



**State of West Virginia
Agency Request for Quote**

Proc Folder: 1310806		Reason for Modification:	
Doc Description: ADDENDUM 3-ALL TERRAIN TREE TRIMMER WITH OPERATOR		Addendum 3: 1. To Attach Vendor Questions with Agency Answers 2. To attach revised ATT A Pricing Page	
Proc Type: Agency Master Agreement			
Date issued	Solicitation Closes	Solicitation No	Version
2023-10-19	2023-10-25 14:30	ARFQ 0803 DOT2400000033	4

BUDGET & PROCUREMENT
DIVISION OF HIGHWAYS
 BLDG 5, RM A-317
 1900 KANAWHA BLVD E
 CHARLESTON WV 25305
 US

VENDOR

Vendor Customer Code: 000000120162

Vendor Name : ASPLUNDH TREE EXPERT, LLC

Address : 708 BLAIR MILL ROAD

Street :

City : WILLOW GROVE

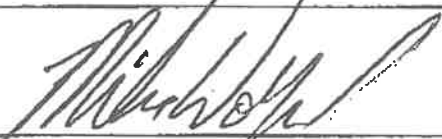
State : PA **Country :** USA **Zip :** 19090

Principal Contact : MICHAEL WOLFORD

Vendor Contact Phone: CELL: 304-376-7655 **Extension:**
 OFFICE: 304-379-8090

OCT 24 '23 AM 11:31
REC'D BUDGET - PROCURE

FOR INFORMATION CONTACT THE BUYER
 Jerry D Rush
 304-414-6683
 jerry.d.rush@wv.gov

Vendor Signature X  **FEIN#** 231277550 **DATE** 10-23-23

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

Date Printed: Oct 19, 2023 Page 1 FORM ID: WV-PRC-ARFQ-002 2020/06

ADDITIONAL INFORMATION

Addendum 3

- 1. To Attach Vendor Questions with Agency Answers
- 2. To attach revised ATT A Pricing Page

No other changes

INVOICE TO		SHIP TO	
VARIOUS AGENCY LOCATIONS AS INDICATED BY ORDER		VARIOUS AGENCY LOCATIONS AS INDICATED BY ORDER	
No City	WV	No City	WV
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	ALL TERRAIN TRIMMER-JARRAFF OR EQUAL	0.00000	HOUR		

Comm Code	Manufacturer	Specification	Model #
72141702			

Extended Description:

All Terrain Tree Trimmer - Jarraff or equal, saw head boom with 180 degree rotation, 75 ft max cutting height, 360 degree turntable rotation, four wheel drive. See Pricing Pages ATT A for actual costs.

INVOICE TO		SHIP TO	
VARIOUS AGENCY LOCATIONS AS INDICATED BY ORDER		VARIOUS AGENCY LOCATIONS AS INDICATED BY ORDER	
No City	WV	No City	WV
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
2	ALL TERRAIN TRIMMER-JARRAFF OR EQUAL-MOBILIZATION	0.00000	MILE		

Comm Code	Manufacturer	Specification	Model #
78121603			

Extended Description:

See Pricing Pages ATT A for actual costs.

SCHEDULE OF EVENTS:

<u>Line</u>	<u>Event</u>	<u>Event Date</u>
1	Technical Questions due at 10am	2023-10-23

SOLICITATION NUMBER: ARFQ DOT2400000033
Addendum Number: 3

The purpose of this addendum is to modify the solicitation identified as ("Solicitation") to reflect the change(s) identified and described below.

Applicable Addendum Category:

- Modify bid opening date and time
- Modify specifications of product or service being sought
- Attachment of vendor questions and responses
- Attachment of pre-bid sign-in sheet
- Correction of error
- Other

Description of Modification to Solicitation:

Addendum 1 is issued for the following reason:

1. Attachment of vendor questions and agency responses
2. Attachment of ATT A pricing page

No other changes

Additional Documentation: Documentation related to this Addendum (if any) has been included herewith as Attachment A and is specifically incorporated herein by reference.

Terms and Conditions:

1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.
2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, 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.

ATTACHMENT A

Revised 6/8/2012

Solicitation Number #DOT 2400000033**Responses to Questions from Vendors****Question 1**

I see a Workday OT calculation and a Workweek OT Calculation on Pg. 4 of the contract. Is there a WorkMonth calculation? If I have four (50-hr) weeks, that does not exceed any overtime for the workweek; however, it exceeds the workmonth max (on ATT A) by 24 hours. How would OT be calculated in this scenario? I'm assuming it depends on the answer to my question about workmonth definition.

Answer 1

There is not an overtime rate option for work hours per month. Per Contract Specifications Section 3.2.1 "Hours that exceed the work month total shall be charged by the workday or work week rates, whichever is less."

Question 2

On Pg. 3 of the solicitation it defines a workmonth as 217 hours and on ATT. A it defines it as 176 hours. Which one should we use for the bid?

Answer 2

The Contract Specifications take precedence over ATT A. Per the Contract Specifications Section 3.2.1, 217 hours is the work month definition. ATT A has been amended to represent the correct definition stated in the Contract Specifications.

Question 3

Can we have an example calculation on how to navigate the Workweek and workday overtime calculation tables on pg. 4? Are we dividing the "weekly price" by the max allowable weekly hours to arrive at our hourly rate?

Answer 3

Example 1: An ADO was placed and accepted for a three-day project. Thirty-two (32) hours were spent by the vendor completing the project. The first 30 hours are charged at the daily rate, as bid on ATT A. The additional two (2) hours are eligible for the overtime rate, which is the daily time bid on ATT A, plus 40% for overtime.

Example 2: An ADO was ordered for one work week. Fifty-two (52) hours were spent by the vendor completing the project. The first 50 hours are charged at the weekly rate.

as bid on ATT A. The additional two (2) hours are the weekly rate, as bid on ATT A, plus 30% for overtime.

Per Contract Specification Section 3.2.1, "Hours that exceed the workweek total but are less than a work month shall be charged by either the workday, work week, or work month, whichever is less.

For questions regarding the calculation of overtime rates for a specific project, Vendors should contact the ordering District Engineer or their designee prior to the acceptance of work offered on the ADO.

Question 4

On the previous contract, under section 10, "Liquidated Damages Are Not Included in this Contract" was checked. Under the new AFRQ, "Liquidated Damages Contained in the Specifications" is checked. I wanted to point this out and ask if this was correct, since nothing else in the contract changed.

