State of West Virginia
OFFICE OF THE STATE TREASURER
CHARLESTON, WV 25305
PHONE: 304-558-5000 FAX: 304-558-4097
1-800-422-7498
www.wvtreasury.com

JOHN D. PERDUE
STATE TREASURER

JOSH STOWERS
ASSISTANT STATE TREASURER

Bid Opportunity

Solicitation Number:	ARFQ STO2100000002
Solicitation Description:	File Integrity Monitoring Solution
Deadline for Q&A:	**09/03/2020 4:00 PM EST**
Bid Closing Date and Time:	**09/15/2020 2:30 PM EST**

Dear Potential Bidder:

Your business has been identified as a potential vendor for the solicitation noted above.

Should your business be interested in this bid opportunity, please visit www.wvOASIS.gov, and click on the Vendor Self Service (VSS) Portal. At the welcome screen, please review any announcements and log into your account or click on the "Public Access" button in the bottom left of the page in order to view the *West Virginia Purchasing Bulletin.* At the *West Virginia Purchasing Bulletin* page, you may view all bid opportunities, or you may search for the solicitation noted above by typing the solicitation number in the "keyword search" box. Additional information may be accessed by clicking on the summary or details of the solicitation. All modifications to solicitations prior to award will be noted as an "addendum" and also available at this same location; please make sure to review for Addenda before submitting a final response to a solicitation.

The above Solicitation is also cross-posted to the WV State Treasurer's Office webpage, please visit https://www.wvtreasury.com/RFP-RFQ and review this same page for Addenda before submitting your final bid response.

Should you decide to bid on this opportunity, you may submit a response through the acceptable delivery methods including electronic submission via *wv*OASIS system, hand delivery, delivery by courier, or by facsimile; **however**, **wvOASIS does not currently accept bids for Request for Proposals**.

Solicitations prefaced with an "A" are agency-delegated bid opportunities expected to be $25,000 or less, **or,** are considered exempt from the requirements of the WV Purchasing Division pursuant to W.Va. Code §12-3A-3 and §5-10B-3. Those prefaced with a "C" are central Purchasing Division solicitations that are expected to exceed $25,000.

Should you have any questions regarding becoming a registered vendor with the State of West Virginia, please visit the vendor registration webpage within the WV State Purchasing Division at http://www.state.wv.us/admin/purchase/VendorReg.html.

WV State Treasurer's Office – Purchasing Division
Email: purchasing@wvsto.com / Phone: 304-558-5000

INSTRUCTIONS TO VENDORS SUBMITTING BIDS
West Virginia State Treasurer's Office

1. **REVIEW DOCUMENTS THOROUGHLY:** The attached documents contain a solicitation 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 Solicitation. Failure to do so may result in disqualification of Vendor's bid.

2. **MANDATORY TERMS:** The Solicitation may contain 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 **NON-MANDATORY PRE-BID** meeting will be held at the following place and time:

☐ 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 person attending the pre-bid meeting may represent more than one Vendor.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. The State will not accept any other form of proof or documentation to verify 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. **VENDOR QUESTION DEADLINE:** Vendors may submit questions relating to this Solicitation to the STO Purchasing Division. Questions must be submitted in writing. All questions must be submitted on or before the date listed below and to the address listed below in order to be considered. A written response will be published in a Solicitation addendum if a response is possible and appropriate. Non-written discussions, conversations, or questions and answers regarding this Solicitation are preliminary in nature and are nonbinding.

   Submitted emails should have the solicitation number in the subject line.

   Question Submission Deadline: September 3, 2020 **by** 4:00pm EST

   Submit Questions to: Alberta Kincaid/Shelly Murray
   Physical Address: 322 70th Street S.E., Charleston, WV 25304
   Fax: (304) 340-1518
   Email: purchasing@wvsto.com

5. **VERBAL COMMUNICATION:** Any verbal communication between the Vendor and any State 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 by the State Treasurer's Office (STO) Purchasing Division is binding.

6. **BID SUBMISSION:** All bids must be submitted electronically through wvOASIS, or, signed and delivered by the Vendor to the STO Purchasing Division at the address listed below on or before the date and time of the bid opening. Any bid received by the STO Purchasing Division staff is considered to be in the possession of the STO Purchasing Division and will not be returned for any reason. The STO Purchasing Division will not accept bids, modification of bids, or addendum acknowledgment forms via e-mail. Acceptable delivery methods include electronic submission via wvOASIS, hand delivery, delivery by courier, or facsimile.

