

**REQUEST FOR PROPOSALS #23229  
RETIREMENT PLAN FIDUCIARY ADVISORY SERVICES**

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Questions will be received until April 10, 2023 @ 4:00PM EST

Proposals will be received until April 26, 2023 @ 3:00PM EST

# REQUEST FOR PROPOSALS

RFP #23229

## **SECTION 1: GENERAL INFORMATION**

1.1 Introduction: The West Virginia Higher Education Policy Commission (Commission) is seeking proposals from qualified firms to provide professional retirement plan fiduciary consulting services in support of the West Virginia Higher Education Retirement Plan which serves the Commission and its affiliated institutions, the West Virginia Council for Community and Technical College Education (Council) and its affiliated institutions and the West Virginia Network for Educational Telecomputing (WVNET).

**1.2 Instructions to bidders: See Exhibit A for bidder instructions.**

**1.3 General terms and conditions: See Exhibit B.**

1.4 Schedule of Events:

Release of RFP:	March 23, 2023
Question Deadline:	April 10, 2023
Addendum/Response to Questions:	April 14, 2023
Proposal Due Date:	April 26, 2023

1.5 Posting of Information: This RFP and any addenda, including answers to questions, will be posted <https://www.wvhepc.edu/resources/purchasing-and-finance/> .

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

1.7 Expenses: The State shall 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.

1.8 Interviews: The Commission may, in its sole discretion, hold discussions and/or interviews with the bidders under final consideration prior to making a selection for award; however, the Commission may award the RFP without such discussions or interviews.

1.9 Award: The Commission anticipates that it will award a single contract for all services. However, the Commission reserves the right to configure the contract in whatever manner is in its best interests.

## **SECTION 2: BACKGROUND INFORMATION**

The Commission is the coordinating and policy making board for a system comprising 12 universities. The Commission administers the West Virginia Higher Education Retirement Plan for itself and its affiliated institutions, as well as for the Council and WVNET. The Council is the policy making board for a system comprising nine community and technical colleges in West Virginia. In total, 23 employer locations submit employee and employer contributions to the West Virginia Higher Education Retirement Plan via wire transfer from three separate payroll systems.

The West Virginia Higher Education Retirement Plan has combined assets of \$3.6 billion with approximately 30,000 participants with balances. The program includes four plans:

- Qualified 401(a) defined contribution plan with a 6% mandatory participation requirement and 6% employer match.
- Frozen 403(b) Deferred Compensation Plan
- Voluntary participation 403(b) Supplemental Plan
- Voluntary participation 457(b) Deferred Compensation Plan

## **SECTION 3: SCOPE OF SERVICES**

This RFP may contain mandatory provisions identified by the use of the words “must, will and shall.” Failure to comply with a mandatory term in the RFP will result in bid disqualification.

As a multiple-location employer and state agency managing the retirement system of West Virginia’s public institutions of higher education, the Commission seeks professional retirement plan fiduciary consulting services designed to mitigate risk, minimize fees, and ensure compliance. Services being considered include advising plan fiduciaries on plan administration, reviewing and providing oversight of retirement plan fund offerings, reviewing and monitoring investment selections, oversight of fiduciary reporting and compliance, legal and regulatory assistance, and benchmarking oversight.

The sole recordkeeper/service provider for the West Virginia Higher Education Retirement Plan is the Teachers Insurance and Annuity Association (TIAA).

The Commission will evaluate interested firms based on responses in the following areas:

### **3.1 Investment Services**

1. Describe your firm’s approach to plan investment consulting.
2. What investment policy statement support do you offer?
3. What tools does your firm use to evaluate investment funds and managers?

