

**WEST VIRGINIA COUNCIL FOR  
COMMUNITY AND TECHNICAL COLLEGE EDUCATION**

**REQUEST FOR PROPOSALS  
ONLINE TUTORING SERVICES  
RFP No. 21165**

**SECTION 1                      GENERAL INFORMATION**

- 1.1 The West Virginia Council for Community and Technical College Education (“Council”) is seeking a company to provide online tutoring services to West Virginia community and technical college students via the internet. Online tutoring shall be in the core subjects of mathematics and writing. The Council will offer these online tutoring services free of charge to community and technical college students. Students will be encouraged to take advantage of the services, but the Council cannot guarantee a minimum level of participation. The successful vendor will receive a contract/purchase order for a period of one (1) year with the option to renew for five (5) additional one-year periods provided satisfactory service is provided.
- 1.2 The Council expects to offer online tutoring services beginning July 1, 2021, for one (1) year with the option to extend the contract annually for up to five one-year periods as determined by and at the sole discretion of the Council.
- 1.3 The point of contact at the Council for questions and clarifications concerning this Request for Proposal (RFP) is:

Chief Procurement Officer  
West Virginia Council for Community and Technical College Education  
1018 Kanawha Boulevard, East, Suite 700  
Charleston, WV 25301  
Phone: 681-313-2212  
Email: [rich.donovan@wvhepc.edu](mailto:rich.donovan@wvhepc.edu)
- 1.4 Questions and requests for clarification must be submitted in writing to the Chief Procurement Officer by Email. Questions and requests for clarification will be received until 5:00 PM, Eastern Time, April 22, 2021.
- 1.5 Responses to questions, requests for clarification and any additional information regarding the RFP will be issued in writing by addendum and posted at the following website address by 5:00 PM, Eastern Time, April 27, 2021. It is the vendor’s responsibility to check this website address for addenda and additional information concerning this RFP. Please acknowledge receipt of addenda in the proposal.

<https://wvhepc.org/purchasing/>

- 1.6 The Chief Procurement Officer will receive proposals until 3:00 PM, Eastern Time, May 7, 2021. Please provide an original proposal in a three-ring loose leaf binder suitable for copying and one complete copy in PDF format on a flash drive. Submit proposal in a sealed opaque envelope with the RFP number clearly marked on the proposal envelope to the Chief Procurement Officer at the address below. Electronically transmitted proposals will not be accepted.

Chief Procurement Officer  
 RFP 21165  
 West Virginia Council for Community and Technical College Education  
 1018 Kanawha Boulevard, East, Suite 700  
 Charleston, WV 25301

- 1.7 The Council reserves the right to reject any proposal that is incomplete, late, or improperly formatted. The Council may also reject any proposal if the vendor fails to respond to a request for clarification by the Council.

- 1.8 RFP schedule of dates:

Release of RFP	April 5, 2021
Written questions due from vendors	April 22, 2021, by 5: 00 PM, EDST
Answers to questions posted	April 27, 2021, by 5:00 PM EDST
Proposals Due	3:00 PM, EDST, May 7, 2021
Contract awarded (estimated)	On or before June 30, 2021

- 1.9 The Community and Technical Colleges listed below will participate in this online tutoring contract:

<b>Participating Institutions</b>	<b>Head Count Fall 2019 End of Term Data</b>	<b>Annualized FTE AY 2019-20</b>
Blue Ridge Community and Technical College	6,540	2,118
BridgeValley Community and Technical College	1,756	1,269
Eastern WV Community and Technical College	536	253
Mountwest Community and Technical College	1,768	1,340
New River Community and Technical College	1,202	889
Pierpont Community and Technical College	1,897	1,269
Southern WV Community and Technical College	1,446	1,093
WV Northern Community College	1,369	985
WVU at Parkersburg	2,833	1,819
<b>Total</b>	<b>19,350</b>	<b>11,035</b>

**SECTION 2 SPECIFICATIONS AND PROPOSAL REQUIREMENTS**

- 2.1 The proposal must identify how the following specifications will be met. A Vendor Questionnaire has been provided in Appendix A for the company to provide some of the

information identified below in a standard format. Please provide all the information requested in the Questionnaire.

