



State of West Virginia
Request For Quotation

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Procurement Folder : 282806

Document Description : Addendum #3

Procurement Type : Agency Master Agreement

Date Issued	Solicitation Closes	Solicitation No	Version	Phase
2017-02-13	2017-02-14 13:00:00	ARFQ 0803 DOT1700000013	4	Final

SUBMIT RESPONSES TO:	VENDOR
FINANCE & ADMINISTRATION DIVISION OF HIGHWAYS BLDG 5, RM A-220 1900 KANAWHA BLVD E CHARLESTON WV 25302 US	Vendor Name, Address and Telephone Strawser Construction, Inc. 1392 Dublin Rd. Columbus, Ohio 43215 614-276-5501

FOR INFORMATION CONTACT THE

Angela Moorman
(304) 558-9427
angie.j.moorman@wv.gov

Signature X *Douglas C. Perry* FEIN # 26-2688853 DATE 2/14/17

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

INVOICE TO		SHIP TO	
VARIOUS AGENCY LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Commodity Line Description	Qty	Unit Issue	Unit Price	Total Price
1	MICRO SURFACING - MAT., DELIV., EQUIP., LABOR BY THE VENDOR				

Commodity Code	Manufacturer	Model #	Specification
72141104			

Extended Description

MICRO SURFACING - MAT., DELIV., EQUIP., LABOR BY THE VENDOR PER THE E-CATALOG

SCHEDULE OF EVENTS

Line	Event	Event Date
1	Question Submission Deadline @4:00 P.M	2017-01-27

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GENERAL TERMS AND CONDITIONS:
(Agency Delegated Procurement Only)

1. **CONTRACTUAL AGREEMENT:** Issuance of a Purchase Order signed by the Agency, and approved as to form by the Attorney General's office if required, constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

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

2.1 "Agency" means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation.

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

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

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

2.5 "Purchase Order" means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the successful bidder and Contract holder. Notwithstanding the foregoing, the Purchasing Division's signature and approval by the Attorney General's office as to form may not be required on a Purchase Order for certain agency delegated purchases.

2.6 "Solicitation" means the official solicitation issued by the Agency.

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

2.8 "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. **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.

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

5. **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 a 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.

6. **ALTERNATES:** Any model, brand, or specification listed herein 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

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alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.

7. 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.

8. ACCEPTANCE/REJECTION: The State may accept or reject any bid in whole, or in part. Vendor's signature on its bid signifies acceptance of the terms and conditions contained in the Solicitation and Vendor agrees to be bound by the terms of the Contract, as reflected in the Purchase Order, upon receipt.

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. 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.

11. PAYMENT: Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears, to the Agency at the address on the face of the purchase order labeled "Invoice To."

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

13. DELIVERY: All quotations are considered freight on board destination ("F.O.B. destination") unless alternate shipping terms are clearly identified in the bid. Vendor's listing of shipping terms that contradict the shipping terms expressly required by this Solicitation may result in bid disqualification.

14. INTEREST: Interest attributable to late payment will only be permitted if authorized by the West Virginia Code. Presently, there is no provision in the law for interest on late payments.

15. PREFERENCE: Vendor Preference may only be granted upon written request and only in accordance with the West Virginia Code § 5A-3-37 and the West Virginia Code of State Rules. A Resident Vendor Certification form has been attached hereto to allow Vendor to apply for the preference. Vendor's failure to submit the Resident Vendor Certification form with its bid will result in denial of Vendor Preference. Vendor Preference does not apply to construction projects.

16. SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES: For any solicitations publicly advertised for bid on or after July 1, 2012, in accordance with West Virginia Code §5A-3- 37(a) (7) and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the Purchasing Division (or to the Agency handling the solicitation for agency delegated purchases) with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to submission of its bid to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority-owned business shall be applied in accordance with W. Va. CSR § 148-22-9.

17. 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.

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 Purchasing Division Director may cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1- 7.16.2.

19. WAIVER OF MINOR IRREGULARITIES: The Director reserves the right to waive minor irregularities in bids or specifications in accordance with West Virginia Code of State Rules § 148-1-4.6.

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

21. **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.

22. **COMPLIANCE:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendors acknowledge that they have reviewed, understand, and will comply with all applicable law.

23. **PREVAILING WAGE:** On any contract for the construction of a public improvement, Vendor and any subcontractors utilized by Vendor shall pay a rate or rates of wages which shall not be less than the fair minimum rate or rates of wages (prevailing wage), as established by the West Virginia Division of Labor under West Virginia Code §§ 21-5A-1 et seq. and available at <http://www.sos.wv.gov/administrative-law/wagerates/Pages/default.aspx>. Vendor shall be responsible for ensuring compliance with prevailing wage requirements and determining when prevailing wage requirements are applicable. The required contract provisions contained in West Virginia Code of State Rules § 42-7-3 are specifically incorporated herein by reference.

24. **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.

25. **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, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). No Change shall be implemented by the Vendor until such time as the Vendor receives an approved written change order from the Purchasing Division. Notwithstanding the foregoing, Purchasing Division and Attorney General approval may or may not be required on certain agency delegated or exempt purchases. In the event that Purchasing Division approval is not required, change orders will be received from the Agency.

26. **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.

27. **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.

28. **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, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments. Notwithstanding the foregoing, Purchasing Division approval may or may not be required on certain agency delegated or exempt purchases.

29. **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.

30. **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.

31. **BANKRUPTCY:** In the event the Vendor files for bankruptcy protection, the State of West Virginia may deem this Contract null and void, and terminate this Contract without notice.

32. [RESERVED]

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33. **CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

34. **DISCLOSURE:** Vendor's response to the Solicitation and the resulting Contract are considered public documents and will be disclosed to the public in accordance with the laws, rules, and policies governing the West Virginia Purchasing Division. Those laws include, but are not limited to, the Freedom of Information Act found in West Virginia Code § 29B-1-1 et seq.

If a Vendor considers any part of its bid to be exempt from public disclosure, Vendor must so indicate by specifically identifying the exempt information, identifying the exemption that applies, providing a detailed justification for the exemption, segregating the exempt information from the general bid information, and submitting the exempt information as part of its bid but in a segregated and clearly identifiable format. Failure to comply with the foregoing requirements will result in public disclosure of the Vendor's bid without further notice. A Vendor's act of marking all or nearly all of its bid as exempt is not sufficient to avoid disclosure and WILL NOT BE HONORED. Vendor's act of marking a bid or any part thereof as "confidential" or "proprietary" is not sufficient to avoid disclosure and WILL NOT BE HONORED. In addition, a legend or other statement indicating that all or substantially all of the bid is exempt from disclosure is not sufficient to avoid disclosure and WILL NOT BE HONORED. Vendor will be required to defend any claimed exemption for nondisclosure in the event of an administrative or judicial challenge to the State's nondisclosure. Vendor must indemnify the State for any costs incurred related to any exemptions claimed by Vendor. Any questions regarding the applicability of the various public records laws should be addressed to your own legal counsel prior to bid submission.