- a. Which of these tools are proprietary to your firm, developed in-house or specifically for your firm?
4. Describe your investment research resources and capabilities.
  - a. How are investment benchmarks determined?
  - b. Is your investment research proprietary or from a third party?
5. Do you hold performance review meetings with clients and what reports do they receive?
6. Do you have an investment watch list and what is your termination recommendation process?
7. What actions do you take when investments are not performing?
8. Provide a sample of a written recommendation provided to a client.
9. Will your firm offer investment advice to our plan?    \_\_\_ Yes \_\_\_No

Please explain:

10. Do you or a related company have relationships with money managers that you recommend, consider for recommendation, or otherwise mention to the plan for our consideration?

### **3.2 Provider / Vendor Services**

1. Describe your vendor benchmark service and process.
2. With how many different service providers does your firm work to support current clients?
3. What experience do you have with our current service provider (TIAA)?
  - a. What relevant issues should we be aware of/focused on?
4. What plan design change initiatives have you led with your clients in the past 24 months?

### **3.3 Fiduciary Status and Compliance**

1. Are you prepared to act as a fiduciary for the plan and or its participants?  
   \_\_\_Yes       \_\_\_No
2. If you are hired, will you acknowledge in writing that you have a fiduciary obligation as an investment adviser to the plan while providing the consulting services we are seeking?

3. Are you registered with the SEC or a state securities regulator as an investment adviser? If so, please include with your proposal all the disclosures required under those laws (including Part II of [Form ADV](#)).
4. What compliance resources does your firm provide?
5. Do you offer committee training, education, and support?  Yes  No
  - a. Please describe committee training, education and support available:
6. Describe your fiduciary responsibility under ERISA to our plan, including your ability to serve in an ERISA 3(21) or 3(38) capacity.
7. Describe your fiduciary responsibility to our plan participants.
8. Describe potential conflicts of interest that may arise with the proposed advisory relationship.
9. Does your firm have a written policy for addressing conflict of interest?  Yes  No  
Please describe.
10. Have any of your clients been the subject of an investigation by the U.S. Department of Labor?  
 Yes  No  
Please describe.
11. Do you have any policies or procedures to address conflicts of interest or to prevent these payments or relationships from being considered when you provide advice to your clients?

### **3.4 Technology**

1. Describe the technology available to your firm, excluding our provider's technology, and which of these technologies is proprietary to your firm, built in-house or specifically for your firm?
2. What applications do you run that would be beneficial to our plan, and which of these applications are proprietary to your firm?

### **3.5 Security and Business Continuity**

1. Please describe the succession plan for the primary contact who will be working with our plan.
2. Please describe the succession plan of your firm.
3. Please describe your firm's data security measures.

4. Please describe your firm's disaster recovery plans.

### 3.6 Fees

1. How is your firm compensated for services? [Note: for bidding purposes fees should be quoted as all cash payments]
2. What percentage of your firm's revenue is derived from:
  - a. Commission relationships?
  - b. Advisory relationships?
3. Does your firm receive any form of compensation or benefits from money managers, investment funds, brokerage services or other service providers whose products or services you may refer or recommend?       Yes  No

Please define in detail and amount; provide the percentage of plan clients utilizing these companies.

4. If you allow plans to pay your consulting fees using the plan's brokerage commissions, do you monitor the amount of commissions paid and alert plans when consulting fees have been paid in full? If not, how can a plan make sure it does not over-pay its consulting fees?
5. If you allow plans to pay your consulting fees using the plan's brokerage commissions, what steps do you take to ensure that the plan receives best execution for its securities trades?
6. Does your firm provide written agreement or a letter of engagement detailing services provided to our plan?       Yes  No  

If so, please include a sample.
7. What is your ability to offset fees with 12b1 fees, finders' fees, or other fees embedded within the plans' investments? What percentage of funds recommended have 12b-1 fees?
8. Provide a schedule of proposed services and corresponding fees. Fees should be quoted as all cash payments for services proposed.

## SECTION 4: VENDOR INFORMATION AND QUALIFICATIONS

Provide a statement/response to each of the following:

4.1 **About Your Firm / Team:** Tell us about your firm. If your team is affiliated with a large firm that includes multiple teams around the country, please tell us about your team.