- 2.1.1. The vendor must have at least three years experience in providing online tutoring services at the collegiate level and must supply names of at least four higher education institutions that are current clients or have been clients within the last three years in the following format: (1) contact person; (2) institution; (3) mailing address; (3) telephone number; and (4) Email address.
- 2.1.2. Tutors must have the necessary credentials to be effective. In your proposal, please list the percentage of tutors with Doctorates, Master's and Bachelor's degrees.
- 2.1.3. The company must offer tutoring services in the areas of collegiate mathematics and writing with the following stipulations:
  - a. Mathematics must include basic math, algebra, calculus, geometry, and trigonometry. In your proposal, list the type of collegiate mathematics in which your tutors have expertise and how many tutors are available.
  - b. The proposal must have outline writing tutoring services and a description of the mechanics to be employed for review of papers in all subject areas. Please provide the credentials and number of tutors available.
- 2.1.4. All interactive tutoring sessions, whether synchronous or asynchronous, are to be archived for future reference by the individual student for the duration of the semester. Proposals must indicate the following:
  - a. For synchronous tutoring, students must be able to check a schedule of times when tutors are available during the course of a day/evening/night and have access to real-time online synchronous delivery. Online tutoring must be interactive in nature and allow for sequential display of problems and steps between the tutor and student to reach a solution. Each session should be able to be recalled at a later date during the semester by the student or for use as a review. Each proposal should identify:
    - (1) How students who are waiting for a synchronous session are informed of their wait period.
    - (2) How the system limits asynchronous session to a predetermined time limit if there is a waiting list during high peak hours.
    - (3) How students assigned to a waiting list are apprised of approximate wait times (based upon preset time limits for all students during high peak hours).
    - (4) How a student can access his/her previous tutoring session for study purposes.
  - b. For asynchronous tutoring, the student must be able to submit a question(s) to the tutor site and expect a response and guidance within 24 hours. Please

describe in your proposal how a student may access his/her previous tutoring session for study purposes.

- c. Please indicate in your proposal the length of time tutoring sessions are archived after a semester is completed.
  - d. Please indicate in your proposal how access is achieved and available to archived tutoring sessions in the event of a dispute.
- 2.1.5 The vendor must offer a writing lab where student papers can be uploaded to tutors for critique. Please describe in your proposal how this will be accomplished.
- 2.1.6 The vendor must provide pedagogical training, in addition to technical training for tutors. Please describe in your proposal how this is provided.
- 2.1.7 Each student must have access to a transcript of every interaction that the student has had. The online tutoring service must also provide similar access to college officials in the event of disputes.
- 2.1.8 The vendor must guarantee that service will be provided 24 hours a day, 7 days a week in math and writing. In your proposal, explain how this will be accomplished.
- 2.1.9 Explain in your proposal how your technology provides human support synchronously, asynchronously and allows prescheduled sessions.
- 2.1.10 There is a budget established for online tutoring services that cannot be exceeded. Each community and technical college must have access to reports that will allow monitoring of usage by each of its students. From January 1, 2020 to December 31, 2020, approximately 4,788 students used the current online tutoring service for a total of approximately 5,105 hours. The Council must have access to usage records of all students participating in the program. At a minimum, the following shall be provided. Please indicate in your proposal how you will comply with this requirement.
- a. Student ID (name, unique student identifier ID, email, class/session).
  - b. Date, time, and duration of session.
  - c. Type of session (synchronous, asynchronous, or scheduled).
  - d. Type of tutoring (subject area).
  - e. Course/schedule.
  - f. Tutor's name or a unique identifier.
- 2.1.11 Student access to tutoring and hourly usage is an important element in controlling costs. Only authorized students shall have access and to set a predetermined ceiling on the number of hours that each student has access to for online tutoring per semester under this contract. Describe in your proposal how access will be controlled and this ceiling per student will be achieved. Also, indicate if it is possible to set an auto warning when a student approaches his/her limit.

