



State of West Virginia  
Request For Quotation

Procurement Folder : 356221

Document Description : STONE, AGGREGATE, CINDERS - MAT.&DEL. TO NON-ESTAB. LOCATION

Procurement Type : Agency Master Agreement

| Date Issued | Solicitation Closes    | Solicitation No         | Version | Phase |
|-------------|------------------------|-------------------------|---------|-------|
| 2017-09-19  | 2017-09-29<br>13:00:00 | ARFQ 0803 DOT1800000012 | 1       | Final |

| SUBMIT RESPONSE TO:  | VENDOR:   |
|--|---|
| FINANCE & ADMINISTRATION<br>DIVISION OF HIGHWAYS<br>BLDG 5, RM A-220<br>1900 KANAWHA BLVD E<br>CHARLESTON WV 25302<br>US | Vendor Name, Address and Telephone<br>Atlas Towing Company<br>P. O. Box 1632<br>Parkersburg, WV 26102<br>304-428-0341<br>atlastowing@frontier.com |

Some sheets  
are front and  
back. *JH*

FOR INFORMATION CONTACT THE  
 Dusty J Smith  
 (304) 558-9398  
 dusty.j.smith@wv.gov

Signature X *[Signature]* FEIN # 55-0116594 DATE 9/22/17

**ADDITIONAL INFORMATION:**

TECHICAL QUESTIONS DUE BY 09/22/17 AT NOON

BID CLOSSES ON 09/29/17

| INVOICE TO  | SHIP TO   |
|---|---|
| VARIOUS AGENCY LOCATIONS<br>AS INDICATED BY ORDER | STATE OF WEST VIRGINIA<br>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    | STONE, AGGREGATE, CINDERS -<br>MAT.&DEL. TO NON-ESTAB. | 0.00000 | EA         |            |             |

| Commodity Code | Manufacturer | Model # | Specification |
|----------------|--------------|---------|---------------|
| 11111600       |              |         |               |

**Extended Description**  
STONE, AGGREGATE, CINDERS - MAT.&DEL. TO NON-ESTAB. LOCATION PER ATTACHED PRICING PAGE AND INFORMATION ATTACHMENT FORM

**SCHEDULE OF EVENTS**

| Line | Event                      | Event Date |
|------|----------------------------|------------|
| 1    | TECHNICAL QUESTION BY NOON | 2017-09-22 |

|               |                                |  |                              |
|---------------|--------------------------------|--|------------------------------|
| DOT1800000012 | <b>Document Phase</b><br>Final | <b>Document Description</b><br>STONE, AGGREGATE, CINDERS -<br>MAT.&DEL. TO NON-ESTAB. LOCATION | <b>Page 3</b><br><b>of 3</b> |
|---------------|--------------------------------|--|------------------------------|

**ADDITIONAL TERMS AND CONDITIONS**

See attached document(s) for additional Terms and Conditions

**ADDENDUM ACKNOWLEDGEMENT FORM**

**SOLICITATION NO.:** ARFQ 0803 DOT 1800000012

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

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

Atlas Towing Company

Full Company Name



Authorized Signature

September 22, 2017

Date

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

# 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.

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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 subsection 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.

## GENERAL TERMS AND CONDITIONS:

**1. CONTRACTUAL AGREEMENT:** Issuance of a Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office 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" or "Agencies"** means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

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

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

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

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

**2.6. "Award Document"** means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

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

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

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

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

**Term Contract**

**Initial Contract Term:** This Contract becomes effective on upon award and extends for a period of one (1) year(s).

**Renewal Term:** This Contract may be renewed upon the 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). Any request for renewal should be submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Renewal of this Contract is limited to two (2) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed twenty-four (24) months in total. Automatic renewal of this Contract is prohibited. Notwithstanding the foregoing, Purchasing Division approval is not required on agency delegated or exempt purchases. Attorney General approval may be required for vendor terms and conditions.

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

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

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

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

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

**Other:** See attached.

**4. NOTICE TO PROCEED:** Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Award Document 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, Agency, Purchasing Division, and Attorney General's office.

**6. EMERGENCY PURCHASES:** The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute 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.

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

**BID BOND (Construction Only):** Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. 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 Purchasing Division prior to Contract award. On construction contracts, the performance bond must be 100% of the Contract value.

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

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable. Notwithstanding the foregoing, West Virginia Code § 5-22-1 (d) mandates that a vendor provide a performance and labor/material payment bond for construction projects. Accordingly, substitutions for the performance and labor/material payment bonds for construction projects is not permitted.

**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 Purchasing Division prior to Contract award.

**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 Purchasing Division.

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

**8. INSURANCE:** The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below prior to Contract award. Subsequent to contract award, and prior to the insurance expiration date, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies mandated herein, including but not limited to, policy cancelation, policy reduction, or change in insurers. The insurance coverages identified below must be maintained throughout the life of this 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 in this section.

Vendor must maintain:

**Commercial General Liability Insurance** in at least an amount of:

\$1,000,000.00

\_\_\_\_\_ should be submitted with bid, will be required prior to award.

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

**Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: \_\_\_\_\_

**Commercial Crime and Third Party Fidelity Insurance** in an amount of: \_\_\_\_\_

**Cyber Liability Insurance** in an amount of: \_\_\_\_\_

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

**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. LITIGATION BOND:** The Director reserves the right to require any Vendor that files a protest of an award to submit a litigation bond in the amount equal to one percent of the lowest bid submitted or \$5,000, whichever is greater. The entire amount of the bond shall be forfeited if the hearing officer determines that the protest was filed for frivolous or improper purpose, including but not limited to, the purpose of harassing, causing unnecessary delay, or needless expense for the Agency. All litigation bonds shall be made payable to the Purchasing Division. In lieu of a bond, the protester may submit a cashier's check or certified check payable to the Purchasing Division. Cashier's or certified checks will be deposited with and held by the State Treasurer's office. If it is determined that the protest has not been filed for frivolous or improper purpose, the bond or deposit shall be returned in its entirety.