1. Firm (Team) Name:
2. Address:
3. Contact for this RFP
  - Name:
  - Phone:
  - Fax:
  - Email:
4. Describe the ownership and structure of your firm (team).
5. Provide biographies on those who will be consulting on this account.
6. List your firm's lines of business (including affiliated companies).
7. How many years has your firm been in business?
8. Briefly describe your firm's history
  - a. How many years has your firm been servicing retirement plan clients?
  - b. What documentation of your firm's history servicing retirement plan clients can you provide?
  - c. What expertise can your firm provide as it relates to State agency\_or public higher education clients?
9. What is the total number of employees in the firm?
  - a. Of those, number of employees who are Investment Advisory Representatives (IAR)
  - d. Do you use sub-contractors?  Yes  No
    - If Yes, who and for what services?
10. What is the position of your firm in the employer-sponsored retirement plans business?
  - a. Percentage of revenue from retirement plan investment advisory services
  - b. Plan assets under advisement

- c. Total number of clients with plans under your advisement (401(k)/403(b)/401(a) Profit Sharing/ 401(a) Profit Sharing or Money purchase other than 401(k) plans, Government 457, 457(b), and 457(f) plans)
  - d. Number of core client plans with whom your firm has regular quarterly contact.
  - e. Number of client plans added over the past 24 months.
  - f. Number of clients lost over the past 24 months.
  - g. Publications your firm has created or to which it has contributed.
  - h. Recognition received from independent sources demonstrating your firm's expertise and credibility.
11. List the types of services your firm offers for retirement plans.
12. Describe your firm's experience helping clients through complex processes such as Department of Labor audits, Internal Revenue Service audits, voluntary compliance actions, partial plan termination determinations, plan mergers or spin-offs, plan terminations, or corrective contributions.
13. Describe what differentiates your firm from other investment/fiduciary consulting firms.
14. How does your firm define and measure the success of retirement plan fiduciary consulting relationships?
15. List the federal, state, and other regulatory agencies with which your firm is licensed or registered and the type of license held.
- a. Indicate which employees are not registered or licensed and why.
16. Have any individuals from your firm ever been disciplined by any government regulator for unethical or improper conduct or been sued by a client who was not happy with the work performed?
17. Has your firm or any advisor of your firm been found guilty of any violation or paid any fines because of violations of securities regulations or ERISA?
18. Is your firm bonded/insured? If so, to what amount?
19. Does your firm work with client plans on an advisory basis?    \_\_\_Yes        \_\_\_No
- a. If applicable, please provide a copy of both parts of your firm's most recent SEC Form ADV.
20. Does your firm work with clients on a commission basis?    \_\_\_Yes        \_\_\_No



21. Does your firm work with clients on a retainer basis?      \_\_\_Yes      \_\_\_No

22. Provide a current list of representative clients.

23. Provide the names, telephone numbers, email addresses and mailing addresses of at least three clients and the contact person from whom references may be obtained. References should be from clients comparable to the type and scope of services solicited in this RFP.

#### 4.2 Experience with Higher Education Institutions

1. Describe your/your team's experience with the public higher education market and industry.

2. Do you currently serve higher education clients? \_\_\_Yes      \_\_\_No

a. If so, provide the number of higher education plans served by your firm and a representative reference list of higher education clients.

3. Describe your process for the following if the team's approach is unique for higher education clients:

- a. Plan governance
- b. Investment due diligence
- c. Reviews of plan service provider cost/administration
- d. Participant communication and education

4. Based on your experiences, what relevant plan issues should higher education institutions be aware of/focused on?

5. Explain your approach to understand our defined contribution retirement program and how you will work with us to develop a strategy given current best practices.

6. Describe your experience consulting with higher education clients who have retirement programs with TIAA-CREF. Describe special considerations.