   The bid delivery address is:

   WV State Treasurer's Office
   Attn: Purchasing Division
   322 70th Street S.E.
   Charleston, WV 25304

A bid that is not submitted electronically through wvOASIS should contain the information listed below on the face of the envelope or the bid may be rejected by the STO Purchasing Division:

Note: Items in italics are for informational purposes only as a means of assisting Vendor in marking their bid submissions that may be physically delivered.

SEALED BID: *Brief Description of Project/Item*
BUYER: *Buyer Name listed above in item 4*
SOLICITATION NO.: *Document number from Solicitation*
BID OPENING DATE: *As stated in Solicitation and/or item 7*
BID OPENING TIME: *As stated in Solicitation and/or item 7*
FAX NUMBER: 304-340-1518 *(if submitting Bid via facsimile)*

Vendor accepts the risk of its Bid not being completely transmitted if sent via facsimile. Agency will not confirm bid/Solicitation details of any related documentation received via facsimile prior to bid opening and/or evaluation.

The STO Purchasing Division may prohibit the submission of bids electronically through wvOASIS at its sole discretion. Such a prohibition will be contained and communicated in the wvOASIS system resulting in the Vendor's inability to submit bids through wvOASIS. Submission of a response to an Agency Expression of Interest or Agency Request for Proposal is currently not permitted in wvOASIS.

For Agency Request For Proposal ("ARFP") Responses Only: In the event that Vendor is responding to a request for proposal, the Vendor shall submit one original technical and one original cost proposal plus _____ convenience copies of each to the STO Purchasing Division at the address shown above. Additionally, the Vendor should identify the bid type as either a technical or cost proposal on the face of each bid envelope submitted in response to a request for proposal as follows:

BID TYPE: **(This only applies to ARFP's)**

[ ] Technical

[ ] Cost

7. **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 after the bid opening date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when confirmation of delivery is provided by wvOASIS (in the case of electronic submission) or when the bid is time stamped by the official STO Purchasing time clock (in the case of hand delivery).

Bid Opening Date and Time: SEPTEMBER 15, 2020 at 2:30pm **EST**

Bid Opening Location: WV State Treasurer's Office
STO Purchasing Division
322 70th Street S.E.
Charleston, WV 25304

8. **ADDENDUM ACKNOWLEDGEMENT:** Changes or revisions to this Solicitation will be made by an official written addendum issued by the STO Purchasing Division. 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.

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. **ALTERNATES:** 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 State at its 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 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. The STO is under no obligation to consider or negotiate any terms and conditions or alternative terms and conditions contained in the Vendor's proposals.

12. **COMMUNICATION LIMITATIONS:** Communication with the STO or any of its employees regarding this Solicitation during the solicitation, bid, evaluation or award periods, except through the STO Purchasing Division, is strictly prohibited without prior STO Purchasing Division approval.

13. **REGISTRATION:** Prior to Contract award, 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. **PREFERENCE**: Vendor Preference may be requested in purchases of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects. Any request for preference must be submitted in writing with the bid, must specifically identify the preference requested with reference to the applicable subsection of W. Va. Code § 5A-3-37, should include with the bid any information necessary to evaluate and confirm the applicability of the requested preference. A request form to help facilitate the request can be found at: http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf.

15A. RECIPROCAL PREFERENCE: The State of West Virginia applies a reciprocal preference to all solicitations for commodities and printing in accordance with W. Va. Code § 5A-3-37(b). In effect, non-resident vendors receiving a preference in their home states will see that same preference granted to West Virginia resident vendors bidding against them in West Virginia. A request form to help facilitate the request can be found at: http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf.

16. **SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES**: For any solicitations publicly advertised for bid, in accordance with W.Va. Code § 5A-3-37(a)(7) and W.Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W.Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the STO Purchasing Division with its bid, and must be properly certified under W.Va. CSR § 148-22-9 prior to contract award to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority-owned business shall be applied in accordance with W. Va. § CSR § 148-22-9.

17. **WAIVER OF MINOR IRREGULARITIES**: The STO Director of Purchasing reserves the right to waive minor irregularities in bids or specifications.

18. **ELECTRONIC FILE ACCESS RESTRICTIONS:** Vendor must ensure that its submission in wvOASIS can be accessed and viewed by the STO Purchasing Division staff immediately upon bid opening. The STO Purchasing Division will consider any file that cannot be immediately accessed and viewed at the time of the bid opening (such as, encrypted files, password protected files, or incompatible files) to be blank or incomplete as context requires, and are therefore unacceptable. A Vendor will not be permitted to unencrypt files, remove password protections, or resubmit documents after bid opening if those documents are required with the bid. A Vendor may be required to provide document passwords or remove access restrictions to allow the STO Purchasing Division to print or electronically save documents provided that those documents are viewable by the STO Purchasing Division prior to obtaining the password or removing the access restriction.