- 2.1.12 The vendor will be required to provide a virtual training session to community and technical college faculty and staff.
- 2.1.13 The vendor shall provide all necessary and required licensing which shall include but not necessarily limited to the following: (1) 24/7 end-user technical support, (2) all product upgrades and enhancements during the license period, (3) Designated Professional Services Manager, (4) unlimited archive storage on ASP servers, and (5) access to all online resources, training materials and user guides.
- 2.1.14 Under no circumstances should tutors simply give the student the answer to the question presented. Tutors are to guide the student to the discovery and ultimate understanding of the solution to the question.
- 2.2 Cost Proposal: Please provide a proposed amount per hour charge for online tutoring services that covers all services specified for year one, year two, year three, year four, year five and year six. Also, provide a proposal for the one-day virtual training session for community and technical college faculty staff.

### **SECTION 3                    OTHER PROVISIONS**

- 3.1 The Council reserves the right to add additional related services based on the original offer. Upon mutual consent of the Council and the successful vendor on pricing, performance, etc., the aforementioned additional services may be added to the contract.
- 3.2 Only written information, interpretations and instructions issued by the Chief Procurement Officer will be considered official. Vendors shall not rely on any oral interpretations, information, and instructions.
- 3.3 Only requests for information received by the Council Office's Chief Procurement Officer in writing from vendors will be considered official.
- 3.4 All expenses associated with preparing and submitting proposals are the exclusive responsibility of the vendor. Proposals will become a matter of public record and open for inspection following the announcement of contract award.
- 3.5 A committee of community and technical college representatives and Council staff will evaluate proposals in accordance with higher education purchasing rules and regulations. Vendors submitting proposals may be asked to provide a demonstration of their product/service via videoconference or webinar.
- 3.6 Evaluations will be based on overall service, qualifications and costs presented in the proposal. An award will be made on the basis of the evaluation committee's determination of the proposal that gives the Council, the Community and Technical Colleges and students the best value. An award will not necessarily be made to the company submitting the lowest cost.

- 3.7 Payment for services will be made monthly in arrears upon completion of the required services, submission of an uncontested invoice and the acceptance of the required usage reports. Advance payments are not allowed.
- 3.8 The Council is exempt from federal and state taxes and will not pay or reimburse such taxes. The vendor may request a tax exemption certificate.
- 3.9 The proposal of the vendor shall provide complete and total compensation for the scope of work identified herein. The Chief Procurement Officer must approve additional service and additional compensation, if deemed appropriate, and an approved change order to the contract is required before payment can be made.
- 3.10 Discussions and interviews may be held with vendors under final consideration prior to making a selection for award; however, a proposal may be accepted without such discussions or interviews. If mutually acceptable terms cannot be reached within a reasonable period of time, the Council Office reserves the right to undertake negotiations with the next most advantageous firm without undertaking a new procurement process.
- 3.11 The State of West Virginia Agreement Addendum (WV96) is attached to demonstrate the State law which must be adhered to in any contracts presented to the Council for execution. The successful firm must be a registered vendor with the WV Department of Administration prior to any award, pay the annual registration fee, and have a valid vendor number.
- 3.12 The successful Vendor must be a registered vendor with the West Virginia Department of Administration, Purchasing Division, and pay the required vendor registration fee prior to receiving a contract/purchase order. Vendor Registration information is available at the following URL:

<http://www.state.wv.us/admin/purchase/vrc/wv1.pdf>

- 3.13 The following are incorporated into this RFP and made a part here of:

- Appendix A, Vendor Questionnaire
- Appendix B, Evaluation Form
- Appendix C, Usage Report January – December 2020
  
