

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

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

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

DEFINITIONS:

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

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

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

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

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: _____

Authorized Signature: _____ Date: _____

State of _____

County of _____, to-wit:

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

My Commission expires _____, 20__.

AFFIX SEAL HERE

NOTARY PUBLIC _____

West Virginia University
DRUG FREE WORKPLACE CONFORMANCE AFFIDAVIT
West Virginia Code §21-1D-5

Request for Bid# _____

STATE OF _____

COUNTY OF _____, TO-WIT:

I, _____, after being first duly sworn, depose and state as follows:

1. I am an employee of _____ ; and,
(Company Name)
2. I do hereby attest that _____
(Company Name)

_____ maintains a valid written drug free workplace policy an that such policy is in compliance with **West Virginia Code §21-1D-5**.

The above statements are sworn to under the penalty of perjury.

(Company Name)

By: _____

Title: _____

Date: _____

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

By Commission expires _____

(Seal)

(Notary Public)

THIS AFFIDAVIT MUST BE SUBMITTED WITH THE BID IN ORDER TO COMPLY WITH WV CODE PROVISIONS. FAILURE TO INCLUDE THE AFFIDAVIT WITH THE BID SHALL RESULT IN DISQUALIFICATION OF THE BID.

BID BOND

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned, _____
_____ of _____, _____, as Principal, and _____
_____ of _____, _____, a corporation organized and existing under the laws of the State of _____
_____ with its principal office in the City of _____, as Surety, are held and firmly bound unto the State
of West Virginia, as Obligee, in the penal sum of _____ (\$ _____) for the payment of which,
well and truly to be made, we jointly and severally bind ourselves, our heirs, administrators, executors, successors and assigns.

The Condition of the above obligation is such that whereas the Principal has submitted to the Purchasing Section of the
Department of Administration a certain bid or proposal, attached hereto and made a part hereof, to enter into a contract in writing for

NOW THEREFORE,

- (a) If said bid shall be rejected, or
- (b) If said bid shall be accepted and the Principal shall enter into a contract in accordance with the bid or proposal attached
hereto and shall furnish any other bonds and insurance required by the bid or proposal, and shall in all other respects perform the
agreement created by the acceptance of said bid, then this obligation shall be null and void, otherwise this obligation shall remain in full
force and effect. It is expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event,
exceed the penal amount of this obligation as herein stated.

The Surety, for the value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no
way impaired or affected by any extension of the time within which the Obligee may accept such bid, and said Surety does hereby
waive notice of any such extension.

IN WITNESS WHEREOF, Principal and Surety have hereunto set their hands and seals, and such of them as are corporations
have caused their corporate seals to be affixed hereunto and these presents to be signed by their proper officers, this
_____ day of _____, 20____.

Principal Corporate Seal

(Name of Principal)

By _____

(Must be President or
Vice President)

(Title)

Surety Corporate Seal

(Name of Surety)

Attorney-in-Fact

**IMPORTANT – Surety executing bonds must be licensed in West Virginia to transact surety insurance. Raised corporate seals
must be affixed, a power of attorney must be attached.**

BID BOND PREPARATION INSTRUCTIONS

AGENCY _____ (A)
RFQ/RFP# _____ (B)

Bid Bond

- (A) WV State Agency
(Stated on Page 1 "Spending Unit")
- Request for Quotation Number (upper right corner of page #1)
- (C) Your Company Name
- (D) City, Location of your Company
- (E) State, Location of your Company
- (F) Surety Corporate Name
- (G) City, Location of Surety
- (H) State, Location of Surety
- (I) State of Surety Incorporation
- (J) City of Surety Incorporation
- (K) Minimum amount of acceptable bid bond is 5% of total bid. You may state "5% of bid" or a specific amount on this line in words.
- (L) Amount of bond in figures
- (M) Brief Description of scope of work
- (N) Day of the month
- (O) Month
- (P) Year
- (Q) Name of Corporation
- (R) Raised Corporate Seal of Principal
- (S) Signature of President or Vice President
- (T) Title of person signing
- (U) Raised Corporate Seal of Surety
- (V) Corporate Name of Surety
- (W) Signature of Attorney in Fact of the Surety

NOTE: Dated, Power of Attorney with Raised Surety Seal must accompany this bid bond.

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned, _____ (C) of _____ (D), _____ (E), as Principal, and _____ (F) of _____ (G), _____ (H), a corporation organized and existing under the laws of the State of _____ (I) with its principal office in the City of _____ (J), as Surety, are held and firmly bound unto The State of West Virginia, as Obligee, in the penal sum of _____ (K) (\$ _____ (L)) for the payment of which, well and truly to be made, we jointly and severally bind ourselves, our heirs, administrators, executors, successors and assigns.

The Condition of the above obligation is such that whereas the Principal has submitted to the Purchasing Section of the Department of Administration a certain bid or proposal, attached hereto and made a part hereof to enter into a contract in writing for _____ (M)

NOW THEREFORE.

(a) If said bid shall be rejected, or
(b) If said bid shall be accepted and the Principal shall enter into a contract in accordance with the bid or proposal attached hereto and shall furnish any other bonds and insurance required by the bid or proposal, and shall in all other respects perform the agreement created by the acceptance of said bid then this obligation shall be null and void, otherwise this obligation shall remain in full force and effect. It is expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated

The Surety for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of time within which the Obligee may accept such bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, Principal and Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be affixed hereto and these presents to be signed by their proper officers, this _____ (N) day of _____ (O), 20____ (P).

Principal Corporate Seal	_____ (Q) (Name of Principal)
(R)	By _____ (S) (Must be President or Vice President)
	_____ (T) Title
(U)	_____ (V) (Name of Surety)
Surety Corporate Seal	_____ (W) Attorney-in-Fact

IMPORTANT – Surety executing bonds must be licensed in West Virginia to transact surety insurance. Raised Corporate Seals must be affixed and a Power of Attorney must be attached.

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West Virginia University
Procurement, Contracting & Payment Services
One Waterfront Place 3rd Floor PO Box 6024 Morgantown, WV 26506-6024

www.wvu.edu
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v: 304.293.5711 f: 304.293.8152

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ALL INFORMATION CONTAINED HEREIN IS SUBJECT TO CHANGE WITHOUT NOTICE. FOR ALL UPDATED INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION SERVICES PLEASE GO TO [PCPS WEBSITE](#) OR CONTACT PRUCHASING, CONTRACTS, & PAYMENT SERVICES AT WEST VIRGINIA UNIVERSITY.

Article I. DEFINITIONS

Section 1. General Definitions

- I.1.1 Request for Bid Solicitation shall be defined as an official request issued by Procurement, Contracts and Payment Services requesting competitive bids pursuant to Chapter 18B of the West Virginia State Code to provide materials, equipment, services or other project related work specifically defined in and under the terms and conditions as stated in such Request for Bid Solicitation.
- I.1.2 Bidding Documents include the Bidding Requirements and the proposed Contract Documents. The Bidding Requirements consist of the Advertisement or Request For Bid, Instructions to Bidders, the bid form, and other sample bidding and contract forms. The proposed Contract Documents consist of the form of Agreement between the Owner and Contractor, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications and all Addenda issued prior to execution of the Contract.
- I.1.3 Definitions set forth in the General Conditions of the Contract for Construction, AIA Document A201, AIA Document A107, or in other Contract Documents which are specifically referenced in the Request for Bid Solicitation are applicable to the Bidding Documents.
- I.1.4 Addenda are written or graphic instruments issued by the Architect or West Virginia University prior to the execution of the Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections.
- I.1.5 A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents.
- I.1.6 The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which Work may be added or from which Work may be deleted for sums stated in Alternate Bids.
- I.1.7 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

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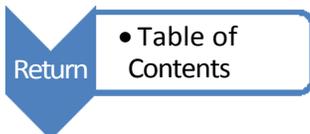
- I.1.8 A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment or services or a portion of the Work as described in the Bidding Documents.
- I.1.9 A Bidder is a person or entity who submits a Bid and who meets the requirements set forth in the Bidding Documents.
- I.1.10 Work shall be defined as all labor, materials, supplies, services, equipment, and other services required by the Bidder to fully and completely perform the project as indicated by the Contract Documents.



Article II. JURISDICTION

Section 1. Applicable Law and Forum

- II.1.1 The rights of any Bidder or any party to a subsequent Contract shall be governed by the laws of the State of West Virginia and only West Virginia courts shall have jurisdiction over any action or proceeding related to the Bid or any subsequent Contract. The Bidder irrevocably consents to such jurisdiction.



Article III. BIDDING PROCEDURES

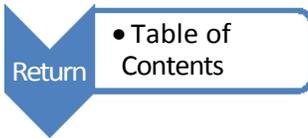
Section 1. Examination of Contract Documents and the Site

- III.1.1 Before submitting a Bid, the Bidder shall examine all Contract Documents, including, but not limited to, the Drawings, Specifications, all terms and conditions, and Addenda for all divisions of Work for the Project, noting in particular all requirements which may affect its Work in any way.
- III.1.2 The successful Bidder shall be required to execute a Contract with West Virginia University for the services as described in the Request for Bid Solicitation. A sample Contract will be provided with the Request for Bid Solicitation or will be included in the project manual. Contract Documents do not include other documents such as

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- bidding requirements unless specifically identified (advertisement or Request For Bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements).
- III.1.3 Federal terms and conditions may apply to projects at West Virginia University and if applicable, additional terms and conditions may apply to the Request for Bid Solicitation. Any terms and conditions that may apply will be provided with the Request for Bid Solicitation or will be included in the project manual.
- III.1.4 The Bidder has read and understands the Bidding Documents or Contract Documents, to the extent that such documentation relates to the Work for which the Bid is submitted, and for other portions of the Project, if any, being bid concurrently or presently under construction.
- III.1.5 The Bidder has visited the site, become familiar with local conditions under which the Work is to be performed and has correlated the Bidder's personal observations with the requirements of the proposed Contract Documents.
- III.1.6 The Bidder shall include in the Bid all applicable state, federal, or local taxes which may be assessed on the Work. West Virginia University is exempt from taxation only if the materials, equipment, products, etc. are purchased directly by the University; therefore, unless otherwise exempt, Bidder must include all applicable taxes which may be incurred by Bidder as a result of the performance of the Work. West Virginia University shall not be responsible for any such taxes or reimbursement of any costs due to the Bidder's failure to include such amounts in the Bid. Such taxes may include but not be limited to Business and Occupation Taxes, Consumer Sales and Use Tax, or similar taxes.
- III.1.7 West Virginia University is not subject to any municipal building regulations or permits; therefore, no building permit as required by such entity shall not be required. Bidder may not include any charges for such items in the Bid.
- III.1.8 The Bidder's failure to become acquainted with the extent and nature of Work required to complete any portion of the Work in conformity with the requirements of the Contract Documents, shall not be a basis for additional compensation.

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Section 2. Pre-Bid Meeting

- III.2.1 If conducted by West Virginia University, the Bidder is encouraged to attend the pre-bid meeting, where the Architect or Engineer (“A/E”), if applicable, and West Virginia University will receive questions regarding the Contract Documents. West Virginia University reserves the right to require mandatory attendance to any pre-bid meeting held in relation to a project and no bid from any Bidder not represented at such meeting will be accepted by West Virginia University.
- III.2.2 The A/E or West Virginia University shall prepare minutes of the pre-bid meeting for the Project record. If questions raised by the prospective Bidders require changes to, or clarifications of, the Contract Documents, the A/E or West Virginia University shall issue the changes by written Addendum, along with a list of pre-bid meeting attendees.
- III.2.3 Additional compensation shall not be based upon the Bidder’s failure to attend the pre-bid meeting, which results in the Bidder’s incomplete knowledge and familiarity with the Project requirements.



Section 3. Request for Interpretation/Addenda

- III.3.1 If the Bidder finds any perceived ambiguity, conflict, error, omission, or discrepancy within the Contract Documents, including, but not limited to, the Drawings, Specifications, and Addenda, or between any of the Contract Documents and Applicable Law, the Bidder shall submit a written Request for Interpretation (“RFI”) to the A/E or West Virginia University for an interpretation or clarification.
- IV.3.1.a The Bidder is responsible for prompt delivery of the RFI.
- IV.3.1.b The A/E or West Virginia University shall respond to RFIs received more than four (4) business days before the bid opening.

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- III.3.2 The A/E or West Virginia University shall issue Addenda that modify or clarify the Contract Documents in response to RFIs. The Addenda may be delivered via facsimile, mail carrier, posted to a Web or file transfer protocol site (FTP site), sent by email, or otherwise furnished to each registered Plan Holder/Bidding Depository and to prospective Bidders.
- III.3.3 Any interpretation, correction, or change in a Request for Bid Solicitation will be made by formal addendum by West Virginia University. Interpretations, corrections, or changes to a Request For Bid Solicitation made in any other manner will not be binding, and no Bidder may rely upon any such interpretation, correction, or change.