**11. 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.

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

**13. 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.

**14. 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.

**15. 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.

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

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

**18. 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.

**19. CANCELLATION:** The Purchasing Division Director 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 also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-6.1.e.

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

**23. 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.



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

**25. 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.

**26. 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.

**27. 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.

**28. 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.

**29. 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.

**30. 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.

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

**32. YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

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

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

**33. LICENSING:** In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. 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.

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

**35. 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.

**36. 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.

**37. 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.

**38. PURCHASING AFFIDAVIT:** In accordance with West Virginia Code § 5-22-1(i), the contracting public entity shall not award a contract for a construction project to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees. Accordingly, prior to contract award, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Purchasing Division affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

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

**40. 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.

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

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

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

**42. 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.

**43. 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 heath, basic oxygen, electric furnace, Bessemer or other steel making process. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:

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

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


**44. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL:** In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

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

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


**45. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE:** W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$100,000, the vendor must submit to the Agency a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-award interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. "Interested parties" means: (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-contractors; (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract; and (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency: Provided, That subdivision (2) shall be inapplicable if a business entity is a publicly traded company: Provided, however, That subdivision (3) shall not include persons or business entities performing legal services related to the negotiation or drafting of the applicable contract. The Agency shall submit a copy of the disclosure to the Ethics Commission within 15 days after receiving the supplemental disclosure of interested parties.

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

  
\_\_\_\_\_  
(Name, Title)  
Vernon Criss Vice-President  
\_\_\_\_\_  
(Printed Name and Title)  
P. O. Box 1632 Parkersburg, WV 26102  
\_\_\_\_\_  
(Address)  
304-428-0341 Fax: 304-485-4585  
\_\_\_\_\_  
(Phone Number) / (Fax Number)  
atlastowing@frontier.com  
\_\_\_\_\_  
(email address)

**CERTIFICATION AND SIGNATURE:** By signing below, or submitting documentation through wvOASIS, I certify that I have reviewed this Solicitation in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise stated herein; that 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.

Atlas Towing Company

\_\_\_\_\_  
(Company)  
  
\_\_\_\_\_  
Vernon Criss Vice-President  
(Authorized Signature) (Representative Name, Title)

Vernon Criss Vice-President  
\_\_\_\_\_  
(Printed Name and Title of Authorized Representative)

September 15, 2017  
\_\_\_\_\_  
(Date)

304-428-0341 Fax: 304-485-4585  
\_\_\_\_\_  
(Phone Number) (Fax Number)

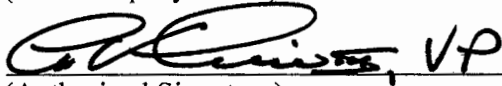


**CERTIFICATION AND SIGNATURE PAGE**

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.

Atlas Towing Company

(Full Company Name)



(Authorized Signature)

A. V. Criss, III Vice-President

(Print or Type Name and Title  
of Signatory)

304-428-0341

(Phone Number)

304-485-4585

(Fax Number)

atlastowing@frontier.com

(Email address)

September 22, 2017

(Date)

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

REQUEST FOR QUOTATION  
Stone, Aggregate and Cinders  
Materials and Delivery by the Vendor to Non-Established WVDOH Locations

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**SPECIFICATIONS**

1. **PURPOSE AND SCOPE:** The West Virginia Division of Highways is soliciting bids to establish an open-end contract for various sizes and types of Stone, Aggregate and Cinders and the delivery of these items, by the Vendor, to NON-ESTABLISHED West Virginia Division of Highways locations.

This contract shall be F.O.B. Vendor's Storage Site plus hauling and delivery by the Vendor to a WVDOH location not covered by any other contract.

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, Subsection 3 below.
- 2.2 **"Pricing Pages"** means the schedule of prices, estimated order quantity, and totals contained in wvOASIS or attached hereto as Exhibit A and used to evaluate the Solicitation.
- 2.3 **"Solicitation"** means the official notice of an opportunity to supply the State with goods or services that is published by the West Virginia Division of Highways.
- 2.4 **"WVDOH"** used throughout this Solicitation means the West Virginia Division of Highways.
- 2.5 **"AASHTO"** used throughout this Solicitation means American Association of State Highway and Transportation Officials. Reference: [www.transportation.org](http://www.transportation.org).
- 2.6 **"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, most recent edition, as modified by all subsequent annual Supplemental Specifications, are interchangeable.
- 2.7 **"Standard Specs"** used throughout this Solicitation means the West Virginia Department of Transportation, Division of Highways Standard Specifications, Roads and Bridges, most recent edition, as modified by all subsequent annual Supplemental Specifications.

REQUEST FOR QUOTATION  
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**3. GENERAL REQUIREMENTS:**

**3.1 Contract Items and Mandatory Requirements:** Vendor shall provide Agency with the Contract Items listed in Section 3.3 on an open-end and continuing basis. Contract Items must meet or exceed the mandatory requirements as shown below.

**3.2 Specifications** The following sections of the Standard Specs, shall apply to the administration of this contract: Sections 101, 102.4, 102.5, 105.1, 105.3, 105.4, 105.10, 105.11, 105.12, 105.13, 106.3, 106.4, 106.5, 106.6, 106.7, 106.9, 107.1, 107.2, 107.3, 107.14, 107.19, 107.20, 108.8, 109.1, 109.2, 109.20 and 401.9.3.

