

REQUEST FOR PROPOSALS
WEST VIRGINIA COUNCIL for COMMUNITY and TECHNICAL COLLEGE EDUCATION
RFP#23226
ADDENDUM #1 MARCH 24, 2023

Question	RFP Section	RFP Paragraph	WVCCTCE Response
1	3		<p>The RFP documentation notes that “mandatory provisions identified by the use of the words “must, will and Shall.” However, much of the requirements are presented in a narrative format. Would it be possible for the West Virginia Council for Community and Technical College Education to provide a clear list of mandatory requirements and a separate list of non-mandatory requirements?</p> <p>Each mandatory requirement is indicated with the words must, will or shall preceding it. The Agency is unable to provide requirements in list format.</p>
2	3		<p>One of the requirements listed specifies the that we provide a “Virage VS600M Truck Driving Simulator Systems or equivalent.” However, the Virage simulator referenced has only three (3) screens. Meaning that the VS600M is non-compliant with the requirements laid out by the RFP specifications in section three (3). Can you provide clarification on the four (4) screen requirement and if therequirement is mandatory?</p> <p>The four (4) screen requirement was included in error. Systems should have a minimum of three (3) screens.</p>
3	GTC	14	<p>Has the State appropriated/secured the necessary funds for this contract?</p> <p>The West Virginia Council for Community and Technical College Education (Council) was awarded funds through a congressionally directed spending request sponsored by Senator Joe Manchin. The funding will be provided through the US Department of Education's Fund for the Improvement of Postsecondary Education. The Council has submitted all required documentation to the United States Department of Education and is awaiting further guidance. We are prepared to execute a purchasing contract as soon as the funds are released by US Ed.</p>
4			<p>Should the steering column be an OEM part from an actual truck?</p> <p>This feature is considered optional. However, additional points may be awarded to proposals that include equipment that most closely approximates real-world vehicles.</p>
5			<p>Should the system incorporate controls and equipment that operate by a pneumatic system, (Range Selector, Side-Splitter, Brake, etc.) such as in an actual vehicle?</p> <p>This feature is considered optional.</p>
6			<p>Is it requested that the simulator have a motion system?</p> <p>This feature is considered optional. However, additional points may be awarded to proposals that include equipment that most closely approximates real-world vehicles.</p>
7			<p>Per your request regarding the automatic transmission, is it requested that the automatic transmission (when selected) be operated by a ‘Paddle Shift’ selector mounted to the steering column?</p> <p>This feature is considered optional. However, additional points may be awarded to proposals that include equipment that most closely approximates real-world vehicles.</p>
8			<p>Per your request to the manual transmission, is it requested that the transmission ‘lock-out’ and provide the sensation of ‘grinding gears’ when shifting / clutching incorrectly?</p> <p>This feature is considered optional. However, additional points may be awarded to proposals that include equipment that most closely approximates real-world vehicles.</p>
9			<p>Should the transmission ‘lock out’ (not go into gear unless all shifting parameters are met – RPMs, gear selection, clutch)?</p> <p>This feature is considered optional. However, additional points may be awarded to proposals that include equipment that most closely approximates real-world vehicles.</p>
10	GTC	25	<p>At present this clause only serves to benefit the State’s Confidential Information. The Vendor therefore requests that this clause be mutualized so that benefits and obligations benefit both parties to the Agreement.</p> <p>Per Section 5.6 (pg 14) of the RFP: In the event that mutually acceptable terms cannot be reached within a reasonable period of time, with the highest ranked bidder, the state reserves the right to undertake negotiations with the next highest ranked bidder and so on until mutually acceptable terms can be reached.</p>

