

**REQUEST FOR PROPOSALS WVSU22-01  
SERVICES**

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Questions will be received until May 2, 2022

Proposals will be received until 3:00PM EST, May 16, 2022

# REQUEST FOR PROPOSALS

## RFP Website Design Services

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

1.1 Purpose: This Request for Proposal (RFP) is being issued by West Virginia State University to obtain proposals from qualified, experienced, financially sound, and responsible firms with proven experience in Responsive Design Web Templates. The university is seeking to contract with a qualified firm to provide web development services that are consistent with the University Web Standards and Policies listed in section shown as Website Governance of this RFP. **Deployment of new website no later than December 2022 required.**

1.2 Schedule of Events:

Release of RFP:	April 11, 2022
Question Deadline:	April 25, 2022
Addendum/Response to Questions:	May 2, 2022
Proposal Due Date:	May 16, 2022
Oral Presentations:	TBD
Target Award Date:	June 17, 2022

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

Justin T. McAllister, AVP-Business and Finance  
(304)204-4098  
purchaing@wvstateu.edu

1.4 Posting of Information: This RFP and any addenda, including answers to questions, will be posted online at <https://wvstateu.edu/about/administration/business-and-finance/purchasing-and-accounts-payable.aspx>

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 Website Design Services 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 five (5) copies of the proposal on or before the date required in Section 1.2. The outside of the envelope should be clearly marked with the RFP number, the bid opening date/time and the Director of Procurement's name.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.16 Contract Term: This contract will be effective upon award and shall extend for a period of (1) year. By mutual consent of the vendor and the institution, the contract may be renewed for *six additional one (1) year terms*.

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

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

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

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

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

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

## **SECTION 2: ELIGIBILITY REQUIREMENTS**

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

receiving a purchase order for competitive products and/or services exceeding \$25,000. See Exhibit A.

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

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

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

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 C) 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.

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

The West Virginia State University Board of Governors is seeking a vendor to provide website design, hosting, and maintenance for West Virginia State University.

It is the Board of Governors' intent to solicit proposals to provide website graphic design, website hosting and website maintenance services for West Virginia State University. The award of contract resulting from this RFP will result in a multi-year contract renewable annually up to six (6) one-year contracts.

The project goals and objectives are:

1: To design, develop and create a visually engaging, responsive design website for the university that accommodates different viewing platforms, including tablets, smart phones and various desktop and laptop views.

2: To host the university's website at a secure, off-site location with redundant back-up protocols routinely exercised, redundant Internet connections and 24/7 technological support.

3: The website content management system (CMS) shall be Kentico, or a CMS of equivalent or superior quality as recommended by the vendor, and the vendor shall provide any necessary training for university employees as well as ongoing support for major webpage enhancements or programming.

4: Conduct a detailed analysis of the university's existing website and then propose site architecture and navigation mapping. Develop a plan and timeline to migrate all existing website content to the new website.

5: Review existing web content and recommend improvements based on industry best practices, including the consolidation and deletion of unnecessary content and web elements. Vendor will also ensure that in addition to meeting industry best practices, all web content will meet ADA compliance standards.

6: Minimize the online disruption and ensure new website is indexed to the new change of address. Create a current and future sitemap with appropriate topical focus.

7: Build into timeline and best practices model the intent to provide updates to keep up with current trends and standards at no less than three years into the length of the contract.

West Virginia State University is the longest accredited institution of higher learning in the State of West Virginia. After desegregation in the 1950s, West Virginia State was one of the first historically black colleges to integrate and saw a rapid shift to a fully accessible, racially integrated and multigenerational institution. The university offers 23 bachelor's degrees and seven master's degrees to a full-time student population of more than 1,800. WVSU offers undergraduate areas of study in Art, Biology, Business Administration, Chemistry, Communications, Computer Science, Criminal Justice, Economics, Education, Foreign Languages, Health Sciences, Mathematics, Recreation, Social Work and Sociology. The master's areas of study are Biotechnology, Criminal Justice, Media Studies and Public Administration. West Virginia State was founded in 1891 as a land-grant institution. The 100-acre campus is located 12 miles from Charleston, the state capital. West Virginia State University is the largest public higher education institution in the Kanawha Valley.

The university currently has a web presence that is outdated in appearance and functionality. The university's website was last updated and re-launched in June 2016. There are a number of constituencies that are involved in decision making roles for the website. The overall vision and goals for the university's website is overseen by the Division of University Relations. A university-wide network of web masters, with various levels of site access, are responsible for the day-to-day management of web page content and layout. Coding is handled by the hosting vendor. University Relations works with the network of university web masters to ensure that the branding and message that is posted on the site is in line with the branding messages of the university.