A hard copy of the current Standard Specs may be purchased from:

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

An electronic copy of the Standard Specs may be obtained by sourcing:  
<http://www.transportation.wv.gov/highways/contractadmin/specifications/2017StandSpec/Pages/default.aspx>

**3.3 Materials:**

| <u>MATERIAL (NOTE1)</u>           | <u>Standard Specs<br/>SECTION</u> |
|-----------------------------------|-----------------------------------|
| Fine Aggregate                    | 702                               |
| Coarse Aggregate                  | 703 (Note 4)                      |
| Riprap                            | 704.2                             |
| Stone for Gabions                 | 704.3                             |
| Shot Rock                         | 704.8                             |
| Abrasives (Note 2)                | Note 3 and Note 5                 |
| Aggregate for Base and Sub-base   | 704.6 (Note 5)                    |
| No. 8 Modified and No. 9 Modified | Note 3 and Note 4                 |
| No. 11 Limestone                  | Note 6                            |
| Quarry Waste                      | Note 7                            |

**NOTE 1:** Fine aggregate on the pricing page shall be considered to be fine aggregate for Portland cement concrete or mortar sand, the particular type to be specified in the Delivery Order. Coarse aggregate on the Pricing Pages is identified by an AASHTO standard size; e.g., AASHTO Size No. 1, AASHTO Size No. 467, etc. Aggregate for base and sub-base on the Pricing Pages is identified by class; e.g., Class 1, Class 2, and Class 9, etc.

**REQUEST FOR QUOTATION**  
**Stone, Aggregate and Cinders**  
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NOTE 2: Abrasives shall conform to the following specifications:

A. Quality

1. The liquid limit shall not exceed 25 and the plasticity index shall not exceed 6.
2. Total deleterious substances including, but not limited to metal, glass, clay, shale, and thin or elongated pieces shall not exceed 3% of the dry weight of the total sample. Deleterious content shall be determined on that fraction of material retained on the U.S. Standard No. 4 (4.75 mm) sieve.
3. When gravel is used as an abrasive, the material retained on the No. 8, the sieve shall have a majority of crushed particles.

B. Gradation

The material shall conform to the following gradation requirements determined in accordance with AASHTO T-27:

| <u>SIEVE SIZE</u> | <u>% PASSING BY WEIGHT</u> |          |
|-------------------|----------------------------|----------|
|                   | Standard                   | Modified |
| 1/2 inch          | 100                        | 100      |
| 3/8 inch          | 85-100                     | 85-100   |
| No. 100           | 0-10                       | 0-4      |

NOTE 3: In addition to meeting the gradation requirements of AASHTO No. 8 and No. 9 aggregate in table 703.4, Modified AASHTO No. 8 and Modified AASHTO No. 9 aggregate shall have a maximum of 2% passing the No. 200 sieve, when sampled at the source (the Vendor's last point of possession), prior to shipment, as determined by AASHTO T-11 and T-27. The aggregates shall be crushed with a minimum of 80% two face fracture. Modified AASHTO No. 8 and Modified AASHTO No. 9 aggregate shall meet all other requirements for AASHTO No. 8 and AASHTO No. 9 aggregate.

NOTE 4: With exception of the following contract items, grading on all specified sieve sized for material furnished shall be determined by AASHTO T-27 (Dry Test Only) or by AASHTO T-27 with AASHTO T-11:

- Item J, AASHTO No. 7
- Item K, AASHTO No. 8
- Item L, AASHTO No. 9
- Item S, AASHTO No. 8 Modified
- Item T, AASHTO No. 9 Modified

The grading for the above items shall be determined by AASHTO T-27 and AASHTO T-11.

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NOTE 5: Cinders (Power Plant Slag) shall conform to the following specifications:

**A. Definition**

Cinders (Power Plant Slag) consists of Wet Bottom Boiler Slag (shiny, black, glassy material) formed when molten ash from the burning of coal drops into water and shatters at the bottom of the boiler, and/or Bottom Ash formed when ash particles from the burning of pulverized coal is allowed to air cool at the bottom of the furnace.

**B. Quality**

Total deleterious substances, including but not limited to metal, glass, clay, shale, and thin or elongated pieces, shall not exceed 3% of the dry weight of the total sample. Deleterious content shall be determined on that fraction of material retained on the US Standard No. 4 (4.75 mm) sieve.

**C. Gradation**

The material shall conform to the following gradation requirements determined in accordance with AASHTO T-27:

| <u>SIEVE SIZE</u> | <u>% PASSING BY WEIGHT</u> |
|-------------------|----------------------------|
| 1/2 inch          | 100                        |
| 3/8 inch          | 85-100                     |
| No. 100           | 0-20                       |

NOTE 6: No. 11 Limestone for SRIC shall conform to the following specifications:

**A. Quality**

1. The liquid limit shall not exceed 25 and the plasticity index shall not exceed 6.
2. Total deleterious substances including, but not limited to metal, glass, clay, shale, and thin or elongated pieces shall not exceed 1% of the dry weight of the total sample. Deleterious content shall be determined on that fraction of material retained on the U.S. Standard No. 8 (2.36 mm) sieve.

**B. Gradation**

The material shall conform to the following gradation requirements determined in accordance with AASHTO T-27:

| <u>SIEVE SIZE</u> | <u>% PASSING BY WEIGHT</u> |
|-------------------|----------------------------|
| 3/8 inch          | 100                        |
| No. 4             | 40-90                      |
| No. 8             | 10-40                      |
| No. 100           | 0-5                        |

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NOTE 7: Quarry Waste shall meet the WVDOH specifications 716.1.1 – Random Material.

**3.4 Sampling and Testing:**

Sampling and testing for quality of all items furnished in this contract will be the responsibility of the WVDOH. Minimum frequency of sampling and testing for quality on all materials (other than those sources already covered by the WVDOH's "commercial source" approval) will be at least one sample every six days of shipment (or if tested during production, at least one sample every six days of production).