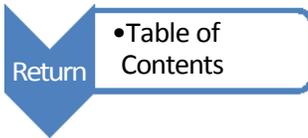
West Virginia University shall make available all official formal addendums when released at the following site and at the following location:

<http://wvubids.finance.wvu.edu>; or

Procurement, Contracts and Payment Services
West Virginia University
One Waterfront Place, 3rd Floor
Morgantown, WV 26506
v: 304-293-5711
f: 304-293-8152
pcps@mail.wvu.edu

- III.3.4 Bidders must acknowledge the receipt of any addenda issued by West Virginia University on the Bid Form included in the Request for Bid Solicitation. If the Bidder fails to acknowledge receipt of each Addendum, then the Bid may be rejected.
- III.3.5 The successful Bidder shall not be compensated for a claim alleging insufficient data, incomplete, ambiguous, conflicting, or erroneous Contract Documents or proposed Contract Documents, or assumed conditions regarding the nature, extent, or character of the Work, if the Bidder did not submit a related RFI prior to the bid opening.
- III.3.6 Addenda will be issued no later than four (4) business days prior to the date for receipt of Bids except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.

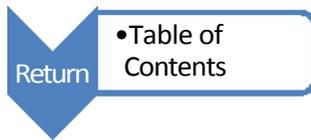
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Section 4. Substitutions Prior to Bid Opening

- III.4.1 If the Bidder proposes to use an article, device, material, equipment, form of construction, fixture, or item other than as indicated in the Contract Documents or Acceptable Components named in the Specifications, the Bidder shall certify that the proposed item is equal in quality and all aspects of performance and appearance, to the item specified and **MUST** receive prior approval as specified under III.4.2.
- III.4.1.a If approval of a Substitution requires changes to the Contract Documents or affects the work of other trades, the Bidder is responsible for the additional costs.
- III.4.2 Proposed Substitutions must be submitted by Bidder to West Virginia University or the A/E by the Cut Off for Question date listed in the Request for Bid Solicitation, which must include:
- III.4.2.a The name and complete description of the proposed Substitution, including Drawings, performance and test data, and other information necessary for a complete evaluation; and
- III.4.2.b A statement setting forth any changes that the Proposed Substitution will require in the Contract Documents or the Project.
- III.4.3 If the A/E or West Virginia University approves the Proposed Substitution, the A/E or West Virginia University shall issue an Addendum.
- III.4.4 If the A/E or West Virginia University does not approve the Proposed Substitution, the A/E or West Virginia University shall inform the Bidder of its decision, which is final. The A/E or West Virginia University may reject a proposed Substitution because the Bidder failed to provide sufficient information to enable the A/E or West Virginia University to completely evaluate the Proposed Substitution without causing a delay in the scheduled bid opening.

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Section 5. Bid Form

- III.5.1 Each Bid shall be submitted on the Bid Form and all Bids and other required documents must be enclosed in a sealed opaque envelope or container and must contain the following all information as provided under [IV.1.3](#).
- III.5.1.a Any change, alteration, omission, or addition in the wording of the Bid Form shall cause the Bid to be rejected as non-responsive.
- III.5.1.b All pages of the Bid Form shall be submitted with the Bid. Failure to do so shall cause the Bid to be rejected as non-responsive.
- III.5.1.c Unless the Bidder withdraws the Bid as provided in [Article V](#), the Bidder is required to comply with all requirements of the Contract Documents, regardless of whether the Bidder had actual knowledge of the requirements and regardless of any statement or omission made by the Bidder that might indicate a contrary intention.
- III.5.2 The Bidder shall fill in all relevant blank spaces on the Bid Form by printing in ink or by typewriting, and not in pencil.
- III.5.2.a The Bidder shall show all bid amounts in both words and figures. In the case of a conflict between the words and figures, the amount shown in words shall govern, where the words are not ambiguous. When the Bidder's intention and the meaning of the words are clear, omissions, or misspellings of words shall not render the words ambiguous.
- III.5.2.b The Bidder shall initial alteration or erasure of items filled in on the Bid Form.
- III.5.2.c All requested Alternates should be bid, if Bidder indicates “no bid” or otherwise indicates that such alternate will not be performed if requested by Bidder, West Virginia University may reject any or all portions of Bidders bid for the project.

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III.5.3 If the Bidder is a corporation, partnership or sole proprietorship, an officer, partner or principal of the Bidder shall print or type the legal name of the Bidder on the line provided, and sign the Bid Form. If the Bidder is a joint venture, an officer, partner or principal, as applicable, of each member of the joint venture shall print or type the legal name of the applicable member on the line provided, and sign the Bid Form on behalf of that member. All signatures must be original. All individuals executing the Bid Form shall be authorized to bind the entity on behalf of the Bidder.



Section 6. Allowances

III.6.1 If Allowances are provided on the Bid Form, the amount of each Allowance shall be included in the Base Bid amount. Allowances shall be used solely for the purpose of determining the adjustment to the Contract Sum for the difference between the amount



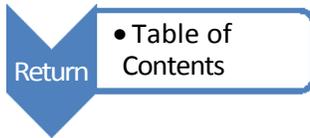
of the Allowance and the actual cost of the related Work provided.

Section 7. Unit Prices

III.7.1 If Unit Prices are requested on the Bid Form, the amount of the scheduled quantities identified on the Bid Form shall be included in the Base Bid amount. Unit prices shall be used solely for the purpose of determining the adjustment to the Contract Sum for the difference between the estimated quantities on the Bid Form and the actual quantities provided.

III.7.2 Unit Prices shall include all materials, equipment, labor, delivery, installation, overhead, profit, and any other cost or expense, in connection with, or incidental to, the performance of that portion of the Work. The Bidder shall submit Unit Prices for all items listed.

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Section 8. Alternates

III.8.1 If an Alternate is listed on the Bid Form, the Bidder shall fill in the applicable blank with an increased or decreased bid amount and indicate which by **circling the word “ADD” or the word “DEDUCT” as applicable**. West Virginia University reserves the right to accept or reject any or all bid amounts for Alternates, in whole or in part, and in any order.

III.8.1.a If no change in the bid amount is required, indicate "No Change" or "\$0."

III.8.1.b Failure to make an entry or an entry of "No Bid," "N/A," or similar entry on any Alternate shall cause the Bid to be rejected as non-responsive if that Alternate is selected.

III.8.1.c **Any statement of an amount for an alternate which has not been identified by circling the word ADD or DEDUCT, as applicable, shall be considered an ADD.**

III.8.1.d If an Alternate is not selected, an entry as listed in [III.8.1.b](#) on that Alternate shall not, by itself, render a Bid non-responsive.



Section 9. Submittals with Bid Form

III.9.1 West Virginia University shall reject a Bid as non-responsive if the Bidder fails to submit the following with the Bid Form in compliance with [Article III, Section 5](#):

III.9.1.a Each Bid shall be accompanied by a Bid Guaranty that meets the requirements of [VI.1](#) below.

III.9.1.b Contractor's License. West Virginia Code § 21-11-2 requires that all persons desiring to perform construction work in West Virginia must be duly licensed. The West Virginia Contractors Licensing Board is

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empowered to issue the contractor's license. Application for a contractor's license may be made by contacting the West Virginia Division of Labor, Building 6, Room B749, State Capitol Complex, Charleston, West Virginia, 25305. Telephone: (304) 558-7890.

West Virginia Code § 21-11-11 requires any prospective Bidder to include the contractor's license number on their bid. The successful Bidder will be required to furnish a copy of their contractor's license prior to issuance of a Purchase Order/Contract.

It shall be the General Contractor's responsibility to ensure that all sub-contractors are duly licensed to perform work with the State of West Virginia and the appropriate city, if applicable.

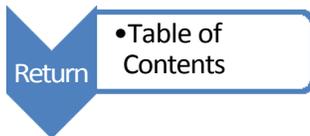
- III.9.1.c Bidder must submit with the Bid Form the West Virginia University Purchasing Affidavit, which shall be provided with the Request for Bid Solicitation, attesting to the Bidder's compliance with the information stated thereon. A sample of this document has been provided in the Appendix below. (see sample [Purchasing Affidavit](#))
- III.9.1.d Bidder must submit with the Bid Form the West Virginia University Alcohol and Drug-Free Workplace Affidavit, which shall be provided with the Request for Bid Solicitation, attesting to the Bidder's compliance with the information stated thereon. A sample of this document has been provided in the Appendix below. (see sample [Alcohol and Drug-Free Workplace Affidavit](#)) Only for bids exceeding One Hundred Thousand Dollars (\$100,000.00).**
- III.9.1.e Bid Breakdown – Bidder shall provide a breakdown of their base bid on the form provided. The form is for informational purposes and the Owner's analysis of the bid.
- III.9.1.f West Virginia State Code West Virginia Code §5-22-1 requires the apparent low bidder on a contract valued at more than \$250,000 for the construction, alteration, decoration, painting or improvement of a new or existing building or structure shall submit a list of all subcontractors who will perform more than \$25,000 of work on the project including labor and materials. This information shall be provided to the Procurement, Contracting and Payment Services within one business day of the opening of bids for review prior to the awarding of a construction contract. Failure to submit the subcontractor list within one business day after the deadline for submitting bids may result

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in disqualification of the bid. The list shall include the names of the bidders and the license numbers.

III.9.2 If the apparent low Bidder does not submit a valid Power of Attorney of the agent signing for the Surety with its Bid, West Virginia University shall direct the apparent low Bidder to deliver a valid and appropriate Power of Attorney to West Virginia University within a period determined by West Virginia University. West Virginia University shall not enter into a Contract without a valid Power of Attorney.

III.9.3 West Virginia University reserves the right to request Pre-Qualification information from prospective Bidders. If applicable, West Virginia University shall notify Bidders of the results of such Pre-Qualification prior to the Bid date and such Request for Bid Solicitation shall be limited to those Bidder's who have met or exceeded the Pre-Qualification requirements and have been determined by West Virginia University to be a responsible Bidder.



Section 10. Changes in the Bid Amount

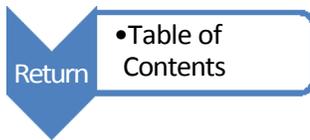
III.10.1 Any change to a previously submitted Bid shall be in writing and received by West Virginia University before the time scheduled for the bid opening.

III.10.2 Changes shall provide an amount to be added to, or subtracted from, the bid amount, so that the final bid amount may be determined only after the sealed envelope is opened.

III.10.3 If the Bidder's written instruction to change the Bid Amount, provided under III.10.1, reveals the bid amount in any way prior to the bid opening, West Virginia University may, in its sole discretion, reject the Bid as non-responsive.

III.10.4 No modification, withdrawal or cancellation shall be allowed during the stipulated time period of sixty (60) calendar days or otherwise agreed upon by the parties following the time and date designated for the receipt of Bids, and each Bidder so agrees in submitting a Bid. If Bidder withdraws or otherwise terminates his performance the Bidder may not do so without forfeiture of Bid Security, not as a penalty, but as liquidated damages.

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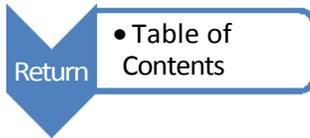


Article IV. BID OPENING AND EVALUATION

Section 1. Delivery of Bid

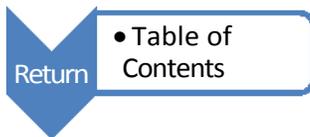
- IV.1.1 The Bidder shall submit its Bid to West Virginia University at Procurement, Contracts and Payment Services located at One Waterfront Place, 3rd Floor, PO Box 6024, Morgantown, WV 26506 prior to the time scheduled for the bid opening.
- IV.1.2 All bids must be delivered by **3:00 p.m. Eastern Standard** time on the due date identified in the Request for Bid Solicitation.
- IV.1.3 If the sealed bid envelope is enclosed in another envelope for the purpose of delivery, the exterior envelope and the envelope containing the bid shall also be clearly marked as containing a Bid with the following information shown on the envelope:
- IV.1.3.a “REQUEST FOR BID” must be clearly visible on the front of the submission;
- IV.1.3.b Bid Identification Number as identified in the Request for Bid Solicitation must be on the front of the envelope or container;
- IV.1.3.c Contractor name and address must be on the front of the submission;
- IV.1.3.d and the opening date and time of the bid must be clearly visible on the front of the submission.
- IV.1.4 The Bidder is fully responsible for timely delivery at the location designated for receipt of Bids. Bids received after this date and time will not receive consideration. Oral, telephonic, facsimile, or telegraphic Bids are invalid and will not receive consideration. No exceptions are permitted.
- IV.1.5 Any and all costs incurred by the Bidder in preparation of a response to the Request for Bid Solicitation or for presentation of credentials are the responsibility of the Bidder and will not be reimbursed. All responses and documentation submitted by the Bidder become the property of West Virginia University at the time the documents are submitted in response to a Request for Bid Solicitation.