19. **NON-RESPONSIBLE:** The STO Purchasing Director reserves the right to reject the bid of any vendor as Non-responsible when it is determined 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.

20. **RFP/RFQ WITHDRAWAL, MODIFICATION, and CANCELLATION**: The STO may withdraw, cancel, or modify an RFP/RFQ at any time. Submission of proposals or receipt of proposals by the STO confer no rights upon the Vendor and do not obligate the STO in any manner. Further, the STO may accept or reject any bid in whole, or in part.

21. **YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the Solicitation and the resulting Contract are considered 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 competitive bidding laws of West Virginia and the Freedom of Information Act found in 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 STO Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal or document. The STO Purchasing Division 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 W.Va. Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

22. **INTERESTED PARTY DISCLOSURE**: West Virginia § 6D-1-2 requires that the vendor submit to the Purchasing Division 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. 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. A copy of that form is available from the Agency Buyer designated in Section 4 above.

23. **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 STO Director of Purchasing reserves the right to request those items after bid opening and prior to contract award. This does not apply to instances where state law mandates receipt with the bid.

ADDENDUM ACKNOWLEDGEMENT FORM

SOLICITATION NO.: _____

Instructions: Please acknowledge receipt of all addenda issued with this solicitation 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)

[ ] Addendum No. 1	[ ] Addendum No. 6
[ ] Addendum No. 2	[ ] Addendum No. 7
[ ] Addendum No. 3	[ ] Addendum No. 8
[ ] Addendum No. 4	[ ] Addendum No. 9
[ ] Addendum No. 5	[ ] 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 state 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 acknowledgement should be submitted with the bid to expedite document processing.

GENERAL TERMS AND CONDITIONS
West Virginia State Treasurer's Office

1. **CONTRACTUAL AGREEMENT:** Issuance of an Award Document signed by the Treasurer, or his designee, and approved as to form by the Agency's Counsel constitutes acceptance of this Contract made by and between the State of West Virginia, WV State Treasurer's Office ("STO") and the Vendor. Vendor's signature on its bid 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"** means the West Virginia State Treasurer's Office ("STO").

   2.2. **"Bid"** or **"Proposal"** means the vendors submitted response to this solicitation

   2.3. **"Contract"** means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

   2.4. **"Director"** means the Deputy Treasurer of STO Purchasing/Director of STO Purchasing Division

   2.5. **"Award Document"** means the document issued by the Agency that identifies the Vendor as the contract holder.

   2.6. **"Solicitation"** means the official notice of an opportunity to supply the State with goods or services that is published by the STO Purchasing Division.

   2.7. **"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.

   2.8. "**Exempt**" means the solicitation/purchase is exempt from the requirements of the West Virginia Dept. of Administration - Purchasing Division.

   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: This Contract becomes effective on UPON AWARD and extends for a period of 3 year(s).

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency and the Vendor. A request for Contract renewal should be submitted to the STO Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract.

Unless otherwise specified below, Renewal of this Contract is limited to TWO (2) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited.

☐ **Alternate Renewal Term** – This contract may be renewed for _____ successive _____ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. **Automatic renewal of this Contract is prohibited**. Renewals must be approved by the Agency and the Vendor.

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.

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

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within _____ days.

Upon completion, the vendor agrees that maintenance, monitoring, or warranty services will be provided for one year thereafter with an additional _____ successive one-year renewal periods or multiple renewal periods of less than one year provided that the multiple renewal periods do not exceed _____ months in total. Automatic renewal of this Contract is prohibited.

☐ **One Time Purchase:** The term of this Contract shall run from the issuance of the Award Document 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**: See attached.

4. **NOTICE TO PROCEED:** Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Award Document/Purchase Order will be considered notice to proceed.

5. **QUANTITIES:** The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

☐ **Open End Contract:** Quantities listed in this Solicitation are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

☐ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

☑ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

☐ **One Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor and Agency.

6. **EMERGENCY PURCHASES:** The STO Deputy Treasurer of Purchasing, or their designee, may authorize the purchase of goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the STO Deputy Treasurer of Purchasing, or their designee, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the STO from filling its obligations under a One Time Purchase contract.

7. **REQUIRED DOCUMENTS:** All of the items checked below must be provided to the STO Purchasing Division by the Vendor as specified below.

[ ] **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/STO. The bid bond must be submitted with the bid.

☐ **PERFORMANCE BOND**: The apparent successful Vendor shall provide a performance bond in the amount of _____. The performance bond must be received by the STO Purchasing Division prior to Contract award. On construction contracts, the performance bond must be 100% of the Contract value.