Other minimum frequencies shall be in accordance with the following:

| <u>Property</u>                   | <u>Frequency</u>   |
|-----------------------------------|--|
| Gradation -<br>Delivered Material | One sample per each day of shipment or if tested during production, one sample per each day of production. See Note 1 below.   |
| Gradation -<br>WVDOH Pick-up      | (A-1 Source) One sample per each week of shipment per MP 700.00.52; or if tested during production, one sample per each day of production. See Note 1 below.<br>(A-2 Source) One sample per 250 tons shipped and a minimum of one per week shipment. |
| Moisture Content                  | See Note 2 below.  |

All samples taken by the Vendor shall be by a Certified Aggregate Sampler or Certified Aggregate Inspector. Tests shall be performed by a Certified Aggregate Inspector.

NOTE 1: The Vendor will be responsible for providing test results attesting to the gradation of materials delivered. Gradation results from the production source will be acceptable.

NOTE 2: In the event visual inspection of the aggregate indicates excess or unusual moisture beyond what is normally expected in the aggregate, the WVDOH reserves the right to determine the moisture content by standard methods. If this becomes necessary, the net weight of the portion represented will be adjusted utilizing the test results obtained by the WVDOH in accordance with MP 700.00.22. Items OA,

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OB, PA and PB (Abrasives) will be considered fine aggregate outlined in MP 700.00.22.

**3.5 Acceptance Plan:**

Material failing to comply with the quality requirements will not be accepted. Acceptance for gradation shall be based on test results, provided and certified by the Vendor to be true test results and representative of the material supplied to the WVDOT, on consecutive random samples from a lot. A lot shall consist of a quantity of material represented by an average value (not to exceed 5 sub-lots). A sub-lot shall consist of the quantity of material represented by a single gradation test. In the case where only one sample is taken to represent the total quantity, the sub-lot and lot will be considered the same. Frequency of sampling and testing shall be in accordance with the Vendor's quality control plan outlined in MP 700.00.51. The Vendor shall provide the gradation test results to the WVDOT within 72 hours.

Gradation test results shall be averaged in accordance with MP 300.00.51. When the average falls outside the applicable limits, the lot of material represented thereby will be considered non-conforming to the extent that the last of its sub-lots is non-conforming. When a lot of material is nonconforming, then the last sub-lot contained therein shall have its degree of non-conformance determined as set forth below.

When a sub-lot of material is to have, its price adjusted, the percentage point difference between the non-conforming test value and the specification limit shall be determined for each sieve size determined to be non-conforming, and this value shall be multiplied by its appropriate multiplication factor as set forth in Table 1.

TABLE 1

| NONCONFORMING<br>SIEVE SIZE | MULTIPLICATION<br>FACTOR        |
|-----------------------------|---------------------------------|
| Plus No. 40                 | 1                               |
| No. 40                      | 1.5                             |
| No. 50                      | 1.5                             |
| No. 100                     | 2.0                             |
|                             | (1.3 for abrasives and cinders) |
| No. 20                      | 2.5                             |
| 1/2"                        | 1                               |
| 3/8"                        | 1                               |

The total measure of non-conformance of an individual sub-lot is the sum of all non-conformances on the various sieve sizes of that sub-lot. In no case, however,

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shall a sub-lot of material have its price adjusted more than once, and the first adjustment which is determined shall apply.

When the total degree of non-conformance has been established and it is 12 or less, the material will be paid for at an adjusted contract price as specified in Table 2.

TABLE 2

| <u>DEGREE OF<br/>NON-CONFORMANCE</u> | <u>PERCENT OF CONTRACT<br/>PRICE TO BE REDUCED</u> |
|--------------------------------------|--|
| 1.0 TO 3.0                           | 2  |
| 3.1 TO 5.0                           | 4  |
| 5.1 TO 8.0                           | 7  |
| 8.1 TO 12.0                          | 11   |
| Greater than 12                      | *  |

\*The WVDOH will make a special evaluation of the material and determine the appropriate action.

In the event a Vendor delivers a specific quantity of material from a stockpile, and said quantity is less than the total quantity contained in the stockpile and it has been determined from his certified test data that a non-conforming sub-lot(s) is contained in said stockpile, the price reduction shall be calculated for the specific quantity as follows:

The percent price reduction shall be determined as set forth above for the non-conforming sub-lot. The quantity represented by the non-conforming sub-lot shall then be calculated as a percent of the total (total material contained in the stockpile). To determine the price reduction on the specific quantity delivered, multiply the percent of non-conforming material contained in the stockpile by the quantity delivered, and reduce this quantity by the percent price reduction as determined.

Example: If it has been determined that a stockpile of 100 tons contains 10 percent failing material, and said material is to have its price reduced by 4 percent, then the actual quantity delivered, say 15 tons, will be multiplied by 0.10 (10 percent failing material) which equals 1.5 tons. These 1.5 tons will thus have its price reduced by 4 percent. The remaining 13.5 tons will be paid for at full contract price.

$$TD \left( 1 - \frac{PQn}{100Qt} \right) = AP \text{ (price to be paid after adjustment)}$$



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WHERE      T = tonnage delivered  
              P = percent price reduction  
              D = cost per ton  
              Qn = quantity of non-conforming sub-lot(s)  
              Qt = quantity of total stockpile

If two sub-lots are non-conforming within the stockpile, calculate each separately for the adjusted payment on the quantity delivered (as above). Add these two adjusted payments together and subtract from the total the price to be paid before adjustment for tonnage delivered (TD). If three sub-lots are non-conforming, calculate each separately and subtract twice the price to be paid before adjustment for tonnage delivered, and so on. Example:

$(AP1 + AP2) - TD = \text{Final price to be paid after adjustments}$

OR

$(AP1 + AP2 + AP3) - 2 TD = \text{Final price to be paid after adjustments}$

WHERE:      AP = price to be paid after initial adjustment for one non-conforming sub-lot determined by the above equation.  
              T = tonnage delivered  
              D = cost per ton

In the event material is delivered from a continuous stockpile, that is, a stockpile which is continuously being replenished while also having material removed for these applications, certification shall be based on the shipment samples.