35. **LICENSING:** In accordance with West Virginia Code of State Rules §148-1-6.1.7, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

36. **ANTITRUST:** In submitting a bid to, signing a contract with, or accepting a Purchase Order 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.

37. **VENDOR CERTIFICATIONS:** By signing its bid or entering into this Contract, Vendor certifies (1) that its bid was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid for the same material, supplies, equipment or services; (2) that its bid is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this RFQ in its entirety; understands the requirements, terms and conditions, and other information contained herein. Vendor's signature on its bid also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency.

The individual signing this bid on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

38. **PURCHASING CARD ACCEPTANCE:** The State of West Virginia currently utilizes a Purchasing Card program, administered under contract by a banking institution, to process payment for goods and services. The Vendor must accept the State of West Virginia's Purchasing Card for payment of all orders under this Contract.

39. **VENDOR RELATIONSHIP:** The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent

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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.

40. **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.

41. **PURCHASING AFFIDAVIT:** In accordance with West Virginia Code § 5A-3-10a, all Vendors are required to sign, notarize, and submit the Purchasing Affidavit stating that neither the Vendor nor a related party owe a debt to the State in excess of \$1,000. The affidavit must be submitted prior to award, but should be submitted with the Vendor's bid. A copy of the Purchasing Affidavit is included herewith.

42. **CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire any 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.

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

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

The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check.

Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

44. **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.

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b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open heath, basic oxygen, electric furnace, Bessemer or other steel making process.

The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:

- a. 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
- b. 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.

45. 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 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.

INSTRUCTIONS TO VENDORS SUBMITTING BIDS

West Virginia Division of Highways Maintenance Division

- 1. REVIEW DOCUMENTS THOROUGHLY:** The attached documents contain a solicitation for bids. Please read these instructions and all documents attached in their entirety. These instructions provide critical information about requirements that if overlooked could lead to disqualification of a Vendor's bid. All bids must be submitted in accordance with the provisions contained in these instructions and the Solicitation. Failure to do so may result in disqualification of Vendor's bid.
- 2. MANDATORY TERMS:** The Solicitation may contain mandatory provisions identified by the use of the words "must," "will," and "shall." Failure to comply with a mandatory term in the Solicitation will result in bid disqualification.
- 3. BID SUBMISSION:** All bids must be submitted electronically through the West Virginia Vendor Self Service Portal website or signed, sealed in an envelope 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. In the event that a Vendor submits multiple bids in response to the same Solicitation, the bid with the most recent Agency or wvOASIS time stamp shall be the bid considered by the Agency and the Agency shall disregard all other bids by that Vendor for that Solicitation. Any bid received by the Agency after the date and time of the bid opening as specified in the Solicitation shall be disregarded by the Agency.
- 4. 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.
- 5. 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.
- 6. ALTERNATES:** Any model, brand, or specification listed in this Solicitation establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the Agency 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.

7. 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.

8. 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 or the fee then assessed by said Division, if applicable.

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

10. PREFERENCE: Vendor Preference may only be granted upon written request and only in accordance with the West Virginia Code § 5A-3-37 and the West Virginia Code of State Rules. A Vendor Preference Certificate form has been attached hereto to allow Vendor to apply for the preference. Vendor's failure to submit the Vendor Preference Certificate form with its bid will result in denial of Vendor Preference.

11. SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES: For any solicitations publicly advertised for bid, in accordance with West Virginia Code §5A-3-37(a)(7) and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the 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.

12. ELECTRONIC FILE ACCESS RESTRICTIONS: Vendor must ensure that its submission in the West Virginia Vendor Self Service Portal website can be accessed by the Agency staff immediately upon bid opening. The Agency will consider any file that cannot be immediately opened and/or 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 if those documents are required with the bid.

13. NON-RESPONSIBLE: The Agency reserves the right to reject the bid of any vendor when the Agency 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. A determination of non-responsibility will only extend to the contract for which the vendor has submitted a bid and does not operate as a bar against submitting future bids.

14. ACCEPTANCE/REJECTION: The Agency may accept or reject any bid in whole, or in part when the Agency determines it is in the best interest of the State.

15. TIE BIDS: When tie bids are received and the Agency intends to award the work to only one vendor, the Agency shall break the tie by allowing the tied vendors to make a final offer, flip of a

coin, draw of the cards, or any other impartial method considered prudent by the Agency. If tie bids are received and the Agency intends to award the bid to multiple vendors, the Agency may award the bid to the number of the tied bidders as Agency deems necessary using the procedure set forth in this section to establish the number of tied bidders which will be awarded the bid.

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. Submission of any bid, proposal, or other document to the Agency constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. Labeling any document "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents will not protect that document from public disclosure. All submissions are subject to public disclosure without notice.

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

GENERAL TERMS AND CONDITIONS:

1. CONTRACTUAL AGREEMENT: Issuance of an Award Document signed by the Agency and approved as to form by legal counsel for the Agency, if required, constitutes acceptance of this Contract made by and between the Agency and the Vendor. Vendor's signature on its bid signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

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

2.1. "Agency" means the West Virginia Department of Transportation, Division of Highways. This Contract is entered into by the Agency pursuant to the provisions of West Virginia Code § 17-4-19 and §17-2A-8.

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 Agency and the Vendor to provide the goods or services requested in the Solicitation. The Contract shall be comprised of the (i) Solicitation and any other document required by the Solicitation (ii) Bid or Proposal (iii) Award Document and (iv) General Terms and Conditions; Instruction to Vendors Submitting Bids, collectively referred to as the "Contract Documents" .

2.4. "Award Document" means the document signed by the Agency, and approved as to form by legal counsel for the agency, that identifies the Vendor as the contract holder.

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

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

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

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 award _____ and extends for a period of one _____ year(s).

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor. Any request for renewal should be submitted in writing 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. Renewal of this Contract is limited to two successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed 24 months in total. Automatic renewal of this Contract is prohibited.

Delivery Order Limitations: In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued prior to the expiration of this Contract shall be effective for no more than 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 that part of the Contract more fully described in the attached specifications must be completed within _____ days. Upon completion, the vendor agrees that maintenance, monitoring, or warranty services will be provided for _____ successive one year periods or multiple periods of less than one year provided that the multiple renewal periods do not exceed _____ months in total.

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 calendar year.

Other: See attached.

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

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

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

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

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

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

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

7. EMERGENCY PURCHASES: The Agency may 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 and Vendor is unable to provide those goods and services on an immediate or expedited basis in the sole judgment of Agency. 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, by the Agency, shall not constitute a breach of this Contract and shall not entitle the Vendor to injunctive relief or to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.