Answer 4

The Terms and Conditions published under the current and previous solicitations indicate the application of liquidated damages is to be as contained in the specifications. There were no changes regarding liquidated damage requirements

Question 5

Operating a piece of specialty equipment like this usually requires a spotter, will the WVDON personnel onsite be able to operate as a spotter? Or should we include a second individual in the bid price for a spotter.

Answer 5

WVDON will not be responsible for providing a spotter. It is the vendor's responsibility to provide all labor required within their submitted bid price.

Section 3.2.1 of the contract specifications states the following:

Equipment Lease/Rental With Operator: Vendor shall provide a qualified operator to perform operation of rental equipment ordered by the Agency. All work by the Vendor shall be performed in the manner ordered by the Agency per its ADO and with the agreement that work by the Vendor's operator shall progress continually through completion, per Agency instruction. Vendor shall be

responsible for acquisition and utilization of all reasonable and necessary equipment operation labor, licenses, permits, specialized equipment, etc.

Section 4.2 also states the following:

"Pricing Pages, Attachment A ("ATT A"): Vendor shall complete the Pricing Pages by providing a bid price for each Contract Item listed. Vendors may bid any or all Contract Items. Vendor shall factor into their bid prices all equipment, materials, delivery, and labor required to provide Contract Items. Vendors may bid on any or all Counties. Vendor shall complete the Pricing Pages for each Contract Item bid in their entirety as failure to do so may result in Vendor's bids being disqualified. All bids or pricing submitted shall be held and honored by the Vendor for 90 days after the bid opening date.

Question 6

Is subcontracting operators allowable on this contract? What (if any) paperwork would need to be filled out to allow this?

Answer 6

This contract does not prohibit the use of a subcontractor, however the vendor on the contract is the vendor accountable for all services under this contract. No services will be ordered or billed to anyone other than the vendor holding the contract.

Please reference Section 34 of the Contract's Terms and Conditions, which states:

"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."

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: ARFQ DOT2400000033

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)

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

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

ASPLUNDH TREE EXPERT, LLC

Company


Authorized Signature

10-23-23
Date

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



7/18/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Central, Inc. Philadelphia PA Office One Liberty Plaza, Suite 1000 Philadelphia, PA 19103	Aon Risk Services Central, Inc. 4 Overlook Point Lincolnshire, IL 60069	CONTACT PHONE: 215-255-2000	FAX:
		INSURER(S) AFFORDING COVERAGE	
INSURED Asplundh Tree Expert LLC 708 Blair Mill Road Willow Grove, PA 19090	INSURER A: Greenwich Insurance Company		NAIC#: 22322
	INSURER B: XL Insurance America, Inc.		NAIC#: 24554
	INSURER C:		
	INSURER D:		
	INSURER E:		
	INSURER F:		

COVERAGES **CERTIFICATE NUMBER: 135041** **REVISION NUMBER: 2145126197**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR (NSD) (RVD)	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:		RGD300136206	8/1/2023	8/1/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADVI INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROP AGG \$ 1,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> AUTOS ONLY <input checked="" type="checkbox"/> \$10,000 Med Pa <input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		RAD943783706 (AOS) RAD943786606 (VI)	8/1/2023	8/1/2024	COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ EACH OCCURRENCE \$ AGGREGATE \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N N/A	RWD300135806 (AOS) RWR300135906	8/1/2023	8/1/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER EL EACH ACCIDENT \$ 1,000,000 EL DISEASE - EA EMPLOYEE \$ 1,000,000 EL DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks, Schedule(s), may be attached if more space is required)

CERTIFICATE HOLDER State of West Virginia Division of Highways Bldg 5, RM A-260 1800 Kanawha Blvd E Charleston, WV 25305	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE SHALL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Aon Risk Services Central, Inc.
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INSTRUCTIONS TO VENDORS SUBMITTING BIDS
(Agency Delegated Procurements Only)

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.

2A. 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. The required attribution of attendance to a single vendor should be addressed during the pre-bid but may occur at any time deemed appropriate by the Purchasing Division.

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.

Revised 8/24/2023

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.

3. VENDOR QUESTION DEADLINE: Vendors may submit questions relating to this Solicitation to the Agency Contact. Questions must be submitted in writing. All questions must be submitted on or before the date listed below and to the address listed below 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: 08/30/2023 at 10:00 A.M.

Submit Questions to:
Jerry Rush

Email: dotprocurementtechques@wv.gov

4. BID SUBMISSION: All bids must be submitted electronically through wvOASIS or signed and delivered by the Vendor to the Agency on or before the date and time of the bid opening. Any bid received by the Agency staff is considered to be in the possession of the Agency and will not be returned for any reason.

4A. BID SUBMISSION

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 Agency.

SEALED BID: EQUIPMENT LEASE/RENTAL WITH OPERATOR
BUYER: JERRY RUSH
SOLICITATION NO.: ARFQ DOT2400000011
BID OPENING DATE: 09/05/2023
BID OPENING TIME: 03:00 P.M.
FAX NUMBER: 304-558-0047

5. ADDENDUM ACKNOWLEDGEMENT: Changes or revisions to this Solicitation will be made by an official addendum issued by the Agency. 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.

Revised 8/24/2023

6. 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.

7. ALTERNATE MODEL OR BRAND: Unless the box below is checked, 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.

This Solicitation is based upon a standardized commodity established under West Virginia Code § 5A-3-61. Vendors are expected to bid the standardized commodity identified. Failure to bid the standardized commodity will result in your firm's bid being rejected.

8. 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.

9. 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.

10. UNIT PRICE: Unit prices shall prevail in cases of a discrepancy in the Vendor's bid.

11. 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 West Virginia Code § 5A-3-37, and must 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>.

11A. 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, if reciprocal preference is requested by a West Virginia resident vendor, 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. Any request for reciprocal preference must include with the bid any information necessary to evaluate and confirm the applicability of the preference. A request form to help facilitate the request can be found at: <http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf>.

12. SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES: For any solicitations publicly advertised for bid, in accordance with West Virginia Code §5A-3-37 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 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.

13. ELECTRONIC FILE ACCESS RESTRICTIONS: Vendor must ensure that its submission in wvOASIS can be accessed and viewed by the Agency staff immediately upon bid opening. The Agency will consider any file that cannot be immediately access 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 therefore unacceptable. A vendor will not be permitted to unencrypt files, remove password protections, or resubmit documents after bid opening to make a file viewable if those documents are required with the bid. A Vendor may be required to provide document passwords or removed access restrictions to allow the Agency to print or electronically save documents provided that those documents are viewable by the Agency prior to obtaining the password or removing the access restriction.

