

WV HIGHER EDUCATION POLICY COMMISSION

**REQUEST FOR PROPOSALS # 22039
BOND/DISCLOSURE COUNSEL SERVICES**

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Exhibits:

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Questions will be received until August 12, 2021 at 3:00 pm EDST.

Proposals will be received until August 25, 2021 by 3:00PM EDST.

REQUEST FOR PROPOSALS

RFP #

SECTION 1: GENERAL INFORMATION AND STANDARD TERMS AND CONDITIONS

1.1 Purpose: The West Virginia Higher Education Policy Commission (HEPC) is seeking to retain a firm(s) as bond counsel in connection with the issuance of two or more series of bonds being issued to refund outstanding bonds.

1.2 Schedule of Events:

| | |
|---------------------------------|-------------------|
| Release of RFP: | August 5, 2021 |
| Question Deadline: | August 12, 2021 |
| Addendum/Response to Questions: | August 17, 2021 |
| Proposal Due Date: | August 25, 2021 |
| Target Award Date: | September 6, 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
Phone: 304-553-1813

1.4 Posting of Information: This RFP and any addenda, including answers to questions, will be posted to: <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 22039 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: Proposals may be emailed to: bid.receipt@wvhepc.edu **OR** mailed/delivered on or before the date required in Section 1.2.

For email submissions, please see Exhibit E for guidelines.

For delivered submissions, 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. 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.

NOTE: ALL PRICES ARE TO BE PROVIDED IN A SEPARATE EMAIL LABELED RFP 22039 PRICING. IF SUBMITTING ELECTRONICALLY OR A SEPARATE SEALED ENVELOPE LABELED AS PRICING INFORMATION IF SUBMITTING BY DELIVERY.

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 HEPC 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 HEPC in any manner.

1.10 Expenses: The HEPC 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 HEPC 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: The HEPC 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 HEPC.

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.

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

1.19 Contract Termination for Failure to Perform: The HEPC 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 and expenses, not to exceed the maximum proposed, will be made upon satisfactory completion of the required services. Payments will be made from the bond proceeds via the Cost of Issuance fund. If the bond sale does not occur, no payment for services will be made.

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/VendorRge.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

HEPC 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

3.1 The West Virginia Higher Education Policy Commission (HEPC) is seeking to retain a firm(s) as bond counsel in connection with the issuance of one or more series of bonds being issued to refund its outstanding:

- Revenue Bonds (Higher Education Facilities), 2012 Series A and Series B.

3.2 The following West Virginia Code Chapters are applicable to this issue:

- Chapter 18B, Higher Education, as amended specifically:
 - Chapter 18B, Article 10, of the West Virginia Code.
 - Chapter 18B, Article 1, of the West Virginia Code.
 - Chapter 29, Article 22, Section 18 of the West Virginia Code, the Lottery Act.

3.3 Proposed Bond Structure

HEPC intends to issue one or more series of West Virginia Higher Education Policy Commission Revenue Refunding Bonds (Higher Education Facilities) with an approximate par amount of \$90 million to refund its 2012 Series A and Series B Revenue Refunding Bonds (Higher Education Facilities). The Bonds will be secured by education and general capital fees and pledged excess lottery revenues .

3.4 Public Resources Advisory Group is serving as Municipal Advisor to the HEPC for this refunding.

SECTION 4: SCOPE OF SERVICES

The firm selected as bond counsel will be expected to perform the following services:

1. Prepare all resolutions of the HEPC as well as legal documents, opinions, notices and certificates required for the bonds except for the Official Statement and related Offering Documents.

2. Assist representatives of the HEPC and other members of the working group with determining the legal material to be included in the Preliminary Official Statement and Official Statement.
3. Cause the bonds to be prepared in definitive form for delivery to the initial purchaser thereof.
4. Undertake all requisite tax analysis, prepare tax certificate, IRS Form 8038 and other pertinent tax documents.
5. Issue a final approving opinion regarding the legality of the sale of bonds and to the effect that interest on the bonds is exempt from federal and state income taxation.
6. Deliver other such legal opinions as are customarily required from bond counsel including as to the accuracy of the descriptions of the bonds and security therefor.