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

BID BOND: All Vendors shall furnish a bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

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

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

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

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

INSURANCE: The apparent successful Vendor shall furnish proof of the following insurance prior to Contract award and shall list the State as a certificate holder:

Commercial General Liability Insurance: In the amount of \$1,000,000.00 _____ or more.

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

-
-
-
-
-

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 above.

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

[WEST VIRGINIA CONTRACTOR'S LICENSE

[

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

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

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

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

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

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

15. CANCELLATION: The Agency 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 this contract for any reason or no reason upon 30 days written notice to the Vendor.

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

17. 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.

18. COMPLIANCE: 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.

19. PREVAILING WAGE: To the extent required by applicable law, Vendor shall be responsible for ensuring compliance with prevailing wage requirements and determining when prevailing wage requirements are applicable.

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

21. MODIFICATIONS: 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.

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

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

24. ASSIGNMENT: Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency and any other government agency or office that may be required to approve such assignments.

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

26. 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.

27. BANKRUPTCY: In the event the Vendor files for bankruptcy protection, the Agency may deem this Contract null and void, and terminate this Contract without notice.

28. PRIVACY, SECURITY, AND CONFIDENTIALITY: The Vendor agrees that it will not disclose to anyone, directly or indirectly, any personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in:

<http://www.transportation.wv.gov/Documents/WVDOT-Privacy-Notice.pdf>.

29. 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. Submission of any bid, proposal, or other document to the Agency constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. Labeling any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents will not protect that document from public disclosure. All submissions are subject to public disclosure without notice.

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

30. LICENSING: Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Upon

request, the Vendor must provide all necessary releases to obtain information to enable the Agency to verify that the Vendor is licensed and in good standing with the above entities.

31. ANTITRUST: In submitting a bid to, signing a contract with, or accepting an Award Document from Agency, 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.

32. VENDOR CERTIFICATIONS: By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein. Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

33. PURCHASING CARD ACCEPTANCE: The State of West Virginia currently utilizes a Purchasing Card program, administered under contract by a banking institution, to process payment for goods and services. The Vendor must accept the State of West Virginia's Purchasing Card for payment of all orders under this Contract unless the box below is checked.

Vendor is not required to accept the State of West Virginia's Purchasing Card as payment for all goods and services.

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: To the fullest extent permitted by law, the Vendor agrees to defend, indemnify, and hold harmless the Agency, its officers, agents and employees from and against all suits, claims, damages, liability, losses, and expenses, including but not limited to attorney's fees and costs of investigations, arising out of, pertaining to or resulting from the performance of work for the above identified Project, including all claims, damages, losses or expenses which are attributable to bodily injury, sickness, disease or death, or to damage to or destruction of property, whether caused either wholly or in part by the negligence, actions or omissions of the Vendor, a Subcontractor or anyone directly or indirectly employed by the Vendor or Subcontractor or for anyone whose acts the Vendor or Subcontractor may be liable, except for any liability or damages due to the willful or intentional unlawful acts or the sole negligence of the Agency or its employees.

36. PURCHASING AFFIDAVIT: In accordance with West Virginia Code § 5A-3-10a, all Vendors are required to sign, notarize, and submit the Purchasing Affidavit stating that neither the Vendor nor a related party owe a debt to the State in excess of \$1,000. The affidavit must be submitted prior to the award, but should be submitted with the Vendor's bid. A copy of the Purchasing Affidavit is included herewith.

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 with the following reports identified by a checked box below:

Such reports as the Agency 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 Agency via email to the Agency representative specified by Agency.

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

in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision. The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check .Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

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. It is hereby expressly covenanted, agreed and understood by and between the parties hereto, that the Vendor will immediately make payment and refund to the Agency for any and all overpayments made by said Agency to the Vendor on any estimate or estimates, advances ,if applicable ,or partial payments made on this Contract. Agency is given the right and authority to withhold any and all funds in its possession, belonging to, owed by, or which may be owed by it to the Vendor on any agreement or from any other source for the recovery of any overpayment made in connection with this contract. It is further expressly agreed that the statute of limitations will not commence to run against the Agency for such overpayments until the same is discovered and made known to the Agency.

43. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities in the order listed below with the highest priority being sub-section a:

- a. General Terms and Conditions; Instructions to Vendors Submitting Bids,
- b. Solicitation and any documents required by the Solicitation,
- c. Bid or Proposal,
- d. Award Document.

CERTIFICATION AND SIGNATURE PAGE

By signing below, or submitting documentation through the West Virginia Vendor Self Service Portal website, 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 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.

Strawser Construction, Inc.
(Full Company Name)

Douglas C. Perry
(Authorized Signature)

Douglas C. Perry, Senior Estimator
(Print or Type Name and Title of Signatory)

614-276-5501
(Phone Number)

614-276-0570
(Fax Number)

dperry@terryasphalt.com
(Email address)

2/14/17
(Date)

**Form pre-approved by DOH legal division on July 12, 2016.
Attorney signature not required.**

ADDENDUM ACKNOWLEDGEMENT FORM

SOLICITATION NO.: ARFQ 0803 DOT 1700000013

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.

Strawser Construction, Inc.
Full Company Name

Douglas C. Perry
Authorized Signature

2/14/17
Date

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

REQUEST FOR QUOTATION
Micro Surfacing
Materials, Equipment and Labor

SPECIFICATIONS

- 1. PURPOSE AND SCOPE:** The West Virginia Division of Highways is soliciting bids to establish an open-end contract for Micro Surfacing work for use on preventive maintenance and repair projects throughout the state of West Virginia which shall include materials, delivery, equipment and labor, by the Vendor.

Micro Surfacing is an application for surfacing existing paved surfaces and filling ruts. The Micro Surfacing is a mixture of a latex-modified asphalt emulsion, crushed mineral aggregate screenings, mineral filler, water and other additives for control of set time in the field. All ingredients are to be properly proportioned, mixed and spread on the paved surface in accordance with Special Provision 495, most recently dated November 1, 2012 attached, the contract specifications and as directed by the WVDOH District Engineer.

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

- 2.1 “Contract Item” or “Contract Items”** means the list of items identified in Section 3.2.
- 2.2 “Pricing Pages/E-Catalog Spreadsheet”** means the schedule of prices attached hereto as Exhibit A and used to evaluate the Solicitation responses.
- 2.3 “Solicitation”** means the official notice of an opportunity to supply the State with goods or services.
- 2.4 “WVDOH”** used throughout this Solicitation means the West Virginia Division of Highways.
- 2.5 “ASTM”** used throughout this Solicitation means American Society for Testing and Materials. Reference: www.astm.org.
- 2.6 “AASHTO”** used throughout this Solicitation means American Association of State Highway and Transportation Officials. Reference: www.transportation.org.
- 2.7 “ISSA”** used throughout this Solicitation means International Slurry Surfacing Association. Reference: www.slurry.org.
- 2.8 “JMF”** used throughout this Solicitation means Job Mix Formula.
- 2.9 “ADT”** used throughout this Solicitation means Average Daily Traffic.

