of the proposal on or before the date required in Section 1.2. The outside of the envelope should be clearly marked with the RFP number, the bid opening date/time, and the Director of Procurement's name.

**NOTE: ALL PRICES ARE TO BE PROVIDED IN A SEPARATE SEALED**

**ENVELOPE LABELED AS PRICING INFORMATION.**

In addition, a digital copy of the proposal should be submitted; the preferred method for submission of the digital copy is by flash/thumb drive which should be included with the original bid.

**PROPOSALS RECEIVED AFTER THE DUE TIME AND DATE WILL NOT BE CONSIDERED. IT IS THE BIDDER'S SOLE RESPONSIBILITY TO ENSURE TIMELY DELIVERY OF THE PROPOSAL.**

1.7 Proposals shall remain in effect ninety (90) days from the submission date.

1.8 Conflict of Interest: By signing the proposal, the bidder affirms that it and its' officers, members and employees have no actual or potential conflict of interest, beyond the conflicts disclosed in its' proposal. Bidder will not acquire any interest, direct or indirect, that would conflict or compromise in any manner or degree with the performance of its services under this contract. If any potential conflict is later discovered or if one arises, the bidder must disclose it to the institution promptly.

1.8 Independent Proposal: A proposal will not be considered for award if the price in the proposal was not arrived at independently, without collusion, consultation, communication, or agreement as to any matter relating to such prices with any other offer or with any competitor. The price quoted in the bidder's proposal will not be subject to any increase and will be considered firm for the life of the contract unless specific provisions have been provided for adjustment in the original contract.

1.9 Rejection of Proposals: The Director of Purchasing reserves the right to accept or reject any or all proposals, in part or in whole, at her discretion. The Director reserves the right to withdraw this RFP at any time for any reason. Submission of, or receipt by, the Director confers no rights upon the bidder nor obligates the institution in any manner.

1.10 Expenses: The institution will not be held liable for any expenses incurred by any bidder responding to this RFP including expenses to prepare or deliver the proposal or attend any oral presentation.

1.11 Interviews: Discussions and/or interviews may be held with the bidders under final consideration prior to making a selection for award; however, the RFP may be awarded without such discussions or interviews.

1.12 Oral Statements and Commitments: Any oral representations made or assumed to be made during discussions held between the bidder's representatives and the institution personnel are not binding. Only the information issued in writing and added to the RFP by an official written addendum is binding.

1.13 Award: It is anticipated that a single contract will be awarded for all services. However, the institution reserves the right to configure the contract in whatever manner is in its' best interests.

1.14 Public Record: All documents submitted in response to the RFP and any documents created as a result of this RFP are considered public record. All bids, proposals or offers submitted shall become public information and will be available for inspection during normal business hours at the institution.

The only exception for public record is disclosure information listed in WV Code § 29B-1-4. Primarily, only trade secrets are considered exempt from public disclosure.

1.15 Contract: The RFP and the bidder's response will be incorporated into the contract by reference. The order of precedence is the contract, the RFP and any addendum and the bidder's proposal in the response to the RFP.

1.16 Contract Term: This contract will be effective upon award and shall extend until July 30, 2027. By mutual consent of the vendor and the institution, the contract may be renewed for an additional one (1) year.

1.17 Contract Changes: Any changes to the original contract will be made via a Change Order issued by the institution. No change is official until a signed Change Order is produced.

1.18 Contract Termination for Unavailability of Funds. If funds are not appropriated or allocated for the services provided under this contract, the institution may terminate the contract at the end of the affected current fiscal period without charge or penalty. The institution shall give the vendor written notice of such non-appropriation or non-allocation of funds as soon as possible after the institution receives notice.

1.19 Contract Termination for Failure to Perform: The institution may terminate the contract resulting from this RFP immediately at any time the vendor fails to meet the terms of the contract.

1.20 Payment of fees will be made upon successful completion of the required services. Progress payments for services satisfactorily completed may be made pursuant to a payment schedule which is deemed satisfactory to the Systems and is included in the bidder's response to this RFP.

1.21 Invoices: The vendor shall submit invoices, in arrears. State law prohibits payment of invoices prior to receipt of services. State law does not provide for interest payments on late payments. Invoices properly prepared and submitted in accordance with the terms and conditions of the contract are usually paid within thirty (30) days.

1.22 Governing Law: This contract shall be governed by the laws of the State of West Virginia.

## **SECTION 2: ELIGIBILITY REQUIREMENTS**

2.1 Vendor Registration – WV Code § 5A-3-12. The West Virginia Code requires that all vendors be registered with the WV Department of Administration, Purchasing Division, prior to

receiving a purchase order for competitive products and/or services exceeding \$25,000. See: <http://www.state.wv.us/admin/purchase/VendorReg.html> for additional vendor registration information.