SECTION 5: EVALUATION AND SELECTION PROCESS

5.1 All acceptable proposals will be evaluated by a committee composed of HEPC staff and hired consultants.

5.2 Once the evaluation committee has narrowed the number of proposals for further consideration, telephone conference calls and/or on-site presentations may be required to determine the best qualified firm. The evaluation committee members may make final adjustments in their scoring of the evaluative criteria based upon such calls/presentations. The proposal receiving the highest overall score will be selected.

5.3 Evaluations will be based on overall experience, qualifications and cost. Award will not necessarily be made to the firm submitting the lowest cost.

SECTION 6: PROPOSALS

6.1 Eligible Proposers:

- A. Are free from all objections and interests that might conflict with the interests of the state;
- B. Are experienced in municipal finance transactions similar to the type contemplated and have an established reputation for excellence in public finance; and
- C. Are able to provide assurance that the firm and all individuals to be assigned to work on this transaction comply with the guidelines and standards established by the West Virginia Ethics Commission in 158 CSR 4.

**FAILURE TO MEET THE CRITERIA LISTED ABOVE WILL BE CAUSE FOR
IMMEDIATE DISQUALIFICATION OF THE PROPOSAL.
NO JOINT PROPOSALS WILL BE ACCEPTED.**

6.2 Required Components of Proposal.

A cover letter should accompany your proposal containing an expression of interest, certification that your firm is eligible and setting forth the primary contact's name, address, telephone number and e-mail address.

- 6.3 Proposers should respond to each of the following requests. The total length of the proposal should not exceed seven (7) pages.

A. Conflict of Interest

1. Affirm that your firm and all individuals that will be assigned to this transaction are free from all obligations and interests which might conflict with the interests of the HEPC and have not, in any way, violated the provisions of Legislative Rule 158 CSR 4.
2. Identify all pending federal or state litigations, investigations or regulatory action, if any, related to public finance in which your firm, any predecessor firm or employee is involved. For each matter state:
 - a. Style of the case.
 - b. Summary of the nature of the case or claim.
 - c. Status of the case or claim (e.g., circuit court, on appeal to district court, awaiting certiorari, etc.).
 - d. Approximate dollar amount involved, if any.
 - e. Improper conduct alleged, if any.
3. Identify any other existing or potential conflicts of interest, as well as your representation of parties or other relationships that might be considered a conflict of interest, that may affect or involve this transaction of the State of West Virginia.

B. Experience and Expertise (40 points possible)

1. Please describe your firm's public finance practice and related areas of law by providing a brief history of the firm in these areas.
2. Provide a description of your firm's experience as bond counsel, special tax counsel or other relevant experience relating to bond issues during the past three (3) years for issuers within the State of West Virginia which you believe qualifies your firm to be bond counsel for bonds contemplated by this request. Please highlight your firm's experience serving as bond counsel on bonds issued by the HEPC and other State or State Agency issued Revenue Refinancing Bonds.
3. List no more than ten (10) issues. For each issue, please indicate the following:
 - a. The name of the governmental entity on whose behalf the bonds were issued.
 - b. Par amount and date of issuance.
 - c. Type of transaction.
 - d. Use of proceeds (refinancing or new money).

- e. The nature of the security pledge (e.g., special fund, full faith credit, etc.).
- f. Name, address telephone number and e-mail address (if available) of a contact for each transaction.

C. Personnel (30 points possible)

Specify the attorney(s) and other persons of your firm who will be assigned to this transaction, the role of each person and his/her qualifications and experience in municipal public finance transactions. Where appropriate, state on which of the transactions in section B above, the attorney(s) played a significant role and describe that role.

D. Fees and Expenses (30 points possible)

List your firm's estimated fees and expenses for providing the services as bond counsel for the reissuance of the bonds. Actual fees and expenses will be paid from the cost of issuance. If the bonds are not issued, no payment of counsel fees will be made.

SECTION 7: ADDITIONAL INFORMATION

7.1 The HEPC reserves the right to reject any and all proposals with or without cause, and to waive any irregularities in the responses received as a result of this request, when such irregularities are not in conflict with WV Code or the HEPC's Purchasing Regulations. In addition, the HEPC reserves the right to make such investigations as it deems necessary as to the qualifications of any and all proposers and to conduct pre-contract negotiations.