REQUEST FOR QUOTATION
Micro Surfacing
Materials, Equipment and Labor

2.10 “Contractor” or “Vendor” 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, are interchangeable.

2.11 “Standard Specs” used throughout this Solicitation means the West Virginia Department of Transportation, Division of Highways Standard Specifications, Roads and Bridges, adopted latest Standard Specs edition.

3. GENERAL REQUIREMENTS:

3.1 The following sections of the Standard Specs, but not limited to, shall apply to the administration of this contract: Sections 101, 102.4, 102.5, 105.1, 105.3, 105.4, 105.10, 105.10, 105.12, 105.13, 106.3, 106.4, 106.5, 106.6, 106.7, 106.9, 107.1, 107.2, 107.3, 107.12, 107.14, 107.15, 107.16, 107.19, 107.20, 107.23, 108.3, 108.5, 108.6, 108.7, 108.8, 109.1, 109.2, 109.9, 109.10, 109.20, 401.4.2.1, 401.9.3, 401.9.7, 401.10.1, 408 and 636.

A complete hard-copy of the latest Standard Specs may be obtained, after January 1, 2017, from:

West Virginia Division of Highways
Contract Administration Division
Building 5, Room 722
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305
(Phone) 304-558-2885

An on-line version of these Standard Specs shall be available, after December 26, 2016, by sourcing:

<http://www.transportation.wv.gov/highways/Contractadmin/specifications>

3.2 Contract Items and Mandatory Requirements: Vendor shall provide Agency with the Contract Items listed below on an open-end and continuing basis. Contract Items must meet or exceed the mandatory requirements as shown below.

3.2.1 Materials: Vendor shall furnish a micro surfacing mixture consisting of a properly designed and proportioned blend of polymerized asphalt emulsion, fine aggregate, Portland cement, water and other additives. Materials shall meet the following:

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3.2.1.1 Mineral Filler: Portland cement, hydrated lime, limestone dust, fly ash or other approved filler meeting the requirements of ASTM D 242 shall be used if required by the mix design.

3.2.1.2 Fine Aggregates (2FA and 3FA): The fine aggregated used shall be suitable for the particular application and shall be a crushed stone such as granite, slag, limestone, chat , or other high-quality aggregate or combination thereof and shall meet the requirements and grading requirements as listed in the tables below. In addition, aggregates used for surface courses on projects with an ADT greater than 3,000 shall be from an approved source identified as having polish-resistant aggregates and considered potential skid-resistant aggregate sources.

Tests		Requirements
Sand Equivalent Value of Soils and Fine Aggregate	ASTM D 2419	65 minimum
Soundness of Aggregates by Use of Sodium Sulfate or Magnesium Sulfate	C 88	15%max.w/NA ² SO ⁴ 25%max.w/MgSO ⁴

Material	Percent Passing							
	3/8 in	No.4	No.8	No.16	No.30	No.50	No.100	No.200
2FA ^(a)	100	85-100	50-80	40-65	25-45	13-25		5-15
3FA ^(a)	100	70-90	45-70	28-50	19-34	12-25	7-18	5-15

^(a)Gradation represents the final blended product.

3.2.1.3 Asphalt Emulsion – CSS-1hM or CQS-1hM: Polymer Modified Asphalt Emulsion shall be a quick-set, CSS-1hM or CQS-1hM emulsion in accordance with AASHTO M 208 except the cement-mixing test is waived. The polymer material shall be processed into the asphalt cement or milled into the asphalt emulsion. Post adding to the asphalt emulsion is not permitted. The minimum polymer solids content will be 3.0% based on the residual of the emulsion.

Tests ASTM D 244, Unless Otherwise Designated:	Requirements
Viscosity, Saybolt Furol, ASTM D 88, @ 25°C, sec	20 – 100
Storage Stability Tests, 24-hr, % Difference, max	1
Particle Charge Tests	Positive
Sieve Tests, % max (Distilled Water)	0.10
Distillation to 260°C, % by Weight, min	60
Tests on Distillation Residue:	
Penetration, 25°C, 100 g, 5 sec, dmm, ASTM D 5	40 – 90

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Ductility, 25°C, 5 cm/min, cm, min, ASTM D 113	40
Solubility in Trichloroethylene, % min, ASTM D 2042	97.5

3.2.1.4 Water: Water shall be potable and free of harmful salts and contaminants.

3.2.1.5 Additives: Chemical additives may be used to accelerate or retard the break/set of the micro-surfacing mixture if required by the mix design.

3.2.2 Mixture Requirements:

3.2.2.1 Mix Design: The Vendor shall submit to the WVDOH District Engineer, at least five working days before the start of production, a complete mix design. The Vendor shall provide a JMF to the WVDOH District Engineer at the pre-paving meeting showing the individual proportions of each material, that when combined, will meet the following mix design criteria. A JMF is required before the start of each project and is also required for any change in aggregate or asphalt emulsion.

ISSA TB-139 Wet Cohesion*	
30 minutes minimum (set traffic)	12 kg-cm min
60 minutes minimum (traffic)	20 kg-cm min or near spin
ISSA TB-114 Wet Stripping	90% min
ISSA TB-100 Wet Track Abrasion Loss	
One Hour Soak	50 g/ft2 max
Six Day Soak	75 g/ft2 max
ISSA TB-144 Saturated Abrasion Compatibility	3 g loss, max
ISSA TB-113	
Mix Time at 77°F	Controllable to 120 sec, min
Mix Time at 104°F*	Controllable to 35 sec, min

*Check the ISSA TB-139 set time and ISSA TB-113 mix time tests at the highest temperature expected during construction. For ISSA TB-113, test at 104°F, preheat all ingredients and containers.

The JMF must be within the following limits:

Asphalt Binder Content (Residual):

7.0%-8.5% dry weight, 2FA aggregate

6.5%-8.0% dry weight, 3FA aggregate

Mineral Filler: 0.25%-3.0% dry weight of aggregate

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3.2.2.2 Mix Design Format: The Vendor shall provide the following information in their final mix design:

- a) Sources of each material
- b) Aggregate:
 - Type
 - Gradation
 - Sand equivalence
- c) Field Simulation Tests
 - Wet stripping test
 - Wet track abrasion loss
 - Saturated abrasion compatibility
 - Trial mix time at 77°F and 100°F
- d) Interpretation of results and the determination of a JMF
 - Mineral filler (minimum and maximum), percent
 - Water, including aggregate moisture (minimum and maximum), percent
 - Quantitative effects of moisture content on the unit weight of the aggregate
 - Mix set additive (if required), percent
 - Modified emulsion, percent
 - Residual content of modified emulsion
 - Residual, percent
- e) Mix designer's signature and date

3.2.3 Construction:

3.2.3.1 Equipment: The Vendor shall provide safe, environmentally acceptable equipment that can produce a product meeting all specifications of this contract.