2.2 Debarment – WV Code §5A-3-33 through §5A-3-33F. Vendors that have been debarred by the federal government are not eligible to offer on or receive contracts to supply goods or services to the state and its subdivision for a specified period of time.

2.3 West Virginia Secretary of State. The vendor must be in compliance with the Secretary of State and should provide a copy of their business license with the proposal. For more information, contact the WV Secretary of State.

2.4 Taxpayer Identification Information. The Internal Revenue Service (IRS) requires the institution to request a taxpayer identification number (TIN) for tax reporting purposes. IRS Form W9 is used to obtain this information. See Exhibit A.

2.5 Purchasing Affidavit – WV State Code §5A-3-10a. WV State Code requires all vendors to submit an affidavit regarding any debt owed to the State. The Affidavit (Exhibit B) should be completed, signed, and returned with the bidder's proposal.

2.6 RFP Response Title Page – The Title Page includes the RFP Number, Addenda Received check boxes, the Bidder's business name, business address and telephone number, a contact name and e-mail address and includes a signature line and date for the individual authorized to obligate the business. See Exhibit C.

### **SECTION 3: BACKGROUND INFORMATION**

The National Science Foundation (NSF) Established Program to Stimulate Competitive Research (EPSCoR) was started in 1978 to assist the NSF in its statutory function "to strengthen research and education in science and engineering throughout the United States and to avoid undue concentration of such research and education." EPSCoR goals are to provide strategic programs and opportunities for EPSCoR participants that stimulate sustainable improvements in their R&D capacity and competitiveness, and to advance science and engineering capabilities in EPSCoR jurisdictions for discovery, innovation, and overall knowledge-based prosperity. West Virginia (WV) has been part of the EPSCoR program since 1979 and received its first award in 1980.

NSF EPSCoR Research Infrastructure Improvement (RII) Track-1 awards provide up to \$4 million per year for up to five years. They are intended to improve the research competitiveness of jurisdictions by improving their academic research infrastructure in areas of science and engineering supported by the NSF and critical to the particular jurisdiction's science and technology initiative or plan. In West Virginia, the Higher Education Policy Commission (HEPC)'s Division of Science and Research is the entity responsible for the management of the RII Track 1 award.

Although the new RFP has not been released yet, for reference the most recent RFP for the Track 1 awards is at: [https://www.nsf.gov/funding/pgm\\_summ.jsp?pims\\_id=503429](https://www.nsf.gov/funding/pgm_summ.jsp?pims_id=503429).

## **SECTION 4: SCOPE OF SERVICES**

In preparation for an upcoming proposal to the NSF RII Track 1 program, the Higher Education Policy Commission's (HEPC) Division of Science and Research is seeking the services an External Evaluator for working with the proposal writing team to develop measurable goals, annual metrics, and milestones of the project, as well as an evaluation plan to be included in the proposal to NSF. The evaluator will also work with the team to provide appropriate baseline data and develop targets for all project elements, including research, education, and workforce development activities.

The proposal writing team will include staff from HEPC, West Virginia University (WVU), Marshall University (MU) and West Virginia State University (WVSU).

### **4.1 Purpose**

The purpose of the evaluation is to determine whether the goals of NSF EPSCoR have been met. The evaluation will assess progress in improving the State's science and technology capabilities in order to promote research competitiveness in West Virginia. The evaluation will report on long- and short-term impacts, as well as system- and individual-level changes. The broad evaluation questions are:

- Has the Track-1 project been successful in mobilizing resources, people, and institutions to develop the state's research capacity?
- Has the number of African American, Latinx, Native Hawaiian, Pacific Islander, women, disabled and other underrepresented students majoring in science, technology, engineering, and mathematics (STEM) increased?
- Has there been an improvement in the State's STEM workforce?
- Has a cooperative, mutually beneficial relationship developed between researchers, stakeholder groups, and the community?

### **4.2 Program Outcomes and Corresponding Evaluation Tasks**

EPSCoR aims to improve West Virginia's science and technology capabilities in order to promote research competitiveness. The evaluation will focus on these project outcomes:

#### **a. Impact on Research Infrastructure**

Identify barriers that may prevent the successful implementation of research infrastructure at participating campuses.

Assess the project's success in implementing research infrastructure and its use by participants to perform cutting edge research.

#### **b. Research Productivity**

Evaluate changes in the level of competitiveness among Track-1 project researchers through the number of grant proposals, publications, and paper presentations submitted, and their rates of acceptance.

Assess trend data on the number and amount of extramural funding generated by Track-1 researchers.

**c. Impact on Students**

Track the number of students participating in project events such as workshops and internships and their perceptions of how these events may have influenced their interest in STEM education or STEM careers.