14. NON-RESPONSIBLE: The Purchasing Division Director 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.”

15. ACCEPTANCE/REJECTION: The State may accept or reject any bid in whole, or in part in accordance with W. Va. Code of State Rules § 148-1-4.5. and § 148-1-6.4.b.”

16. 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 competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., 5G-1-1 et seq. and the Freedom of Information Act 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 Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The 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 West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

**GENERAL TERMS AND CONDITIONS:
(Agency Delegated Procurements Only)**

1. CONTRACTUAL AGREEMENT: Issuance of an Award Document signed by the Agency and approved as to form by the Attorney General's office, if required, constitutes acceptance by the State of this Contract made by and between the State of West Virginia 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, board, commission, or other entity of the State of West Virginia that is identified on the first page 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. "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 Director of the West Virginia Department of Administration, Purchasing Division.

2.5. "Purchasing Division" means the West Virginia Department of Administration, Purchasing Division.

2.6. "Award Document" means the document signed by the Agency that identifies the Vendor as the contract holder.

2.7. "Solicitation" means the official notice of an opportunity to supply the State with goods or services.

2.8. "State" means the State of West Virginia and/or any of its agencies, commissions, boards, 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: This Contract becomes effective on
Upon Award _____ and the initial contract term extends until 1 year has expired.

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor. Any request for renewal should be delivered to the Agency 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 three (3) 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 Vendor and Agency.

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 of the work covered by the preceding sentence, the vendor agrees that maintenance, monitoring, or warranty services will be provided for _____ year(s) thereafter.

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.

Construction/Project Oversight: This Contract becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the State Agency (or another page identified as _____), and continues until the project for which the vendor is providing oversight is complete.

Other: See attached.

4. AUTHORITY TO PROCEED: Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked in Section 3 above. If either "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the Contract via change order to memorialize the official date that work commenced.

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/Award Document 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, Agency, Purchasing Division, and Attorney General's office.

Construction: This Contract is for construction activity more fully defined in the specifications.

6. EMERGENCY PURCHASES: The Purchasing Division Director may authorize the Agency to purchase 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 Purchasing Division Director, shall not constitute of breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.

7. REQUIRED DOCUMENTS: All of the items checked below must be provided to the Agency by the Vendor as specified below.

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 following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications 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 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 Agency with proof that the insurance

mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancellation, 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: \$1,000,000.00 per occurrence.

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

Professional/Malpractice/Errors and Omission Insurance in at least an amount of: _____ per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

Commercial Crime and Third Party Fidelity Insurance in an amount of: _____ per occurrence.

Cyber Liability Insurance in an amount of: _____ per occurrence.

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

Pollution Insurance in an amount of: _____ per occurrence.

Aircraft Liability in an amount of: _____ per occurrence.

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

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

_____ for _____

Liquidated Damages Contained in the Specifications.

Liquidated Damages Are Not Included in this Contract.

11. ACCEPTANCE: Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State 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.

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

13. 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 licenses, subscriptions, or maintenance may be paid annually in advance.

14. PAYMENT METHODS: Vendor must accept payment by electronic funds transfer 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.)

15. 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 of West Virginia, included in the Contract, 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.

16. 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.

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. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

18. CANCELLATION: The State 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 Agency may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

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.

20A. VENUE: All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

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 laws, regulations, and ordinances. 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.

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.

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 Vendor to the Agency or Purchasing Division 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. 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 www.state.wv.us/admin/purchase/privacy.

30. 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 competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and 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 Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The 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 West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

31. LICENSING: In accordance with West Virginia Code of State Rules § 148-1-6.1.e, 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 Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities. 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.

32. 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 tenders the initial payment to Vendor.

33. VENDOR NON-CONFLICT: Neither Vendor nor its representatives are permitted to have any interest, nor shall they 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.

34. 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.

35. 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.

36. NO DEBT CERTIFICATION: In accordance with West Virginia Code §§ 5A-3-10a and 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. By submitting a bid, or entering into a contract with the State, Vendor is affirming 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 in the statute cited above unless the debt or employer default is permitted under the statute.

37. 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.

38. REPORTS: Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at purchasing.division@wv.gov.

39. 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 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.

40. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS: Except when authorized by the Director of the 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 hearth, 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.

41. 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.

42. PROHIBITION AGAINST USED OR REFURBISHED: Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

43. VOID CONTRACT CLAUSES-- This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

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.

MICHAEL WOLFORD VP / MANAGER

(Printed Name and Title)

708 BLAIR MILL ROAD, WILLOW GROVE, PA 19090

(Address)

CELL: 304-376-7855 OFFICE: 304-379-809 EFAX: 304-205-0623

(Phone Number) / (Fax Number)

MWOLFORD@ASPLUNDH.COM

(E-mail 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 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 this bid or offer was made without prior understanding, agreement, or connection with any entity submitting a bid or offer for the same material, supplies, equipment or services; that this bid or offer is in all respects fair and without collusion or fraud; 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; 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 this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

ASPLUNDH TREE EXPERT, LLC

(Company)

(Signature of Authorized Representative)

MICHAEL WOLFORD VP / MANAGER

(Printed Name and Title of Authorized Representative)

OCTOBER 23, 2023

(Date)

CELL: 304-376-7855 OFFICE: 304-379-809 EFAX: 304-205-0623

(Phone Number) (Fax Number)

Revised 8/24/2023

REQUEST FOR QUOTATION
Equipment Lease/Rental With Operator 6624C007

SPECIFICATIONS

- 1. PURPOSE AND SCOPE:** The West Virginia Division of Highways is soliciting bids to establish an open-end contract for Equipment Lease/Rental With Operator throughout the state of West Virginia including materials, delivery, and equipment operator labor by the Vendor.

- 2. DEFINITIONS:** The terms listed below shall have the following meanings assigned to them throughout and for the purpose of this Solicitation. Additional definitions can be found in Section 2 of the General Terms and Conditions.
 - 2.1 "ADO" and "Agency Delivery Order"** - A written order entered by WVDOH personnel in the wvOASIS financial system against a master agreement, authorizing quantities of commodities and/or services to be delivered in accordance with all terms, conditions, and prices stipulated in the original contract.

 - 2.2 "Contract Item"** - The list of items available for Vendor to provide pricing as identified in Section 3.2 of this Solicitation and referenced throughout.