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Section 2. Bid Opening

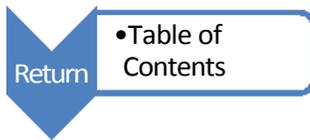
- IV.2.1 Sealed Bids shall be received at the location designated in [IV.1.1](#) until the time stated when all Bids shall be opened, read aloud, and the tabulation made public. Bidders are encouraged to be present during bid opening but are not required to do so.
- IV.2.2 The public opening and reading of Bids is for informational purposes only and is not to be construed as an acceptance or rejection of any Bid submitted.
- IV.2.3 The contents of the bid envelope are public records and open for inspection, upon request, at any time after the bid opening. Ownership of all data, materials, and documentation originated and prepared for WVU pursuant to the Request For Bid Solicitation shall belong exclusively to West Virginia University and be subject to public inspection in accordance with the West Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by a Bidder shall not be subject to public disclosure under the West Virginia Freedom of Information Act; however, the Bidder must invoke the protections of Article 1, Chapter 29B of the Code of West Virginia in writing, either before or at the time the data or material is submitted. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secrets or proprietary information.



Section 3. Bid Opening Extension

- IV.3.1 If an Addendum is issued without giving all Bidders four (4) business days prior to the published time for the bid opening, excluding Saturdays, Sundays and legal holidays, the bid opening shall be extended to at least meet such requirement.

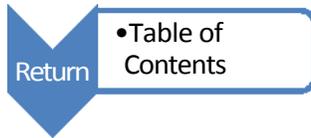
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Section 4. Bid Evaluation Criteria

- IV.4.1 West Virginia University reserves the right to accept or reject any or all Bids, in whole or in part, and reserves the right to award the Contract to any remaining Bidder West Virginia University determines, in its sole discretion, to have submitted the lowest responsive and responsible Bid.
- IV.4.2 West Virginia University reserves the right to accept or reject any or all Alternates. Alternates may be accepted or rejected in any order.
- IV.4.3 If any Bidder has engaged in collusive bidding, West Virginia University shall reject that Bidder's Bid as non-responsible for the Contract. A collusive bidder may also be debarred from future State Contracts.
- IV.4.4 Bidder affirms that to the best of its knowledge, there exists no actual or potential conflict of interest between Bidder business or financial interests, and its services under any Contract issued pursuant to this Request for Bid Solicitation, and in the event of change in either its private interests or service under the Contract, Bidder will inform West Virginia University regarding possible conflict of interest which may arise as a result of such change. Bidder also affirms that there exists no actual or potential conflict between West Virginia University's employees and Bidder.
- IV.4.5 West Virginia University reserves the right to waive, or to allow any Bidder a reasonable opportunity to cure a minor irregularity or technical deficiency in a Bid, provided the irregularity or deficiency does not affect the bid amount, or otherwise give the Bidder a competitive advantage. Noncompliance with any material requirements of the Contract Documents shall cause a Bid to be rejected as non-responsive.
- IV.4.6 If, in the opinion of West Virginia University, the award of the Contract to the lowest Bidder is not in its best interest, West Virginia University may accept, in its discretion, another Bid so opened, or West Virginia University may reject all Bids and advertise for other Bids. The advertisement shall be for the period, in the form, and in the publications directed by West Virginia University.

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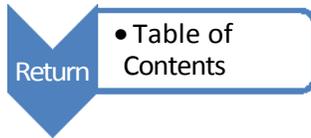
Section 5. Bid Evaluation Procedure

- IV.5.1 The Contract shall be awarded to the lowest responsive and responsible Bidder as determined in the discretion of West Virginia University, or all Bids may be rejected in accordance with Applicable Law.
- IV.5.1.a In determining which Bid is the lowest, West Virginia University shall consider the Base Bid and the bid amounts for any Alternate, or Alternates, which the Owner decides, in its sole discretion, to accept.
- IV.5.1.b The total of the bid amounts for the accepted Alternate(s) shall be added to, or deducted from, the Base Bid, as applicable, for determining the lowest Bidder.
- IV.5.1.c If two Bidders submit the same bid amount and both are determined to be responsive and responsible, West Virginia University may select one Bidder by the flip of a coin, which shall be conducted in the presence of both Bidders and shall be final.
- IV.5.1.c.i If one of the Bidders refuses to participate in, or fails to be present at, the flip of a coin, the remaining Bidder shall be selected.
- IV.5.2 A Bidder shall be considered responsive if the Bidder's Bid responds to the Contract Documents in all material respects and contains no irregularities or deviations from the Contract Documents that would affect the amount of the Bid or otherwise give the Bidder a competitive advantage.
- IV.5.2.a A Bid shall be rejected as non-responsive if the Bid contains a Bid Bond executed by a Surety not licensed in West Virginia or a Bid Bond that is otherwise determined to be insufficient by West Virginia University, including but not limited to not on the form as provided in the "Request for Bid Solicitation".
- IV.5.2.b If the lowest Bidder is non-responsive, the Bidder shall be notified according [IV.6.1](#), below.

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- IV.5.3 In determining whether a Bidder is responsible, factors to be considered include, without limitation:
- IV.5.3.a Preferences required by law, where applicable;
 - IV.5.3.b The experience of the Bidder;
 - IV.5.3.c The financial condition of the Bidder;
 - IV.5.3.d The conduct and performance of the Bidder on previous Contracts, including compliance with Equal Employment Opportunity in the Construction Industry, OSHA and Prevailing Wage laws;
 - IV.5.3.e The facilities of the Bidder;
 - IV.5.3.f The management skills of the Bidder; and
 - IV.5.3.g The Bidder's ability to execute the Contract properly, including past performance of the Bidder and the Subcontractors that the Bidder proposes to use on the Project.
- IV.5.4 The A/E or West Virginia University shall obtain from the lowest responsive Bidder any information West Virginia University determines appropriate to consideration of factors showing responsibility. If the lowest responsive Bidder is responsible, the Contract shall be awarded to that Bidder, unless all Bids are rejected. The Bidder shall provide all requested information within three (3) consecutive days of a request from the A/E of West Virginia University, or a longer period, if West Virginia University consents in writing.
- IV.5.5 If the lowest responsive Bidder is not responsible, West Virginia University shall evaluate the next lowest Bidder according to the procedures set forth in this [Article IV, Section 5](#) until the Contract is awarded, all Bids are rejected, or all responsive Bidders are determined to be not responsible.

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Section 6. Rejection of Bid

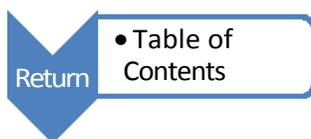
IV.6.1 If the lowest Bidder is not responsive or responsible, West Virginia University shall reject the Bid and notify the Bidder in writing by Certified Mail of the finding and the reasons therefor.

IV.6.2 Bidder notified in accordance with [IV.6.1](#) may object to its rejection by filing a written protest, which must be received by West Virginia University within five (5) consecutive days of the notification provided pursuant to [IV.6.1](#).

IV.6.3 Upon receipt of a timely protest, West Virginia University shall meet with the protesting Bidder to hear its objections.

IV.6.3.a No Contract award shall become final until after West Virginia University has met with all Bidders who have timely filed protests and the award of the Contract is affirmed.

IV.6.3.b If all protests are rejected, the Contract shall be awarded to the lowest responsive and responsible Bidder, or all Bids shall be rejected.

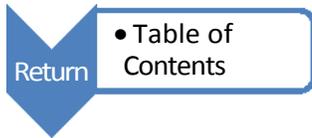


Section 7. Notice of Intent to Award

IV.7.1 West Virginia University shall notify the apparent successful Bidder that upon satisfactory compliance with all conditions precedent for execution of the Contract, within the time specified, the Bidder shall be awarded the Contract.

IV.7.2 West Virginia University reserves the right to rescind any Notice of Intent to Award if West Virginia University determines it issued the Notice of Intent to Award in error, or if the conditions precedent for execution of Contract set forth in [Article VII](#) are not met.

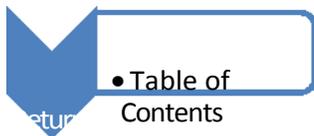
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Article V. WITHDRAWAL OF BID

Section 1. Withdrawal prior to Bid Opening

V.1.1 A Bidder may withdraw a Bid after West Virginia University receives the Bid, provided the Bidder makes a request in writing and West Virginia University receives the request prior to the time of the bid opening, as determined by West Virginia University.



Section 2. Late Bids, Late Withdrawals, and Late Modifications

V.2.1 The Bid shall remain valid and open for acceptance for a period of sixty (60) calendar days after the bid opening. Any bid, withdrawal or modification received after the date and time set for receipt of bids is late. No late bid, late modification, or late withdrawal will be considered. The clock in the University's Procurement, Contracting & Payment Services Office shall be considered the official timepiece used to determine whether the bid, withdrawal, or modification was late.

Section 3. Mistakes

V.2.2 Mistakes after Bid Opening but Before Award: Correction or withdrawal of a bid because of an inadvertent mistake in the bid requires careful consideration to protect the integrity of the competitive bidding process, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. A bid correction or withdrawal because of a mistake is permissible but only to the extent that it is not contrary to the interest of West Virginia University or the fair treatment of other bidders. When West Virginia University knows or has reason to conclude that a mistake has been or may have been made, a request shall be made for the bidder to confirm the bid. Situations in which confirmation should be requested include obvious or apparent errors on the face of the bid or a bid unreasonably lower (or higher) than the

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other bids submitted. Unit price shall be the governing factor if an error is made in extending the unit price. If the bidder alleges a mistake, the bid may be corrected or withdrawn if the conditions set forth below are met:

V.2.2.a Minor Informalities or Irregularities: Minor informalities or irregularities, or significant mistakes that can be waived or corrected without prejudice to other bidders, which are evident after examining the bid, are considered matters of form rather than substance; that is, the effect on price, quantity, quality, or terms and conditions is negligible. The Chief Procurement Officer may waive such informalities or irregularities or allow the bidder to correct such mistakes, depending on which is in the best interest of the University. An example is the lack of specifications on alternate bids. Additional specifications may be requested to make an accurate determination.

V.2.2.b Mistakes Where Intended Correct Bid Is Evident: If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

V.2.2.c Mistakes Where Intended Correct Bid Is Not Evident: A bidder may be permitted to withdraw a low bid if:

1. mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident,; or
2. the bidder submits proof of evidentiary value which clearly and convincingly demonstrates the mistake.

V.2.2.d Notice of a request to withdraw a Bid shall be made in writing filed with West Virginia University within two (2) business days after the bid opening. West Virginia University reserves the right to request the Bidder to submit evidence substantiating the Bidder's request to withdraw the Bid.

V.2.3 The Chief Procurement Officer may reject an erroneous bid after the bid opening, upon request of the bidder, if all of the following conditions exist:

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V.2.2.a An error was made that materially affected the bid or proposal;

V.2.2.b Rejection of the bid or proposal would not cause a hardship on the University other than losing an opportunity to receive materials, supplies, equipment, services or printing at a reduced cost; and

V.2.2.c Enforcement of the part of the bid or proposal in error would be unconscionable.

V.2.4 Mistakes Discovered After Award: Mistakes shall not be corrected after award of the contract except where the Chief Procurement Officer makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

V.2.5 If a Bidder withdraws its Bid under [Article V.2](#), West Virginia University may award the Contract to the next lowest responsive and responsible Bidder, or reject all Bids and advertise for other Bids. In the event West Virginia University advertises for other Bids, the withdrawing Bidder shall pay the costs, in connection with the re-bidding, of printing new Contract Documents, required advertising, and printing and mailing of notices to prospective Bidders, if West Virginia University finds that these costs would not have been incurred but for the withdrawal.

V.2.6 A Bidder may withdraw the Bidder's Bid at any time after the 60 day period described in [Article V.2.1](#) by giving written notice to West Virginia University if the Bidder has not previously received a notice of intent to award. Bidder may not withdraw its Bid anytime after a notice of intent to award has been sent to the Bidder by West Virginia University unless otherwise provided for by these instructions.

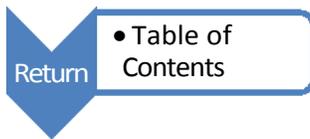


Section 4. Refusal to Accept Withdrawal

V.3.1 If West Virginia University contests the right of a Bidder to withdraw a Bid pursuant to [Article V.2.1](#), a hearing shall be held within ten (10) consecutive days after the bid opening and West Virginia University shall issue an order allowing or denying the claim of this right within five (5) consecutive days after the hearing is concluded. West Virginia University shall give the withdrawing Bidder timely notice of the time and place of the hearing.

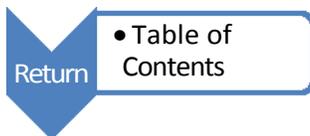
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- V.3.1.a West Virginia University shall make a stenographic record of all testimony, other evidence, and rulings on the admissibility of evidence presented at the hearing. The Bidder shall pay the costs of the hearing.
- V.3.1.b The ruling of West Virginia University shall be final and binding upon the Bidder.



Section 5. Refusal to Perform

- V.4.1 In the event West Virginia University denies the request for withdrawal and the Bidder refuses to perform the Contract, West Virginia University may reject all Bids or award the Contract to the next lowest responsive and responsible Bidder.