Gauge the impact that student participation in NSF EPSCoR activities may have on STEM enrollment, matriculation, and workforce preparedness in West Virginia.

**d. Impact on Workforce**

Monitor impacts on the STEM workforce by documenting the number of internships filled, and the number of graduates who find jobs, including faculty positions, in STEM fields in West Virginia and the nation.

Maintain a database on internships, graduates, faculty positions, and career paths of students who participate in the Track-1 project.

**e. Impact on Stakeholders**

Document the evolution of stakeholder engagement in research and education especially with respect to the development of integrated project research in West Virginia.

Document community engagement in the research process over time, paying special attention to describing the progress made in establishing a cooperative, mutually beneficial relationship between researchers and local, national, and international communities.

Collect data via observations at joint meetings, and interviews with research and community representatives.

### **4.3 Evaluation Methodology**

The evaluator must conduct both formative (process) and summative (outcome) evaluation. The evaluator will monitor whether grant activities are being implemented as proposed and with what quality. Problems, barriers, and conflicts that could detract from the success of the project should be brought to the attention of program administrators in order to improve program delivery.

The HEPC Division of Science and Research will provide data on all participating personnel and project activities/events. Personnel data will include a broad range of demographic data and associated outputs such as publications, reports, patents, etc. Events will include public presentations, meetings, seminars, etc. and will include attendee data.

Monitoring will take place via interviews with key Track-1 administrators and researchers; surveys; focus groups; observations at meetings and workshops; and review of project documents. The evaluator will participate in a strategic planning workshop to be held as soon as the RII Track 1 is awarded.

Other novel approaches to evaluating will be considered.

### **4.4 Required Deliverables**

The evaluator will provide the following evaluation reports/activities:

- An Evaluation Plan to be included in the proposal submission.
- Development of baselines, goals, metrics, targets, and milestones to measure program success.
- Assist in the development and refinement of the project's Strategic Plan.
- An Interim Evaluation Report, due 120 days before the end of each project year.
- An Annual Evaluation Report, due 30 days after the end of each project year that updates the Interim Evaluation Report to reflect the entire project year.
- Provide quarterly reports evaluating project activities for that quarter.
- Make annual updates of the Strategic Plan, goals, metrics, and milestones.
- A cumulative, Final Evaluation Report, due 30 days after the closing date of the award evaluating the work and activities of the entire award.
- Upon request, oral and/or written status reports and presentations for the principal investigator, advisory committees, and other stakeholder groups.
- Address any additional reporting requests and/or requirements which may be required by NSF.
- Attend annual face-to-face project meetings.
- Attend various meetings virtually.
- Prepare and administer assessments to evaluate project activities.
- Additional evaluation activities as requested by the project administrators.

All reports will be provided in an editable version in MS Word along with a ready to print version in .pdf format.

## **SECTION 5: VENDOR INFORMATION AND QUALIFICATIONS**

### **Evaluator's Minimum Qualifications**

#### **5.1 Minimum qualifications include:**

- Educational and professional experiences in evaluation methodology for scientific projects.
- Experience in designing and implementing evaluation plans to include collection and analysis of data, and preparation of reports and evaluation presentations; and
- Detailed knowledge in quantitative and qualitative evaluation measures.

#### **5.2 Preferred qualifications include:**

- Five (5) plus years' experience with federal grant evaluation;
- Five (5) plus years' experience with multi-disciplinary National Science Foundation grants; and
- Experience with EPSCoR/IDeA programs.

#### **5.3 Provide a statement/response to each of the following:**

- a. Identify and provide a statement of qualifications of individuals to be assigned direct responsibility for the services.
- b. Describe the experience that key personnel have, their length of service with the

firm, as well as other relevant skills.

- c. Describe the Firm's size, illustrating its ability to fulfill the terms of the RFP.
- d. Describe any related experience.

**5.4 Provide a complete description of how the work will be conducted.**

Include all quality assurances that are provided in the firm's process for this type of work and detail the amount of time and effort that will be required of the entities' personnel. Include in this description an explanation of the tools/technology used to collect/coordinates requested items.

**5.5 Provide a proposed schedule that ensures completion of the services.**

**5.6 References**

Provide the names, telephone numbers and mailing addresses of at least three higher education clients and the contact person from whom references may be obtained for both the firm and the key personnel assigned to the engagement. References should be from clients comparable to the type and scope of services solicited in this RFP.

**SECTION 6: BIDDER RESPONSE AND EVALUATION CRITERIA**

6.1 Economy of Preparation: Proposals should be prepared simply and economically, providing a straightforward, concise description of the bidder's ability to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.