- Exhibit A, Instructions to Bidders
- Exhibit B, Purchase Order Terms and Conditions
- Exhibit C, Agreement Addendum (WV-96)
- Exhibit D, Purchasing Affidavit

## **INSTRUCTIONS TO BIDDERS**

**(Purchases greater than \$25,000)**

1. **BIDDER'S REPRESENTATIONS:** The bidder, by making a bid, represents that: (a) the bidder has read and understands the bidding documents, terms and conditions, and the bid is made in accordance therewith; and (b) the bid is based upon the materials, equipment, systems, printing and/or services specified.
2. **QUALITY STANDARDS:** Brand names, when identified, include the standard of quality, performance or use desired. Unless otherwise noted, bids by bidders on equivalents may be considered, provided the bidder furnishes descriptive literature and other proof required by the Institution. Samples, when required, must be furnished free of charge, including freight. In the event the Institution elects to contract for a brand purported to be an equivalent by the bidder, the acceptance of the item will be conditioned on the Institution's inspection and testing after receipt. If, in the sole judgment of the Institution, the item is determined not to be equivalent, the item will be returned at the Seller's expense and the contract terminated.
3. **SUBMISSION OF BIDS:** The bid, the bid security, if any, and other documents required to be submitted with the bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the bids and shall be identified as a "Sealed Bid," and shall include the bid number, the bid opening time, and the bid opening date. Bids shall be delivered and deposited at the designated location prior to the time and date for receipt of bids. Bids received after the time and date for the bid opening will be returned unopened. The bidder shall assume full responsibility for timely delivery at the location designated for receipt of bids. Oral, telephonic, facsimile or telegraphic bids are invalid and will not receive consideration.
4. **MODIFICATION OR WITHDRAWAL OF BIDS:** Prior to the time and date designated for receipt of bids, a bid submitted may be modified or withdrawn by notice to the party receiving bids at the place designated for receipt of bids. Such notice shall be in writing over the signature of the bidder and shall be received prior to the designated time and date for receipt of bids. A modification shall be worded so as not to reveal the amount of the original bid. A withdrawal may be made by facsimile or electronic transmission. A modification may also be made by facsimile or electronic transmission if the final bid result is not revealed prior to the bid opening.
5. **OPENING OF BIDS:** Bids shall be publicly opened and read aloud at the designated location for receipt of bids shortly after the time and date bids are due.
6. **REJECTION OF BIDS:** The Institution shall have the right to reject any and all bids, in whole or part; to reject a bid not accompanied by a required bid security or other data required by the bidding documents; or reject a bid which is in any way incomplete or irregular.
7. **ACCEPTANCE OF BID (AWARD):** It is the intent of the Institution to award a contract to the lowest responsible and responsive bidder provided the bid does not exceed the funds available. The Institution shall have the right to waive informalities or irregularities in a bid received and to accept the bid, which in the Institution's judgment, is in the Institution's own best interests. All bids are governed by the West Virginia Code and the Procedural Rules of the Commission.
8. **VENDOR REGISTRATION:** Prior to any award for purchases exceeding \$15,000, the apparent successful bidder must be properly registered with the W. Va. Department of Administration, Purchasing Division, and have paid the required vendor registration fee.
9. **NON-FUNDING:** All services performed or goods delivered under State Purchase Orders/Contracts are to be continued for the term of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
10. **PAYMENTS AND INTEREST ON LATE PAYMENTS:** Payment may only be made after the delivery and acceptance of goods or services. Interest may be paid for late payment in accordance with the West Virginia Code.
11. **RESIDENT VENDOR PREFERENCE:** A resident vendor preference will be granted upon written request in accordance with the West Virginia Code.
12. **TAX EXEMPTION:** The State of West Virginia, the Commission, Governing Board and its institutions are exempt from federal and state taxes and will not pay or reimburse such taxes.