### 3.6 Bid Instructions:

Vendors **shall** complete the Information Attachment form by providing the Vendor's Source Information. Vendors **may** bid any or all items on the Pricing Pages.

#### 3.6.1 Information Attachment Form Vendor's Source Information:

The Vendor **shall** provide the information requested for Limestone, Sandstone, Gravel, Sand, Blast Furnace Slag and Steel Slag as:

- a) Source of Material
- b) Exact Location of Vendor's Storage Site(s).

The Vendor **shall** provide the information requested for Cinders:

- c) Source of Material
- d) Exact Location of Vendor's Storage Site(s), **only if** the Vendor is providing Cinders to the WVDOH on this contract.

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Failure to provide the required information **shall** disqualify this Storage Site(s) as a source for the items being bid.

**3.6.2** The Pricing Page shall be:

- a) Bid price of material as F.O.B. Vendor's Storage Site to non-established locations, Contract Items A-W and AA.
- b) Hauling by Vendor for the First Ton-Mile and Hauling by Vendor for Additional Ton-Miles, Contract Items X and Y

**A Vendor may submit more than one Vendor's Storage Sites information on one Information Attachment form ONLY if bid pricing is the SAME for all Storage Sites. A separate bid submission and Information Attachment form MUST be submitted when bid price varies between Vendor's Storage Sites.**

Vendor's bid will be disqualified if both the Pricing Page **AND** Information Attachment Form is not submitted with their bid packet.

**4. CONTRACT AWARD:**

- 4.1 Contract Award:** The Contract is intended to provide Agencies with a purchase price on all Contract Items. A Contract shall be awarded to all Vendors that provide the Contract Items meeting the required specifications on the Pricing Page.
- 4.2 Pricing Pages:** Vendor shall complete the Pricing Pages and Information Attachment Form per instructions in section 3.6, Bid Instructions.

The Pricing Pages contain a list of Contract Items F.O.B. Vendor's Storage Site(s). There is no anticipated purchase/delivery volume. Delivery may be requested to any location within the State of West Virginia. Delivery from a Vendor's Storage Site to a Non-Established Location(s) will only be requested when delivery to a location that is not covered by another contract or WVDOH pickup is not feasible for a WVDOH project. No future use of the Contract or any individual item is guaranteed or implied.

Vendor should electronically enter the information into the Pricing Pages, through wvOASIS, if available, or as an electronic document. In most cases, the Vendor can request an electronic copy of the Pricing Pages for bid purposes by sending an email request to the following address: dusty.j.smith@wv.gov.

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**4.3 Contract award transition:** Upon the award of this contract, whether the effective date or the completed and encumbered date or an established date by the WVDOH, the WVDOH Maintenance Division will announce the effective date of use of this contract to the Districts and the Vendors. Upon the announced effective date of use by the WVDOH Maintenance Division to the Districts and Vendors, any Delivery Order issued toward the 2017 Contracts shall remain in effect and should not be cancelled until that Delivery Order is filled; however, after ten (10) working days of the Districts' and Vendors' notice, any Delivery Order that has not been completely filled by the Vendor from the 2017 Contracts shall NOT be completed, but a cancellation notice will be sent to that Vendor from the issuing District for cancellation of the balance of that Delivery Order only. No Delivery Order from the 2017 Contracts should be held open by the District or the Vendor longer ten (10) working days after the notice to the Districts and the Vendors of the effective date of use of the new contracts.

This directive is issued to assist the Districts and the Vendors when fulfilling open Delivery Orders only. It is NOT issued to cause harm or to take contracts from one Vendor to give to another Vendor, but to establish a transition process from one contract into another contract.

**5. DETERMINING LOW BID PER DELIVERY TO NON-ESTABLISHED WVDOH STORAGE SITE:** The WVDOH District Engineer will calculate the lowest overall total cost of the price of material, Item A through W and AA plus the Haul, Item X and Y and the Vendor Preference, is applicable.

The most direct suitable route from the Vendor's Storage Site to the mid-point of the non-established WVDOH location will be determined by the WVDOH and used to compute haul distance, to determine the low bid.

In-state delivery route will be mapped by the WVDOH by utilizing the WVDOH Straight Line Diagrams. These Diagrams for WV Primary Routes and WV Secondary Routes are available in each WVDOH office and the WVDOH Central Office. The WVDOH will determine the route to be taken due to bridge and/or road restrictions.

Out-of-state delivery routes will be mapped by the WVDOH utilizing "Google Maps" or a similar source for routing to the WV State line at which time; the Straight-Line Diagrams will be sourced to the non-established WVDOH Storage Site.

The Contractor shall deposit aggregates at the non-established WVDOH Location and in a manner directed by the WVDOH. This may include tailgating the aggregate into an aggregate spreader, onto a roadway or dumping the aggregate into a stockpile.

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**6. ORDERING AND PAYMENT:**

- 6.1 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 can 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.
- 6.2 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. DELIVERY AND RETURN:**

- 7.1 Delivery Time:** Vendor shall deliver standard orders according to the established acceptable delivery date agreed to on the order. Vendor shall deliver emergency orders within an established acceptable time frame after orders are received. Vendor shall ship all orders in accordance with the above schedule and shall not hold orders until a minimum delivery quantity is met. If the vendor is unable to furnish material in accordance with the established delivery schedule, the WVDOH District Engineer/Manager shall be advised in writing within five (5) working days of the reason for failure to conform to the delivery requirements.

After the WVDOH District Engineer/Manager has been advised by the Vendor, in writing, that the delivery requirements cannot be met, the WVDOH District Engineer/Manager shall have the option to cancel the Delivery Order and issue a new Delivery Order to the next low-bid Vendor calculated for this Delivery Order.