**NOTE: ALL PRICES ARE TO BE PROVIDED IN A SEPARATE SEALED ENVELOPE LABELED AS PRICING INFORMATION.**

6.2 Proposals should be limited to 50 pages. Additional material may be presented as exhibits to the main proposal.

6.3 A Title Page (Exhibit C) should be provided. The Title Page is the preferred method of providing the bidder's information. If the bidder does not utilize the Title Page, the bid must provide a cover letter with, at a minimum, the signature of an individual authorized to obligate the company and a date.

6.4 The proposal will be evaluated on a one hundred (100) point scale with points assigned as outlined below.

**Vendors failing to score at least 70% or 49 points for Sections 6.4.1 and 6.4.2 will not be considered to have met the minimum acceptable score. Any vendor not meeting the minimum acceptable score will NOT have their prices opened and will NOT be considered for award of the bid.**

6.4.1 Qualifications, Experience and Company Background – 40 points

Responses to Section 5 will be reviewed and evaluated here.

6.4.2 Services – 30 points

Responses to Section 3 and 4 will be reviewed and evaluated here.

6.4.3 Price – 30 points – The low bid will receive the full 30 points. Each higher bid will receive a percentage of the 30 points on a ratio basis compared to the low bid cost.

6.5 Award will be made to the bidder receiving the highest point total.

6.6 In the event that mutually acceptable terms cannot be reached within a reasonable period of time, with the highest ranked bidder, the Commission reserves the right to undertake negotiations with the next highest ranked bidder and so on until mutually acceptable terms can be reached.

## **SECTION 7: ADDITIONAL INFORMATION**

7.1 By submitting a proposal in response to this RFP, a firm shall be deemed to have accepted all the terms, conditions, and requirements set forth in herein unless otherwise clearly noted and explained in writing. Any exception(s) or additional terms and conditions a firm wishes to offer for consideration must be clearly itemized and explained. Otherwise, the RFP in total shall be incorporated into the contract by reference. The Systems may accept or reject the Firm's proposed exceptions as it deems appropriate and in the best interests of the Systems.

7.2 The State's Agreement Addendum (WV-96) is attached to demonstrate the State law and guidelines which must be adhered to in any contracts presented to the Systems for execution (See Exhibit E). A copy of additional terms and conditions that a firm wishes to offer for consideration should be enclosed with the proposal. The West Virginia Attorney General's Office must accept or reject proposed modifications to the WV-96.

### **OTHER:**

If funded, this is a 5-year project that will commence in early summer 2022 under a cooperative agreement with the National Science Foundation (NSF). The cooperative agreement is renewed annually based on performance review including a report from the evaluator.

An additional fee may be requested for the Evaluation Plan to be submitted with the proposal in 2021. The resulting contract is inclusive of all costs, including fees, support staff, travel, supplies, equipment use, and any other costs necessary to work on or complete this contract. Any contract awarded as a result of this request for proposal is contingent upon availability of funding from NSF.

**Request for Taxpayer  
 Identification Number and Certification**

**Give Form to the  
 requester. Do not  
 send to the IRS.**

► Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	<p><b>1</b> Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.</p> <hr/> <p><b>2</b> Business name/disregarded entity name, if different from above</p> <hr/> <p><b>3</b> Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only <b>one</b> of the following seven boxes.</p> <p><input type="checkbox"/> Individual/sole proprietor or single-member LLC      <input type="checkbox"/> C Corporation      <input type="checkbox"/> S Corporation      <input type="checkbox"/> Partnership      <input type="checkbox"/> Trust/estate</p> <p><input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____</p> <p><b>Note:</b> Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is <b>not</b> disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.</p> <p><input type="checkbox"/> Other (see instructions) ► _____</p>	<p><b>4</b> Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):</p> <p>Exempt payee code (if any) _____</p> <p>Exemption from FATCA reporting code (if any) _____</p> <p><small>(Applies to accounts maintained outside the U.S.)</small></p>
	<p><b>5</b> Address (number, street, and apt. or suite no.) See instructions.</p> <hr/> <p><b>6</b> City, state, and ZIP code</p> <hr/> <p><b>7</b> List account number(s) here (optional)</p>	<p>Requester's name and address (optional)</p> <hr/>

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

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

<b>Social security number</b>											
				-			-				
<b>or</b>											
<b>Employer identification number</b>											
				-							

**Part II Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

<b>Sign Here</b>	Signature of U.S. person ►	Date ►
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**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

**Purpose of Form**

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-DIV (dividends or capital gains)
- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.*

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 C

TITLE PAGE

The undersigned declares that he/she has read the RFP 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)

WV-96  
1/1/2019

**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.

- 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 ~~strike through~~ 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: \_\_\_\_\_  
By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Vendor: \_\_\_\_\_  
By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_