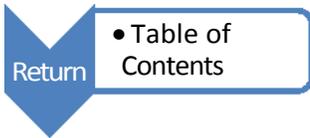
Section 6. Effect of Withdrawal

- V.5.1 A Bidder, who is permitted to withdraw a Bid under [V.2.1](#), shall not supply material or labor to, or perform a subcontract or other work for, the Bidder to whom the Contract is awarded; or otherwise benefit, directly or indirectly, from the performance of the Project for which the withdrawn Bid was submitted; without West Virginia University's prior written consent.

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West Virginia University
Procurement, Contracting & Payment Services
One Waterfront Place 3rd Floor PO Box 6024 Morgantown, WV 26506-6024

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Article VI. BID GUARANTY AND CONTRACT BOND

Section 1. Bid Guaranty

VI.1.1 The Bidder shall submit a Bid Guaranty as specified under [Article III.9.1a](#), with the Bidder's Bid, payable to West Virginia University, in the form of either:

VI.1.1.a The signed Bid Bond contained in the Contract Documents for an amount equal to 5% of the Base Bid plus all additive Alternates; or

VI.1.1.b The Bid Bond shall be issued by a Surety Company having a minimum of an "A- (minus)" rating from an accredited rating company such as A.M. Best. Documentation of the rating shall be included with the Bid Bond.

If box is checked the following in VI.1.1.c applies to bid:

VI.1.1.c For large projects (over \$5,000,000).

- Require all subcontractors over \$500,000 to be bonded by an A- or better rated surety
- After bids are awarded, the General Contractor is required to certify that all key subcontractors meet Contractor qualification requirements included in Division 1, Subcontractor Requirement

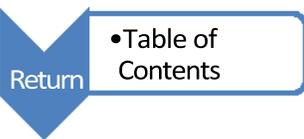
VI.1.2 The Bid Bond shall be in form and substance satisfactory to West Virginia University and shall serve as an assurance that upon acceptance of the Bid, the Bidder shall comply with all conditions precedent for Contract execution, within the time specified by West Virginia University.

VI.1.3 If the blank line on the Bid Guaranty or Contract Bond is not filled in, the penal sum shall be the full amount of the Base Bid plus all additive Alternates. If the blank line is filled in, the amount shall not be less than the full amount of the Base Bid plus all

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additive Alternates, stated in dollars and cents or as 5% of Bidder's Bid. In the event the blank line is filled in for an amount less than the full amount of the Base Bid plus all additive alternates, the Bid shall be rejected as non-responsive.

- VI.1.4 An authorized agent must sign the Bid Bond, and the Bidder shall provide a Power of Attorney from the Surety. A Surety authorized to transact business in the State of West Virginia must issue the Bond.



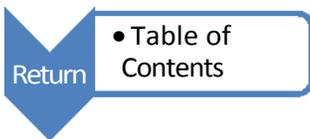
Section 2. Bond Forfeiture

- VI.2.1 If for any reason, other than as authorized by [Article V](#), the Bidder fails to execute the Contract Form, and West Virginia University awards the Contract to another Bidder, which West Virginia University determines is the lowest responsive and responsible Bidder:
- VI.2.1.a The Bidder who failed to execute the Contract Form is liable to West Virginia University for the difference between its Bid and the Bid of the next lowest responsive and responsible Bidder, or for a sum not to exceed 5% percent of Bidder's bid amount, whichever is less, not as a penalty but as liquidated damages.
- VI.2.2 If West Virginia University then awards a Contract to another Bidder, which West Virginia University determines is the lowest responsive and responsible Bidder and that Bidder fails or refuses to execute the Contract Form:
- VI.2.2.a The liability of the lowest responsive and responsible Bidder shall be the difference between the bid amount of the lowest responsive and responsible Bidder and another Bidder which West Virginia University determines is the lowest responsive and responsible Bidder, but not in excess of the liability specified in [Article VI.2.1.a](#);
- VI.2.2.b The liability on account of an award to the lowest responsive and responsible Bidder beyond the third lowest responsive and responsible Bidder shall be determined in like manner.

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VI.2.3 If West Virginia University does not award the Contract to another Bidder under [VI.2.2.a](#), but submits the Project for re-bidding:

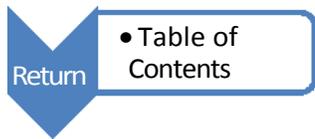
VI.2.3.a The Bidder failing or refusing to execute the Contract Form is liable to the West Virginia University for a sum not to exceed 5 percent of the Bidder's bid amount or the costs in connection with the resubmission of printing new Contract Documents, required advertising, and printing and mailing notices to prospective Bidders, whichever is less.



Section 3. Contract Bond

VI.3.1 Prior to signing the Contract Form, the Bidder shall provide Bond(s) required by law issued by a Surety licensed to do business in the State of West Virginia in form and substance satisfactory to West Virginia University. (See [VII.1.3](#))

VI.3.2 The Bond must be in the full amount of the Contract to indemnify West Virginia University against all direct and consequential damages suffered by failure of the Contractor to perform according to the provisions of the Contract and in accordance with the Plans, Specifications, details, and bills of material therefore and pay all lawful claims of Subcontractors, Material Suppliers, and laborers for labor performed or materials furnished in performing and completing the Contract.



Article VII. CONTRACT AWARD AND EXECUTION

Section 1. Conditions Precedent for Execution of Contract

VII.1.1 The successful Bidder must submit or, if applicable, meet the obligation set-forth in this Article VII to West Virginia University before the execution of any Contract with Bidder.

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- VII.1.2 Contract Time. The successful Bidder, as a condition of the Contract, agrees that all Work is to be Substantially Complete within the Contract Time stated in the Request for Bid Solicitation.

West Virginia University will suffer financial loss if the Work is not Substantially Complete within the Contract Time. Therefore, at the discretion of West Virginia University, liquidated damages may be applicable to the Work and such terms and conditions shall be identified in the Request for Bid Solicitation and any Contract Documents issued pursuant thereto. The Bidder does hereby agree to such terms and conditions upon submitting a Bid pursuant to any Request for Bid Solicitation issued by West Virginia University.

- VII.1.3 Performance, Payment and Maintenance Bonds. The successful Bidder will be required to furnish, at the Bidder's expense, a Performance Bond and a Labor and Material Payment Bond for One Hundred Percent (100%) of the contract award and, if applicable, a two (2)-year roofing Maintenance Bond for the full value of the roofing system. Bonds must be executed by a company licensed to transact surety insurance in the State of West Virginia.

Bonds shall be written on the State of West Virginia approved forms bound in the Project Manual or provided with the Request for Bid Solicitation. No other form of bonds will be accepted by West Virginia University.

- VII.1.4 Proof of West Virginia Workers' Compensation Coverage. The successful Bidder shall be in compliance with all rules and regulations of the State of West Virginia Workers' Compensation Fund and have all premiums paid and reports filed currently. The successful Bidder will be required to furnish a copy of their proof of coverage prior to execution of any Contract relating to the Request for Bid.

- VII.1.5 Certificate of Insurance (ACORD form is acceptable) and copy of additional insured endorsement. Bidder, at its own expense, shall procure and maintain for the duration of the work insurance requirements as required by the Contract Documents. Bidder shall provide such other insurance as may be required by law. West Virginia University shall be named as an additional insured on all liability policies. Bidder shall provide a certificate of insurance confirming the minimum coverage limits specified in the Contract Documents and documenting additional insured status for West Virginia University under each liability policy. All policies shall provide a minimum of (30) calendar day's written notice prior to cancellation.

- VII.1.6 Subcontractor Insurance. Bidder shall verify that all contractors and subcontractors of Bidder performing any work pursuant to any Contract entered into due to this Request

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v: 304.293.5711 f: 304.293.8152

for Bid have sufficient liability and worker's compensation insurance and shall obtain certificates evidencing such insurance. In addition, Bidder shall verify that all contractors and subcontractors to Bidder performing any work pursuant to any Contract are properly licensed under the laws of the State of West Virginia or any other applicable laws to do the work that such subcontractor is hired to complete.

- VII.1.7 The successful Bidder shall furnish a copy of its contractor's license prior to issuance of a Purchase Order/Contract.
- VII.1.8 Vendor Registration. All Bidders and/or Contractors must be registered vendors with the State of West Virginia before conducting business. All Bidders must be registered prior to issuance of a Purchase Order/Contract and will be responsible for and must pay any registration fee. All Bidders are encouraged to contact West Virginia University Procurement, Contracts & Payment Services at phone number 304-293-5711 for further information.
- VII.1.9 Wage Bond. If applicable, Bidders engaged in construction work in West Virginia less than five (5) years preceding the date of the Bid shall post a wage bond with the West Virginia Department of Labor. Proof of such compliance may be required by West Virginia University.
- VII.1.10 West Virginia Jobs Act. All Bidders, when applicable, shall comply with the provisions of the West Virginia Jobs Act, West Virginia Code § 21-1C-1 et seq. It will be the contractor's responsibility to file copies of certified payrolls with Division of Labor, copy West Virginia University's Department of Procurement, Contracts and Payment Services, and as otherwise indicated to other representatives of West Virginia University.
- VII.1.11 West Virginia Alcohol and Drug-Free Workplace Act. West Virginia University may not award a contract, as defined under West Virginia Code §21-1D-1 et. Seq., to a contractor who does not have a written plan for a drug-free workplace and who has not submitted that plan to West Virginia University in a timely fashion; therefore, the successful Bidder must meet all requirements of West Virginia Code §21-1D-1 et. seq., if applicable.
- VII.1.12 Foreign Corporation. If a Bidder is a foreign corporation, e.g., not incorporated under the laws of West Virginia, it must submit a Certificate of Good Standing from the West Virginia Secretary of State showing the right of the Bidder to do business in the State of West Virginia.

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VII.1.13 Time of Delivery of Contract and Supporting Documents. The successful Bidder shall deliver the required bonds and all other Contract Documents, including but not necessarily limited to, Certificates of Insurance and Contractor's Licenses within fifteen (15) consecutive calendar days after receipt of West Virginia University notice of intent to award a contract. Failure to do so may cause: (1) forfeiture of the Bidder's security deposited with his Bid as liquidated damages, not a penalty, or (2) reduction of contract performance time proportionate to the additional time for Bidder to fully comply with this section.

VII.1.14 Experience Modification Rate (EMR). All contractors and sub-contractors are required to have an Experience Modification Rate (EMR) of less than or equal to 1.0 at the time of bid. This requirement applies to all contractors working on site. The West Virginia EMR shall be used to meet this requirement. If the contractor does not have EMR in West Virginia, then the EMR from the contractor's state shall be used.



Section 2. Time Limits

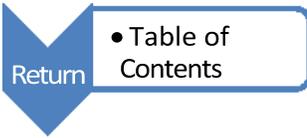
VII.2.1 West Virginia University's failure to award the Contract and execute the Contract Form within 60 days of the bid opening invalidates the entire bid process and all Bids submitted, unless the time is extended by written consent of the apparent lowest responsive and responsible Bidder and West Virginia University.

VII.2.1.a If West Virginia University awards the Contract within 60 days of the bid opening, increases in material, labor, and subcontract costs shall be borne by the Bidder.

VII.2.1.b If failure to execute the Contract within 60 days of the bid opening is due to matters for which the West Virginia University is solely responsible, West Virginia University may authorize payment of verifiable increased costs in materials, labor, or subcontracts. Notwithstanding the foregoing, West Virginia University may cancel any or all portions of such Bid for convenience.

VII.2.1.c If failure to execute the Contract within 60 days of the bid opening is due to matters for which the Contractor is responsible, West Virginia University shall not grant a request for increased costs.

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Section 3. Notice to Proceed

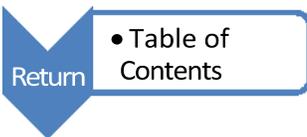
VII.3.1 West Virginia University shall issue a Notice to Proceed to the Contractor, which establishes the date for commencement and the calendar days allocated or actual calendar day for Contract Completion. Any Work performed or any materials contracted for prior to receipt of West Virginia University's Notice to Proceed shall be at the Bidder's absolute and sole risk. Within ten (10) calendar days of the date of the Notice to Proceed, the Contractor shall furnish the following submittals to the A/E and/or West Virginia University:

VII.3.1.a Schedule of Values

VII.3.1.b Preliminary schedule of Shop Drawings and other Submittals

VII.3.1.c Subcontractor and Material Supplier Declaration form

VII.3.1.d Qualifications of proposed project manager(s) and superintendent(s) and a comprehensive resume of each.



Section 4. Wage Rates

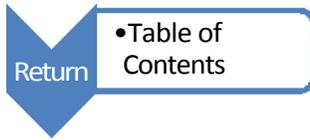
VII.4.1 The successful Bidder and all subcontractors must pay West Virginia Department of Labor Wage Rates pursuant to West Virginia Code § 21-5-1, et seq. established for the county where the work is performed.

VII.4.2 The Bidder shall not be entitled to an increase in the Contract Sum on account of an increase in prevailing wage rates, except as otherwise provided by Applicable Law. The Bidder is responsible for compliance of its Subcontractors with prevailing wage requirements.