 - 2.3 "Contractor" or "Vendor"** - Interchangeably used throughout this Solicitation and in any cited Sections of the West Virginia Department of Transportation, Division of Highways Standard Specifications, Roads and Bridges, adopted latest Standard Specs edition, as amended, including any Supplementals and refers to 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.

 - 2.4 "Downtime"** - The amount of time when equipment is not operational due to operator, repairs, or normal maintenance.

 - 2.5 "Emergency Work"** - Work or orders requiring to be done without delay owing to circumstances for which the WVDOH could not have reasonably expected and has been designated as such by a representative of the WVDOH.

 - 2.6 "FOB" or "Free on Board"** - Indicates that the price for goods includes delivery at the Vendor's expense to a specified point, and that the Vendor retains liability for loss or damage until the goods are delivered.

 - 2.7 "Lease/Rental"** - An agreement wherein the WVDOH leases/rents the equipment, with the Vendor's equipment operator, set forth for periods of time not to exceed ninety (90) days unless otherwise specified in the Agency Delivery Order.

**REQUEST FOR QUOTATION
Equipment Lease/Rental With Operator 6624C007**

- 2.8 "Liquidated Damages"** - monetary compensation due from the Vendor in the event the Vendor's performance falls short of contractual stipulation or breaches the contract. Delays in the delivery of goods and/or services or quality failures or corrections by the Vendor may result in the Agency assessing charges for such deficiencies per these contract Specifications, the Standard Specs Section 108.7, as amended, and calculated from the table posted in Section 6.5.1 of these Specifications.
- 2.9 "Pricing Pages," "Attachment A," and "ATT A"** - The schedule of prices attached hereto as Attachment A (ATT A) and used to evaluate Solicitation responses.
- 2.10 "Solicitation"** - The official notice of an opportunity to supply the State with goods or services.
- 2.11 "Standard Specs"** - used throughout this solicitation means the West Virginia Department of Transportation, Division of Highways Standard Specifications, Roads and Bridges, most recent edition, as modified or amended by all subsequent Supplemental Specifications.
- 2.12 "Vendor Location Information," "Attachment B," and "ATT B"** - The form identifying locations from where the Vendor will deliver equipment with operator as ordered.
- 2.13 "WVDOH" or "Agency"** - Interchangeable terms for the West Virginia Division of Highways.

3. GENERAL REQUIREMENTS:

- 3.1 Standard Specifications Roads and Bridges:** The following Standard Specs Sections shall apply, as applicable, to the administration of this contract: 101, 102, 103, 104, 105, 106, 107, 108, 109, and 110, as amended.

Materials, equipment, and performance of this contract shall conform to, but are not limited to, the requirements of Section 401 as amended.

Free electronic copies of the Standard Specs and Supplementals are available at: <https://transportation.wv.gov/highways/TechnicalSupport/specifications/Pages/default.aspx>.

- 3.2 Contract Items and Mandatory Requirements:** Vendor shall provide Agency with the Contract Items listed below on an open-end and continuing

**REQUEST FOR QUOTATION
Equipment Lease/Rental With Operator 6624C007**

basis. Contract Items must meet or exceed the mandatory requirements as shown below.

3.2.1 Equipment Lease/Rental With Operator: Vendor shall provide a qualified operator to perform operation of rental equipment ordered by the Agency. All work by the Vendor shall be performed in the manner ordered by the Agency per its ADO and with the agreement that work by the Vendor's operator shall progress continually through completion, per Agency instruction. Vendor shall be responsible for acquisition and utilization of all reasonable and necessary equipment operation labor, licenses, permits, specialized equipment, etc.

Vendor shall lease/rent equipment, with a qualified operator, to the WVDOH by the day, week, and/or month as defined on the Pricing Pages (ATT A) in Section 4.2. All work by the operator will begin on the first rental day, upon acceptance, according to the Agency's instructions on the Agency Delivery Order (ADO). Rental time periods are defined as the following:

DAY, WEEK, MONTH DEFINITIONS:

Rental Period	Shall be defined as
A workday	10 hours
A work week	50 hours
A work month	217 hours

Hours that exceed the workday total but are less than a work week shall be charged by either the workday or work week rate, whichever is less. Hours that exceed the workweek total but are less than a work month shall be charged by either the workday, work week, or work month, whichever is less.

Hours that exceed the work month total shall be charged by the workday or work week rates, whichever is less.

3.2.1.1 Per Day: Consists of a single day of Agency operation where the equipment is not inoperable for a period of four hours or more. Invoicing shall be for a minimum of one whole day, and no less. Days in which a piece of equipment is down for maintenance or repair for four hours or more during the normal work period shall be considered a day of downtime and shall not be considered a day of equipment rental.

3.2.1.2 Per Week: Consists of seven (7) leased/rented days that includes Saturdays, Sundays, and Holidays.

**REQUEST FOR QUOTATION
Equipment Lease/Rental With Operator 6624C007**

3.2.1.3 Per Month: Consists of thirty leased/rental days that includes Saturdays, Sundays, and Holidays.

3.2.2 Overtime: Overtime shall be charged by a percentage above a normal workday or week as defined in the tables below:

WORKDAY OVERTIME CALCULATION - Table D

Workday Hours	Shall be charged as
11 through 18	workday hourly rate plus 40%
19 through 24	workday hourly rate plus 60%

Once hour 24 is reached, a new lease/rental day begins at the normal workday rate.

WORK WEEK OVERTIME CALCULATION - Table W

Hour	Shall be charged as
51 through 74	work week hourly rate plus 30%
75 through 99	work week hourly rate plus 50%
100 or more	a new rental work week begins at the normal weekly rate.

Any overtime rates bid other than those stated above will not be accepted and could result in the disqualification of the vendor's bid.

3.2.3 Mobilization: The vendor may charge Mobilization for the transportation of equipment and/or materials from the Vendor's base location/delivery departure site to the Agency's delivery location/project site. The Agency will not pay for the return mileage of equipment to the vendor's base location upon project completion. Mobilization fees shall be bid by providing a price for the first mile and each additional mile afterwards. Delivery locations for Contract Items will be provided by the Agency on the ADO issued at the time of need.

3.2.3.1 Additional Mileage Fees: Leased/rented equipment may be used for multiple projects (i.e. leased/rented equipment traveling from one Agency location or project site to another). In such instances, additional mileage fees shall be charged by the Vendor at the "Additional Mile" price quoted on the ATT A. Additional Mileage Fees may also be charged for moving of equipment to and from the Vendor's storage area when rentals exceed one day in the event the equipment cannot be stored at the Agency project site.