### **SECTION 5: BIDDER RESPONSE AND EVALUATION CRITERIA**

5.1 Economy of Preparation: Bidders should prepare proposals simply and economically, providing a straightforward, concise description of the bidder's ability to satisfy the requirements of the RFP and focusing on completeness and clarity of content.

5.2 Bidders should limit their proposals to 25 pages but may present additional material as exhibits to the main proposal.

5.3 The Commission will evaluate proposals on a 100-point scale with points assigned as outlined below.

5.3.1 Qualifications, Experience and Company Background – 40 points

Responses to Section 4 will be reviewed and evaluated here.

5.3.2 Services – 30 points

Responses to Section 3.1 to 3.5 will be reviewed and evaluated here.

5.3.3 Fees – 30 points – Section 3.6 will be reviewed and evaluated here.

5.4. A committee composed of Commission and Council staff and board members will evaluate all accepted proposals.

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

5.6. The Commission will base award evaluations on the bidders' overall experience, qualifications, and cost. The Commission may consider those firms that have proposed opportunities for the Commission or the Council in the past. The Commission is not required to make the award to the lowest cost bidder.

5.7 In the event that the Commission and the highest ranked bidder cannot reach mutually acceptable terms within a reasonable period of time, the Commission reserves the right to undertake negotiations with the next highest ranked bidder and so on until mutually acceptable terms can be reached.

## **INSTRUCTIONS TO BIDDERS**

**1. REVIEW DOCUMENTS THOROUGHLY:** The attached documents contain an RFP/RFB for bids. Please read these instructions and all documents attached in their entirety. These instructions provide critical information about requirements that if overlooked could lead to disqualification of a vendor's bid. All bids must be submitted in accordance with the provisions contained in these instructions and the Request for Proposals (RFP) or Request for Bids (RFB). Failure to do so may result in disqualification of vendor's bid.

**2. MANDATORY TERMS:** The RFP/RFB may contain mandatory provisions identified by the use of the words "must," "will," and "shall." Failure to comply with a mandatory term in the RFP/RFB will result in bid disqualification.

**3. PREBID MEETING:** The item identified below shall apply to this RFP/RFB.

A pre-bid meeting will not be held prior to bid opening

A **MANDATORY PRE-BID** meeting will be held at the following place and time:

All vendors submitting a bid must attend the mandatory pre-bid meeting. Failure to attend the mandatory pre-bid meeting shall result in disqualification of the vendor's bid. No one individual is permitted to represent more than one vendor at the pre-bid meeting. Any individual that does attempt to represent two or more vendors will be required to select one vendor to which the individual's attendance will be attributed. The vendors not selected will be deemed to have not attended the pre-bid meeting unless another individual attended on their behalf.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. Any person attending the pre-bid meeting on behalf of a vendor must list on the attendance sheet his or her name and the name of the vendor he or she is representing.

Additionally, the person attending the pre-bid meeting should include the vendor's e-mail address, phone number, and fax number on the attendance sheet. It is the vendor's responsibility to locate the attendance sheet and provide the required information. Failure to complete the attendance sheet as required may result in disqualification of vendor's bid.

All vendors should arrive prior to the starting time for the pre-bid. Vendors who arrive after the starting time but prior to the end of the pre-bid will be permitted to sign in but are charged with knowing all matters discussed at the pre-bid.

Questions submitted at least five business days prior to a scheduled pre-bid will be discussed at the pre-bid meeting if possible. Any discussions or answers to questions at the pre-bid meeting are preliminary in nature and are non-binding. Official and binding answers to questions will be published in a written addendum to the RFP/RFB prior to bid opening.

**4. VENDOR QUESTION DEADLINE:** Vendors may submit questions relating to this RFP/RFB. Questions must be submitted in writing. All questions must be submitted on or before the date listed below and to the e-mail address listed below to be considered.

Submitted e-mails should have RFP/RFB number in the subject line.