3.2.3.1.1 Mixing Machine: The Vendor shall provide one or more self-propelled, front-feed, continuous-loading mixing machines equipped and operated as follows:

- a) A positive connection conveyer belt aggregate delivery system and an interconnected positive displacement, water-jacketed gear pump to

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accurately proportion aggregate and asphalt emulsion.

b) Continuous flow, twin-shaft, multi-blade type pugmill, a minimum of 50 inches long.

c) Blade sizes and side clearances that meet the equipment manufacturer's recommendation.

d) Mineral filler feed located to ensure that the proper quantity of mineral filler drops on the aggregate before discharging into the pugmill.

e) Asphalt emulsion introduced within the first one-third of the mixer length to ensure proper mixing of all materials before they exit from the pugmill.

f) Computerized material monitoring system with integrated material control devices that are readily accessible and positioned so the amount of each material used can be determined at any time. The mixer shall be equipped with a back-up electronic materials counter that is capable of recording running count totals for each material being monitored. The mixer shall be equipped with a radar ground measuring device. Each material control device shall be calibrated prior to each mix application and as often thereafter as deemed necessary by the WVDOH District Engineer. The computer system shall have the capability to record, display and print the following information:

- Individual sensor counts for emulsion, aggregate, cement, water and additive.
- Aggregate, emulsion and cement output in pounds (kgs) per minute.
- Ground travel distance. The mixer shall be equipped with a Radar Ground metering device.
- Spread rate in pounds/square yards (kgs/m²)
- Percentages of emulsion, cement, water and additive

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- Cumulative totals of aggregate, emulsion, cement, water and additive
- Scale factor for all materials.

g) Equipped with a water pressure system and nozzle type spray bar to provide water spray ahead of and outside the spreader box when required. Apply water to dampen the surface without resulting in free flowing water ahead of the spreader box.

h) Opposite side driving stations on the front to optimize longitudinal alignment during placement. Remote forward speed control at the back mixing platform so that the back operator can control forward speed and the level of mixture in the spreader box.

Use a sufficient number of transports to assure a continuous operation during mix production and application. Use transport units with belt type aggregate delivery systems, emulsion and water storage tanks of adequate size to proportionally mix aggregate delivered by each transport.

Provide a minimum of two units at all times. Schedule these truck-mounted machines so that mixture production is never delayed more than 15 minutes. Stop production anytime there is noncompliance with this requirement.

Calibrate the mixing machines before use. Maintain documentation of calibration of each material metering device at various settings. Supply all materials and equipment, including scales and containers, necessary for calibration. Recalibrate after all changes in aggregate or asphalt emulsion sources.

3.2.3.1.2

Spreader Box: Attached to the machine shall be hydraulically adjustable (adjustable while applying mixture) type spreader box with a positive screed

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adjustment for yield control and a positive adjustment for the joint matcher. Equipped with paddles or augers mounted on adjustable shafts to continually agitate and distribute the mixture to prevent stagnation, excessive build-up or lumps. Spreader boxes shall be equipped with front and rear flexible seals to maintain direct contact with the road. Use a secondary strike off attached to the spreader box to provide a finished smooth surface texture on the final pass or surface pass. Use a drag that produces a uniform finish.

3.2.3.1.3 Rut Box: The Vendor shall use a steel "V" configuration screed rut box specifically designed and commercially manufactured to fill ruts to perform all micro-surface, rut-filling applications. The Vendor shall ensure a mixture spread to the width of five to six feet and use a secondary strike off to control crown on the rut box. The rut box must be equipped with a third strike off that may be used to control texture.

3.2.3.1.4 Miscellaneous Equipment: The Vendor shall provide squeegees, shovels and other equipment as necessary to perform the work. The Vendor shall provide cleaning equipment such as power brooms, air compressors, water flushing equipment and hand brooms for surface preparation.

3.2.3.1.5 Light on Equipment: The Vendor shall equip power brooms, distributors and truck mount spreaders with at least one approved, flashing, rotating or oscillating amber light that is visible in all directions. The continuous spreader units shall be equipped with one such light on each side.

3.2.4 Micro Surfacing Application: Micro Surfacing mixtures shall be applied in a manner to fill minor cracks, ruts and leave a uniform surface with straight longitudinal joints, transverse joints and edges. The construction of Micro Surfacing will restore the cross section of the driving lane within $\frac{1}{4}$ inch as measured transversely across the pavement with a seven foot straight edge. The preceding will not apply to any pavement segment that

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is designed with a quarter crown cross slope or any area of the segment within six inches of the edge line, lane line or center line.

Micro surfacing shall not be placed on top of patches, base repairs, edge repairs or any other asphalt pavement repairs for at least 14 calendar days.

Micro surfacing shall include all materials, equipment, preparation of the surface, placing temporary pavement marking and laying the micro surfacing mixture.

At the time of need, the WVDOH will issue a Delivery Order to the Vendor requesting one or more of the applications listed below for one or more projects:

3.2.4.1 Micro Surface, Single Course: A single course shall be applied full lane width in one course to the entire pavement surface including the shoulder at a minimum of 20 pounds per square yard, by weight of dry aggregate. Contract Item A.

3.2.4.2 Micro Surface, Double Course: A double course shall be applied separately, full lane width, in two courses to the entire pavement surface including the shoulder at a minimum of 30 pounds per square yard, by weight of dry aggregate, with the final surface course not less than 16 pounds per square yard, by weight of dry aggregate. Contract Item B.

3.2.4.3 Rut-Fill: Rut-filling is required when the rut depth is ½ inch or greater. Rut-filling shall use a micro surfacing mix with fine aggregate 3FA applied with an approved rut box for each designated wheel track. A clean overlap and straight edges shall be required between wheel tracks. Each pass of rut-filling shall be limited to a maximum depth of one inch. For each one inch of applied mix, an additional 1/8 inch crown is required for traffic consolidation. All rut-filling material should cure under traffic for at least 24 hours before additional material is placed. Contract Item C.

3.2.4.4 Bond Coat: Bond Coat shall be applied on concrete surfaces as directed by the WVDOH District Engineer. Bond Coat shall be a Tack Coat material having dilution rate of one part emulsion to two parts water. Use the same emulsion as used in the production mixture. The bond coat shall be applied uniformly, at a rate of 0.035-0.070 gallons per square yard and without excessive run off.

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The bond coat shall be allowed to cure before placement of mixture. Contract Item D.