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3.2.3.2 Delivery: The Agency will calculate the delivery route mileage (in-state and out-of-state) from the Vendor's base locations/equipment delivery departure points to the delivery location/project site using Google Maps or similar source. The Agency, at its own discretion, will determine the route to be taken due to any bridge and/or other road restrictions.

3.2.4 Emergency Work: Emergency work as ordered by WVDOT District Engineer, or their designee is work that shall be initiated within forty-eight (48) hours from when the request is received by the vendor. The determination of emergency work will be in accordance with Section 2.5 of this Solicitation and prominently noted on ADO. Designated emergency projects will be paid at 1.50 times the vendors bid price.

3.3 Equipment Acceptance, Maintenance & Risk:

3.3.1 Equipment Acceptance: Equipment shall be subject to acceptance at the discretion of the Agency. Upon delivery of equipment, the Agency shall inspect the equipment and acknowledge the equipment's condition and either accept or reject the delivery and document such on the Agency-provided SM-93 Statement of Acceptance form. At its own discretion, if the Agency finds the equipment to be acceptable at the time of delivery, the Agency shall accept such equipment and the Delivery Order "Rental Term" shall commence on such date. Any discrepancies noted on the SM-93 should be discussed with the Vendor and resolution documented. The completed SM-93 form shall serve at a minimum, as the Agency's official inspection/acceptance document for all rented equipment items. The original version of the SM-93 shall be retained by the Agency. If the equipment is rejected by the Agency for any reason, the Agency reserves the right to refuse delivery.

3.3.2 Equipment Maintenance: The rental equipment shall be delivered with all of its manufacturer-required maintenance being up to date, fueled, assembled, in good working order, and ready for operation by the Vendor's operator, with work to commence as instructed by the Agency. The Vendor shall be responsible for the performance of all regular/routine/preventive equipment maintenance as required per manufacturer recommendations and shall provide and maintain the required parts, supplies, fuel, oil, and other lubricants as necessary during the rental period. Upon the completion of the project, the Agency will arrange with vendor the pick up of equipment.

3.3.3 Risk of Loss, Damage, Destruction or Theft: The WVDOT shall have limited responsibility for rented equipment items left on agency property, not in use, or not required to be attended by a vendor's operator. The vendor

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shall be responsible for repair, replacement, and maintenance of all equipment loss, damage, destruction, negligence, and misuse by the vendor's operator. The agency shall not be liable for equipment damage or loss caused by weather related events, acts of god, war, acts of government, riots, strikes, vandalism, theft, or other causes beyond the agency's control.

NOTE: While under the direction of the agency, operators furnished by the vendor per this contract shall not be considered as agents of the WVDOH and shall remain employees of the Vendor, the Vendor's responsibility, and under the control of the Vendor.

The agency shall not pay for items not ordered, unauthorized vendor work, ancillary assembly, incidentals, loading/unloading, or other delivery-related charges from the vendor/vendor's designee/operator. If the vendor/contractor fails to comply with any agency order, the vendor shall be required to remedy, replace, or remove the unacceptable work. The cost of which shall be deducted from any monies due.

4. CONTRACT AWARD:

4.1 Contract Award: The Contract is intended to provide Agencies with a rental/lease price with Operator on all Contract Items. All qualified responsible Vendors shall be awarded a contract for those Contract Items bid which meet or exceed all mandatory requirements of this Contract. At the time of need, the Agency, at its own discretion, will determine the necessary equipment for use in planned work to be done by the Operator.

4.1.1 Determining Low Bid Per Project: To determine the low bid vendor for individual projects, the WVDOH District Engineer or their designee will calculate the lowest overall total cost of the Contract Items required for individual projects, accounting for their anticipated length of use, and mileage calculation from vendors base location to the WVDOH project location in their determination. A written ADO will be issued to the Vendor with the lowest overall total cost.

WVDOH reserves the right to request any one or combination of Contract Items for which bids are awarded at the lowest overall total as set forth in this section.

4.2 Pricing Pages, Attachment A ("ATT A"): Vendor shall complete the Pricing Pages by providing a bid price for each Contract Item listed. Vendors may bid any or all Contract Items. Vendor shall factor into their bid prices all equipment,

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materials, delivery, and labor required to provide Contract Items. Vendors may bid on any or all Counties. Vendor shall complete the Pricing Pages for each Contract Item bid in their entirety as failure to do so may result in Vendor's bids being disqualified. All bids or pricing submitted shall be held and honored by the Vendor for 90 days after the bid opening date.

- 4.2.1 The Pricing Pages contain a list of Contract Items with no guarantee that any Contract Item will be rented throughout the life of this contract. Estimated quantities are not available.
- 4.2.2 Vendor should type or electronically enter the information into the Pricing Pages spreadsheet to prevent errors in the evaluation. In most cases, the Pricing Pages are available in wvOASIS within the solicitation attachments, however, Vendors may request an electronic copy of the Pricing Pages spreadsheet for bid purposes by sending an email request to the following address: DOTProcurement@wv.gov.
- 4.2.3 Changing a column or row description, Contract Item description or unit of measure on the Pricing Pages, Attachment A (ATT A), shall result in disqualification of the Contract Item bid on the altered line. In circumstances when all Contract Items must be bid for bid evaluation and contract award, the disqualification of any Contract Item will result in the disqualification of the entire bid.

Submitting Pricing Pages other than those provided with this solicitation, as described in Section 4.2, shall result in the disqualification Vendor's bid in its entirety.

Vendor entries of bid prices or other notations made in wvOASIS commodity line descriptions will not be considered for bid evaluation or award.

- 4.3 **Vendor Information Form, Attachment B ("ATT B"):** Vendor shall complete the ATT B by providing the current physical address of the Vendor's base locations/equipment delivery departure points to allow the Agency to accurately calculate delivery mileage cost for low bid determination and specifying the counties the Vendor agrees to provide service as ordered.

