



**State of West Virginia
Agency Expression of Interest
Architect/Engr**

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BID RECEIVING LOCATION

WEST VIRGINIA STATE UNIVERSITY
5000 FAIRLAWN AVENUE
FERRELL HALL RM 301
INSTITUTE WV 25112

VENDOR

Vendor Customer Code:

Vendor Name :

Address :

Street :

City :

State :

Country :

Zip :

Principal Contact :

Vendor Contact Phone:

Extension:

FOR INFORMATION CONTACT THE BUYER

Jerry D Rush
304-766-3009
jerry.rush@wvstateu.edu

**Vendor
Signature X**

FEIN#

DATE

All offers subject to all terms and conditions contained in this solicitation

INVOICE TO	SHIP TO
WEST VIRGINIA STATE UNIVERSITY PO BOX 368 301 FERRELL HALL INSTITUTE WV 25112-0368 US	WEST VIRGINIA STATE UNIVERSITY INVENTORY CONTROL PHYSICAL FACILITIES BUILDING INSTITUTE WV 25112 US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Civil engineering				

Comm Code	Manufacturer	Specification	Model #
81101500			

Extended Description:

Expression of Interest Request

West Virginia State University is soliciting proposals for architectural/engineering design services and construction contract administration for renovations to be completed at Davis Fine Arts Center located at West Virginia State University, Institute, WV per the attached specifications and terms and conditions.

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SECTION ONE: GENERAL INFORMATION

1. **PURPOSE:** West Virginia State University is soliciting Expression(s) of Interest (“EOI) from qualified firms to provide architectural/engineering services (“Vendors”) as defined herein.
2. **PROJECT:** The mission or purpose of the project for which request for qualifications are being solicited is to provide necessary engineering, and other related professional services to design, specify and provide construction contract administration services for the various renovations to be completed for the Davis Fine Arts Center. These project include roof replacement, sprinkler system replacement, electrical upgrades, and complete HVAC upgrade.

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SECTION TWO: INSTRUCTIONS TO VENDORS SUBMITTING BIDS

Instructions begin on the next page.

INSTRUCTIONS TO BIDDERS

- 1. REVIEW DOCUMENTS THOROUGHLY:** The attached documents contain a solicitation for bids for bids. Please read these instructions and all documents attached in their entirety. All bids must be submitted in accordance with the provisions contained in these instructions and the solicitation. Failure to do so may result in disqualification of vendor's bid.
- 2. MANDATORY TERMS:** The solicitation contains mandatory provisions identified by the use of the words "must," "will," and "shall." Failure to comply with a mandatory term in the solicitation will result in bid disqualification.
- 3. PREBID MEETING:** The item identified below shall apply to this solicitation

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 solicitation prior to bid opening.

- 4. VERBAL COMMUNICATION:** Any verbal communication between the vendor and any Institution personnel is not binding, including verbal communication at the mandatory pre- bid conference. Only information issued in writing and added to the solicitation by an official written addendum is binding.
- 5. BID SUBMISSION:** All bids must be signed and delivered by the Vendor to West Virginia State University at the address listed below on or before the date and time of the bid opening. Any bid received by West Virginia State University is considered to be in the possession of the Office and will not be returned for any reason. West Virginia State University will not accept bids, modification of bids, or addendum acknowledgment forms via e-mail. Acceptable delivery methods include WVOASIS, hand delivery, and delivery by courier.

Bid Delivery Address:
West Virginia State University
5000 Fairlawn Avenue
Ferrell Hall Room 301
Institute, WV 25112
Attention: Jerry Rush, Director of Purchasing

A bid should contain the information listed below on the face of the envelope or the bid may be rejected by the West Virginia State University:

SEALED BID: A&E Services-WVSU Davis Fine Arts Center
BUYER: Jerry Rush
SOLICITATION NUMBER: AEOI WSC240000001
BID CLOSING DATE: 03/05/2024
BIDCLOSING TIME: 2:30 P.M.

- 6. BID OPENING:** Bids submitted in response to this solicitation 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: 03/05/2024 at 2:30 P.M.