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Article VIII. APPENDIX

[Sample Bid Bond](#)

[Sample Purchasing Affidavit](#)

[Sample West Virginia University Alcohol and Drug-Free Workplace Act Affidavit](#)

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KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned,

_____ of _____, _____, as Principal, and _____ of _____, _____, a corporation organized and existing under the laws of the State of _____ with its principal office in the City of _____, as Surety, are held and firmly bound unto the West Virginia University, as Obligee, in the penal sum of _____ (\$ _____) for the payment of which, well and truly to be made, we jointly and severally bind ourselves, our heirs, administrators, executors, successors and assigns.

The Condition of the above obligation is such that whereas the Principal has submitted to West Virginia University, a certain bid or proposal, attached hereto and made a part hereof, to enter into a contract in writing for:

NOW THEREFORE,

(a) If said bid shall be rejected, or

(b) If said bid shall be accepted and the Principal shall enter into a contract in accordance with the bid or proposal attached hereto and shall furnish any other bonds and insurance required by the bid or proposal, and shall in all other respects perform the agreement created by the acceptance of said bid, then this obligation shall be null and void, otherwise this obligation shall remain in full force and effect. It is expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated

The Surety, for the value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Obligee may accept such bid, and said Surety does hereby waive notice of any such extension

IN WITNESS WHEREOF, Principal and Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be affixed hereunto and these presents to be signed by their proper officers, this ____ day of _____, 20__

Principal Corporate Seal

Surety Corporate Seal

(Name of Principal)

By _____
(Must be President or Vice President)

(Title)

(Name of Surety)

Attorney-in-Fact

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Sample

RFQ No. _____

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

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

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

DEFINITIONS:

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

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

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

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

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: _____

Authorized Signature: _____ Date: _____

State of _____

County of _____, to-wit:

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

My Commission expires _____, 20__.

AFFIX SEAL HERE

NOTARY PUBLIC _____

Purchasing Affidavit (Revised 07/01/2012)

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West Virginia University
Procurement, Contracting & Payment Services
One Waterfront Place 3rd Floor PO Box 6024 Morgantown, WV 26506-6024

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v: 304.293.5711 f: 304.293.8152

West Virginia University
DRUG FREE WORKPLACE CONFORMANCE AFFIDAVIT
West Virginia Code §21-1D-5
Request for Bid# #####

STATE OF #####

COUNTY OF #####, TO-WIT:

I, #####, after being first duly sworn, depose and state as follows:

1. I am an employee of _____;
(Company Name) and,
2. I do hereby attest that _____
(Company Name)

maintains a valid written drug free workplace policy and that such policy is in compliance with **West Virginia Code §21-1D-5**.

The above statements are sworn to under the penalty of perjury.

(Company Name)

By: _____

Title: _____

Date: _____

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

By Commission expires _____

(Seal)

(Notary Public)

THIS AFFIDAVIT MUST BE SUBMITTED WITH THE BID IN ORDER TO COMPLY WITH WV CODE PROVISIONS. FAILURE TO INCLUDE THE AFFIDAVIT WITH THE BID SHALL RESULT IN DISQUALIFICATION OF THE BID.

ATTACHMENT B
West Virginia Prevailing Wage Requirements

1. Prevailing Wage.

In accordance with West Virginia Code § 21-5A-1 *et seq.* (2009) West Virginia Prevailing Wage Act, hereinafter the "Act", Contractor agrees to pay the wages of laborers, workers or mechanics in the various branches or classes of the construction to be performed pursuant to this Agreement a wage of no less than the prevailing hourly rate of wages for work of a similar character in the locality in which the construction is performed.

2. Wage Rates.

West Virginia University has ascertained from the State Commissioner of Labor ("Commissioner") the fair minimum rate of wages, including fair minimum overtime and holiday pay, to be paid to the laborers, workers or mechanics in the various branches or classes of the construction to be performed under this Agreement. This schedule of wages is attached to and made part of this Agreement as Attachment C.

Payment of compensation to workers on a lump sum basis, or a piece work system for work performed on this Project shall not be permitted unless such piece rate method or lump sum basis, at the time of payment, is computed on an hourly basis and is not less than the fair minimum wage rate determined to be prevailing.

3. Compliance.

The Contractor and all subcontractors shall comply with the Act, which in part, requires the following:

- A. Contractor and all subcontractors shall pay all workers employed or working on this Project unconditionally, regardless of whether any contractual relationship exists or which may be alleged to exist between any contractor, subcontractor(s), either directly or indirectly, except authorized deductions. The full amounts due, less hold back pay of no more than three (3) days, shall be paid and shall be computed at the rates applicable to the time worked in the appropriate classification.
- B. No person, whether personally or for another shall, request, demand or receive, either before or after workers are employed on this Project, money or other thing of value in order to pay back, return, donate, contribute or give any part or all of their wage or thing of value, to any person, upon the statement, representation or understanding that failure to comply with such request or demand will prevent them or any one of them from procuring or retaining employment.
- C. At all times during the performance of this Agreement, Contractor shall post in a prominent and easily accessible place at the work site a clearly legible statement of all fair minimum wage rates to be paid the several branches or classes of skilled laborers, workers and mechanics employed on this Project. The posted notice of wage rates must contain the following information:
 1. Name of Project;
 2. Name of public authority for which it is being constructed;
 3. The crafts and classifications of workers listed in the Commissioner's fair minimum wage rate determination for the particular locality;
 4. The fair minimum wage rates determined for each craft and classification; and
 5. A statement advising workers that if they have been paid less than the fair minimum wage rate for their job classification or that the Contractor and/or subcontractor or subcontractors are not complying with the Act or its implementing regulations in any manner whatsoever, such worker may recover from the noncompliant Contractor and/or subcontractor(s) the difference between the amount actually paid and the posted fair minimum wage rate of wages, as well as a penalty equal in amount to such difference and a reasonable attorney's fee. The statement must inform the workers that the limitation to such civil action is three (3) years.

AFFADAVIT
West Virginia Division of Labor
Prevailing Wage Act Compliance
West Virginia Code § 21-5-A-1 et seq. (2009)

STATE OF _____

COUNTY OF _____, TO-WIT:

I, _____, after being first duly sworn, depose and state as follows:

1. I am a representative of _____ ; and,
(Company Name)

2. I do hereby attest that _____
(Company Name)

has been awarded a contract subject to West Virginia Code § 21-5-A-1 et seq. (2009) and the rules and regulations promulgated thereto by the Commissioner of Labor under W. Va. Code St. R. 42-7-§ 4 (2010), and that:

a. The name of the Project was _____ ;

b. The Contract/PO # assigned to this Project was N/A _____ ;

c. The WV State Agency Issuing the Contract was _____ ;

d. The amount of the Contract is _____ ; and

e. all workers have been paid wages in strict conformity with the provisions as prescribed by
 West Virginia State Code § 21-5A-1 et seq. (2009) and the rules and regulations promulgated thereto by the Commissioner of Labor under W. Va. Code St. R. 42-7-§ 4 (2010); or

all workers have been paid wages in strict conformity with the provisions as prescribed by West Virginia Code § 21-5A-1 et seq. (2009) and the rules and regulations promulgated thereto by the Commissioner of Labor under W. Va. Code St. R. 42-7-§ 4 (2010) except the wages due and owing each workers respectively as attached hereto. (Attach and Sign document showing itemized wages due and owing by specific worker).

The above statements are sworn to under the penalty of perjury.

(Notary Seal)

Company Name

By _____

Title

Date

Taken, subscribed and sworn before me this _____ day of _____, _____

My Commission expires _____

(Notary Public)

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____
(Contractor name, complete address including ZIP Code and legal title)

as Principal, hereinafter called Contractor, and _____
(Surety name and complete address including ZIP Code)

_____ a corporation organized and existing under
the laws of the State of _____, with its principal office in the City of _____
as Surety, hereinafter called Surety, are held firmly bound unto _____
(Owner name, complete address including ZIP Code and legal title)

as Obligee, hereinafter called Owner, in the amount of _____
Dollars (_____), for the payment whereof Contractor and Surety bind themselves, their heirs, executors,
administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____
_____ entered into a contract with Owner for _____
_____ in accordance with drawings and specifications prepared by _____

which contract is by reference made a part hereof, and is hereinafter referred to as the CONTRACT.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Contractor shall, promptly and faithfully Perform and CONTRACT,
then this obligation shall be null and void, otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the CONTRACT, the Owner having performed Owner's obligations
thereunder, the Surety may promptly remedy the default, or shall promptly:

1. Complete the CONTRACT in accordance with its terms and conditions, and
2. Shall save the Owner harmless from any claims, judgments, or liens arising from the Surety's failure to either remedy the default or to
complete the CONTRACT in accordance with its terms and conditions in a timely manner.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the successors of
Owner.

Signed and sealed this * _____ day of _____ 20 _____ .

Principal Raised Corporate Seal (MUST BE AFFIXED)

(Contractor Name) (Seal)

BY: _____ (Seal)
(Must be President, Vice President, Owner, Partner, Manager or Member)

(Title)

Surety Raised Corporate Seal (MUST BE AFFIXED)

(Surety)

NOTE: Raised Corporate Seals are mandatory.
Please attach Power of Attorney.

BY: _____ (Seal)

NOTE: Applicable sections of attached acknowledgments must be
completed and returned as part of the bond.

*Power of Attorney must be certified on this date or later.

ACKNOWLEDGMENTS

Acknowledgment by Principal if individual or Partnership

1. STATE OF _____
2. County of _____ to-wit:
3. I, _____, a Notary Public in and for the
4. county and state aforesaid, do hereby certify that _____
whose name is signed to the foregoing writing, has this day acknowledged the same before me in my said county.
5. Given under my hand this _____ day of _____ 20 _____
6. Notary Seal 7. _____
(Notary Public)
8. My commission expires on the _____ day of _____ 20 _____

Acknowledgment by Principal if Corporation

9. STATE OF _____
10. County of _____ to-wit:
11. I, _____, a Notary Public in and for the
12. county and state aforesaid, do hereby certify that _____
13. who as, _____ signed the foregoing writing for
14. _____ a corporation,
has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.
15. Given under my hand this _____ day of _____ 20 _____
16. Notary Seal 17. _____
(Notary Public)
18. My commission expires on the _____ day of _____ 20 _____

Acknowledgment by Surety

19. STATE OF _____
20. County of _____ to-wit:
21. I, _____, a Notary Public in and for the
22. county and state aforesaid, do hereby certify that _____
23. who as, _____ signed the foregoing writing for
24. _____ a corporation,
has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.
25. Given under my hand this _____ day of _____ 20 _____
26. Notary Seal 27. _____
(Notary Public)
28. My commission expires on the _____ day of _____ 20 _____

APPROVED AS TO FORM PRIOR TO SIGNATURE

THIS 20th DAY OF August 2009.

Attorney General

By: *Sam E. Wayfield*
(Deputy Attorney General)

ACKNOWLEDGMENT PREPARATION INSTRUCTIONS

1. IF PRINCIPAL IS AN INDIVIDUAL OR PARTNERSHIP, HAVE NOTARY COMPLETE LINES (1) THROUGH (8).
2. IF PRINCIPAL IS A CORPORATION, HAVE NOTARY COMPLETE LINES (9) through (18).
3. SURETY MUST HAVE NOTARY COMPLETE LINES (19) through (28).
4. **Notaries must:**

ACKNOWLEDGMENT BY PRINCIPAL, IF INDIVIDUAL OR PARTNERSHIP

1. Enter name of State.
2. Enter name of County.
3. Enter name of Notary Public witnessing transactions.
4. Enter name of principal covered by bond if individual or partnership. (Must be Owner or General Partner of Sole Proprietorship or Partnership)
5. Notary enters date bond was witnessed. Must be the same as or later than signature date.
6. Affix Notary Seal.
7. Notary affixes his/her signature.
8. Notary enters commission expiration date.

ACKNOWLEDGMENT BY PRINCIPAL IF CORPORATION

9. Enter name of State.
10. Enter name of County.
11. Enter name of Notary Public witnessing transactions.
12. Enter name of Corporate Officer signing bond.
13. Enter Title of Corporate Officer signing bond. (Must be President or Vice President of Corporation; Manager or Managing Member of Limited Liability Company)
14. Enter name of Company or Corporation.
15. Notary enters date bond was witnessed. Must be the same as or later than signature date.
16. Affix notary Seal.
17. Notary affixes his/her signature.
18. Notary enters commission expiration date.

ACKNOWLEDGMENT BY SURETY

19. Enter name of State.
20. Enter name of County.
21. Enter name of Notary Public witnessing transactions.
22. Enter name of person having power of attorney to bind Surety Company.
23. Enter Title of person binding Surety Company.
24. Enter name of Insurance Company (Surety).
25. Notary enters date bond was witnessed. Must be the same as or later than signature date.
26. Affix Notary Seal.
27. Notary affixes his/her signature.
28. Notary enters commission expiration date.

POWER OF ATTORNEY INSTRUCTIONS

Power of attorney for surety must be attached showing that it was in full force and effect on signature date indicated on the face of the bond. A raised corporate seal must also be affixed to the Power of Attorney form.