3.2.5 Pre-Paving Meeting: The Vendor shall attend an on-site pre-paving meeting with the WVDOH District Engineer before beginning each project to review and discuss the following:

- Detailed work schedule
- Traffic control plan
- Calibration of equipment
- JMF previously submitted to the WVDOH District Engineer
- Equipment inspection, including transport units

3.2.6 Test Strips: The Vendor shall utilize test strips to demonstrate the mixing of materials and placement procedures of each mixing machine to be used on a project. Test strip shall be performed at the beginning of the first day of production and on the roadway to be treated. The completed test strip (minimum 500 feet length) shall be reviewed to detect and correct any variances in surface texture, material ratio(s) and finished surface appearance. Additionally, the test strip will be used to establish the target job application rate.

3.2.7 Surface Preparation: Thoroughly clean the existing surface of all loose materials, vegetation, dirt, dust, mud and other objectionable materials at the time of placing the mixture. Remove animal remains and thoroughly wash the surface before placing the mixture.

Protect drainage structures, monument boxes, water shut-offs, etc. during application of bond coat and mixture.

If the removal of Thermoplastic Pavement Markings is required, the Vendor shall use an abrasive method. An example of Thermoplastic Pavement Markings shall be stop bars, turn arrows and similar items. Edge lines and center lines are typically painted and should not be included in this item. Markings shall be removed just before the surfacing operation. Contract Item E.

The Vendor shall establish 1,000-foot intervals for the entire project, before placing the mixture. Clearly identify and maintain these intervals until project completion.

3.2.8 Maintaining Traffic: While undergoing improvement, the project site shall be kept open to traffic in such condition that both local and through

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traffic will be adequately and safely accommodated. All improvement operations shall be scheduled by the Contractor to keep traffic delay to a minimum.

Traffic Control may be furnished by the WVDOH; however, when Pilot Truck and Driver, Item F-1; Traffic Control Devices, Item F-2; Flagger, Item F-3 and/or Arrow Board, Item F-4 are requested by the WVDOH District Engineer for a project, traffic shall be maintained by the Vendor in accordance with Standard Specs Section 636.

3.2.8.1 Traffic Control: Do not allow traffic on the mixture until it has cured sufficiently to prevent pickup by vehicles tires. The new surface must be able to carry normal traffic without damage within one hour of application. Protect the new surface from damage at intersections and driveways. All damage to the mixture caused by traffic shall be repaired by the Contractor and all costs associated with this repair work will be borne by the Contractor.

3.2.9 Mobilization: Mobilization is a Lump Sum Unit of Measure intended to compensate the Vendor for moving his equipment and supplies to the job site including the Vendor's establishment of any stock piles for material. Mobilization will be paid one-way. For multiple projects requested on one Delivery Order, mobilization will only be paid one time when multiple projects are within seven miles of the first project. Any additional locations over the seven mile range shall be paid another mobilization based on the Vendor's bid Lump Sum Unit of Measure. Contract Item G.

3.2.10 Weather and Seasonal Limitations:

3.2.10.1 Place the mixture when the air and pavement temperatures are at least 45°F.

3.2.10.2 Do not place mixture in rain or inclement weather or when temperatures are forecast to be below 32°F within 24 hours of completion of the work.

3.2.11 Quality Control: The Vendor shall produce a mixture that will meet the JMF and the quality control tolerances. The Vendor shall notify the WVDOH District Engineer immediately if the quality control test results exceed any of the tolerances and stop mixture production. The Vendor shall identify the cause of the excess deviation and determine the corrective action necessary to bring the mixture into compliance. The

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Vendor shall have the approval of the WVDOH District Engineer before resuming work.

3.2.11.1 Micro Surfacing Quality Control Tolerances:

3.2.11.1.1 Aggregate Gradation Tolerances (\pm) from JMF							
Sieve Size	No. 4	No. 8	No. 16	No. 30	No. 50	No. 100	No. 200
Tolerance	5.0%	5.0%	5.0%	5.0%	4.0%	3.0%	2.0%

3.2.11.1.2 General Quality Control Tolerances (\pm) Parameter Tolerance	
Asphalt Cement Content Single Test	0.5% from JMF
Asphalt Cement Content Daily Average	0.2% from JMF
Application Rate: 2 lbs/sq yd (as determined by 1000 ft yield checks)	
Sand Equivalent Test (ASTM D 2419)	7% from JMF

3.2.11.1.3 The Vendor shall verify and document quality control with the following minimum measures:

- a) Fine Aggregate: Sample from the project stockpile and test for gradation at one test per 500 tons of aggregate or one test per day of mixture production, whichever is greater.
- b) Sand Equivalent Test (ASTM D 2419): Perform a minimum of one test for each aggregate gradation used in producing micro surface mixture for the project.
- c) Asphalt Content: At least three times per day, on a random basis, calculate the percent asphalt content of the mixture using the equipment counter readings.
- d) Application Rate: At least three times per day, on a random basis, calculate the yield of the course being placed using the equipment counter readings.
- e) Documentation: Create and complete a daily report that includes the following information. A separate daily report shall be created and completed for each truck mounted machine:

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- Control section, job number, route, WVDOH District Engineer
- Date, air temperature
- Control settings, calibration values
- Unit weight of emulsion (lbs/gal), percent residue in emulsion
- Beginning and ending intervals
- Counter readings (beginning, ending and total)
- Length, width, total area (sq yd), weight of aggregate and gallons of emulsion
- Percent of each material including asphalt cement
- Application rate (lbs/sq yd) and combined application rate (lbs/sq yd)
- JMF (percent Portland cement, percent emulsion, gradations and percent asphalt cement)
- Contractor's authorized signature
- Calibration forms
- Quality control aggregate gradations
- Aggregate certification
- Asphalt emulsion bill of lading
- Quality control sand equivalent test results

For Quality Assurance purposes, samples for gradation will be taken from aggregate stockpiles designated by the Contractor for use. Additionally, samples for asphalt content will be taken from the completed mixture. The frequency of sampling and testing will be established by the WVDOH District Engineer based upon the WVDOH's current acceptance program and local conditions encountered.

3.2.12 Finished Surface Quality: The Vendor shall provide a finished surface free from excessive rippling, tear marks, scratch marks and other surface irregularities. The finished surface shall not have ripples greater than 1/8 inch measured by a ten foot straight edge. The finished surface shall not have tear marks greater than 1/2 inch wide and four inches long. The finished surface shall not have any other marks greater than one inch wide and one inch long. If the finished surface exceeds the described tolerance, work shall stop immediately and determine appropriate corrective action. The Vendor shall review the corrective action to be taken with the WVDOH District Engineer before resuming production.