Vendor shall ensure the information entered on ATT B is accurate and complete for when equipment rental with operator work is needed within the Vendor's service area, the Agency will be able to accurately calculate the mobilization and overall total rental cost for the purpose of low bid determination. **Bids submitted without ATT B will be disqualified.**

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- 4.4 Contract Award Transition:** Upon award of this contract, the WVDOH Operations Division will announce the effective date of use of this contract to the Districts and the Vendors, whether it is by the effective date, the completed and encumbered date, or an established date by the WVDOH. Upon the announced effective date of use, any order issued prior to the award of the contract shall remain in effect and should not be cancelled until that order is filled; however, after 10 working days of the Districts and Vendors notice, any order that has not been completely filled by the Vendors shall NOT be completed and a cancellation notice will be sent to that Vendor from the issuing District for cancellation of the balance of that order only. No orders from prior contracts should be held open by the Districts or Vendors longer than 10 working days after the effective date of use is announced for the new contract.
- 4.5 Cooperative Contracting:** The purchase prices on all Contract Items herein, available for the WVDOH, shall be adoptable for other public agencies upon their request. Agencies under the authority of the West Virginia Purchasing Division must receive prior approval by the Purchasing Director.
- 4.6 Renewal Price Adjustments:** A price adjustments will occur at the time of the contract's renewal, and only if both parties agree to renew the contract for an additional year period under the same terms, conditions, and specifications.
- 4.6.1** All Contract Items will be adjusted proportionally, upwards, or downwards, based on the percentage change from July 2023 to the most recent index rate available at the time of renewal submission on the Producer Price Index by Industry: Other Heavy Machinery Rental and Leasing: Construction Equipment Rental and Leasing index at <https://fred.stlouisfed.org/>. If for any reason the index is no longer available at the time of the renewal, an equivalent Construction Equipment Rental and Leasing index will be used.

EXAMPLE OF ADJUSTMENT:

- The January 2021 index rate was 249.900
- The January 2022 index rate was 259.472
- Contract Item 1 bid price was \$1800 (example only)

A 3.83% change in the index occurred between January 2021 and January 2022. Contract Item 1 will be adjusted proportionally to match the percentage change in the index – therefore would be increased by 3.83%. The contract price for this Contract Item during the renewal period would be adjusted from \$1800.00 to \$1868.94 for the remainder of the renewal contract. The same calculation would be performed for all Contract Items proportionally.

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- 4.6.2** The Price adjustments and renewal will be granted or denied at the sole and absolute discretion of the State.
- 4.6.3** Price adjustments shall be memorialized by a written Change Order which much be reviewed and approved by the WVDOT Budget and Procurement Division to be effective. Adjusted pricing will not take effect until the effective date of such Change Order and cannot be retroactive.

5. ORDERING AND PAYMENT:

- 5.1 Ordering:** Vendor shall accept orders through regular mail, facsimile, email, or any other written forms of communication. Vendor shall maintain and keep current its phone numbers, fax number, email address, locations, and ordering/billing/payment addresses with WVDOH and in wvOASIS. Vendor may, but is not required to, accept online orders through a secure internet ordering portal/website. If Vendor can accept online orders, it shall include in its response a brief description of how Agencies may utilize the online ordering system. Vendor shall ensure that its online ordering system is properly secured prior to processing Agency orders online.
- 5.2 Agency Delivery Order ("ADO"):** District personnel must issue an ADO from OASIS for detailing the needed rental equipment, estimated time period, delivery destination, as well as the start and end dates. The Agency shall specify the date and time by which the equipment needs be delivered, and the Operator will need to be on site, ready to operate equipment. The ADO must be created in OASIS and approved to "Final", prior to placing the order with the vendor. The District is responsible for creating the ADO in OASIS and is required to submit the approved order, in writing, directly to the vendor via mail, email or fax. **Verbal communication with the vendor is not considered an official order.** In the event the vendor denies an order or if there are changes to an ADO, the District must process a change order to the approved ADO issued from OASIS.

Emergencies shall be prominently noted on the ADO. Once complete, the ADO shall be sent to Vendor via fax, email, or mail.

- 5.3 Invoicing:** The date of official receipt of rented equipment and acceptance by the Agency shall be considered the first day of rental. The day immediately preceding the date on which the equipment is officially returned to the Vendor shall be considered the last day of rental. The Agency will supply the Vendor with the number of downtime days in any calendar month within ten (10) working days following the end of that month, within two days after termination of a rental, or sooner if requested by calling the Agency District office.

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An invoice submitted to the WVDOH shall include the following:

- The beginning date and the last date of the rental
- The number of rental days in the invoicing period.
- The number of equipment downtime days in the invoicing period.
- The make, model, and serial number(#) of the leased equipment being invoiced with pricing per the Vendor's contract.
- The total owed to the Vendor and the method of calculation, congruent with the terms of this agreement and as broken down in these Specifications.

The period of need for rented equipment as specified on the ADO is only an estimate of need and shall not be used for invoicing purposes. Payment shall only be made for actual rented/leased days.

- 5.4 **Payment:** Upon completion of the work indicated on the ADO, Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia. The State of West Virginia currently utilizes a Purchasing Card program, administered under contract by a banking institution, as well as Electronic Funds Transfer as methods to process payment for goods and services. The Vendor shall accept the State of West Virginia's Purchasing Card and Electronic Funds Transfer for payment of orders under this Contract. Electronic Funds Transfer for payment is available through the WV State Auditor's Office. The Vendor may visit the WV State Auditor's website (wvsao.gov) for all necessary forms and instructions. Payment method may be dictated at WVDOH's discretion.

6. PROJECT ACCEPTANCE, DELIVERY AND RETURN:

- 6.1 **Project Acceptance and Written Verification of Receipt:** Upon receipt of a WVDOH ADO, the Vendor shall advise the WVDOH in writing within five (5) calendar days of their acceptance or refusal of the ADO. As verification of receipt, Vendor must provide written acknowledgement of any ADO and any Revisions/Modifications thereto sent by WVDOH. Failure to provide the WVDOH with written acknowledgement of any ADOs/Revisions within five (5) days of the Order being sent shall be considered refusal of the ADO. In the event of refusal, the WVDOH at its own discretion shall cancel the ADO and may seek to obtain the goods or services from the next low bid Vendor or proceed with an emergency purchase from the open market. Equipment, machinery, and vehicles listed on ATT A and used to perform work shall be of good and proper operating condition.