7.2 Discussions and interviews may be held with firms under final consideration prior to making a selection for award; however, proposals may be accepted without such discussions or interviews.

7.3 In the event that mutually acceptable terms cannot be reached with the apparent successful bidder within a reasonable period of time, HEPC reserves the right to undertake negotiations with the next highest scoring firm without undertaking a new procurement process. The State's WV-96 form is attached to demonstrate the state law and guidelines that must be adhered to in any contracts presented to the HEPC for execution. A copy of additional terms and conditions that a firm wishes to offer for consideration should be enclosed with the proposal. The successful firm must be a registered vendor with the Purchasing Division of the WV Department of Administration.

7.4 Payment of fees and expenses, not to exceed the maximum proposed, will be made upon satisfactory completion of the required services. Payments will be made from the bond proceeds via the Cost of Issuance fund. If the bond sale does not occur, no payment for services will be made.

7.5 The following is a list of Exhibits that are attached which are applicable to this RFP:

- Exhibit A, W-9
- Exhibit B, Purchasing Affidavit
- Exhibit C, Response Title Page
- Exhibit D, Agreement Addendum
- Exhibit E, Vendor Guidelines for Bid Submissions via Email

7.6 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.

7.7 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 D). 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.

Request for Taxpayer Identification Number and Certification

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

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

| | | |
|--|---|--|
| Print or type. See Specific Instructions on page 3. | <p>1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.</p> <hr/> <p>2 Business name/disregarded entity name, if different from above</p> <hr/> <p>3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one 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>Note: 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 not 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>4 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 style="font-size: small;">(Applies to accounts maintained outside the U.S.)</p> |
| | <p>5 Address (number, street, and apt. or suite no.) See instructions.</p> <hr/> <p>6 City, state, and ZIP code</p> <hr/> <p>7 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.

| | | | | | | | | | | | |
|---------------------------------------|--|--|--|---|--|--|---|--|--|--|--|
| Social security number | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | - | | | - | | | | |
| or | | | | | | | | | | | |
| Employer identification number | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | - | | | | | | | |

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.

| | | |
|------------------|----------------------------|--------|
| Sign Here | Signature of U.S. person ▶ | Date ▶ |
|------------------|----------------------------|--------|

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.

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 distributions)

- 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 exceed 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 _____

TITLE PAGE

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

WV-96
1/1/2019

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

State Agency, Board, or Commission (the "State"): WV Higher Education Policy Commission

Vendor:

Contract/Lease Number ("Contract"): 22038

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: WV Higher Education Policy Commission

Vendor: _____

By: _____

By: _____

Printed Name: Mary Blashford

Printed Name: _____

Title: Director of Procurement

Title: _____

Date: _____

Date: _____

VENDOR GUIDELINES FOR BID SUBMISSIONS VIA EMAIL

NOTE: This document is specific to the competitive solicitation processes, where bid submissions must arrive at the closing location on time.

1. Purpose of These Guidelines

The Commission/Council may post opportunities that allow vendors to submit their bids / proposals / responses (known as submissions) electronically via email. This document is intended to assist vendors in understanding:

- the risks associated with submitting an emailed submission; and
- the pitfalls that should be avoided if emailing a submission.

NOTE: Vendors who deliver submissions via email do so at their own risk; the Commission/Council does not take any responsibility for any emailed submission that:

- does not arrive on time;
- is rejected; or
- contains corrupted electronic files.

2. Risks

Although emails are sent every day without incident, there are a number of risks that could occur and delay the receipt of an email. An email submission is deemed to have been received once it arrives in the Commission/Council's Electronic Mail System. Emailed submissions that arrive late will not be considered, regardless of the reason, and vendors will not have the option to resubmit after the closing date and time.