A written response will be published in an RFP/RFB addendum if a response is possible and appropriate. Non-written discussions, conversations, or questions and answers regarding this RFP/RFB are preliminary in nature and are nonbinding.

Submit Questions to: [bid.receipt@wvhepc.edu](mailto:bid.receipt@wvhepc.edu)

Question Submission Deadline: April 10, 2023 @ 4:00PM EST

**5. VERBAL COMMUNICATION:** Any verbal communication between the vendor and any Commission/Institution personnel is not binding, including verbal communication at the mandatory pre-bid conference. Only information issued in writing and added to the RFP/RFB by an official written addendum is binding.

**6. BID SUBMISSION:** All bids must be submitted electronically to the e-mail address identified in the bid document OR mailed/hand delivered to the address below:

Bid delivery address:

WV Higher Education Policy Commission  
1018 Kanawha Blvd., E, Suite 700  
Charleston, WV 25301  
Attention: Kelley Smith

Hand delivered or mailed bids should clearly identify the Bid/RFP Number on the envelope.

**Bid email delivery address:**

[Bid.receipt@wvhepc.edu](mailto:Bid.receipt@wvhepc.edu) (See **Exhibit C** for emailing requirements.)

**For Request for Proposal (“RFP”) Responses Only:** Mailed/delivered vendor responses should include one (1) original and a flash/thumb drive with an electronic copy of the bid by the date and time shown in Section 7 (below) Additionally, the vendor should clearly identify and segregate the cost proposal from the technical proposal in a separately sealed envelope.

**7. BID OPENING:** Bids submitted in response to this RFP/RFB will be opened at the location identified below on the date and time listed below. Delivery of a bid, whether by e-mail or delivery, after the bid opening date and time will result in bid disqualification.

Bid Opening Date and Time: April 26, 2023

Bid Opening Location: Same as bid delivery address.

**8. ADDENDUM ACKNOWLEDGEMENT:** Changes or revisions to this RFP/RFB will be made by an official written addendum. Vendor should acknowledge receipt of all addenda issued with this RFP/RFB by completing an Addendum Acknowledgment Form, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

Form Origination Date: 03/30/2022

**9. BID FORMATTING:** Vendor should type or electronically enter the information onto its bid to prevent errors in the evaluation. Failure to type or electronically enter the information may result in bid disqualification.

**10. ALTERNATE MODEL OR BRAND:** Any model, brand, or specification listed in this RFP/RFB establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the Commission/Institution's sole discretion. Any vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a vendor's bid.

**11. EXCEPTIONS AND CLARIFICATIONS:** The RFP/RFB contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions, clarifications, or other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the RFP/RFB may result in bid disqualification.

**12. COMMUNICATION LIMITATIONS:** Communication with the Commission/Institution or any of its employees regarding this RFP/RFB during the RFP/RFB, bid, evaluation, or award periods, except through the Director of Procurement, is strictly prohibited without prior approval.

**13. REGISTRATION:** Prior to award of any contract award in the amount of \$25,000 or greater, the apparent successful vendor must be properly registered with the West Virginia Purchasing Division and must have paid the \$125 fee, if applicable.

**14. UNIT PRICE:** Unit prices shall prevail in cases of a discrepancy in the vendor's bid.

**15. WAIVER OF MINOR IRREGULARITIES:** The Commission/Institution reserves the right to waive minor irregularities in bids or specifications.

**16. NON-RESPONSIBLE:** The Commission/Institution reserves the right to reject the bid of any vendor as non-Responsible in accordance with W. Va. Code of State Rules § 148-1- 5.3, when the Director determines that the vendor submitting the bid does not have the capability to fully perform or lacks the integrity and reliability to assure good-faith performance.”

**17. ACCEPTANCE/REJECTION:** The Commission/Institution may accept or reject any bid in whole, or in part if it is found to be in the best interest of the Commission/Institution.