- 7.2 Late Delivery:** The Agency placing the order under this Contract must be notified in writing within five (5) days 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 the next low-bid Vendor calculated for the Delivery Order or a third party.

Any Agency seeking to obtain items from a third party under this provision must

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Stone, Aggregate and Cinders  
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first obtain approval of the Finance Division.

- 7.3 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 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 if Vendor invoices those delivery costs as a separate charge with the original freight bill attached to the invoice.
- 7.4 Return of Unacceptable Items:** If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable, or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be F.O.B. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.
- 7.5 Return Due to Agency Error:** Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B. Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

**8. ANTI-COLLUSION CLAUSE:**

- 8.1** 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:
- 8.1.1.** 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;
  - 8.1.2** 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;

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- 8.1.3 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;
  - 8.1.4 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;
  - 8.1.5 otherwise taken any action in restraint of free competitive bidding.
- 8.2 Contractor further affirms that that neither Contractor nor anyone on its behalf, including affiliate and subsidiary entities of Contractor, has:
- 8.2.1 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;
  - 8.2.2 directly or indirectly colluded, conspired, connived, or agreed with any potential or actual bidder or anyone else to put in a sham bid;
  - 8.2.3 otherwise taken any action to put in a sham bid.

**9. VENDOR DEFAULT:**

- 9.1 The following shall be considered a vendor default under this Contract.
  - 9.1.1 Failure to provide Contract Items in accordance with the requirements contained herein.
  - 9.1.2 Failure to comply with other specifications and requirements contained herein.
  - 9.1.3 Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
  - 9.1.4 Failure to remedy deficient performance upon request.
- 9.2 The following remedies shall be available to Agency upon default.
  - 9.2.1 Immediate cancellation of the Contract.

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Stone, Aggregate and Cinders  
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9.2.2 Immediate cancellation of one or more delivery orders issued under this Contract.

9.2.3 Any other remedies available in law or equity.

**10. MISCELLANEOUS:**

**10.1 No Substitutions:** Vendor shall supply only Contract Items submitted in response ion unless a contract modification is approved in accordance with the provisions contained in this Contract.

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

**10.3 Reports:** Vendor shall provide quarterly reports and annual summaries to the Agency showing the Agency's items purchased, quantities of items purchased and total dollar value of the items purchased. Vendor shall also provide reports, upon request, showing the items purchased during the term of this Contract, the quantity purchased for each of those items and the total value of purchases for each of those items. Failure to supply such reports may be grounds for cancellation of this contract.

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

**Contract Manager:** Vernon Criss  
**Telephone Number:** 304-428-0341  
**Fax Number:** 304-485-4585  
**Email Address:** atlastowing@frontier.com

INFORMATION ATTACHMENT FORM

Vendor's Storage Sites -- REQUIRED TO BE SUBMITTED WITH BID

2018 Stone and Aggregate Material and Delivery by Vendor to Non-Established WVDOH Locations

VENDOR NAME Atlas Towing Company

**Mandatory - Vendor shall complete this form and return with bid submission.**

**A Vendor may submit more than one Vendor's Storage Sites information on one Information Attachment Form ONLY if bid pricing is the SAME for all Storage Sites and all WVDOH locations bid. A separate bid submission and Information Attachment Form MUST be submitted when bid price varies between Vendor's Storage Sites.**

**Limestone, Sandstone, Gravel, Sand, Blast Furnance Slag and Steel Slag**

|   |
|---|
| a) SOURCE OF MATERIAL ( <u>all</u> sources for which bid prices apply (e.g., Quarry location if Sandstone or Limestone; dredging or pit location if Gravel; production plant name and location if Slag) |
| Mulzer Crushed Stone- Charlestown, New Amsterdam & Cape Sandy Quarries  |
| Riverside Stone- Wolf Creek Quarry  |
|   |
|   |
|   |
| b) EXACT LOCATION OF VENDOR'S STORAGE SITE(S): A separate bid schedule <b>must</b> be submitted when bid price varies between Vendors' storage sites.   |
| 1334 Staunton Turnpike Parkersburg, WV 26104  |
| 304-428-4445  |
|   |
|   |
|   |
|   |

|  |
|--|
| <b>Cinders</b>   |
| c) SOURCE OF MATERIAL: Name and Location of plant which produces Cinder material.  |
|  |
|  |
|  |
|  |
|  |
| d) EXACT LOCATION OF VENDOR'S STORAGE SITE(S) A separate bid schedule <b>must</b> be submitted when bid price varies between Vendors' storage sites. |
|  |
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|  |



Material and delivery by the Vendor to Non-Established WVDOH locations, ONLY.