☐ **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 STO Purchasing Division 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, W.Va. Code § 5-22-1 (d) mandates that a vendor provide 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

☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section entitled Licensing, of the General Terms and Conditions, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits prior to Contract award, in a form acceptable to the STO Purchasing Division.

[ ]

[ ]

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the Specifications prior to Contract award regardless of whether or not that requirement is listed above.

8. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below and must include the State as an additional insured on each policy prior to Contract award. The insurance coverages identified below must be maintained throughout the life of the contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with the immediately 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 regardless of whether or not that insurance requirement is listed in this section.

Vendor must maintain:

☑ **Commercial General Liability Insurance** in at least an amount of:
ONE MILLION DOLLARS per occurrence.

☑ **Automobile Liability Insurance** in at least an amount of: ONE MILLION per occurrence.

☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: _____per occurrence.

☐ **Commercial Crime and Third Party Fidelity Insurance** in at least an amount of: _____per occurrence.

☑ **Cyber Liability Insurance** in at least an amount of: ONE MILLION per occurrence.

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

☐ **Pollution Insurance** in an amount of: _____per occurrence.

☐ **Aircraft Liability** in an amount of: _____ per occurrence.

[ ]

[ ]

Notwithstanding anything contained in this section to the contrary, the STO Deputy Treasurer of Purchasing reserves the right to waive the requirement that the STO be named as an additional insured on one or more of the Vendor's insurance policies if he/she finds that doing so is in the STO's best interest.

9. **WORKERS' COMPENSATION INSURANCE:** The apparent successful 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.

10. **LIQUIDATED DAMAGES:** Vendor shall pay liquidated damages in the amount of _____for _____. This clause shall in no way be considered exclusive and shall not limit the Agency's right to pursue any other available remedy.

☐ Liquidated Damages Contained in the Specifications

11. **ACCEPTANCE:** Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the STO 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 Solicitation unless otherwise indicated.

12. **PRICING**: The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the STO. A Vendor's inclusion of price adjustment provisions in its bid, without express authorization from the STO in the Solicitation to do so, may result in bid disqualification.

13. **PAYMENT IN ARREARS:** Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit itemized invoices, in arrears.

14. **PAYMENT METHODS:** Vendor must accept payment by electronic funds transfer and/or a State issued credit card, also known as 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)

15. **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.

16. **ADDITIONAL FEES**: Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State Treasurer's Office or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

17. **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.

18. **CANCELLATION:** The STO Deputy Treasurer of Purchasing Division 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. The STO Deputy Treasurer of Purchasing Division may also cancel any purchase order or Contract upon 30 days written notice to the Vendor.

19. **TIME:** Time is of the essence with regard to all matters of time and performance in this Contract.

20. **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, West Virginia Code or West Virginia Code of State Rules is void and of no effect.

21. **COMPLIANCE WITH LAWS:** Vendor 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 law.

    SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to

comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

22. **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.

23. **MODIFICATIONS:** This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary, no modification of this Contract shall be binding without mutual written consent of the Agency and the Vendor. 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 STO Purchasing Division and/or Agency's Counsel as to form prior to the implementation of the change or commencement of work affected by the change. No Change shall be implemented by the Vendor until such time as the Vendor receives an approved written change order from the STO Purchasing Division.

24. **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.

25. **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 the Vendor to the Agency 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.

26. **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 Agency, and any other government agency or office that may be required to approve such assignments.

27. **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 Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

28. **STATE EMPLOYEES:** State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

29. **BANKRUPTCY:** In the event the Vendor files for bankruptcy protection, the State Treasurer's Office may deem this Contract null and void, and terminate this Contract without notice.

30. **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 Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in http://www.state.wv.us/admin/purchase/privacy/default.html.

31. **YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the Solicitation and the resulting Contract are considered 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 competitive bidding laws of West Virginia and the Freedom of Information Act found in 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 STO Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal or document. The STO Purchasing Division 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 W. Va. Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

32. **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. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the STO Purchasing Division 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. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

33. **ANTITRUST:** In submitting a bid to, signing a contract with, or accepting an Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia 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 State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency renders the initial payment to Vendor.

34. **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 Agency. The individual signing this bid or offer on behalf of 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; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

35. **VENDOR RELATIONSHIP:** The relationship of the Vendor to the State 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 State, and shall provide the State and Agency 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.

36. **INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, 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.