- a. Name of attorney in fact must be listed.
- b. Power of Attorney may not exceed imposed limitations.
- c. Certificate date, the signature date of bond must be entered.
- d. Signature of authorizing official must be affixed. (Signature may be facsimile).
- e. **Raised seal must be affixed.**

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____
(Contractor name, complete address including ZIP Code and legal title)

as Principal, hereinafter called Contractor, and _____
(Surety name and complete address including ZIP Code)

_____ a corporation organized and existing under
the laws of the State of _____, with its principal office in the City of _____
as Surety, hereinafter called Surety, are held firmly bound unto _____
(Owner name, complete address including ZIP Code and legal title)

as Obligee, hereinafter called Owner, for the use and benefit of claimants as herein below defined in the amount of
_____ Dollars (_____),
for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally,
firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____
_____ entered into a contract with Owner for

_____ in accordance with drawings and specifications prepared by _____

which contract is by reference made a part hereof, and is hereinafter referred to as the CONTRACT.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Contractor shall, well and truly perform the contract, and shall pay off, satisfy and discharge all claims of subcontractors, labors, materialmen and all persons furnishing material or doing work pursuant to the CONTRACT and shall save Owner and its property harmless from any and all liability over and above the contract price thereof, between the Owner and the Contractor, for all of such labor and material, and shall fully pay off and discharge and secure the release of any and all mechanics liens which may be placed upon said property by any such subcontractor, laborer or materialmen, then this obligation shall be null and void. Otherwise, it shall remain in full force and effect.

Signed and sealed this * _____ day of _____ 20 _____ .

Principal Raised Corporate Seal (MUST BE AFFIXED)

(Contractor Name) (Seal)

BY: _____ (Seal)
(Must be President, Vice President, Owner, Partner, Manager or Member)

Surety Raised Corporate Seal (MUST BE AFFIXED)

(Title)

(Surety)

BY: _____ (Seal)

NOTE: Raised Corporate Seals are mandatory.
Please attach Power of Attorney.

NOTE: Applicable sections of attached acknowledgments
must be completed and returned as part of the bond.

*Power of Attorney must be certified on this date or later.

ACKNOWLEDGMENTS

Acknowledgment by Principal if individual or Partnership

1. STATE OF _____
2. County of _____ to-wit:
3. I, _____, a Notary Public in and for the
4. county and state aforesaid, do hereby certify that _____
whose name is signed to the foregoing writing, has this day acknowledged the same before me in my said county.
5. Given under my hand this _____ day of _____ 20 _____
6. Notary Seal 7: _____
(Notary Public)
8. My commission expires on the _____ day of _____ 20 _____

Acknowledgment by Principal if Corporation

9. STATE OF _____
10. County of _____ to-wit:
11. I, _____, a Notary Public in and for the
12. county and state aforesaid, do hereby certify that _____
13. who as, _____ signed the foregoing writing for
14. _____ a corporation,
has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.
15. Given under my hand this _____ day of _____ 20 _____
16. Notary Seal 17: _____
(Notary Public)
18. My commission expires on the _____ day of _____ 20 _____

Acknowledgment by Surety

19. STATE OF _____
20. County of _____ to-wit:
21. I, _____, a Notary Public in and for the
22. county and state aforesaid, do hereby certify that _____
23. who as, _____ signed the foregoing writing for
24. _____ a corporation,
has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.
25. Given under my hand this _____ day of _____ 20 _____
26. Notary Seal 27: _____
(Notary Public)
28. My commission expires on the _____ day of _____ 20 _____

APPROVED AS TO FORM PRIOR TO SIGNATURE

THIS 20th DAY OF August 2009.

Attorney General

By: *Sam E. Wayfield*
(Deputy Attorney General)

ACKNOWLEDGMENT PREPARATION INSTRUCTIONS

1. IF PRINCIPAL IS AN INDIVIDUAL OR PARTNERSHIP, HAVE NOTARY COMPLETE LINES (1) THROUGH (8).
2. IF PRINCIPAL IS A CORPORATION, HAVE NOTARY COMPLETE LINES (9) THROUGH (18).
3. SURETY MUST HAVE NOTARY COMPLETE LINES (19) THROUGH (28).
4. **Notaries must:**

ACKNOWLEDGMENT BY PRINCIPAL, IF INDIVIDUAL OR PARTNERSHIP

1. Enter name of State.
2. Enter name of County.
3. Enter name of Notary Public witnessing transactions.
4. Enter name of principal covered by bond if individual or partnership. (Must be Owner or General Partner of Sole Proprietorship or Partnership)
5. Notary enters date bond was witnessed. Must be the same as or later than signature date.
6. Affix Notary Seal.
7. Notary affixes his/her signature.
8. Notary enters commission expiration date.

ACKNOWLEDGMENT BY PRINCIPAL IF CORPORATION

9. Enter name of State.
10. Enter name of County.
11. Enter name of Notary Public witnessing transactions.
12. Enter name of Corporate Officer signing bond.
13. Enter Title of Corporate Officer signing bond. (Must be President or Vice President of Corporation; Manager or Managing Member of Limited Liability Company)
14. Enter name of Company or Corporation.
15. Notary enters date bond was witnessed. Must be the same as or later than signature date.
16. Affix notary Seal.
17. Notary affixes his/her signature.
18. Notary enters commission expiration date.

ACKNOWLEDGMENT BY SURETY

19. Enter name of State.
20. Enter name of County.
21. Enter name of Notary Public witnessing transactions.
22. Enter name of person having power of attorney to bind Surety Company.
23. Enter Title of person binding Surety Company.
24. Enter name of Insurance Company (Surety).
25. Notary enters date bond was witnessed. Must be the same as or later than signature date.
26. Affix Notary Seal.
27. Notary affixes his/her signature.
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POWER OF ATTORNEY INSTRUCTIONS

Power of attorney for surety must be attached showing that it was in full force and effect on signature date indicated on the face of the bond. A raised corporate seal must also be affixed to the Power of Attorney form.

- a. Name of attorney in fact must be listed.
- b. Power of Attorney may not exceed imposed limitations.
- c. Certificate date, the signature date of bond must be entered.
- d. Signature of authorizing official must be affixed. (Signature may be facsimile).
- e. **Raised seal must be affixed.**

MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____
(Contractor name, complete address including ZIP Code and legal title)

as Principal, hereinafter called Contractor, and _____
(Surety name and complete address including ZIP Code)

_____ a corporation organized and existing under
the laws of the State of _____, with its principal office in the City of _____

as Surety, hereinafter called Surety, are held firmly bound unto _____
(Owner name, complete address including ZIP Code and legal title)

as Obligee, hereinafter called Owner, in the amount of _____
Dollars (_____), for the payment whereof Contractor and Surety bind themselves, their heirs, executors,
administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____
_____ entered into a contract with Owner for _____

in accordance with drawings and specifications prepared by _____

which contract is by reference made a part hereof, and is hereinafter referred to as the CONTRACT.
NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Contractor shall, for a period of two (2) years from and after the date
of completion and acceptance of same by Owner, replace any and all defects arising in the Work, whether resulting from defective materials or
defective workmanship, after such period this obligation shall be null and void; otherwise it will remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.
Whenever Contractor shall be, and declared by Owner to be in default under the CONTRACT, the Owner having performed Owner's obligations
thereunder, the Surety may promptly remedy the default, or shall promptly:

1. Complete the CONTRACT in accordance with its terms and conditions, and
2. Shall save the Owner harmless from any claims, judgments, or liens arising from the Surety's failure to either remedy the default or to
complete the CONTRACT in accordance with its terms and conditions in a timely manner.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the successors of
Owner.

Signed and sealed this * _____ day of _____ 20 _____ .

Principal Raised Corporate Seal (MUST BE AFFIXED)

(Contractor Name)

BY: _____ (Seal)
(Must be President, Vice President, Owner, Partner, Manager or Member)

Surety Raised Corporate Seal (MUST BE AFFIXED)

(Title)

(Surety)

BY: _____ (Seal)

NOTE: Raised Corporate Seals are mandatory.
Please attach Power of Attorney.

NOTE: Applicable sections of attached acknowledgments
must be completed and returned as part of the bond.

*Power of Attorney must be certified on this date or later.

ACKNOWLEDGMENTS

Acknowledgment by Principal if individual or Partnership

1. STATE OF _____
2. County of _____ to-wit:
3. I, _____, a Notary Public in and for the
4. county and state aforesaid, do hereby certify that _____
whose name is signed to the foregoing writing, has this day acknowledged the same before me in my said county.
5. Given under my hand this _____ day of _____ 20 _____
6. Notary Seal 7. _____
(Notary Public)
8. My commission expires on the _____ day of _____ 20 _____

Acknowledgment by Principal if Corporation

9. STATE OF _____
10. County of _____ to-wit:
11. I, _____, a Notary Public in and for the
12. county and state aforesaid, do hereby certify that _____
13. who as, _____ signed the foregoing writing for
14. _____ a corporation,
has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.
15. Given under my hand this _____ day of _____ 20 _____
16. Notary Seal 17. _____
(Notary Public)
18. My commission expires on the _____ day of _____ 20 _____

Acknowledgment by Surety

19. STATE OF _____
20. County of _____ to-wit:
21. I, _____, a Notary Public in and for the
22. county and state aforesaid, do hereby certify that _____
23. who as, _____ signed the foregoing writing for
24. _____ a corporation,
has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.
25. Given under my hand this _____ day of _____ 20 _____
26. Notary Seal 27. _____
(Notary Public)
28. My commission expires on the _____ day of _____ 20 _____

APPROVED AS TO FORM PRIOR TO SIGNATURE

Attorney General

THIS 20th DAY OF August 2009.

By: *Dawn E. Wayfield*
(Deputy Attorney General)

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- e. **Raised seal must be affixed.**

ATTACHMENT A

State of West Virginia

Supplementary Conditions to AIA Document A201-2007 General Conditions of the Contract for Construction

The following Supplementary Conditions modify the General Conditions of the Contract for Construction, AIA Document A201, 2007 Edition. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect.

ARTICLE 1 GENERAL PROVISIONS

ANY PROVISION OF THE AIA DOCUMENT A101-2007 STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR THAT CONFLICTS WITH THESE SUPPLEMENTARY CONDITIONS IS NULL AND VOID.

Add the following Section to Article 1:

§1.05 PARTY RELATIONS

§1.05 The Owner and their consultants, the Architect and their Consultants, and the Contractor and their Subcontractors agree to proceed with the Work on the basis of mutual trust, good faith and fair dealing.

§1.1 BASIC DEFINITIONS

§1.1.1 THE CONTRACT DOCUMENTS

§1.1.1 Delete the last sentence of this Section and substitute the following:

The Contract Documents also include the Bidding Documents (Advertisement or Invitation to Bid, Request for Quotations/Bids, Instructions to Bidders, Form of Proposal, Bid Bond and Sample Forms), Performance Bond, Payment Bond, Maintenance Bond (if applicable), Certificates of Insurance, Special Provisions For Disadvantaged and Women Business Enterprise Utilization (if bound herein), and West Virginia Department of Labor Wage Rates.

§1.1.2 THE CONTRACT

§1.1.2 Make the following changes to Section 1.1.2:

In the last sentence, insert "and the Contractor" after "The Architect" and delete "the Architect's" and insert "their respective".

ARTICLE 2 OWNER

§2.1 GENERAL

§2.1.2 Delete Section 2.1.2 in its entirety.

§2.1 Add the following Section to 2.1:

§2.1.3 The Owner reserves the right to maintain a full time project representative at the site who shall have such duties and responsibilities as the Owner may assign. The Owner's representative shall not interfere with or be responsible for the Contractor's means, methods, techniques, sequences and procedures for accomplishing the Work.

§2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§2.2.3 Delete the last sentence of Section 2.2.3 and substitute the following:

The Contractor shall confirm the locations of each utility. If the Owner has provided geotechnical and other tests to determine subsurface conditions, the Owner will provide such documents to the Contractor; the Contractor acknowledges that it will make no claims for any subsurface or any other conditions revealed by these tests.

§2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

§2.4 Delete the third sentence of Section 2.4.

ARTICLE 3 CONTRACTOR

§3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§3.2.2 Add the following sentence to the end of Section 3.2.2:

Claims by Contractor resulting from its failure to familiarize itself with the site or pertinent documents shall be deemed waived.

§3.2.3 Delete Section 3.2.3 in its entirety and substitute the following:

§3.2.3 The Contractor acknowledges its continuing duty to review and evaluate the Construction Documents during performance of its services and shall immediately notify the Owner and the Architect about any problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents; and variances it discovers between the Construction

ATTACHMENT A

Documents and applicable laws, statutes, building codes, rules and regulations.

§ 3.2.4 Add the following clauses to Section 3.2.4:

§3.2.4.1 If the Contractor performs any Work which it knows or should have known involves a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Construction Documents; or a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations, without notifying the Owner and the Architect prior to receiving written authorization from the Architect to proceed, the Contractor shall be responsible for the consequences of such performance.