Bid Opening Location: West Virginia State University
5000 Fairlawn Avenue
Ferrell Hall Room 302
Institute, WV 25112

- 7. ADDENDUM ACKNOWLEDGEMENT:** Changes or revisions to this solicitation will be made by an official written addendum. Vendor should acknowledge receipt of all addenda issued with this solicitation 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.
- 8. 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.
- 9. ALTERNATE MODEL OR BRAND:** Any model, brand, or specification listed in this solicitation 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 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.

- 10. EXCEPTIONS AND CLARIFICATIONS:** The solicitation 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 solicitation may result in bid disqualification.
- 11. COMMUNICATION LIMITATIONS:** Communication with the Institution or any of its employees regarding this solicitation during the solicitation, bid, evaluation, or award periods, except through the Director of Purchasing, is strictly prohibited without prior approval.
- 12. 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.
- 13. UNIT PRICE:** Unit prices shall prevail in cases of a discrepancy in the vendor's bid.
- 14. WAIVER OF MINOR IRREGULARITIES:** The Institution reserves the right to waive minor irregularities in bids or specifications.
- 15. NON-RESPONSIBLE:** The 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.”
- 16. ACCEPTANCE/REJECTION:** The Institution may accept or reject any bid in whole, or in part if it is found to be in the best interest of the Institution.
- 17. YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the solicitation 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 Institution constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The 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.

- 18. 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 solicitation 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.

19. 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 Institution reserves the right to request those items after bid opening and prior to contract award

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SECTION THREE: PROJECT SPECIFICATIONS

- 1. Background:** The Davis Fine Arts Building was built in 1964 and is approximately 50,500 sq. ft. This facility is critical for the academic disciplines within our college and are central to the mission of a public, land-grant university and have been a significant component of WVSU for over a century. The maintenance at this facility has been deferred over a period of several years and has escalated to a critical level. The University is soliciting Expressions of Interest (“EOI”) for engineering and design services for 30yr vulcanized roof replacement, complete HVAC upgrade which includes all necessary ceiling repairs and pipe, boiler, air handler, and chiller replacements, electrical upgrades, and replacement of current sprinkler system. The University will request design team to provide preliminary studies pertaining to design options related to construction cost.
- 2. Project and Goals:** The project goals and objectives are listed below. Vendors should discuss any anticipated concepts and proposed methods of approach for achieving each of the listed goals and objectives:

 - 2.1. Goal/Objective 1:** Review existing plans and conditions as well as the operation of the facility and evaluate while communicating effectively with the owner to determine a plan that can be implemented in a manner that will minimize disruption to concurrent operation of the facility and meet all objectives.
 - 2.2. Goal/Objective 2:** As a portion of this process outlined in Objective 1, provide all necessary services to design the facilities described in this EOI in a manner that is consistent with West Virginia State University needs, objectives, current law, and current code; while following the plan to design and execute the project within the project budget.
 - 2.3. Goal/Objective 3:** Provide Construction Contract Administration Services with Competent professionals that ensures the project is constructed and functions as designed.
- 3. Qualifications, Experience, and Past Performance:** Vendors must include a statement of qualifications and performance data. The statement of qualifications and performance data may be presented through things like information regarding its employees, such as staff qualifications and experience in completing similar projects; references; copies of any staff certifications or degrees applicable to this project; proposed staffing plan; descriptions of past projects completed entailing the location of the project, project manager name and contact information, type of project, and the project goals and objectives and how they were met.

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- 4. Oral Presentations/Interviews:** The University will conduct individual interviews with the three vendors that are determined to be the most qualified to provide the required service. During oral presentations/interviews, vendors may not alter or add to their submitted proposal, but only clarify information already submitted. A description of the materials and information to be presented is provided below:

- 4.1. Materials and Information Required at Oral Presentation/Interviews:**

The Vendor must be prepared to discuss and clarify required items submitted with the EOI as indicated in Section 2 and Section 3.