37. **PURCHASING AFFIDAVIT:** Vendors are required to sign, notarize, and submit the Purchasing Affidavit affirming under oath that it is not in default on any monetary obligation owed to the State

or a political subdivision of the State. The affidavit must be submitted prior to award, but should be submitted with the Vendor's bid. The STO has adopted the use of this Affidavit while the referenced W.Va. Code citation is not applicable to the STO. A copy of the Purchasing Affidavit is included herewith.

38. **ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE:** This Contract may be utilized by and extends to other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"), provided that both the Other Government Entity and the Vendor agree. Any extension of this Contract to the aforementioned Other Government Entities must be on the same prices, terms, and conditions as those offered and agreed to in this Contract, provided that such extension is in compliance with the applicable laws, rules, and ordinances of the Other Government Entity. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.

39. **CONFLICT OF INTEREST:** Vendor, its officers or 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 Agency.

40. **REPORTS:** Vendor shall provide the Agency with the following reports identified by a checked box below:

☑ Such reports as the Agency/STO may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures, etc.

☐ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by the agency. Unless otherwise provided for upon Contract award, quarterly reports should be delivered to the STO Purchasing Division via email at purchasing@wvsto.com.

41. **BACKGROUND CHECK:** In accordance with W.Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state repository. The service provider is responsible for any costs associated with the fingerprint-based state and federal background inquiry.

After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision.

The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

42. **JOINT PROPOSALS AND SUBCONTRACTING:** Joint Proposals are not permitted. Subcontracting is permitted subject to STO authorization. The purchase order/contract shall be awarded to the Vendor submitting the proposal. The Vendor awarded the purchase order/contract shall be the sole point of contact with regard to the purchase order and shall be solely responsible for all matters provided pursuant to the purchase order/contract, including without limitation, any tangible or intangible items provided by a subcontractor or other party.

43. **PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS:** Except when authorized by the Director of the (WV Dept. of Administration) Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.

b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open heath, basic oxygen, electric furnace, Bessemer or other steel making process. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:

c. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars ($2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or

d. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

44. **PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL:**
In accordance with W.Va. Code § 5-19-1 et seq., and W.Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is

unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars ($50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a "substantial labor surplus area", as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

45. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE: W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least $100,000, the vendor must submit to the Agency 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. "Interested parties" means: (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically subcontractors; (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract; and (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency: Provided, That subdivision (2) shall be inapplicable if a business entity is a publicly traded company: Provided, however, That subdivision (3) shall not include persons or business entities performing legal services related to the negotiation or drafting of the applicable contract. The Agency shall submit a copy of the disclosure to the Ethics Commission within 15 days after receiving the supplemental disclosure of interested parties

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.

_____

(Printed Name, Title)

_____

(Address)

_____

(Phone Number) / (Fax Number)

_____

(Email address)

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, 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 State 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 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.

_____

(Company Name)

_____

Printed Name / Title

_____Date_____

(Authorized Signature)

_____

(Phone Number) (Fax Number)

_____

(Email)

FEIN_____

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

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

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

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

DEFINITIONS:

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

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

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

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

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: _____

Authorized Signature: _____ Date: _____

State of _____

County of _____, to-wit:

Taken, subscribed, and sworn to before me this ___ day of _____, 20___.

My Commission expires _____, 20___.

AFFIX SEAL HERE **NOTARY PUBLIC** _____

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia State Treasurer's Office (STO or Agency) is soliciting bids to establish a contract for a File Integrity Monitoring Solution for a segment of its network that must adhere to PCI Compliance requirements.

   Background Information: The STO conducted research of existing solutions and reviewed various products and demonstrations and after a review of its specific needs, has defined a set of requirements for the File Integrity Monitoring (FIM) Solution to meet the needs. The STO's research determined that, based on existing solutions known, the Agency has identified NNT's Change Tracker GEN7 R2, or equal, as a product that provides the best fit for its requirements. **A solution is being sought to be implemented as soon as possible to accommodate other current projects and network/operational updates**. Detailed contract deliverables and requirements are listed in Section 4.

   1.1 Vendor Questions are due: September 3, 2020 at 4:00 pm EST. Please review the Instructions to Vendors Submitting Bids document for more information.

2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.

   2.1 "Contract Services" means each item identified in Section 4 and on the Pricing Page(s) as more fully described in these specifications.

   2.2 "Pricing Page" means the page(s), or the area contained wvOASIS or attached hereto as Exhibit A, upon which the Vendor should list its proposed price for the Contract Services. For submission/entry in wvOASIS, the Commodity Code section is where pricing shall be entered for each category/item listed.

   2.3 "Solicitation" means the official notice of an opportunity to supply the State Treasurer's Office with goods or services that is published by the STO Purchasing Division.

