

REQUEST FOR PROPOSALS
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION &
WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION
RFP #22006 STRATEGIC PLANNING SERVICES

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Exhibits:

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

Questions will be received until by October 8, 2021 by 3:00PM EDST

Proposals will be received until October 20, 2021 at 3:00PM ED22006ST

REQUEST FOR PROPOSALS
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION &
WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION
RFP #22006 STRATEGIC PLANNING SERVICES

SECTION 1: GENERAL INFORMATION AND STANDARD TERMS AND CONDITIONS

1.1 Purpose: The West Virginia Higher Education Policy Commission (Commission) and the West Virginia Council for Community and Technical College Education (Council) have initiated a Request for Proposal (RFP) process to identify a qualified vendor to guide and execute a strategic visioning and comprehensive planning process including a hybrid workplace plan. This process will assist the agency's senior leadership team with developing agency-wide decision-making, project management and prioritization processes and workflows.

1.2 Schedule of Events:

Release of RFP: 09/24/2021
Question Deadline: 10/08/2021
Addendum/Response to Questions: 10/13/2021
Proposal Due Date: 10/20/2021 by 3:00pm EDST
Target Award Date: 11/15/2021

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
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 via e-mail by the point of contact until the deadline identified in Section 1.2. When submitting questions by e-mail, please reference RFP 22006 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 Commission and Council 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 Commission and Council in any manner.

1.10 Expenses: The Commission and Council 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 Commission and Council 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 Commission and Council 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 Commission and Council.

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 for one (1) year. By mutual consent of the vendor and the Commission and Council, 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 Commission and Council. 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 Commission and Council may terminate the contract at the end of the affected current fiscal period without charge or penalty. The Commission and Council shall give the vendor written notice of such non-appropriation or non-allocation of funds as soon as possible after the Commission and Council receives notice.

1.19 Contract Termination for Failure to Perform: The Commission and Council 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 Commission and Council 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.

1.23 Sub-Contractors: The use of sub-contractors is not allowed unless pre-approved by the Commission.

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 Commission 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 should be completed, signed, and returned with the bidder’s proposal. See Exhibit B.
- 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 Organizations

The scope of this request for proposal includes the two governing entities for West Virginia public higher education.

West Virginia Public Higher Education

West Virginia public higher education consists of 19 public colleges and universities and two administrative units. The supervision and management of the affairs of each institution is the responsibility of their governing boards, while the Commission and the Council are responsible for the development and implementation of a statewide higher education policy agenda, providing shared services and support to institutions, and they serve as the clearinghouse for information for the state executive branch and Legislature.

The Commission and Council are served by a single executive, the chancellor. The majority of the Commission’s staff are shared and provide service to the Commission and Council. The Fiscal Year 2022 budgeted expenditures for the Commission and Council total about \$152

million and \$22 million, respectively. The Commission and Council employee 62 and 12 employees respectively.

3.2 The Context

The State of West Virginia and its public higher education institutions recognize and promote education as a path to social and economic well-being for the citizens of West Virginia. Commission and Council strategies and programs to improve student success build upon and support all public college and university achievements and help to serve the will of the West Virginia Legislature and the governor.

To effectively meet the demands of coordinating a 19-institution system, as well as providing services and financial aid for all state higher education institutions, in addition to developing a public policy agenda and sustainability plan for the future of higher education, the Commission and Council must develop a strategic and efficient operating plan for the agency itself.

The plan must develop an internal administrative, communications and hybrid operating and structural model that will enable the agency to more efficiently and effectively operate. The plan will help the chancellor and agency leaders achieve the outcomes expected by all constituents, including taxpayers, students, institution administrators, legislators and the governor. It must also address processes and strategies to be implemented to ensure the organizations' success and sustainability and provide training – in person or remote – that will help the agency to implement more effective meetings and workflow among staff.

The model should provide a framework that improves effectiveness, efficiency and collaboration with business/industry, education, other governmental agencies, and philanthropic entities that support higher education.

The plan and training must enhance and nurture a culture that is collaborative, innovative, disciplined, focused, efficient, and responsive to constituent needs. It also must position the organization to leverage technology and draw from the experience and knowledge of others within the organization and higher education community.

The plan must provide strategies that promote a modern, healthy, productive, and supportive work environment for both in-person and remote workers.