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SECTION FOUR: VENDOR PROPOSAL, EVALUATION, & AWARD

1. Economy of Preparation: EOIs should be prepared simply and economically, providing a straight-forward, concise description of the firm’s abilities to satisfy the requirements and goals and objectives of the EOI. Emphasis should be placed on completeness and clarity of content. **Submissions must be in WVOASIS or portable digital format, (.pdf) only. They may be on CD, DVD, or Flash drive. Do not submit paper/printed copies.**

2. **BIDS MUST NOT CONTAIN PRICE INFORMATION:** The State shall select the best value solution according to W. Va. Code §5G-1-3. In accordance with Code requirements, no “price” or “fee” information is permitted in the Vendor’s EOI response.

3. **Evaluation and Award Process:** Expressions of Interest for projects estimated to cost \$250,000 or more will be evaluated and awarded in accordance with W.Va. Code §5G-1-3. That Code section requires the following related to evaluation and award:
 - 3.1. **Selection Committee Evaluation and Negotiation:** A committee comprised of three to five representatives of the agency initiating the request shall:
 - 3.1.1. evaluate the statements of qualifications and performance data and other material submitted by the interested firms and select three firms which in their opinion are the best qualified to perform the desired service.
 - 3.1.2. conduct interviews with each of the three firms selected.
 - 3.1.3. rank the three selected firms in order of preference
 - 3.1.4. and commence scope of service and price negotiations with the highest qualified professional firm.

If negotiations are successful, the contract documents will be forwarded to the WV Attorney General’s office for review and approval as to form. Once approved, a formal contract will be issued to the Vendor.

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Should the University be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified at a fee determined to be fair and reasonable, the agency will then commence negotiations with the second most qualified firm, and so on, until an agreement is reached or the solicitation is cancelled.

3.2. **Three Firm Evaluation Rankings:** The University will evaluate the three firms that have been determined most qualified to perform the desired service. The evaluation criteria are defined in the Procurement Specifications section and based on a 100-point total score. Points shall be assigned based upon the Vendor’s response to the evaluation criteria as follows:

- Qualifications, Experience, and Past Performance (40) Points Possible
 - Goals and Objectives: –
Anticipated Concepts and Methods of Approach (40) Points Possible
 - Oral Interview (20) Points Possible
- Total** 100

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SECTION FIVE: TERMS AND CONDITIONS

Terms and conditions begin on the next page.

STANDARD TERMS AND CONDITION

- 1. CONTRACTUAL AGREEMENT:** Issuance of an Award Document signed by the University'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 solicitation, signifies vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.
- 2. DEFINITIONS:** As used in this solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this solicitation/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 of the solicitation 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 solicitation.
 - 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 solicitation 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 solicitation.
 - 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.** "solicitation" 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 solicitation, 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 one (1) year. 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 Institution, and the Vendor, with approval of the Attorney General's Office (Attorney General approval is as to form only) for two (2) one (1) year renewals. Any request for renewal should be delivered to the 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.

Fixed Period Contract: This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within ____ days.

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 solicitation/Purchase Order.

6. REQUIRED DOCUMENTS: All of the items checked in this section must be provided to the Institution by the vendor as specified:

BID BOND (Construction Only): Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

PERFORMANCE BOND: The apparent successful Vendor shall provide a performance bond in the amount of 100% of the contract. The performance bond must be received by the Institution prior to Contract award.

LABOR/MATERIAL PAYMENT BOND: The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Institution prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable.

Notwithstanding the foregoing, West Virginia Code § 5-22-1 (d) mandates that a vendor provides a performance and labor/material payment bond for construction projects.

Accordingly, substitutions for the performance and labor/material payment bonds for construction projects is not permitted.

MAINTENANCE BOND: The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Commission/Institution prior to Contract award.

LICENSE(S) / CERTIFICATIONS / PERMITS: In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the licenses, certifications, and/or permits requested in the solicitation.

7. **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 \$500,000.00 per occurrence.

Professional/Malpractice/Errors and Omission Insurance in an amount of: \$1,000,000.00 per occurrence.