3. **QUALIFICATIONS:** Vendor, or Vendor's staff if requirements are inherently limited to individuals rather than corporate entities, shall have the following minimum qualifications:

   3.1. All implementation services must be performed by technical resources of the software vendor and not a reseller.

4. MANDATORY REQUIREMENTS:

4.1 Mandatory Contract Services Requirements and Deliverables: Contract Services must meet or exceed the mandatory requirements listed below for **NNT Change Tracker GEN7 R2, or equal**. For another solution to be deemed 'or equal' to **NNT's Change Tracker GEN7 R2** product, it must have/provide all of the following technical requirements listed below.

4.1.1 Architecture

4.1.1.1 The product must be offered as an on-premise system where the primary data collection, reporting and alerting components are installed on a server within the boundaries of the STO network.

4.1.1.2 The product must be supported for installation on a virtual machine running on Microsoft Windows Server 2019 Hyper-V cluster.

4.1.1.3 The product must be supported for installation on Windows Server 2019. This requirement is specific to the core server responsible for data collection, reporting and alerting.

4.1.1.4 The product must support real-time data collection and alerting for detected changes via an installed agent on Microsoft Windows Server platforms (Windows Server 2012 and later).

4.1.1.5 The product must support periodic data collection and alerting for detected changes on network devices, including switches, routers and firewalls.

4.1.1.6 Solution must accommodate the current 25 devices, which are a mix of Windows servers and network devices. There is a reasonable expectation that the number of devices will increase in the future, but the exact number or date is not yet known. If a vendors' pricing model is based on number of devices, it may estimate up to 50 devices could be covered.

4.1.2 Monitoring Capabilities and Customization

4.1.2.1 The product must include pre-built monitoring templates for core system files on Microsoft Windows Server platforms (Windows Server 2012 and later).

4.1.2.2 The product must include full rule customization capabilities for File Integrity Monitoring as follows:

a. Define monitoring rules for specific files

b. Define monitoring rules for specific folders

c. Define level of recursion when monitoring folders, must support depths of 1-9 and "unlimited" depth

d. Define inclusion filters for file/folder monitoring rules

e. Define exclusion filters for file/folder monitoring rules

f. Define what attributes/metadata to monitor for changes with a specific rule, this should include all of the following:

i. File Hash/File Content

ii. File/Folder Creation

iii. File/Folder Deletion

iv. Changes to File/Folder security attributes

4.1.2.3 The product must include the full rule customization capabilities for monitoring of additional system parameters as follows:

a. Define monitoring rules for installed software

b. Define monitoring rules for registry keys/values

c. Define monitoring rules for changes in services/processes running on a system

d. Define monitoring rules for changes to security/auditing policies on a system

e. Define monitoring rules for changes to Local User Accounts on a system

4.1.2.4 The product must provide pre-built templates for auditing/enforcing security based on the Center for Internet Security (CIS) benchmark checklists for vulnerability assessment and mitigation.

4.1.2.5 The product must provide the ability to create customized copies of pre-built templates (previous requirement) for auditing/enforcing system security to fine tune the system to the STO's specific requirements

4.1.2.6 The product must provide a mechanism to automatically reduce "noise" typically generated during events such as monthly patching of Windows Servers. This noise reduction must require no direct user intervention. The reference solution does this via their NNT FAST Cloud Service

technology, an equivalent solution must provide similar functionality, specifically:

a. Maintain signature-based database of "known good" system files across all platforms supported for monitoring

b. Automatically use this signature-based database to check if file changes match a "known good" signature and suppress alerts for such activity.

4.1.2.7 The product must include the ability to configure SQL Server (2012 and newer) monitoring rules with the capability to monitor the following aspects of the database server.

a. Database Attributes Audited and Tracked
b. User accounts and password settings
c. Roles and assigned privileges
d. File/object permissions
e. Schema structure
f. Tables
g. Views
h. Triggers
i. Stored Procedures
j. Auditing functions
k. Networking capabilities

4.1.3 Logging and SIEM Integration

4.1.3.1 The product must provide SIEM/Log Collection integration by supporting standard syslog output to a remote log controller

4.1.3.2 The product must provide logging of username/account and process responsible for a detected change on a monitored system

4.1.3.3 The product must support secure management and storage meeting current PCI standards for password requirements, password age, account disablement, and logging

4.1.4 Reporting and Alerting

4.1.4.1 The product must provide built-in reports for review of detected changes on monitored systems

4.1.4.2 The product must provide dash boards for review of real-time events detected by the system

4.1.4.3 The product must provide the ability to define custom reports

4.1.4.4 The product must provide the ability to alert on changes in real time via e-mail

4.1.4.5 The product must provide the ability to deliver reports on a scheduled basis via e-mail

4.1.4.6 The product must provide the ability store generated reports and/or reporting data for 1 year

4.1.5 Implementation and Support

4.1.5.1 Implementation Services: Implementation services will include the following, at a minimum:

a. Initial implementation shall include up to 25 devices

b. Installation of central server component(s) on virtual machine(s) running on the STO's infrastructure

c. Installation of monitoring agents on monitored Windows Servers

d. Configuration of data collection from monitored network devices

e. Configuration of custom rules and security templates per STO requirements

f. All implementation support will be done via remote sessions

g. Implementation is to be completed within 45 days of project plan approval.