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The Vendor shall place longitudinal construction joints and lane edges to coincide with the proposed painted lane lines. Construction longitudinal joints with less than three inches overlap on adjacent passes and no more than 3/8 inch overlap thickness as measured with a ten foot straight edge. Place successive passes to prevent ponding of water on the up-slope side of the overlap. Construct neat and uniform transverse joints with less than 1/8 inch difference in elevation across the joint as measured with a ten foot straight edge. Provide neat and uniform lane edges with no more than two inches of horizontal variance in 100 feet. If defective joints or edges are placed, work shall stop immediately and determine appropriate corrective action. The Vendor shall review the corrective action to be taken with the WVDOH District Engineer before resuming production.

4. PRICE ADJUSTMENTS:

4.1 Price Adjustment of Asphalt Cement: Due to the uncertainty in estimating the cost of Asphalt Binder that will be used during the life of this Contract, Contract Items A, B and C will be adjusted by the following formulas:

Item	Description	Formula
A	Single Course	$P_a = (I_p - I_b) \times (0.00075) \times Q$
B	Double Course	$P_a = (I_p - I_b) \times (0.001125) \times Q$
C	Rut Fill	$P_a = (I_p - I_b) \times (0.075) \times Q$

P_a = Price Adjustment

I_p = Price Index at the time of Placement (Delivery Order)

I_b = Price Index at the time of Bid (Bid Index)

Q = Quantity constructed

4.2 Price Adjustment of Fuel Oil No. 2 (Diesel Fuel): Due to the uncertainty in estimating the cost of diesel fuel that will be used during the life of this Contract, Contract Items A, B and C will be adjusted by the following formulas:

Item	Description	Formula
A	Single Course	$P_a = (M_{bp} - C_{bp}) \times (0.0062) \times Q$
B	Double Course	$P_a = (M_{bp} - C_{bp}) \times (0.0093) \times Q$
C	Rut Fill	$P_a = (M_{bp} - C_{bp}) \times (0.62) \times Q$

P_a = Price Adjustment

M_{bp} = Monthly base price at the time of Placement (Delivery Order)

C_{bp} = Monthly base price at the time of Bid (Bid Index)

Q = Quantity constructed

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The bidding indexes and the placement indexes for Asphalt and Fuel prices may be found posted at the following site:

<http://www.transportation.wv.gov/highways/contractadmin/lettings/pages/fuelandasphaltprices.aspx>

The bidding index for asphalt binder and diesel fuel will be the price in effect for the month prior to the month in which this contract is let.

5. CONTRACT AWARD:

5.1 Contract Award: The Contract is intended to provide Agencies with a purchase price on all Contract Items. All qualified responsible Vendors shall be awarded a contract for those Contract Items bid which meet all mandatory requirements of this Contract.

5.2 Pricing Pages/E-Catalog Spreadsheet:

5.2.1 Pricing Pages/E-Catalog Spreadsheet: Vendor should complete the Pricing Pages/E-Catalog Spreadsheet by providing the following information, per each Contract Item Bid. Vendor should not modify or add any information into the Column Headers.

- 1) Column A – Vendor Customer Code should identify the Vendor's wvOASIS vendor/customer number. If the Vendor does not know this number, please leave this column blank.
- 2) Column C – Supplier Name should identify the Equipment Storage Location.
- 3) Column I – Vendor shall not modify or change any Unit of Measure identified in this column.
- 4) Column J – List Price shall identify the Vendor's unit prices per Contract Items bid. Vendor should not place formulas or any type of Excel calculations into the List Price column, only the actual bid price, per each Contract Item Bid.
- 5) Column T – Picture File Name shall remain blank.

Vendors may bid any or all items on the Pricing Pages/E-Catalog Spreadsheet. Bidding on any one Contract Item may not be conditioned on the acceptance of the bid on any other Contract Item or Items.

The Pricing Pages/E-Catalog Spreadsheet contains a list of the Contract Items with no guarantee that any Contract Item will be purchased throughout the life of this contract. Estimated quantities are not available.

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Vendor should type or electronically enter the information into the Pricing Pages/E-Catalog Spreadsheet to prevent errors in the evaluation. In most cases, the Vendor can request an electronic copy of the Pricing Pages/E-Catalog Spreadsheet for bid purposes by sending an email request to the following address:
angie.j.moorman@wv.gov.

- 6. DETERMINING LOW BID PER PROJECT:** To determine the low bid Vendor per project for individual projects, the WVDOH District Engineer will calculate the lowest overall total cost of the price of treatment plus any additional cost items.

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

7. ORDERING AND PAYMENT:

7.1 Ordering: Vendor shall accept orders through wvOASIS, regular mail, facsimile, e-mail, or any other written forms of communication. Vendor may, but is not required to, accept on-line orders through a secure internet ordering portal/website. If Vendor has the ability to accept on-line orders, it should include in its response a brief description of how Agencies may utilize the on-line ordering system. Vendor shall ensure that its on-line ordering system is properly secured prior to processing Agency orders on-line.

7.2 Payment: 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, to process payment for goods and services. The Vendor must accept the State of West Virginia's Purchasing Card for payment of all orders under this Contract.

7.2.1 Payment Adjustment: Materials in stockpiles (fine aggregate) or placed on the road not meeting the required tolerances as described in these contract specifications and ISSA A-143, Section 3 may be accepted at a reduced price if it is not considered detrimental to the life of the treatment by the WVDOH District Engineer. The following price adjustment schedule will be used when appropriate and applied accordingly to representative material:

7.2.1.1 One percent price reduction in the bid price per square yard for each one-tenth percent the asphalt content is out of tolerance.

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7.2.1.2 One-quarter percent price reduction in the bid price per square yard for each one percent that the aggregate gradation is out of the JMF range.

7.2.1.3 One and a half percent price reduction in the bid price per square yard for application rate dropping below the established rate by more than 2 lbs/sq yd. If the application rate drops below the established rate by more than 3 lbs/sq yd., the material will not be accepted and the Vendor shall take measures to correct the deficiency.

Price adjustments above shall apply concurrently; however price adjustment will not apply in the event the material is rejected. The disposition of rejected materials will be subject to the approval of the WVDOH District Engineer.

8. PROJECT ACCEPTANCE, DELIVERY AND RETURN:

- 8.1 Project Acceptance:** Upon receipt of a Delivery Order, the Vendor shall advise the WVDOH, in writing, within five calendar days of their acceptance of the project work of the Delivery Order. Failure on the Vendor's part to acknowledge acceptance of the project work may result in cancellation of the Delivery Order and re-award of the project to the next lowest bidder.
- 8.2 Delivery Time:** All Delivery Orders shall specify a starting date and a completion date based on the Vendor's acceptance of the Delivery Order. If work is not started by the Vendor by the specified starting date on the Delivery Order, the Delivery Order may be cancelled and issued to the next low bidder. If work is not completed by the completion date as specified on the Delivery Order, liquidated damages may be assessed in accordance with Standard Specs Section 108.7. Vendor shall deliver emergency orders within an agreed upon acceptable timeframe after orders are received. Vendor shall ship all orders in accordance with the dates assigned to each project per the Delivery Order and shall not hold orders until a minimum delivery quantity is met. No Vendor is authorized to ship, nor is the WVDOH authorized to receive materials prior to the issuance of a Delivery Order.
- 8.3 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 a third party.
- 8.4 Delivery Payment/Risk of Loss:** Standard order delivery shall be F.O.B. destination to the Agency's location. Vendor shall include the cost of standard

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order delivery charges in its bid pricing/discount 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.