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11	GTC	30	<p>The Vendor is happy to indemnify the State, however we request that the wording is amended to the following: "The Vendor is responsible for and shall defend, indemnify, and hold harmless the State, its servants, agents, and subcontractors from and against all claims, losses, damages, costs (including reasonable legal costs), expenses and liabilities of kind or nature in respect of the personal injury or death of any personnel or third party and/or damage to third party property resulting from any Negligent acts or omissions or the wilful misconduct of the Vendor, its servants, agents or subContractors under this Agreement."The Vendor further requests the addition of the following clause which limits both parties' liability to the value of the contract for those which can be limited at law.It is not commercially viable for the Vendor to enter into a contract where liability is uncapped, therefore e propose the following wording: For the avoidance of doubt, the Vendor is not liable for any loss, destruction, or damage to the State's property, including any property which may be the subject of The order unless and then only to the extent that such loss, destruction or damage is a direct Result of the Vendor's gross negligence or wilful misconduct." "IN NO EVENT WILL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL, MULTIPLE, OR PUNITIVE DAMAGES OR ANY DAMAGE DEEMED TO BE OF AN INDIRECT OR CONSEQUENTIAL NATURE ARISING OUT OF OR RELATED TO ITS PERFORMANCE UNDER THIS AGREEMENT, WHETHER BASED UPON BREACH OF CONTRACT, WARRANTY, INDEMNITY, NEGLIGENCE AND WHETHER GROUNDED IN TORT, CONTRACT, OR CIVIL LAW OR OTHER THEORIES OF LIABILITY, INCLUDING STRICT LIABILITY." "IN NO EVENT WILL THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY OR ITS SUBCONTRACTORS OR SUPPLIERS OF ANY TIER FOR THE PERFORMANCE OR BREACH OF THIS AGREEMENT OR ANYTHING DONE IN CONNECTION THEREWITH EXCEED THE PRICE PAYABLE OR THE AMOUNT ACTUALLY PAID FOR BY THE STATE FOR THE PRODUCT, WHICHEVER IS LESS." Nothing in this clause excludes or limits either Party's liability to each other for death or personal injury; or fraud or fraudulent misrepresentation or any other liability which Cannot be excluded or limited at law.</p>	<p>Per Section 5.6 (pg 14) of the RFP: In the event that mutually acceptable terms cannot be reached within a reasonable period of time, with the highest ranked bidder, the state reserves the right to undertake negotiations with the next highest ranked bidder and so on until mutually acceptable terms can be reached.</p>
12	GTC	Proposed New Clause	<p>The Vendor requests the addition of the following language which serves to protect its Intellectual Property which is the subject of the Agreement: "The State agrees that the ownership Of all intellectual Property rights in the Product remain the exclusive property of the Vendor and/or the relevant third- party Supplier as applicable. Upon acceptance of the Product, the Vendor grants to the State a non-exclusive, non-transferable, license to use the Product for the sole purpose of operating and Maintaining the Product and any associated equipment as long as the State operates the Product at State's site and complies with the terms and conditions of the Agreement, including the right to: a) make one (1) copy only of the software to be used solely for back up or archiving purposes; and b) make copies of any documentation provided as are reasonably necessary for the purpose of providing simulation training to a maximum of three (3) copies. c) the State shall not: i) copy (other than in Accordance with a) and b)), modify, export, or derive training material and/or devices from, nor reverse Engineer, decompile, disassemble from the or translate nor create derivative works based on the Product; or ii) use the Product to manufacture or enable the manufacture of any products and/or of any Part, component, system, or element of the Product; or iii) disclose any Confidential Information Regarding the Product or any part thereof to any other persons or companies without the Vendor's prior written approval.iv) refer to the Vendor's Products by name or likeness to market the State's Products or services, without express written permission from the Vendor. In the event that an arbitration award or a court decision having the authority of a final conclusive judgement duly concludes that the Vendor's Product infringes a third party's intellectual property rights then the Vendor shall Indemnify, defend, and hold harmless the State against all reasonably incurred legal proceedings and costs resulting from such infringement except and to the extent that any such infringement is based upon: i) any act or omission of the State in its use of the Product; or ii) the claim relates to a third-party supplier's Product and the Vendor shall use reasonable efforts to obtain from such third parties the most favourable patent indemnity protection for the State hereunder. The Vendor is not responsible for any settlement made by the State without the Vendor's prior written consent. Any breach of this clause by the State will be considered a substantial material breach of the Agreement and the Vendor will be entitled to terminate the Agreement with immediate effect.</p>	<p>Per Section 5.6 (pg 14) of the RFP: In the event that mutually acceptable terms cannot be reached within a reasonable period of time, with the highest ranked bidder, the state reserves the right to undertake negotiations with the next highest ranked bidder and so on until mutually acceptable terms can be reached.</p>

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13	GTC	Proposed New Clause	<p>Vendor requests the addition of the following clause which deals with how the contract will be handled/proceed in the event of a force majeure event occurring: "Neither Party shall be liable for nor deemed to be in default on account of delays in performance of any of its obligations under the Agreement which are due directly or indirectly to any event or circumstance or combination of events or circumstances that is beyond the reasonable control of the affected Party and materially and adversely affects the performance by such Party of all or a part of its obligations under or pursuant to the Agreement ("Force Majeure Event") For the avoidance of doubt, the State shall not be relieved of its obligation to make timely payment associated with Product payment milestones achieved prior to the occurrence of a Force Majeure Event. The affected Party shall give the other party timely notice after it becomes aware of any Force Majeure Event, which notice shall, to the extent practicable, specify the length of the delay anticipated and any additional costs, incurred or likely to be incurred, by reason of such Force Majeure Event and the Parties shall agree to amend the State's order accordingly. If a Force Majeure Event continues for a period of one hundred and eighty (180) consecutive days then, within that one hundred and eighty(180) day period, if permitted, the Parties shall meet to review the situation with a view to attain means of achieving a resumption of performance, however, in the absence of any such agreement, the State may terminate the Agreement as per new clause 38 of this Agreement.</p>	<p>Per Section 5.6 (pg 14) of the RFP: In the event that mutually acceptable terms cannot be reached within a reasonable period of time, with the highest ranked bidder, the state reserves the right to undertake negotiations with the next highest ranked bidder and so on until mutually acceptable terms can be reached.</p>