**TERMS AND CONDITIONS**

1. **ACCEPTANCE:** Vendor shall be bound by this Order and its terms and conditions upon receipt of this Order. This Order expressly limits acceptance to the terms and conditions stated herein. Additional or different terms proposed by the Vendor are objected to and are hereby rejected, unless otherwise provided for in writing by the Institution and approved by the Attorney General.
2. **APPLICABLE LAW:** The laws of the State of West Virginia and the Procedural Rules of the Higher Education Policy Commission shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
3. **ASSIGNMENT:** Neither this Order nor any monies due, or to become due hereunder, may be assigned by the Vendor without the Institution's consent.
4. **INSTITUTION:** For the purposes of these Terms and Conditions, the "Institution" means the institution purchasing goods and services for which a Purchase Order has been lawfully issued to the Vendor.
5. **CANCELLATION:** The Institution may cancel any Purchase Order/Contract upon 30 days written notice to the Vendor.
6. **COMPLIANCE:** Vendor shall comply with all federal, state and local laws, regulations and ordinances including, but not limited to, the prevailing wage rates of the W. Va. Division of Labor, if applicable.
7. **DELIVERY:** For exceptions to the delivery date as specified in the Order, the Vendor shall give prior notification and obtain the approval of the Institution. Time is of the essence of this Order and it is subject to termination by the Institution for failure to deliver on time.
8. **DISPUTES:** Disputes arising out of the agreement shall be submitted to the West Virginia Court of Claims.
9. **HOLD HARMLESS:** The Institution will not agree to hold the Vendor or any other party harmless because such agreement is not consistent with state law.
10. **MODIFICATIONS:** This writing is the parties' final expression of intent. No modification of this Order shall be binding unless agreed to in writing by the Institution.
11. **NON-FUNDING:** All services performed or goods delivered under this Purchase Order/Contract are to be continued for the term of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
12. **ORDER NUMBERS:** Contract Order numbers or Purchase Order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices and correspondence.
13. **PAYMENTS AND INTEREST ON LATE PAYMENTS:** Payments may only be made after the delivery of goods or services. Interest may be paid on late payments in accordance with the West Virginia Code.
14. **RENEWAL:** The Contract may be renewed only upon mutual written agreement of the parties.
15. **REJECTION:** All goods or materials purchased herein are subject to approval of the Institution. Any rejection of goods or materials resulting in nonconformity to the terms, conditions or specifications of this Order, whether held by the Institution or returned to the Vendor, will be at the Vendor's risk and expense.
16. **VENDOR:** For the purposes of these Terms and Conditions, the "Vendor" means the vendor whose quotation, bid, proposal or expression of interest has been accepted and has received a lawfully issued Purchase Order from the Institution.
17. **SHIPPING, PACKING, BILLING & PRICING:** Unless otherwise stated, all goods are to be shipped prepaid, FOB destination. No charges will be allowed for special handling, packing, wrapping, bags, containers, etc., unless otherwise specified. All goods or services shall be shipped on or before the date specified in this Order. Prices are those that are stated in this Order. No price increase will be accepted without written authority from the Institution.
18. **TAXES:** The State of West Virginia (the Institution) is exempt from Federal and State taxes and will not pay or reimburse such taxes.
19. **TERMINATION:** In the event of a breach by the Vendor of any of the provisions of this contract, the Institution reserves the right to cancel and terminate this contract forthwith upon giving written notice to the Vendor. The Vendor shall be liable for damages suffered by the Institution resulting from the Vendor's breach of contract.
20. **WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Order will: (a) conform to the specifications, drawings, samples or other description furnished or specified by the Institution; (b) be merchantable and fit for the purpose intended; (c) be free and clear of all liens, claims and encumbrances of any kind; and/or (d) be free from defect in material and workmanship.



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 ~~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: \_\_\_\_\_

# 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 OTHER 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** \_\_\_\_\_