§3.2.4.2 Before ordering any materials or doing any Work, the Contractor and Subcontractors shall verify all measurements at the site and shall be responsible for the correctness of same. Discrepancies shall be reported in writing to the Architect prior to proceeding with the Work. No extra charge or compensation will be entertained due to differences between actual measurements and dimensions indicated on the drawings, if such differences do not result in a change in the scope of Work or if the Architect failed to receive written notice before the Work was performed.

§3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§3.3.1 Make the following changes to Section 3.3.1:

In the last sentence, delete the word "solely" the first time it appears and insert at the end of this sentence "unless the Contractor is grossly negligent."

§3.4 LABOR AND MATERIALS

§3.4.1 Add the following clauses to Section 3.4.1:

§3.4.1.1 In accordance with West Virginia Code §5-19-1 *et seq.*, every contract and subcontract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works, where the cost is more than \$50,000 and, in the case of steel only, where the cost of steel is more than \$50,000 or where more than 10,000 pounds of steel are required, the State will accept only aluminum, glass or steel products produced in the United States. In addition, items of machinery or equipment purchased for use at the site of public works, shall be made of domestic aluminum, glass or steel, unless the cost of the product is less than \$50,000 or less than 10,000 pounds of steel are used in the public works project.

§3.4.1.2 Foreign made aluminum, glass or steel products may be accepted only if the cost of domestic products is found to be unreasonable. Such cost is unreasonable if it is twenty percent (20%) or more higher than the bid price for foreign made products. If the domestic aluminum, glass or steel products to be supplied or produced are in a "substantial labor surplus area," as defined by the

United States Department of Labor, foreign made products may be supplied only if domestic products are thirty percent (30%) or more higher in price than the foreign made products.

§3.4.1.3 If, prior to the award of a contract under the above provisions, the spending officer of the spending unit determines that there exists a bid for like foreign aluminum, glass or steel that is reasonable and lower than the lowest bid for domestic products, the spending officer may request in writing a reevaluation and reduction in the lowest bid for such domestic products. All vendors must indicate in their bid if they are supplying foreign aluminum, glass or steel.

§3.4.1.4 PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS

.1 Except when authorized by the director of the Purchasing Division pursuant to Subclause .2 below, no contractor may use or supply steel products for a state contract project other than those steel products made in the United States. As used in this contract:

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 any 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 of such operations, from steel made by the open hearth, basic oxygen, electric furnace, bessemer or other steel making process.

c. "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

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

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

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

ATTACHMENT A

.3 A contractor who uses steel products in violation of this Clause may be subject to civil penalties pursuant to West Virginia Code §5A-3-56.

§3.4.1.5 The Contractor and all Subcontractors shall pay the higher of the U. S. Department of Labor minimum wage rates or the West Virginia Department of Labor minimum wage rates for the County in which this contract is performed, pursuant to West Virginia Code §21-5A-1 *et seq.*

§3.4.1.6 WEST VIRGINIA JOBS ACT: Pursuant to West Virginia Code §21-1C-1 *et seq.*, every public improvement contract or subcontract let by a public authority shall contain the following language:

.1 DEFINITIONS:

a. The term "construction project" means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract in an amount equal to or greater than one million dollars (\$1,000,000). The term "construction project" does not include temporary or emergency repairs;

b. (1) The term "employee" means any person hired or permitted to perform hourly work for wages by a person, firm or corporation in the construction industry;

(2) The term "employee" does not include:

(A) Bona fide employees of a public authority or individuals engaged in making temporary or emergency repairs;

(B) Bona fide independent contractors; or

(C) Salaried supervisory personnel necessary to assure efficient execution of the employee's work;

c. The term "employer" means any person, firm or corporation employing one or more employees on any public improvement and includes all contractors and subcontractors;

d. The term "local labor market" means every county in West Virginia and all counties bordering West Virginia that fall within seventy-five (75) miles of the border of West Virginia;

e. The term "public authority" means any officer, board, commission or agency of the State of West Virginia and its political subdivisions, including counties and municipalities. Further, the Economic Grant Committee, Economic Development Authority, Infrastructure and Jobs Development Council and School Building Authority shall

be required to comply with the provisions of this Clause for loans, grants or bonds provided for public improvement construction projects; and

f. The term "public improvement" includes the construction of all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures that may be let to contract by a public authority, excluding improvements funded, in whole or in part, by federal funds.

.2 LOCAL LABOR MARKET UTILIZATION ON PUBLIC IMPROVEMENT CONSTRUCTION PROJECTS; WAIVER CERTIFICATES:

a. Employers shall hire at least seventy-five percent (75%) of employees for public improvement construction projects from the local labor market, to be rounded off, with at least two employees from outside the local labor market permissible for each employer per project.

b. Any employer unable to employ the minimum number of employees from the local labor market shall inform the nearest office of the Bureau of Employment Programs' Division of Employment Services of the number of qualified employees needed and provide a job description of the positions to be filled.

c. If, within three (3) business days following the placing of a job order, the Division is unable to refer any qualified job applicants to the employer or refers less qualified job applicants than the number requested, then the Division shall issue a waiver to the employer stating the unavailability of applicants and shall permit the employer to fill any positions covered by the waiver from outside the local labor market. The waiver shall be either oral or in writing and shall be issued within the prescribed three (3) days. A waiver certificate shall be sent to both the employer for its permanent project records and to the public authority.

.3 SCOPE; REPORTING REQUIREMENTS:

a. Pursuant to West Virginia Code §21-1C-5, the West Virginia Jobs Act applies to expenditures for construction projects by any public authority for public improvements as defined by this Act.

b. For public improvement projects let pursuant to the West Virginia Jobs Act, the public authority shall file or require an employer as defined in Chapter 21, Article 1C, Section 2 to file with the Division of Labor copies of the waiver certificates and certified payrolls, pursuant to West Virginia Code, Chapter 21, Article 5A, or other comparable documents that include the number of employees, the

ATTACHMENT A

county and state wherein the employees reside and their occupation.

c. The Division of Labor shall compile the information required by this section and submit it annually to the Joint Committee on Government and Finance by the fifteenth day of October. The joint committee may forward these reports to the Legislative Auditor to review and make comments regarding the usefulness of the information collected and to suggest changes to the division's method of reporting to ensure the information collected will prove useful in evaluating the effectiveness of the provisions of this Clause.

d. Each public authority has the duty to implement the reporting requirements of this Clause. Every public improvement contract or subcontract let by a public authority shall contain provisions conforming to the requirements of this Clause.

e. The Division of Labor is authorized to establish procedures for the efficient collection of data, collection of civil penalties prescribed in West Virginia Code §21-1C-6 and transmittal of data to the Joint Committee on Government and Finance.

.4 PENALTIES: Pursuant to West Virginia Code §21-1C-6, any employer who violates any provision of this Clause is subject to a civil penalty of one hundred dollars (\$100) per day of violation.

§3.4.1.7 PUBLIC IMPROVEMENT CONTRACTS & DRUG-FREE WORKPLACE ACT: The Contractor must, at all times during the term of this Agreement, be in compliance with West Virginia Code §21-1D-1 et seq., which provides, in part:

.1 DEFINITIONS:

- a. The term "construction", as used in this article, means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract the value of which contract is over \$100,000. The term "construction" does not include temporary or emergency repairs;
- b. The term "contractor" means any employer working on a public improvement without regard to whether they are serving as the prime or subcontractor to another;
- c. The term "employee" means a laborer, mechanic or other worker. For the purposes of this article, employee does not include those persons as are employed or hired directly by a public authority on a regular or temporary basis engaged exclusively in

making temporary or emergency repairs. Furthermore, employee does not include those persons employed by a contractor who does not work in public improvement construction;

- d. The term "public authority", as used in this article, means any officer, board or commission or other agency of the State of West Virginia, its counties or municipalities or any political subdivision thereof, authorized by law to enter into a contract for the construction of a public improvement, including any institution supported, in whole or in part, by public funds of the State of West Virginia and this article applies to expenditures of these institutions made, in whole or in part, from public funds; and
- e. The term "public improvement", as used in this article, includes all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures upon which construction may be let to contract by the State of West Virginia, its counties or municipalities or any political subdivision thereof.

.2 No public authority may award a public improvement contract which is to be let to bid to a contractor unless the terms of the contract require the contractor and its subcontractors to implement and maintain a written drug-free workplace policy in compliance with this article and the contractor and its subcontractors provide a sworn statement in writing, under the penalties of perjury, that they maintain a valid drug-free workplace policy in compliance with this article.

The public improvement contract shall provide for the following:

- (1) That the contractor implements its drug-free workplace policy;
- (2) Cancellation of the contract by the awarding public authority if the contractor:
 - (A) Fails to implement its drug-free workplace policy;
 - (B) Fails to provide information regarding implementation of the contractor's drug-free workplace policy at the request of the public authority; or
 - (C) Provides to the public authority false information regarding the contractor's drug-free workplace policy.

.3 Each contractor that submits a bid for the work must submit at the same time an affidavit that the contractor has a written plan for a drug-free workplace policy in compliance with West Virginia Code §21-1D-5. A public improvement contract may not be awarded to a contractor who does not have a written

ATTACHMENT A

plan for a drug-free workplace policy and who has not submitted that plan to the appropriate contracting authority in timely fashion.

(C) Post-accident;

(D) Random.

.4 In instances where a worker is required by law to follow United States Department of Transportation drug testing guidelines, no additional drug tests are required under this article.

.9 PENALTIES:

.5 A clearly legible copy of the contractor's written drug-free workplace policy shall be kept posted in a prominent and easily accessible place at the public improvement construction site thereof by each contractor subject to the provisions of this article.

a. Any contractor who violates any provision of this article is, for the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000; for the second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000; for the third or any subsequent offense within the preceding five years, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$25,000 and the contractor shall be excluded from bidding any additional new public improvement projects for a period of one year.

.6 Every contractor shall keep an accurate record showing the names, occupation and safety-sensitive status of all employees, in connection with the construction on the public improvement, and showing any drug tests or alcohol tests performed and employee education and supervisor training received, which record shall be open at all reasonable hours for inspection by the public authority which let the contract and its officers and agents. It is not necessary to preserve the record for a period longer than three (3) years after the termination of the contract.

b. Any person who directly or indirectly aids, requests or authorizes any other person to violate any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$250.

.7 All drug testing information specifically related to individual employees is confidential and should be treated as such by anyone authorized to review or compile program records. Drug test results may not be used in a criminal proceeding without the employee's consent.

§3.4 Add the following Sections to 3.4:

.8 No less than once per year, or upon completion of the project, every contractor shall provide a certified report to the public authority which let the contract. The report shall include:

§3.4.4 Where materials and equipment are to be provided by the Owner under the Contract Documents, the Contractor shall notify the Owner in writing as to when materials and equipment are required on the project site in sufficient time to avoid delay in the Work.

- (1) Information to show that the education and training service to the requirements of section five [§ 21-1D-5] of this article was provided;
- (2) The name of the laboratory certified by the United States Department of Health and Human Services or its successor that performs the drug tests pursuant to this article;
- (3) The average number of employees in connection with the construction on the public improvement;
- (4) Drug test results for the following categories including the number of positive tests and the number of negative tests:

§3.4.5 The Contractor shall employ labor on the Project or in connection with the Work, capable of working harmoniously with all trade crafts and any other individuals associated with the Project. The Contractor shall also use its best efforts and implement policies and practices to minimize the likelihood of any strike, work stoppage or other labor disturbance. Except as specifically provided in this Agreement, Contractor shall not be entitled to any adjustment in the Contract sum or Contract time and shall be liable to the Owner for all damages suffered by the Owner occurring as a result of work stoppages, slowdowns, disputes, or strikes by the work force of or provided by Contractor or its Subcontractors.

§3.5 WARRANTY

§3.5 Add the following sentence at the end of Section 3.5:

(A) Preemployment and new hires;

The Contractor agrees to assign to the Owner at time of Final Completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such a manner so as to preserve any and all such warranties.

(B) Reasonable suspicion;

ATTACHMENT A

§3.8 ALLOWANCES

§3.8.3 Make the following change to Section 3.8.3:

§3.8.3 Delete "with reasonable promptness" and insert "in sufficient time to avoid delay in the Work."

Add the following Section to 3.8:

§3.8.4 The Contractor shall promptly submit to the Owner an itemized account of any expenditure by the Contractor of the Contract allowance in sufficient detail to allow the Owner to properly account for such expenditure.

§3.9 SUPERINTENDENT/PROJECT MANAGER

§3.9.1 Add the following sentence to the end of Section 3.9.1:

The Contractor may also employ a competent project manager.

§3.9.2 Make the following changes to Section 3.9.2:

In the first sentence, add "and project manager, if applicable" after "superintendent." In the second sentence, add "or project manager, if applicable," after "superintendent."

§3.9.3 Make the following changes to Section 3.9.3:

In the first sentence, add "or project manager, if applicable," after "superintendent." In the second sentence, add "or project manager, if applicable," after "superintendent."

§3.9 Add the following Section to 3.9:

§3.9.4 The Owner shall have the right, at any time, to direct a change in the Contractor's representatives if their performance is deemed unsatisfactory.