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- 6.2 Negotiation of Dates:** The WVDOH shall have the option to negotiate with the Vendor, the project's tentative start and end dates. Project work shall be continuous to completion unless otherwise approved in writing by the WVDOH District Engineer or their designee.
- 6.3 Delivery Time:** In accordance with Section 6.2 and the terms of this contract, the work shall be scheduled by the WVDOH. The Vendor shall mobilize, commence, and complete work delivery in accordance with the WVDOH's written ADO, per project. Any changes must be communicated by the Vendor in writing to the WVDOH District Engineer or their designee. The Vendor shall work in an efficient manner in effort to keep traffic delay to a minimum and traffic must be adequately and safely accommodated. Vendor shall ship/provide all orders in accordance with the dates assigned to each project per the ADO and shall not hold orders until a minimum delivery quantity is met. No Vendor is authorized to ship project related goods or begin work/services, nor is the WVDOH authorized to receive materials, prior to the issuance of an ADO.
- 6.4 Adverse Weather Conditions:** Unsuitable/adverse/inclement weather conditions may dictate the work schedule. It is preferred that operations be suspended immediately when an inclement weather event begins or if the WVDOH District Engineer or their designee determines that an inclement weather event is imminent. If working conditions are dangerous or unsuitable for the WVDOH, Vendor, or general public, work shall be suspended by the WVDOH Engineer/designee. If needed, revision to the project's start and end date may be negotiated by the Vendor and the WVDOH Engineer/designee. After a weather-related suspension of work, the WVDOH District Engineer or their designee shall determine and convey in writing, such ADO changes and when work shall commence/resume, followed by the Vendor's written acknowledgement; per Section 6.2 of this Contract Solicitation.
- 6.5 Late Delivery:** The Agency placing the order under this Contract must be notified in writing if orders will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the delayed order, and/or obtaining the items ordered from another awarded vendor or proceed with an Emergency Purchase from the open market.

The Agency placing the ADO under this contract must be notified in writing by the Vendor no later than five (5) business days prior to the scheduled start from the Agency's order. Any failure to notify, acknowledge receipt of WVDOH's written ADOs/ Revisions resulting in delivery delay, or failure to start or complete the project per the WVDOH scheduled due dates may be determined by the WVDOH at its sole discretion as harmful to the Agency and as such, shall result in WVDOH's cancellation of the ADO and application of Liquidated Damages.

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Any Agency seeking to obtain items from the open market under this provision must first obtain approval of the WVDOT Budget & Procurement Division.

- 6.5.1 Liquidated Damages:** If the Vendor's work completion or corrections of deficient work exceeds the ADO completion due date or timeframe, the Vendor shall agree that no extension of contract time will be granted unless Liquidated Damages are applied by the WVDOH in the form of an off-set reduction to the total amount of the Vendor's final invoice. The WVDOH shall calculate Liquidated Damages per project beginning on day one (1) after the WVDOH's specified ADO due date and in accordance with this Section, the Contract's Terms and Conditions, Standard Specs Section 108.7, and the following Standard Specs Section Table 108.7.1 - Schedule of Liquidated Damages, as amended:

Table 108.7.1
Schedule of Liquidated Damages

Original Contract Amount		Daily Charges Per Calendar Day
For More Than	To and Including	
\$0	\$500,000	\$350
\$500,000	\$2,000,000	\$650
\$2,000,000	\$10,000,000	\$1,600
\$10,000,000	\$25,000,000	\$3,100
\$25,000,000		\$4,200

- 6.5.2 Force Majeure:** It shall be further noted that the Vendor is not responsible for and shall not be penalized for delays in its delivery of goods and/or services when caused by factors or events outside Vendor's control, including but not limited to acts or omissions of the Agency or third parties, acts of civil or military authority, civil disturbance, war, terrorism, pandemics, explosions, fire, floods, tornadoes, or other natural disasters or acts of God.
- 6.6 Delivery Payment/Risk of Loss:** Standard order delivery shall be F.O.B. destination to the Agency's location. Vendor shall include the cost/discount of standard order delivery charges in its bid pricing and is not permitted to charge the Agency separately for such delivery. The Agency will pay delivery charges on all emergency orders provided that Vendor invoices those delivery costs as a separate charge with the original freight bill attached to the invoice.

Deliveries made by the vendor shall be comprised only of Contract Items intended for delivery at that location and specified in the pricing pages, contract specifications or WV-39 Blanket Release Order. At no time shall property belonging to the West Virginia Department of Transportation be utilized as a lay-

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down or storage facility by the vendor, or items left with the intention of being distributed to an alternate location.

- 6.7 Project Acceptance Criteria:** The WVDOH District Engineer or their designee shall have final acceptance of the work done by the Vendor, per project. Any work found by the WVDOH District Engineer or their designee not performed in accordance with these contract specifications or the Standard Specs, as amended, and/or found deficient and unacceptable by visual inspection will be rejected and, at the Vendor's/Contractor's expense, will be removed and replaced by the Vendor with work being continual until the Vendor's deficient work corrections are completed and deemed acceptable and approved by the WVDOH District Engineer or their designee. Under no circumstance shall the Vendor's deficiency corrections exceed twenty (20) calendar days unless otherwise declared in writing by the WVDOH District Engineer or their designee and may be subject to Liquidated Damages as per Section 6.5.1 of these Contract Specifications.
- 6.8 Return of Unacceptable Items:** The decision of the WVDOH District Engineer or their designee regarding materials, workmanship, quality etc., shall be final per the Standard Specs Section 105.1, as amended. If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either arrange for the return within five (5) days of being notified that items are unacceptable or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be F.O.B. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.
- 6.9 Return Due to Agency Error:** Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B. Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

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- 6.10 Damaged Property:** Vendor assumes responsibility for any damage caused by the Vendor's activities to property items and the repair or replacement of any damaged sections of roads, guardrails, sidewalks, curbs, utilities, signs, concrete gutters, pipes, ditch lines, etc. Any such repairs or replacements will be at the Vendor's expense and to the satisfaction of the WVDOH District Engineer or their designee and are subject to liquidated damages as per Section 6.5.1.

7. VENDOR DEFAULT:

- 7.1** The following shall be considered a vendor default under this Contract.
- 7.1.1** Failure to provide Contract Items in accordance with the requirements contained herein.
 - 7.1.2** Failure to comply with other specifications and requirements contained herein.
 - 7.1.3** Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
 - 7.1.4** Failure to remedy deficient performance upon request.
- 7.2** The following remedies shall be available to Agency upon default.
- 7.2.1** Immediate cancellation of the Contract.
 - 7.2.2** Immediate cancellation of one or more release orders issued under this Contract.
 - 7.2.3** Any other remedies available in law or equity.