**18. YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the RFP/RFB and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

**DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.**

Submission of any bid, proposal, or other document to the Commission/ Institution constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Commission/Institution will disclose any document labeled “confidential,” “proprietary,” “trade secret,” “private,” or labeled with any other claim against public disclosure of the documents, to include any “trade secrets” as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

**19. INTERESTED PARTY DISCLOSURE:** West Virginia Code § 6D-1-2 requires that the vendor submit a disclosure of interested parties to the contract for all contracts with an actual or estimated value of at least \$1 million. That disclosure must occur on the form prescribed and approved by the WV Ethics Commission prior to contract award.

A copy of that form is included with this RFP/RFB or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

**20. WITH THE BID REQUIREMENTS:** In instances where these specifications require documentation or other information with the bid, and a vendor fails to provide it with the bid, the Commission/Institution reserves the right to request those items after bid opening and prior to contract award.

**21. EMAIL NOTIFICATION OF AWARD:** The Commission/Institution will attempt to provide bidders with e-mail notification of contract award when an RFP/RFB that the bidder participated in has been awarded. For notification purposes, bidders must provide the Commission/Institution with a valid email address in the bid response. Bidders may also monitor Commission/Institution’s websites to determine when a contract has been awarded.

## **GENERAL TERMS AND CONDITIONS:**

**1. CONTRACTUAL AGREEMENT:** Issuance of a Purchase Order signed by the Commission/Institution's Chief Procurement Officer or Director of Purchasing, or their designee, and approved as to form by the Attorney General's Office constitutes acceptance by the Commission/Institution of this Contract made by and between the Commission/Institution and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid RFP/RFB, signifies vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

**2. DEFINITIONS:** As used in this RFP/RFB/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this RFP/RFB/Contract.

**2.1. "Agency" or "Agencies"** means the agency, institution, board, commission, or other entity of the State of West Virginia that is identified on the first page of the RFP/RFB or any other public entity seeking to procure goods or services under this Contract.

**2.2. "Bid" or "Proposal"** means the vendors submitted response to this RFP/RFB.

**2.3. "Chief Procurement Officer" or "Director of Purchasing"** means the individual authorized to sign Purchase Order/Contracts.

**2.4. "Commission/Institution"** means the entity identified on the first page of the RFP/RFB who is issuing the solicitation.

**2.5. "Contract" or "Purchase Order"** means the binding agreement that is entered into between the Commission /Institution and the vendor to provide the goods or services requested in the RFP/RFB.

**2.6. "Award Document"** means the document signed by the Commission/Institution and approved as to form by the Attorney General, that identifies the vendor as the contract holder.

**2.7. "RFP/RFB"** means the official notice of an opportunity to supply the Commission/Institution with goods or services.

**2.8. "State"** means the State of West Virginia and/or any of its agencies, institutions, commissions, boards, institutions etc. as context requires.

**2.9. "Vendor" or "Vendors"** means any entity submitting a bid in response to the RFP/RFB, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

**3. CONTRACT TERM; RENEWAL; EXTENSION:** The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

**Term Contract**

**Initial Contract Term:** The Initial Contract Term will be for a period of two (2) years. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

**Renewal Term:** This Contract may be renewed upon the mutual written consent of the Commission/Institution, and the Vendor, with approval of the Attorney General's Office (Attorney General approval is as to form only) for three (3) successive years. Any request for renewal should be delivered to the Commission/Institution thirty (30) days prior to the expiration date of the contract.

Automatic renewal of this Contract is prohibited.

**Delivery Order Limitations:** In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

**One-Time Purchase:** The term of this Contract shall run from the issuance of the Purchase Order until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

**Other:** Contract Term specified in \_\_\_\_\_

**4. AUTHORITY TO PROCEED:** Vendor is authorized to begin performance of this contract upon receipt of a signed Purchase Order.