|  |                                      | Bid Price per Ton Items A-W and AA<br>F.O.B. Vendor's Storage Site |                    |            |
|--|--------------------------------------|--|--------------------|------------|
| Contract Item                          | Description of Material              | Limestone, Sandstone, Gravel, Sand                                 | Blast Furnace Slag | Steel Slag |
| A                                      | Class 1 Aggregate                    | \$ 21.30   |                    |            |
| B                                      | Class 2 Aggregate                    | \$ 21.30   |                    |            |
| C                                      | Class 10 Aggregate                   | \$ 21.30   |                    |            |
| D                                      | AASHTO #1 Aggregate                  | \$ 21.80   |                    |            |
| E                                      | AASHTO #3 Aggregate                  | \$ 21.80   |                    |            |
| F                                      | AASHTO #4 Aggregate                  | \$ 21.80   |                    |            |
| G                                      | AASHTO #467 Aggregate                | \$ 21.80   |                    |            |
| H                                      | AASHTO #57 Aggregate                 | \$ 21.80   |                    |            |
| I                                      | AASHTO #67 Aggregate                 | \$ 22.80   |                    |            |
| J                                      | AASHTO #7 Aggregate                  | No Bid   |                    |            |
| K                                      | AASHTO #8 Aggregate                  | \$ 23.30   |                    |            |
| L                                      | AASHTO #9 Aggregate                  | \$ 35.75   |                    |            |
| M                                      | Stone for Gabions                    | \$ 28.80   |                    |            |
| N                                      | Fine Aggregate                       | \$ 20.00   |                    |            |
| OA                                     | Limestone Standard Abrasives         | No Bid   |                    |            |
| OB                                     | Sandstone Standard Abrasives         | No Bid   |                    |            |
| PA                                     | Limestone Modified Abrasives         | No Bid   |                    |            |
| PB                                     | Sandstone Modified Abrasives         | No Bid   |                    |            |
| Q                                      | Rip Rap                              | No Bid   |                    |            |
| R                                      | Shot Rock                            | No Bid   |                    |            |
| S                                      | AASHTO #8 Modified                   | \$ 24.30   |                    |            |
| T                                      | AASHTO #9 Modified                   | \$ 36.75   |                    |            |
| U                                      | Pea Gravel                           | \$ 21.50   |                    |            |
| V                                      | #11 Limestone Abrasives              | No Bid   |                    |            |
| W                                      | Quarry Waste                         | No Bid   |                    |            |
| AA                                     | Cinders                              |  |                    |            |
| Items A-W and AA (Except for Q and R): |                                      |  |                    |            |
| X1                                     | Haul by Vendor - First Ton-Mile      | \$ 1.00  |                    |            |
| X2                                     | Haul by Vendor - Additional Ton-Mile | \$ 1.00  |                    |            |
| Items Q and R ONLY:                    |                                      |  |                    |            |
| Y1                                     | Haul by Vendor - First Ton-Mile      | No Bid   |                    |            |
| Y2                                     | Haul by Vendor - Additional Ton-Mile | No Bid   |                    |            |

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: Atlas Towing Company

Signed: 

Date: September 22, 2017

Title: Vice-President

\*Check any combination of preference consideration(s) indicated above, which you are entitled to receive.

STATE OF WEST VIRGINIA  
Purchasing Division

# PURCHASING AFFIDAVIT

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

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

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

**DEFINITIONS:**

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

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

**"Related party"** means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or 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: (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

**WITNESS THE FOLLOWING SIGNATURE:**

Vendor's Name: Atlas Towing Company

Authorized Signature: *[Handwritten Signature]* Date: 9/20/17

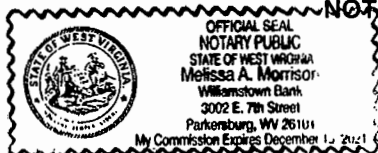
State of West Virginia

County of Wood, to-wit:

Taken, subscribed, and sworn to before me this 20th day of September, 2017.

My Commission expires December 19, 2021

**AFFIX SEAL HERE**



**NOTARY PUBLIC**

*[Handwritten Signature]*

*Purchasing Affidavit (Revised 07/07/2017)*

## West Virginia Ethics Commission



### Disclosure of Interested Parties to Contracts

Pursuant to W. Va. Code § 6D-1-2, a state agency may not enter into a contract, or a series of related contracts, that has/have an actual or estimated value of \$100,000 or more until the business entity submits to the contracting state agency a Disclosure of Interested Parties to the applicable contract. In addition, the business entity awarded a contract is obligated to submit a supplemental Disclosure of Interested Parties reflecting any new or differing interested parties to the contract within 30 days following the completion or termination of the applicable contract.

For purposes of complying with these requirements, the following definitions apply:

*"Business entity"* means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership or corporation.

*"Interested party"* or *"Interested parties"* means:

- (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-contractors;
- (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract. (This subdivision does not apply to a publicly traded company); and
- (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency. (This subdivision does not apply to persons or business entities performing legal services related to the negotiation or drafting of the applicable contract.)

*"State agency"* means a board, commission, office, department or other agency in the executive, judicial or legislative branch of state government, including publicly funded institutions of higher education: Provided, that for purposes of W. Va. Code § 6D-1-2, the West Virginia Investment Management Board shall not be deemed a state agency nor subject to the requirements of that provision.

The contracting business entity must complete this form and submit it to the contracting state agency prior to contract award and to complete another form within 30 days of contract completion or termination.

*This form was created by the State of West Virginia Ethics Commission, 210 Brooks Street, Suite 300, Charleston, WV 25301-1804. Telephone: (304)558-0664; fax: (304)558-2169; e-mail: [ethics@wv.gov](mailto:ethics@wv.gov); website: [www.ethics.wv.gov](http://www.ethics.wv.gov).*

West Virginia Ethics Commission

Disclosure of Interested Parties to Contracts

Contracting business entity: Atlas Towing Company

Address: P. O. Box 1632 Parkersburg, WV 26102

Contracting business entity's authorized agent: Vernon Criss

Address: P. o. Box 1632 Parkersburg, WV 26104

Number or title of contract: Request for quotation- Stone Aggregate 2018 Material & Delivery to Non-Estab. Locations

Type or description of contract: Supply Aggregates for 2018

Governmental agency awarding contract: WVDOH

Names of each Interested Party to the contract known or reasonably anticipated by the contracting business entity (attach additional pages if necessary):

Vernon Criss

Signature: [Handwritten Signature] Date Signed: September 20, 2017

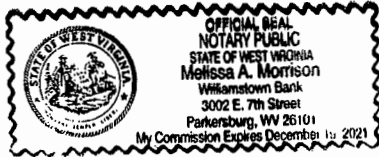
Check here if this is a Supplemental Disclosure.