4.1.5.2 Software Support: Software support must include access to technical support staff that will assist with all aspects of the operation/customization of the system with no additional cost to the Agency. This would include the following:

a. Assist with configuration of custom monitoring rules post-implementation
b. Assist with troubleshooting of any system errors, both with central server and with agents installed on monitored devices
c. Software subscription/support costs must include upgrade rights for all future major versions.

d. Support should include a response time to a support request/ticket of one business day.
e. Support services for the Agency to submit requests may include a web portal, email address, or a 24-hour support number so that a ticket may be created.

5. CONTRACT AWARD:

5.1 Contract Award: The Contract is intended to provide the Treasurer's Office with a purchase price for the Contract Services. The Contract shall be awarded to the Vendor that provides the Contract Services meeting the required specifications for the lowest overall total cost as shown on the Pricing Pages, or if entered in wvOasis, the combined total of all Commodity Lines.

5.1.1 The base award will be a combination of the initial Implementation Services plus either of a Perpetual License price model, **or**, a Software Subscription model, for a base three-year period and optional renewal periods of up to two, one-year periods.

5.1.2 Any change in the requirements and/or deliverables must be mutually agreed upon in writing and issued as a contract amendment/change order before it will be considered binding.

5.1.3 Solution must be implemented within 45 days from notice of agency approval of project plan. Project plan must be submitted to the agency designated project manager within 3 business days of contract award.

5.2 Pricing Page: Vendor should complete the Pricing Page (Exhibit A) by filling out the appropriate section(s) for each item listed; an itemized listing of goods and services may be required upon notice of intent to award, and upon presentation of invoice before payment is released. Vendor should complete the Pricing Page in full as failure to complete the Pricing Page in its entirety may result in Vendor's bid being disqualified.

Vendor should type or electronically enter the information into the Pricing Pages through wvOASIS, if available, or as an electronic document. In most cases, the Vendor can request an electronic copy of the Pricing Pages for bid purposes by sending an email request to the designated by at the following address: purchasing@wvsto.com .

5.2.1 If the product is sold as a perpetual license plus support, perpetual license cost must be included in year one costs.

5.2.2 If the product is sold as a software subscription, please fill out the appropriate section(s) on the pricing page.

5.2.3 If the software subscription includes support, please enter zero-dollar cost for support.

6. **PERFORMANCE:** Vendor and Agency shall agree upon a schedule for performance of Contract Services and Contract Services Deliverables, unless such a schedule is already included herein by Agency. In the event that this Contract is designated as an open-end contract, Vendor shall perform in accordance with the release orders that may be issued against this Contract.

7. **PAYMENT:** Agency shall pay for all goods and services at the completion of the project Implementation, including required user acceptance testing and/or final acceptance, as shown on the Pricing Pages, for all Contract Services performed and accepted under this Contract. Software license may be paid on an annual basis as a lump sum upon request as a one-time payment.

   Other services may not be paid in advance, but they may be paid on a monthly or quarterly basis (upon request prior to contract award). Payments of all services is to be in arrears. Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

8. **TRAVEL:** Vendor shall be responsible for all mileage and travel costs, including travel time, associated with performance of this Contract. Any anticipated mileage or travel costs may be included in the flat fee or hourly rate listed on Vendor's bid, but such costs will not be paid by the Agency separately.

9. **FACILITIES ACCESS:** Performance of Contract Services may require access cards and/or keys to gain entrance to Agency's facilities. In the event that access cards and/or keys are required:

   9.1. Vendor must identify principal service personnel which will be issued access cards and/or keys to perform service. Upon contract award, personnel designated to perform services must provide Agency a copy of each individual's State issued ID/Driver's License prior to beginning work.

   9.2. Vendor will be responsible for controlling cards and keys and will pay replacement fee, if the cards or keys become lost or stolen.