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8. MISCELLANEOUS:

- 8.1 No Substitutions:** Vendor shall supply only Contract Items submitted in response to the Solicitation unless a contract modification is approved in accordance with the provisions contained in this Contract.
- 8.2 Vendor Supply:** Vendor must carry sufficient inventory of the Contract Items being offered to fulfill its obligations under this Contract. By signing its bid, Vendor certifies that it can supply the Contract Items contained in its bid response. If Vendor's equipment-stock changes during the contract period, equipment presented by the Vendor to the Agency must match the ADO and meet the parameters specified in the equipment description listed on the pricing pages and shall be subject to the terms and conditions of this contract. Final acceptance of changed equipment for project is at the discretion of the WVDOH.
- 8.3 Inspection of Equipment:** The Vendor shall have the right, during normal working hours, to the extent of the WVDOH's authority, to enter upon the premises where the said equipment is located for the purpose of inspecting or providing maintenance to the rental equipment.
- 8.4 Reports:** Vendor shall provide the Agency with quarterly reports, annual summaries, and/or monthly reports as requested by the Agency and/or the West Virginia Purchasing Division showing quantities, total dollar value of the Contract Items purchased, ordered, shipped & invoiced with dates in spreadsheet format as defined by the Agency. Failure to supply such reports may be grounds for cancellation of this Contract.
- 8.5 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: MICHAEL WOLFORD
Telephone Number: 304-378-7655
Fax Number: 304-205-0623
Email Address: MWOLFORD@ASPLUNDH.COM

Vendor shall inform the Agency in writing of any changes to the information provided above within ten (10) calendar days of such changes. Failure to comply may be grounds for cancellation of this contract.

**All Terrain Tree Trimmer-Jarraf or Equal
ATTACHMENT A PRICING PAGE (ATT A)**

Vendor Name: ASPLUNDH TREE EXPERT, LLC

Vendor Instructions: Vendor shall mark with an "X" the counties that correspond with the bid prices on this page. If Vendor has varied pricing per county, Vendor shall complete a separate set of Pricing Pages (ATT A and ATT B if different) for each county pricing set. Failure to include ATT A and ATT B will result in the disqualification of the affected bid.

This is a multiple vendor award contract. All qualifying vendor meeting the contract specifications will be awarded with a contract. The low bid vendor per project will be determined at the time of need, as per Section 8 of the contract specifications. Estimated quantities are not available.

- | | | | | | | | | | |
|---|---|---|--|---|--|---|--|--|--|
| <input checked="" type="checkbox"/> Boone | <input checked="" type="checkbox"/> Cabell | <input checked="" type="checkbox"/> Calhoun | <input checked="" type="checkbox"/> Doddridge | <input checked="" type="checkbox"/> Berkeley | <input checked="" type="checkbox"/> Brooke | <input checked="" type="checkbox"/> Barbour | <input checked="" type="checkbox"/> Pendleton | <input checked="" type="checkbox"/> Fayette | <input checked="" type="checkbox"/> McDowell |
| <input checked="" type="checkbox"/> Clay | <input checked="" type="checkbox"/> Lincoln | <input checked="" type="checkbox"/> Jackson | <input checked="" type="checkbox"/> Harrison | <input checked="" type="checkbox"/> Grant | <input checked="" type="checkbox"/> Hancock | <input checked="" type="checkbox"/> Braxton | <input checked="" type="checkbox"/> Pocahontas | <input checked="" type="checkbox"/> Greenbrier | <input checked="" type="checkbox"/> Mercer |
| <input checked="" type="checkbox"/> Kanawha | <input checked="" type="checkbox"/> Logan | <input checked="" type="checkbox"/> Pleasants | <input checked="" type="checkbox"/> Marion | <input checked="" type="checkbox"/> Hampshire | <input checked="" type="checkbox"/> Marshall | <input checked="" type="checkbox"/> Gilmer | <input checked="" type="checkbox"/> Randolph | <input checked="" type="checkbox"/> Monroe | <input checked="" type="checkbox"/> Raleigh |
| <input checked="" type="checkbox"/> Mason | <input checked="" type="checkbox"/> Mingo | <input checked="" type="checkbox"/> Ritchie | <input checked="" type="checkbox"/> Monongalia | <input checked="" type="checkbox"/> Hardy | <input checked="" type="checkbox"/> Ohio | <input checked="" type="checkbox"/> Lewis | <input checked="" type="checkbox"/> Tucker | <input checked="" type="checkbox"/> Nicholas | <input checked="" type="checkbox"/> Wyoming |
| <input checked="" type="checkbox"/> Putnam | <input checked="" type="checkbox"/> Wayne | <input checked="" type="checkbox"/> Roane | <input checked="" type="checkbox"/> Preston | <input checked="" type="checkbox"/> Jefferson | <input checked="" type="checkbox"/> Tyler | <input checked="" type="checkbox"/> Upshur | | <input checked="" type="checkbox"/> Summers | |
| | | <input checked="" type="checkbox"/> Wirt | <input checked="" type="checkbox"/> Taylor | <input checked="" type="checkbox"/> Mineral | <input checked="" type="checkbox"/> Wetzel | <input checked="" type="checkbox"/> Webster | | | |
| | | <input checked="" type="checkbox"/> Wood | | <input checked="" type="checkbox"/> Morgan | | | | | |

Contract Item #	Contract Item Description	Lease/Rental With Operator			Mobilization	Additional Mile
		\$/Day up to 10 hours	\$/Week up to 50 Hours	\$/Month up to 217 Hours	First Mile	
TRIMMER						
1	All Terrain Tree Trimmer - Jarraf or equal, saw head boom with 180 degree rotation, 75 ft max cutting height, 360 degree turntable rotation, four wheel drive.	\$1,875	\$7,500	\$29,975	\$350	\$18

**ALL TERRAIN TREE TRIMMER
6624C037
ATT B - Information Form**

Vendor Name: ASPLUNDH TREE EXPERT, LLC

Vendor shall identify source locations (physical 911 address) where Contract Items will be provided from upon contract award.
Bids submitted without ATT B will be disqualified.
Please duplicate this page if listing additional source locations.

Vendor Source Location
298 QUAIL RIDGE ROAD
THOMAS, WV 26292
Vendor Source Location
Vendor Source Location
Vendor Source Location
Vendor Source Location



38 Parson Drive, Gassaway, WV 26624
Office: 304-379-8090 Fax: 304-205-0623

October 23, 2023

Mr. Jerry Rush
Budget & Procurement
Division of Highways
BLDG 5, RM A-260
1900 Kanawha BLVD E
Charleston, WV 25305

Dear Mr. Rush:

We look forward to working cooperatively with the WV Division of Highways to accomplish their vegetation management goals.

Attached are the requested rates, for your review.

Please feel free to contact me if there are any questions or concerns that need to be discussed.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Wolford". The signature is fluid and cursive, written over a white background.

Michael Wolford
Asplundh Tree Expert, LLC
Region 040 - VP Manager.
Cell: 304-376-7655
Email: mwolford@asplundh.com