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

The selected firm shall partner with the university to develop a redesigned web presence that attracts, engages, and retains credit and non-credit students. The website shall clearly market the university's available programs and services and highlight WVSU as a research institution as

well as “best choice” for traditional and non-traditional students both in West Virginia and throughout the nation. The site shall provide a simplified front-end enrollment and registration, including the cost, tuition and available tools for payment, such as financial aid and scholarships. The information provided regarding payment shall comply with all federal requirements for educational websites. The site shall incorporate easy, self-directed selection options for academic programs and offerings. The site shall develop key stakeholder areas and subsequent pages for students, parents, alumni and faculty and staff. The site shall also highlight key WVSU events, announcements and services. The site shall also highlight the university event calendar, map, directory and giving opportunities. The site shall highlight the university’s land-grant mission, Title III and history. The site shall seamlessly connect to the university’s social media channels.

The selected firm will partner with the WVSU website steering committee, the Division of University Relations, the university-wide webmasters along with content managers located throughout the university to redesign and populate revised content into the new CMS templates. The university currently uses the Kentico content management system (CMS), for the university’s website and will continue to utilize this system for website management or one recommended by the successful bidder of equivalent or superior quality and functionality. The selected firm will host the university’s website in its entirety and invest in business continuity practices, including conducting and maintaining regular website back-ups as well as redundant Internet connections along with 24/7 technological support, to ensure the university’s business continuity related to the website.

Currently, the WVSU website is hosted off-site by a vendor with routine back-ups. The university uses the content management system (CMS) Kentico, version 6.0. Led by a university webmaster, WVSU maintains a group of varying level webmasters to manage and update website content; however, major updates to the structure of the site require vendor webmaster development and programming, and this occurs periodically each year. The website serves dual purposes: external community engagement and internal business purposes. While the site is the entry point to the university’s ERP system and is used daily by certain university stakeholders, the primary focus of the site needs to be recruitment and retention of students as well as engagement with students, faculty, staff and the surrounding community.

**Vendor must accomplish the following:**

**The following is an outline of five phases related to the website redesign project:**

**Phase I: Research & discovery**

- Compare current website design and content against multiple peers selected by the university.
- Audit current site content for quality and potential for migration to new site and use of SEO with regard to industry best practices.
- Onsite meetings with Executive Leadership, Site Managers and Content Contributors groups formed for website redesign organization.

- Survey prospective students and influencers (parents/family, counselors) as well as current students and conduct focus groups with current and prospective students to better understand current and emerging site/content needs.
- Establish benchmarks for measuring efficacy of redesigned site.
- Report out findings, along with recommendations and strategy for remainder of the project; summary should include an articulation of users and a prioritized recognition of their content needs.

## **Phase II: Information architecture**

- Create a site map for proposed redesign that recognizes all pages related to audience needs, and map user flows accordingly.
- Develop wireframe and refine wireframe through testing and present wireframe to the university via organizational groups created for website redesign project.
- Develop wireframe for the overall site including service areas critical to prospective and current students (Admissions, Financial Aid, Housing & Residence Life, Career Services, etc.) and to the university's four colleges.
- Refine wireframes through testing and include annotations in presentation of wireframe to the university.

## **Phase III: Design**

- In collaboration with University Relations, Executive Leadership and Site Manager groups, review a range of peer and aspirational peer sites to identify a desirable aesthetic for the redesign.
- With a primary focus on optimizing look and performance for mobile users, produce three design concepts for presentation to the university, which will select one design for further development and execution.
- Create secondary and tertiary page designs to push the overall design deep into the website.
- Produce a complete style guide for the site that addresses use of color, type fonts, photography, videography and forms and that is accessible for all content managers and contributors, no matter their level of skill or experience.

## **Phase IV: Content creation & migration**

- Create a multi-channel content strategy that includes social media, search engines, e-mail and printed admissions materials with the redesigned website at its center and a messaging framework to guide implementation of that strategy.



- Working with University Relations, create a bank of brand compliant photography and other visual assets sufficient to support the redesigned site for at least one year after launch.
- Provide guidance for content creation in the form of content templates and training for content coordinators and contributors across the university. The Vendor shall provide a minimum of three training sessions, at least two of those training sessions on the website content management system are to be directed for the university-wide webmasters, including members of University Relations, and the additional detailed, higher-level training session shall be directed for the university's webmaster.