SECTION 4: SCOPE OF SERVICES

The services requested by this RFP include the preparation of a revised agency strategic operating and hybrid-remote work plan and training of senior leadership staff on implementing the principles of the plan. It is anticipated that the successful vendor will provide, at a minimum, the following deliverables:

4.1 A written plan prepared for the Commission and Council senior leadership team. The plan should be presented as an editable Microsoft Word document that can easily be updated and shared among a variety of media. The acceptable format will be determined by the executive vice chancellor for administration as it is developed.

4.2 The minimum characteristics of the plan include:

- Evaluation of current agency organizational structure and decision-making processes
- Evaluation of current agency project management strategies
- Design of a strategic visioning and comprehensive planning model
- Training in effective operating and planning strategies
- Recommendations for use of and basic training on how to implement modern office communications and collaboration tools (Microsoft Office 365, Zoom, Microsoft Teams, Calendaring, digital signing software, etc.)
- Recommendations for a hybrid work environment that allows the agencies to meet their goals
- An actionable strategic plan, including a projected budget for implementation
- Recommendations regarding the plan's implementation and support structure

4.3 Project Goals and Target Audience

While the Commission and Council seek the consultant's recommendations regarding the best process to effectively collaborate among internal departments and support with the development of a more comprehensive agency strategic plan, the scope of work would be completed in stages.

Stage 1. Discovery - Vision and key goals with Commission and Council.

This stage includes consensus building among the Commission and Council leadership to develop a strategic vision that:

- is clearly stated
- is compelling
- is timely
- steers the agency toward using modern and more efficient internal communications
- facilitates more effective operations among departments
- describes a clear and present need
- motivates staff to collaborate
- is challenging and rewarding
- allows for flexible workplace opportunities

Stage 2. Research and Validation - Needs assessment, gap analysis, SWOT analysis, research, etc.

This stage should provide evidence of research and documentation that outlines the organization's vision and key goals and informs the strategic planning process.

Stage 3. Identification of strategic goals and creating the strategic plan, including a description of the organizations' design and detailed budget. The plan should:

- Identify and facilitate new methods that foster an optimal working environment;
- Support the development of a resilient organizational culture by integrating modern management approaches, and adaptive thinking to prepare for contextual changes in the future;
- Align people and processes needed to advance the organization's work;

- Build smooth and effective collaboration techniques, both internally across cross-functional “silos” and externally across its extensive and diverse ecosystem of partners;
- Identify strategies that help build a more effective work environment that aligns with the post-pandemic office and service agency culture that can be quickly implemented, yet are dynamic, and monitored to adapt to the rapidly evolving workplace.

After the discovery and research phases, Stage 3 entails the identification of key strategic goals and the development of an actionable strategic plan that will serve as the overall blueprint for our work. This plan should include:

- An executive summary
- A comprehensive, detailed plan that identifies:
 - o Shared vision
 - o Goals
 - o Objectives
 - o Strategies
 - o Tactics
 - o Responsible partners and their roles
 - o Measures
 - o Outcomes
- This plan should also include:
 - o Comparison of existing and recommendations for a public higher education governance and structural model
 - o Resource development strategies
 - o Initial communication strategies

Stage 4. Development of implementation recommendations

This stage includes the development of recommendations regarding the implementation phase of Commission and Council work. Included within this phase should be methods of measuring successful implementation.

SECTION 5: VENDOR INFORMATION AND QUALIFICATIONS

5.1 Identify and provide a statement of qualifications of individuals to be assigned direct responsibility for the services including:

- Understanding of the work to be performed, estimated hours, and other pertinent information.
- Qualifications of all staff to be assigned to the project with the project manager identified.
- Resumes of staff to be assigned to the project. Resumes are to include the individual’s education, position in firm, years and type of experience, continuing professional education.

5.2 Provide a complete description of how the work will be conducted including 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.

5.3 Provide a proposed schedule that ensures completion of the services by the timeframes as stated in Section 4.

5.4 Provide the names, telephone numbers and mailing addresses of at least three public, education or non-profit sector 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 for whom the services provided were 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 twenty (20) 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 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 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 Commission and Council may accept or reject the Firm's proposed exceptions as it deems appropriate and in the best interests of the Commission and Council.

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 Commission and Council 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.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	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.	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
	<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	Exempt payee code (if any) _____
	<input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ 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.	Exemption from FATCA reporting code (if any) _____
	<input type="checkbox"/> Other (see instructions) ► _____	<i>(Applies to accounts maintained outside the U.S.)</i>
	5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
6 City, state, and ZIP code		
7 List account number(s) here (optional)		

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 ►
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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.

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 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 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"): 22006

Commodity/Service: Strategic Planning Services

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: _____