Verification

State of West Virginia, County of Wood

I, Vernon Criss, the authorized agent of the contracting business entity listed above, being duly sworn, acknowledges that the Disclosure herein is being made under oath and under the penalty of perjury.

Taken, sworn to and subscribed before me this 20th day of September, 2017.



[Handwritten Signature] Notary Public's Signature

To be completed by State Agency: Date Received by State Agency: Date submitted to Ethics Commission: Governmental agency submitting Disclosure:



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
8/29/2017

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

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

|  |  |        |
|--|--|--------|
| PRODUCER<br>Reagle & Padden, Inc.<br>200 Star Avenue, Suite 210<br>Parkersburg, WV 26101 | CONTACT NAME: Irlene Barnhouse                                     |        |
|  | PHONE (A/C, No, Ext): (304) 422-8476 FAX (A/C, No): (304) 428-7374 |        |
|  | E-MAIL ADDRESS: irlene@reagle-padden.com                           |        |
|  | PRODUCER CUSTOMER ID #: 00004303                                   |        |
| INSURED<br>Atlas Towing Company<br>PO Box 1632<br>Parkersburg, WV 26102-1632             | INSURER(S) AFFORDING COVERAGE                                      | NAIC # |
|  | INSURER A: Cincinnati Insurance Co.                                | 10677  |
|  | INSURER B: U.S. Fire Insurance Company                             | 21113  |
|  | INSURER C: Starr Indemnity Insurance Co.                           | 38318  |
|  | INSURER D: Water Quality Ins. Syndicate                            | 52421  |
|  | INSURER E: AIG Insurance Company                                   | 19402  |
|  | INSURER F:   |        |

COVERAGES CERTIFICATE NUMBER: 2017 GL REVISION NUMBER:

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

| INSR LTR | TYPE OF INSURANCE  | ADDL SUBR INSR WVD                          | POLICY NUMBER           | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS   |
|----------|--|---|-------------------------|-------------------------|-------------------------|--|
|          | GENERAL LIABILITY  |   |                         |                         |                         | EACH OCCURRENCE \$ 1,000,000   |
|          | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY                     |   |                         |                         |                         | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000                                    |
| A        | <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR       |   | ENP0158387              | 9/20/2017               | 9/20/2018               | MED EXP (Any one person) \$ 5,000  |
|          | <input checked="" type="checkbox"/> Marine Liability                                 |   | 830-1018159             | 9/20/2017               | 9/20/2018               | PERSONAL & ADV INJURY \$ 1,000,000   |
| B        | <input checked="" type="checkbox"/> Pollution Liability                              |   | 49-23030                | 9/20/2017               | 9/20/2018               | GENERAL AGGREGATE \$ 2,000,000   |
|          | GEN'L AGGREGATE LIMIT APPLIES PER:   |   | Liability, Wharfingers, |                         |                         | PRODUCTS - COM/OP AGG \$ 2,000,000   |
| D        | <input checked="" type="checkbox"/> POLICY PRO-JECT LOC                              |   | Pollution, P&I          |                         |                         | Separate Limits \$ 1,000,000   |
|          | AUTOMOBILE LIABILITY   |   |                         |                         |                         | COMBINED SINGLE LIMIT (Ea accident) \$   |
|          | <input checked="" type="checkbox"/> ANY AUTO   |   |                         |                         |                         | BODILY INJURY (Per person) \$ 1,000,000  |
| A        | <input type="checkbox"/> ALL OWNED AUTOS   |   | EBA0158387              | 9/20/2017               | 9/20/2018               | BODILY INJURY (Per accident) \$  |
|          | <input type="checkbox"/> SCHEDULED AUTOS   |   |                         |                         |                         | PROPERTY DAMAGE (Per accident) \$  |
|          | <input type="checkbox"/> HIRED AUTOS   |   |                         |                         |                         | Uninsured motorist BI-single \$ 1,000,000  |
|          | <input type="checkbox"/> NON-OWNED AUTOS   |   |                         |                         |                         | Underinsured motorist BI single \$ 1,000,000   |
| A        | <input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR     |   | ENP0158387              | 9/20/2017               | 9/20/2018               | EACH OCCURRENCE \$ 4,000,000   |
|          | <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE |   |                         |                         |                         | AGGREGATE \$   |
|          | DEDUCTIBLE   |   |                         |                         |                         | \$   |
| C        | <input checked="" type="checkbox"/> RETENTION \$ 10,000                              |   | MASILCH000215           | 9/20/2017               | 9/20/2018               | Bumbershoot \$ 5,000,000   |
| E        | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY  |   |                         |                         |                         | <input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER |
|          | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)          | Y/N <input checked="" type="checkbox"/> N/A | WC001-61-0212           | 2/24/2017               | 2/24/2018               | E.L. EACH ACCIDENT \$ 1,000,000  |
|          | If yes, describe under DESCRIPTION OF OPERATIONS below                               |   |                         |                         |                         | E.L. DISEASE - EA EMPLOYEE \$ 1,000,000  |
|          |  |   |                         |                         |                         | E.L. DISEASE - POLICY LIMIT \$ 1,000,000   |
| A        | Inland Marine - Land   |   | ENP0158387              | 9/20/2017               | 9/20/2018               |  |
| B        | Inland Marine - Water  |   | 835-1008038             | 9/20/2017               | 9/20/2018               |  |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
Re: Building Supplies

### CERTIFICATE HOLDER

### CANCELLATION

|   |  |
|---|--|
| WV Division of Highways<br>1900 Kanawha Blvd East<br>Charleston, WV 25305 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. |
|   | AUTHORIZED REPRESENTATIVE<br><br>Irlene Barnhouse/INB <i>Irlene G. Barnhouse</i>   |

Atlas Towing Company  
PO Box 1632  
Parkersburg, WV 26102

**RECEIVED**

SEP 26 2017

FINANCE DIVISION  
DOT

8:30 am