**5. QUANTITIES:** The quantities required under this Contract shall be identified in the RFP/RFB/Purchase Order.

**6. INSURANCE:** The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below and must include the Commission/Institution as an additional insured on each policy prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, vendor shall provide the Commission/Institution with proof that the insurance mandated herein has been continued. Vendor must also provide the Commission/Institution with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award.

Vendor must maintain:

**Commercial General Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

**Automobile Liability Insurance** in at least an amount of: \_\_\_\_\_ per occurrence.



**Cyber Liability Insurance** in an amount of: \_\_\_\_\_per occurrence.

**Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.

**7. WORKERS' COMPENSATION INSURANCE:** Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

**8. ACCEPTANCE:** Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the Commission/Institution that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the RFP/RFB for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the RFP/RFB unless otherwise indicated.

**9. PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this RFP/RFB/Contract by the Commission/Institution. A vendor may request the inclusion of price adjustment provisions in its bid, but final approval of any price adjustments will be made by the Commission/Institution. Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

**10. PAYMENT IN ARREARS:** 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 maintenance, licenses, or subscriptions may be paid annually in advance.

**11. PAYMENT METHODS:** Vendor must accept payment by electronic funds transfer and/or P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

**12. TAXES:** The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

**13. ADDITIONAL FEES:** Vendor is not permitted to charge additional fees or assess additional charges that were not expressly provided for in the RFP/RFB.

**14. FUNDING:** This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the Commission/Institution 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.

**15. CANCELLATION:** The Commission/Institution reserves the right to cancel this Contract

immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract.

**16. APPLICABLE LAW:** This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution or West Virginia Code, is void and of no effect.

**17. COMPLIANCE WITH LAWS:** Vendor or approved Subcontractor shall comply with all applicable federal, state, and local laws, regulations, and ordinances. By submitting a bid, vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

**18. ARBITRATION:** Any references made to arbitration contained in this Contract, vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

**19. MODIFICATIONS:** Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Commission /Institution and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

**20. WAIVER:** The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

**21. SUBSEQUENT FORMS:** The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by vendor to the Commission/Institution such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

**22. ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the vendor without the express written consent of the Commission/Institution and the Attorney General's Office (as to form only).

**23. WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Commission/Institution; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

**24. STATE EMPLOYEES:** State employees (including Commission/Institution employees) are not permitted to utilize this Contract for personal use and the vendor is prohibited from permitting or facilitating the same.

**25. PRIVACY, SECURITY, AND CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Commission/Institution, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Commission/Institution's policies, procedures, and rules.

**26. LICENSING:** Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Upon request, the vendor must provide all necessary releases to obtain information to enable the Commission/Institution to verify that the vendor is licensed and in good standing with the above entities.

**SUBCONTRACTOR COMPLIANCE:** Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up to date on all state and local obligations as described in this section. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

**27. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting a Purchase Order with the Commission or any Institution of the State of West Virginia, the vendor agrees to convey, sell, assign, or transfer to the institution all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the Commission/Institution. Such assignment shall be made and become effective at the time the Commission/Institution tenders the initial payment to vendor.

**28. VENDOR CERTIFICATIONS:** By signing its bid or entering into this Contract, vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this RFP/RFB in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Commission/Institution. The individual signing this bid or offer on behalf of the vendor certifies that he or she is authorized by the vendor to execute this bid or offer, or any documents related thereto on vendor's behalf; and that he or she is authorized to bind the vendor in a contractual relationship.

**29. VENDOR RELATIONSHIP:** The relationship of the vendor to the Commission/Institution shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this RFP/RFB and resulting contract. Neither the vendor, nor any employees or subcontractors of the vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the Commission/Institution and shall provide the State and Commission/Institution with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

**30. INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and the Commission/Institution, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

**31. PURCHASING AFFIDAVIT:** In accordance with West Virginia Code §5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Commission/Institution affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

**32. CONFLICT OF INTEREST:** Vendor, its officers, members, or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members, and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Commission/Institution.