   9.3. Vendor shall notify Agency immediately of any lost, stolen, or missing card or key.

   9.4. Anyone performing under this Contract will be subject to Agency's security protocol and procedures.

   9.5. Vendor shall inform all staff of Agency's security protocol and procedures.

10. **VENDOR DEFAULT:**

   10.1 The following shall be considered a vendor default under this Contract:

10.1.1 Failure to perform Contract Services in accordance with the requirements contained herein.

10.1.2 Failure to comply with other specifications and requirements contained herein

10.1.3 Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.

10.1.4 Failure to remedy deficient performance upon request

10.2 The following remedies shall be available to Agency upon default.

10.2.1 Immediate cancellation of the Contract.

10.2.2 Immediate cancellation of one or more release orders issued under this Contract.

10.2.3 Any other remedies available in law or equity.

11. MISCELLANEOUS:

11.1 Contract Manager: During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract manager and his or her contact information below.

Contract Manager: _____

Telephone Number: _____

Fax Number: _____

Email Address: _____

EXHIBIT A - PRICING PAGE

Please complete the appropriate sections. For items that are not applicable, use 'N/A'. For items that will not have a cost, or, are included in another item (such as support being part of the subscription cost), enter '0' on that line. Pricing should reflect all requirements and deliverables as described in Section 4. All fees must be inclusive as no separate reimbursement will be permitted. Any change in the scope of work requirements or deliverables requires a formal written contract change order.

YEAR 1

Item 1: Implementation Services – up to 25 devices: **$_____(a-1)**
Note: initial rollout is expected to be 25 devices and is to be included in the base contract award.

Item 2: Option 1 – Perpetual License + Support

License $_____ per device x 25 = $_____(b-1)

Yearly maintenance/support/software upgrades

$_____ per device x 25 = $_____(b-2)

Item 3 Option 2 – Software Subscription + Support – One Year

Subscription $_____ per device x 25 = $_____(c-1)

Yearly maintenance/support/software upgrades

$_____ per device x 25 = $_____(c-2)

YEAR 2

Item 1: Option 1 – Perpetual License Support - Yearly maintenance/support/software upgrades.

$_____ per device x 25 = $_____(b-3)

Item 2 Option 2 – Software Subscription + Support – One Year

Subscription $_____ per device x 25 = $_____ (c-3)

Yearly maintenance/support/software upgrades

$_____ per device x 25 = $_____ (c-4)

YEAR 3

Item 1: Option 1 – Perpetual License Support - Yearly maintenance/support/software upgrades.

$_____ per device x 25 = $_____ (b-4)

Item 2 Option 2 – Software Subscription + Support – One Year

Subscription $_____ per device x 25 = $_____ (c-5)

Yearly maintenance/support/software upgrades

$_____ per device x 25 = $_____ (c-6)

YEAR 4 (Optional Renewal)

Item 1: Option 1 – Perpetual License Support - Yearly maintenance/support/software upgrades.

$_____ per device x 25 = $_____ (b-5)

Item 2 Option 2 – Software Subscription + Support – One Year

Subscription $_____ per device x 25 = $_____ (c-7)

Yearly maintenance/support/software upgrades

$_____ per device x 25 = $_____ (c-8)

YEAR 5 (Optional Renewal)

Item 1: Option 1 – Perpetual License Support - Yearly maintenance/support/software upgrades.

$_____ per device x 25 = $_____ (b-6)

Item 2 Option 2 – Software Subscription + Support – One Year

Subscription $_____ per device x 25 = $_____ (c-9)

Yearly maintenance/support/software upgrades

$_____ per device x 25 = $_____ (c-10)

Additional Services (Per Section 4.1.1.6)

Fee for additional devices that the proposed solution may be needed (up to 25 additional). This additional service/add-on will be agreed upon in writing and added to the contract as a change order.

Price per add-on device

Option 1 – Perpetual License + Support
Additional Device, License: $_____
Additional Device, Yearly Support: $_____

Option 2 – Software Subscription + Support
Additional Device, Yearly Subscription: $_____
Additional Device, Yearly Support: $_____

Note: Evaluation and award will be based on the lowest price for the Implementation Services, the Perpetual License model OR the Software Subscription model for the initial 25 devices over the base contract term as well as optional renewal periods.

TOTAL FOR A 5 YEAR TERM – Perpetual License Model $_____
*(Implementation + **Option 1** for each year: a-1 / b-1 through b-6)*

TOTAL FOR A 5 YEAR TERM – S/W Subscription Model $_____
*(Implementation + **Option 2** for each year: a-1 / c-1 through c-10)*

Unsigned bid responses will not be accepted. If you are responding electronically via wvOASIS, your sign-on credentials become your signature.

Signature: _____

Printed Name: _____

Telephone (if questions arise): _____

Email:_____