Following are some of the reasons that may delay an email, or cause an email to be rejected by the Commission/Council's email system:

- i. Delays can occur as an email moves from server to server between the sender and the recipient, meaning that the time when an email is received can be later – and sometimes considerably later – than the time when it was sent. The Commission/Council will consider the time that an email was received by the Commission/Council's email system as the official time for any emailed submission.
- ii. The Commission/Council's email system has technical and security limitations on the size and type of files that will be accepted. Emails containing attachments that exceed 30 MB cannot be accepted.
- iii. The Commission/Council's email system has protocols whereby an email may be investigated as potential spam or containing a virus / malware. Such protocols may result in an email being sent to the recipient's inbox late.

- iv. The Commission/Council's email system has protocols whereby an email may be investigated as having Personally Identifiable Information (PII). An email determined by the system to contain PII or data of a similar appearance of PII will not be delivered.
- v. The Commission/Council's email system is designed to reject any email that is considered spam or that contains a virus or malware. On occasion, an email may be falsely flagged and rejected. Copies of rejected emails are not kept in the email system, and therefore no possibility exists to retrieve an emailed submission that has been rejected.
- vi. In addition, it is possible that one or more attachments to an email to become corrupted and therefore inaccessible to the Commission/Council's email system. Vendor will not have the option to resubmit after closing if the attachments cannot be opened. Further, the Commission/Council cannot open any submission prior to closing to confirm whether or not the files have been corrupted.

3. Vendor Guidance for Emailed Submissions

1. Never assume that a solicitation allows for emailed submissions. Emails should only be used as a delivery mechanism when the opportunity expressly allows for it.
2. Never assume which email address is being used for submissions, when emailed submissions are permitted. Carefully read the instructions and ask questions well in advance of closing if the email address for submissions is not clear. Submissions that are emailed to any address other than the one expressly stated for the purpose may be rejected as missing a mandatory requirement of the solicitation.
3. Avoid using generic subject lines in the emailed submissions that do not clearly identify the solicitation name and / or number as well as the vendor organization name. The subject line of the email should be: BID FOR xxxxxxxx DUE WEDNESDAY xxxxxxxx AT 3:00PM. A sample email subject line for an open bid might be: BID FOR 21001 DUE WEDNESDAY, APRIL 7, 2021 AT 3:00PM.
4. Avoid multiple emails from the same vendor for the same opportunity wherever possible. If multiple emails cannot be avoided (e.g., the collective size of the emails exceeds the maximum size allowed), identify how many emails constitute the full submission and provide clear instructions on how to assemble the submission. Multiple submissions from the same vendor for the same opportunity may result in rejection if these instructions are unclear.
5. Vendors may update, change, or withdraw their submission at any time prior to the closing date and time. If emailing updates or changes, do not submit only the changes that then require collation with the previous submission. Instead, a complete revised package with clear instructions that it replaces the earlier submission should be sent. This will help to avoid any confusion as to what constitutes the complete submission.

6. Avoid emailing submissions in the last 60 minutes that the solicitation is open. Sufficient time should be left prior to closing to ensure that the email was received, and to resubmit before closing if a problem occurs.
7. Do not assume that the email has been received. If a confirmation email is not received shortly after sending the email, contact the named Contact on the solicitation to confirm whether or not their submission was received. In addition, send the emailed submission with a delivery receipt request. If unsure how to send an email with a delivery receipt request, contact the vendor's own system support personnel or search online for instructions specific to the vendor's email system (e.g., Outlook, Gmail, etc.)
8. If the confirmation email is not received, do not resubmit without first contacting the named Contact. Resending a submission should only occur once confirmation is received that the original email was not received, and enough time is left for receipt of the submission prior to the closing date and time.
9. Do not ignore any message from the Commission/Council regarding rejection of an emailed submission. If such a message is received prior to closing, contact the named Contact on the opportunity immediately.
10. If time permits prior to closing, possible remedies for a rejected or missing emailed submission include:
 - i. If the collective size of the emailed attachments exceeds 30 MB, resubmit it over multiple emails, clearly identify how many emails constitute the full submission and how to collate the files.
 - ii. If the emailed submission included zipped or executable files, unzip or remove the executable the files and resubmit over one or more emails (see previous bullet if the files collectively exceed 30 MB).
 - iii. Resend the submission from a different email account.
 - iv. If permitted in the opportunity, use an alternative method to deliver the submission (e.g., mailed or hand delivered).

Note: None of these remedies are applicable after the closing date and time.