#### **Phase V: Development**

- Working with the Kentico content management system (or an equivalent or superior system as recommended by the vendor), fully develop the redesigned site, supporting any custom programming, development of any necessary HTML and cascading style sheets.
- Migrate content from the existing site to the redesigned site with an emphasis on full page development deep into the site.
- Fully develop the redesigned site, supporting any custom programming, development of any necessary HTML and cascading style sheets.
- Ensure that any developed templates are able to incorporate emergency notification messages and the templates must work in conjunction with the university's automated emergency notification system called Regroup.
- Work with the university's graphic designer and webmaster to create consistent and standardized templates for all pages that ensure that pages conform with the WVSU branding and identity manual.
- Ensure that SSL certificates, obtained by the university, are integrated into templates and pages as needed.
- Using approved documents from previous phases, build, apply and test new responsive design templates. This will include a plan for setting up local servers, and migration of all existing content. All custom code documentation should be configured and delivered to University Relations.
- The vendor will work with the University Relations to review, test and deploy the new templates. Final website will be compliant with University Standards. Security audit of the new website should be performed by vendor.
- Develop a transition plan based on goal six(6) in section 3. It is the University's goal to have the website transitioned within four (4) to six (6) months of contract signing,

however the vendor should develop a transition plan based on goal six (6) in section 3--if an alternative timeline is proposed it will need to be mutually agreed upon by both parties.

- The university will have final approval of the site and its date of deployment.

#### Transition-Out Plan

- The vendor should prepare a Transition-Out Plan to be mutually agreed upon by both parties in the event of operational support being transferred to another vendor at the end of the contract period or upon termination of the contract.
- The University's goal is for the vendor to provide this Transition-Out Plan within six (6) months of the execution of the contract. Please provide suggestions on this timeline.
- The vendor should describe the content of the Transition-Out Plan, including but not limited to, any resources required, the turn over of hosting, support, data, source code, etc..
- The University retains the rights and ownership of all content and data.

#### PERIODIC [*WEEKLY, MONTHLY*] STATUS REPORTS

The Vendor shall provide Phase status or completion reports to the designated project lead on a weekly basis. This report shall include, at a minimum, information concerning the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, and notification of any significant deviation from previously agreed upon work plans and schedules. These reports shall be well organized and easy to read. The Vendor shall submit the reports in a timely manner and on a regular schedule as agreed by the parties.

#### CONTRACT CHANGES

Contract changes, if any, over the life of the contract shall be implemented by contract amendments agreed to in writing by the State and Vendor.

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

Provide a statement/response to each of the following:

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

5.2 Describe the experience that key personnel have, their length of service with the firm, as well as other relevant skills.

5.3 Describe the Firm's size, illustrating its ability to fulfill the terms of the RFP.

- 5.4 Describe any related experience working in the field of higher education.
- 5.5 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.
- 5.6 Provide a proposed schedule that ensures completion of the services.
- 5.7 Provide the names, telephone numbers and mailing addresses of at least three higher education clients and the contact person from whom references may be obtained for both the firm and the key personnel assigned to the engagement. References should be from clients comparable to the type and scope of services solicited in this RFP.

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

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

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

6.2 Proposals should be limited to 30 pages. Additional material may be presented as exhibits to the main proposal.

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

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

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

Technical Approach and Methodology	20	Points Possible
Design and Functionality	20	Points Possible

Plan, Timeline and Experience	25	Points Possible
Oral Presentation	5	Points Possible
Cost	30	Points Possible
Total	100	Points Possible

6.4.1 Technical Approach and Methodology; Design and Functionality; Plan and Timeline: Responses to Section 3 and 4 will be reviewed and evaluated here.

6.4.2 Experience and Qualifications: Responses to Section 5 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, WVSU 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. WVSU may accept or reject the Firm's proposed exceptions as it deems appropriate and in the best interests of WVSU.

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 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.

## Cost Evaluation

Design	
Implementation	
<b>Total One-time Cost (Design + Implementation)</b>	
<b>On-going Monthly Cost (Per Month)</b>	

**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 \$25,000, 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.

## Purchasing Affidavit

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

### STATE OF WEST VIRGINIA Purchasing Division

## PURCHASING AFFIDAVIT

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

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

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

#### DEFINITIONS:

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

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

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

**AFFIRMATION:** By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that: (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

#### WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_, to-wit:

Taken, subscribed, and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission expires \_\_\_\_\_, 20\_\_.

AFFIX SEAL HERE

NOTARY PUBLIC \_\_\_\_\_

*Purchasing Affidavit (Revised 01/19/2018)*



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 is 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 ~~striketrough~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General's authorized representative expressly agree to and knowingly approve those alterations.

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

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