**33. BACKGROUND CHECK:** In accordance with W. Va. Code §15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Commission/Institution based upon results addressed from a criminal background check.

**34. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE:** W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the vendor must submit to the Commission/Institution a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre- award interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this RFP/RFB or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

**35. PROHIBITION AGAINST USED OR REFURBISHED:** Unless expressly permitted in the RFP/RFB published by the Commission/Institution, vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

**36. VOID CONTRACT CLAUSES** – The Commission/Institution is requiring the vendor to follow the provisions of West Virginia Code §5A-3-62, which automatically voids certain contract clauses that violate State law.

# GUIDELINES FOR VENDORS FOR BID SUBMISSIONS VIA EMAIL

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

## 1. Purpose of These Guidelines

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

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

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

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

## 2. Risks

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

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

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

investigated as having Personally Identifiable Information (PII). An email determined by the system to contain PII or data of a similar appearance of PII will not be delivered.

- v. The Commission/Council's email system is designed to reject any email that is considered spam or that contains a virus or malware. On occasion, an email may be falsely flagged and rejected. Copies of rejected emails are not kept in the email system, and therefore no possibility exists to retrieve an emailed submission that has been rejected.
- vi. In addition, it is possible that one or more attachments to an email to become corrupted and therefore inaccessible to the Commission/Council's email system. Vendor will not have the option to resubmit after closing if the attachments cannot be opened. Further, the Commission/Council cannot open any submission prior to closing to confirm whether or not the files have been corrupted.

### **3. Vendor Guidance for Emailed Submissions**

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

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

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



**EXHIBIT D**

**BID CERTIFICATION/SIGNATURE/ADDENDUM ACKNOWLEDGEMENT**

**1. DESIGNATED CONTACT:** Vendor appoints the individual identified as the Contract Administrator and the initial point of contact for matters relating to this Contract.

\_\_\_\_\_  
(Name, Title)

\_\_\_\_\_  
(Printed Name and Title)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone Number)

\_\_\_\_\_  
(email address)

**2. CERTIFICATION AND SIGNATURE:** By signing below, or submitting documentation through e-mail, I certify that: I have reviewed this RFP/RFB in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the Commission/Institution that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the RFP/RFB for that product or service, unless otherwise stated herein; that the vendor accepts the terms and conditions contained in the RFP/RFB, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

*By signing below, I further certify that I understand the Commission/Institution is requiring the vendor to follow the provisions of WV State Code 5A-3-62 which automatically voids certain contract clauses that violate State law.*

\_\_\_\_\_  
(Company)

\_\_\_\_\_  
(Authorized Signature) (Representative Name, Title)

\_\_\_\_\_  
(Printed Name and Title of Authorized Representative)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Phone Number)

**EXHIBIT E**

**ADDENDUM ACKNOWLEDGEMENT FORM**

**REQUEST FOR PROPOSALS/REQUEST FOR BIDS NO.:** \_\_\_\_\_

Instructions: Please acknowledge receipt of all addenda issued with this RFP/RFB by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

Acknowledgment: I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

Addendum Numbers Received:

*(Check the box next to each addendum received)*

- |   |  |
|---|--|
| <input type="checkbox"/> Addendum No. 1 | <input type="checkbox"/> Addendum No. 6  |
| <input type="checkbox"/> Addendum No. 2 | <input type="checkbox"/> Addendum No. 7  |
| <input type="checkbox"/> Addendum No. 3 | <input type="checkbox"/> Addendum No. 8  |
| <input type="checkbox"/> Addendum No. 4 | <input type="checkbox"/> Addendum No. 9  |
| <input type="checkbox"/> Addendum No. 5 | <input type="checkbox"/> Addendum No. 10 |

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that any verbal representation made or assumed to be made during any oral discussion held between vendor's representatives and any Commission/Institution personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

\_\_\_\_\_  
Company

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

NOTE: This addendum acknowledgment should be submitted with the bid to expedite document processing.