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

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

9. **LIQUIDATED DAMAGES:** This clause shall in no way be considered exclusive and shall not limit the Commission/Institution's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

Liquidated Damages Are Not Included in this Contract.

10. **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 solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions

contained in the solicitation unless otherwise indicated.

- 11. PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this solicitation/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.
- 12. 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.
- 13. 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.)
- 14. 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.
- 15. ADDITIONAL FEES:** Vendor is not permitted to charge additional fees or assess additional charges that were not expressly provided for in the solicitation.
- 16. 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.
- 17. 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.
- 18. 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.
- 19. 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.
- 20. 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.
- 21. 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.

- 22. 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.
- 23. 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.
- 24. 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).
- 25. 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.
- 26. 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.
- 27. 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.
- 28. 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.
- 29. 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.
- 30. 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.
- 31. 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 solicitation 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.

- 32. 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 solicitation 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.

- 33. 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.

- 34. 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.

- 35. 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.

- 36. 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.
- 37. 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 solicitation 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.

**ADDITIONAL TERMS AND CONDITIONS
(Architectural and Engineering Contracts Only)**

1. PLAN AND DRAWING DISTRIBUTION: All plans and drawings must be completed and available for distribution at least five business days prior to a scheduled pre-bid meeting for the construction or other work related to the plans and drawings.

2. PROJECT ADDENDA REQUIREMENTS: The Architect/Engineer and/or Agency shall be required to abide by the following schedule in issuing construction project addenda. The Architect/Engineer shall prepare any addendum materials for which it is responsible, and a list of all vendors that have obtained drawings and specifications for the project. The Architect/Engineer shall then send a copy of the addendum materials and the list of vendors to the State Agency for which the contract is issued to allow the Agency to make any necessary modifications. The addendum and list shall then be forwarded to the Property and Procurement Office buyer by the Agency section. The Property and Procurement Office buyer shall send the addendum to all interested vendors and, if necessary, extend the bid opening date. Any addendum should be received by West Virginia State University at least fourteen (14) days prior to the bid opening date.

3. PRE-BID MEETING RESPONSIBILITIES: The Architect/Engineer shall be available to attend any pre-bid meeting for the construction or other work resulting from the plans, drawings, or specifications prepared by the Architect/Engineer.

4. AIA DOCUMENTS: All construction contracts that will be completed in conjunction with architectural services procured under Chapter 5G of the West Virginia Code will be governed by the attached AIA documents, as amended by the Supplementary Conditions for the State of West Virginia, in addition to the terms and conditions contained herein.

4A. PROHIBITION AGAINST GENERAL CONDITIONS: Notwithstanding anything contained in the AIA Documents or the Supplementary Conditions, the State of West Virginia will not pay for general conditions, or winter conditions, or any other condition representing a delay in the contract. The Vendor is expected to mitigate delay costs to the greatest extent possible and any costs associated with Delays must be specifically and concretely identified. The state will not consider an average daily rate multiplied by the number of days extended to be an acceptable charge.

5. GREEN BUILDINGS MINIMUM ENERGY STANDARDS: In accordance with W. Va. Code § 22-29-4, all new building construction projects of public agencies that have not entered the schematic design phase prior to July 1, 2012, or any building construction project receiving state grant funds and appropriations, including public schools, that have not entered the schematic design phase prior to July 1, 2012, shall be designed and constructed complying with the ICC International Energy Conservation Code, adopted by the State Fire Commission, and the ANSI/ASHRAE/IESNA Standard 90.1-2007: Provided, that if any construction project has a commitment of federal funds to pay for a portion of such project, this provision shall only apply to the extent such standards are consistent with the federal standards

SIGNATURE/CERTIFICATION

DESIGNATED CONTACT: Vendor appoints the individual identified in this Section 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) / (Fax Number)

(email address)

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through e-mail, I certify that: I have reviewed this solicitation 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 solicitation for that product or service, unless otherwise stated herein; that the vendor accepts the terms and conditions contained in the solicitation, 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) (Fax Number)