- 8.5 Return of Unacceptable Items – Acceptance Criteria:** Materials found not in compliance with the requirements of this Contract or if the work performed, visually appears to be unacceptable, by visual inspection of the WVDOH District Engineer, the work may be rejected, removed and replaced at the Contractor's expense.

9. ANTI-COLLUSION CLAUSE:

- 9.1** Contractor affirms that in regard to this contract and the bidding process which underlies this contract, neither Contractor nor anyone on its behalf, including affiliate and subsidiary entities of Contractor, has:
- 9.1.1** been a party to any collusion among potential or actual bidders or with any state or federal official or employee in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding;
 - 9.1.2** been a party to any collusion with any other potential or actual bidders, federal or state official or employee as to quantity, quality or price in the contract, or any other terms of the contract;
 - 9.1.3** been a party to any discussions between or among potential or actual bidders and any federal or state official or employees concerning exchange of money or other thing of value for special consideration in the letting or award of this of contract;
 - 9.1.4** exchanged money or other thing of value with other potential or actual bidders, federal or state officials or employees for special consideration in the letting or award of this contract;
 - 9.1.5** otherwise taken any action in restraint of free competitive bidding.
- 9.2** Contractor further affirms that that neither Contractor nor anyone on its behalf, including affiliate and subsidiary entities of Contractor, has:
- 9.2.1** made its bid in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation and that the bid is genuine and is not a sham;

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**Micro Surfacing
Materials, Equipment and Labor**

- 9.2.2 directly or indirectly colluded, conspired, connived, or agreed with any potential or actual bidder or anyone else to put in a sham bid;
- 9.2.3 otherwise taken any action to put in a sham bid.

10. VENDOR DEFAULT:

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

10.1.1 Failure to provide Contract Items in accordance with the requirements contained herein.

10.1.2 Failure to comply with other specifications and requirements contained herein.

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

10.1.4 Failure to remedy deficient performance upon request.

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

10.2.1 Immediate cancellation of the Contract.

10.2.2 Immediate cancellation of one or more Delivery Orders issued under this Contract.

10.2.3 Any other remedies available in law or equity.

11. MISCELLENOUS:

11.1 **No Substitutions:** The 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.

11.2 **Vendor Supply:** The Vendor must carry sufficient inventory of the Contract Items being offered to fulfill its obligations under this Contract. By signing its bid, the Vendor certifies that it can supply the Contract Items contained in its bid response.

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Materials, Equipment and Labor

- 11.3 Reports:** The Vendor shall provide quarterly reports and annual summaries to the Agency showing the Contract Items purchased, quantities of Contract Items purchased and the total dollar value of the Contract Items purchased. The Vendor shall also provide reports, upon request, showing the Contract Items purchased during the term of this Contract, the quantity purchased for each of those Contract Items and the total value of purchases for each of those Contract Items. Failure to supply such reports may be grounds for cancellation of this Contract.
- 11.4 Contract Manager:** During its performance of this Contract, the Vendor must designate and maintain a primary contract manager responsible for overseeing the 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. The Vendor should list its Contract manager and his or her contact information below.

Contract Manager: DOUG PERRY
Telephone Number: 614-276-5501
Fax Number: 614-276-0570
Email Address: dperry@terryasphalt.com

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

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

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

DEFINITIONS:

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

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

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

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: Strawser Construction, Inc.

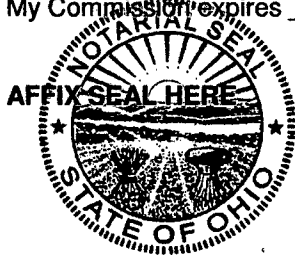
Authorized Signature: Douglas C. Perry Date: 2/13/17

State of Ohio

County of Franklin, to-wit:

Taken, subscribed, and sworn to before me this 13th day of February, 2017.

My Commission expires 12/10, 2021.



TONYA M. MORRIS
Notary Public, State of Ohio
My Commission Expires 12-10-2021

NOTARY PUBLIC [Signature]
Purchasing Affidavit (Revised 08/01/2015)

State of West Virginia

VENDOR PREFERENCE CERTIFICATE

Certification and application is hereby made for Preference in accordance with *West Virginia Code*, §5A-3-37. (Does not apply to construction contracts). *West Virginia Code*, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the *West Virginia Code*. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Vendor Preference, if applicable.

1. Application is made for 2.5% vendor preference for the reason checked:

- Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; **or,**
- Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification;
- Bidder is a resident vendor partnership, association, or corporation with at least eighty percent of ownership interest of bidder held by another entity that meets the applicable four year residency requirement; **or,**
- Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; **or,**

2. Application is made for 2.5% vendor preference for the reason checked:

- Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; **or,**

3. Application is made for 2.5% vendor preference for the reason checked:

- Bidder is a nonresident vendor that employs a minimum of one hundred state residents, or a nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia and employs a minimum of one hundred state residents, and for purposes of producing or distributing the commodities or completing the project which is the subject of the bidder's bid and continuously over the entire term of the project, on average at least seventy-five percent of the bidder's employees or the bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor's bid; **or,**

4. Application is made for 5% vendor preference for the reason checked:

- Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; **or,**

5. Application is made for 3.5% vendor preference who is a veteran for the reason checked:

- Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; **or,**

6. Application is made for 3.5% vendor preference who is a veteran for the reason checked:

- Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.

7. Application is made for preference as a non-resident small, women- and minority-owned business, in accordance with *West Virginia Code* §5A-3-59 and *West Virginia Code of State Rules*.

- Bidder has been or expects to be approved prior to contract award by the Purchasing Division as a certified small, women- and minority-owned business.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) rescind the contract or purchase order; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: _____ **Signed:** _____

Date: _____ **Title:** _____

SJI CONSTRUCTION
Inc.

Moving Pavement Preservation Forward
1382 Dublin Road Columbus, OH 43215

RECEIVED
17 FEB 14 AM 11:34
FINANCE & ADMINISTRATION

RECEIVED
FEB 14 2017
FINANCE DIVISION
DOT
11:30

Finance & Administration
Division of Highways
Bldg 5, Rm A-220
1900 Kanawha Blvd E
Charleston, WV 25302

Solicitation No: ARFQ 0803
DOT 1700000013

Solicitation Closes: 02-14-2017
1:00 PM