§3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§3.10.1 Make the following changes to Section 3.10.1:

In the first sentence, delete the word "promptly" and substitute "by the earliest reasonable date".

Add the following sentence to the end of Section 3.10.1: "The Contractor shall submit an updated construction schedule with each payment application, unless waived by the Owner."

Add the following Sections to 3.10:

§3.10.4 At any time after the first thirty (30) days of the Contract Time, if it is found that the project is two (2) weeks or more behind schedule, beyond approved time extensions, or if at any time during the last thirty (30) days of the scheduled Contract Time the

Contractor is one (1) week or more behind schedule, the Contractor shall immediately submit a plan to the Owner describing how the Work will be placed back on schedule within the remaining Contract Time.

§3.10.5 If the Owner and the Architect determine that the performance of the Work during any stage of the construction schedule last approved by the Owner has not progressed or reached the level of completion required by the Contract Documents, the Owner will have the right to order the Contractor to take corrective measures (hereinafter referred to collectively as Extraordinary Measures) necessary to expedite the progress of the Work, including, without limitation: (1) working additional shifts or overtime; (2) supplying additional manpower, equipment and facilities; and (3) other similar measures. Such Extraordinary Measures shall continue until the progress of the Work complies with the last approved construction schedule. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule after allowing for approved extensions of Contract Time as provided elsewhere in this Agreement. The Contractor is not entitled to an adjustment in the Contract Sum in connection with any Extraordinary Measures required by the Owner. The Owner may exercise its rights under this Section as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with the construction schedule.

§3.11 DOCUMENTS AND SAMPLES AT THE SITE

§3.11 Insert the following sentence at the end of Section 3.11:

The Contractor's compliance with this Section 3.11 shall be a condition precedent to any obligation of the Owner to make Final Payment pursuant to this Agreement.

§3.15 CLEANING UP

§3.15.2 Delete Section 3.15.2 in its entirety and substitute the following:

§3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and may withhold such reasonable costs as necessary for the fulfillment of the Contractor's obligation under this Section 3.15. If the reasonable costs of such cleaning exceed the Contract Sum then due the Contractor, the Contractor shall reimburse the Owner the difference within thirty (30) consecutive calendar days of the Owner's written request.

§3.15 Add the following Section to 3.15:

§3.15.3 In order to achieve Substantial Completion, as defined by Section 9.8, for any portion of the Work, the Contractor must have the area where the Work is located fully cleaned and all materials and/or debris removed from site. The Certificate of Substantial

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Completion will not be issued until the Contractor has met this obligation.

ARTICLE 4 ARCHITECT

§4.1 GENERAL

§4.1.1 Make the following changes to Section 4.1.1:

In first sentence, delete the period and add ", when required pursuant to West Virginia Code §30-12-1 *et seq.*" Add the following sentence at the end of Section 4.1.1: "If the Owner does not retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located, the Owner will appoint an individual to assume the role and obligations of the Architect pursuant to this Agreement."

§4.2 ADMINISTRATION OF THE CONTRACT

§4.2 Make the following changes to Section 4.2:

§4.2.1 In the first sentence of Section 4.2.1 after the word Architect add ", unless otherwise indicated by the Owner,".

§4.2.2 In the first sentence of Section 4.2.2 strike the word "generally."

§4.2.3 In the first sentence of Section 4.2.3 strike the word "reasonably."

§4.2.5 Add the following sentence at the end of Section 4.2.5:

The Architect upon receipt of an Application for Payment from the Contractor shall either review and certify such amounts due for payment or return such Application for Payment to the Contractor for correction(s) within five (5) consecutive business days of receipt.

§4.2.7 Delete the first sentence and substitute the following:

The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents.

§4.2.8 Make the following change to Section 4.2.8:

In the first sentence, after the word Architect add ", in consultation with the Owner,".

ARTICLE 7 CHANGES IN THE WORK

§7.2 CHANGE ORDERS

§7.2 Add the following Section to 7.2:

§7.2.2 A written Change Order as defined under 7.2.1 above constitutes a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to general conditions, all direct or indirect costs associated with such change and any and all adjustment to the Contract Sum and Contract Time.

§7.3 CONSTRUCTION CHANGE DIRECTIVES

§7.3.7 Make the following change in Section 7.3.7:

In the fourth line of the first sentence, delete the words "an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount" and substitute "an allowance for overhead and profit in accordance with clauses 7.3.11.1 through 7.3.11.9 below."

§7.3.9 Delete Section 7.3.9 in its entirety and substitute the following:

§7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment provided these amounts have been added to the Contract by Change Order and a purchase order has been issued for the Change Order.

§7.3.10 Add the following sentence at the end of Section 7.3.10:

The Change Order shall be issued by the Owner within 60 days following such agreement.

Add the following Section to 7.3:

§7.3.11 In Section 7.3.7, the allowance for overhead and profit included in the total cost to the Owner shall be based on the following schedule:

.1 For the Contractor, for any Work performed by the Contractor's own forces, fifteen percent (15%) of the cost.

.2 For the Contractor, for Work performed by the Contractor's Subcontractor, ten percent (10%) of the amount due the Subcontractor.

.3 For each Subcontractor or Sub-Subcontractor involved, for any Work performed by that Subcontractor's own forces, fifteen percent (15%) of the cost.

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.4. For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, ten percent (10%) of the amount due the Sub-subcontractor.

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.7. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the Change Order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the allowance for Overhead and Profit. Hand tools are defined as equipment with a value of \$1,000 or less. For Contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing Change Order proposals shall be not more than the monthly rate listed in the most current publication of The AED Green Book divided by 176 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the Change Order work.

.6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, material, equipment and Subcontractors. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item or by drawing as applicable.) Where major cost items are Subcontracts, they shall also be itemized as prescribed above. In no case will a change involving over \$10,000 be approved without such an itemization.

.7 Local Business and Occupation Taxes, if applicable, shall be calculated on the cost of the Work, overhead and profit.

.8 Overhead and profit shall not be calculated on changes in the Work involving unit prices. Unit prices are to have overhead and profit included in the price quoted.

ARTICLE 8 TIME

§8.3 DELAYS AND EXTENSIONS OF TIME

§8.3.1 In the first sentence, delete "unusual delay in deliveries,".

ARTICLE 9 PAYMENTS AND COMPLETION

§9.2 SCHEDULE OF VALUES

§9.2 Make the following changes to Section 9.2:

In the first sentence add "and the Owner" after the first reference to the Architect. In the second sentence add "or the Owner" after Architect.

§9.3 APPLICATIONS FOR PAYMENT

§9.3 Make the following changes to Section 9.3:

§9.3.1 In the first sentence add "and the Owner" after the first reference to the Architect and add "and other required documents" after the words "schedule of values."

§9.3.1.1 Delete clause 9.3.1.1 in its entirety and substitute the following:

§9.3.1.1 Such applications may include requests for payment on account of changes in the Work authorized by Construction Change Directives and Change Orders only after a purchase order has been issued for the Work affected.

§9.3.1 Add the following clauses to Section 9.3.1:

§9.3.1.3 Until the Work is fifty percent (50%) complete, the Owner will withhold as retainage 10% of the amount due the Contractor on account of progress payments. At the time the Work is fifty percent (50%) complete and thereafter, if the manner of completion of the Work and its progress are and remain satisfactory to the Owner and Architect, and in the absence of other good and sufficient reasons, the Architect will, on presentation by the Contractor of Consent of Surety, authorize any remaining partial payments to be paid in full.

§9.3.1.4 The full Contract retainage may be reinstated if the manner of completion of the Work and its progress do not remain satisfactory to the Owner and Architect, if the Surety withholds its consent, or for other good and sufficient reasons.

§9.6 PROGRESS PAYMENTS

§9.6.7 Delete Section 9.6.7 in its entirety.

§9.7 FAILURE OF PAYMENT

§9.7 Make the following changes in Section 9.7:

In line two, change "seven days" to "sixty days." In line four, delete "binding dispute resolution" and substitute "a court of competent jurisdiction in the State of West Virginia."

§9.8 SUBSTANTIAL COMPLETION

§9.8.5 Add the following clause to Section 9.8.5:

§9.8.5.1 The payment of retainage shall be sufficient to increase the total payments to ninety-five percent (95%) for the Work or designated portion thereof being accepted as Substantially

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Complete, less any amounts as the Architect shall determine for any Work that is not complete, not in accordance with the Contract Documents, or for unsettled claims.

In the first sentence, delete "within a reasonable time not exceeding 21 days" and substitute "immediately".

§9.10 FINAL COMPLETION AND FINAL PAYMENT

§10.3 HAZARDOUS MATERIALS

§9.10.2 Make the following changes in Section 9.10.2:

§10.3.3 Delete Section 10.3.3 in its entirety.

In the first sentence, delete "for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner)."

§10.3.6 Make the following change to Section 10.3.6:

Delete "indemnify" and substitute "reimburse."

Add the following clause to Section 9.10.2:

ARTICLE 11 INSURANCE AND BONDS

§9.10.2.1 Before final payment is due the Contractor, all applicable State and local taxes must be paid. If requested by the Owner, the Contractor shall present evidence that payment or satisfaction of all such tax obligations has been made.

§11.1 CONTRACTOR'S LIABILITY INSURANCE

§11.1.1 Make the following changes in Section 11.1.1:

§9.10.3 Add the following clause to Section 9.10.3:

9.10.3.1 Unless and to the extent final completion is delayed through no fault of the Contractor as provided in Section 9.10.3, the Owner shall be under no obligation to increase payments above ninety-five percent (95%) until final completion of the Work is Certified by the Architect.

§11.1.1.1 Delete the semicolon at the end of clause 11.1.1.1 and add:

"including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project."

Add the following Sections to Article 9:

§11.1.1.2 Delete the semicolon at the end of clause 11.1.1.2 and add:

§9.11 LIQUIDATED DAMAGES

§9.11.1 The Owner will suffer financial loss if the Work is not Substantially Complete within the Contract Time as defined in Article 8, and if final completion is not achieved within the specified time frame following Substantial Completion. As liquidated damages, and not as a penalty, the Contractor and the Contractor's surety shall be liable for and shall pay the Owner the sum(s) stated in this Agreement and/or purchase order.

"as described in West Virginia Code §23-4-2 (Mandolidis), or persons or entities excluded by statute from the requirements of clause 11.1.1.1 but required by the Contract Documents to provide the insurance required by that clause."

§11.1.2 Add the following clause to Section 11.1.2:

§9.11.2 Allowances may be made for delays due to shortages of materials and/or energy resources, subject to proof by documentation, and also for delays due to strikes or other delays beyond the control of the Contractor. All delays and any claim for extension of Contract Time must be properly documented in accordance with Section 15.1.5 by the Contractor and must be made within the time limits stated in Section 15.1.2.

§11.1.2.1 The insurance coverages required by Section 11.1.1 shall be written for not less than the minimum limits (or greater if required by law) set forth in the sample Certificate of Insurance following these Supplementary Conditions.

§11.1.4 Delete Section 11.1.4 in its entirety and substitute the following:

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

§11.1.4 The Owner shall require the Contractor to purchase and maintain liability insurance coverage, primary to the Owner's coverage under Paragraph 11.2. Owner, Architect, and Architect's Consultants shall be named as additional insureds on Contractor's Commercial General Liability Insurance specified for operations and completed operations, but only with respect for bodily injury, property damage or personal and advertising injury to the extent caused by the negligent acts or omissions of the Contractor, or those acting on the Contractor's behalf, in the performance of the Contractor's Work for the Owner at the Worksite.

§10.2.8 Make the following changes to Section 10.2.8:

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§11.3 PROPERTY INSURANCE

§11.3.1 Make the following changes to Section 11.3.1:

At the beginning of the first sentence, delete "Unless otherwise provided, the Owner" and substitute "The Contractor".

Add the following sentences at the end of this Section:

The form of policy for this coverage shall be Completed Value. If the Owner is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall bear all reasonable costs properly attributable thereto.

§11.3.1.2 Delete clause 11.3.1.2 in its entirety.

§11.3.1.3 Delete clause 11.3.1.3 in its entirety.

§11.3.2 BOILER AND MACHINERY INSURANCE

§11.3.2 Make the following changes to Section 11.3.2:

In the first line, delete "Owner" and substitute "Contractor".

§11.3.4 Delete Section 11.3.4 in its entirety.

§11.3.6 Make the following changes in Section 11.3.6:

At the beginning of the first sentence, delete "Before an exposure to loss may occur, the Owner shall file with the Contractor" and substitute "Before an exposure to loss may occur, the Contractor shall file with the Owner".

At the end of the third sentence, delete "Contractor" and substitute "Owner."

§11.3.7 WAIVERS OF SUBROGATION

§11.3.7 Make the following change in Section 11.3.7:

At the end of the first sentence, delete "Owner" and substitute "Contractor".

§11.3.8 Make the following changes in Section 11.3.8:

In the first sentence, substitute "Contractor" for "Owner" each time the latter word appears.

§11.3.9 Make the following changes in Section 11.3.9:

Substitute "Contractor" for "Owner" each time the latter word appears, except in the last sentence. In the second sentence, delete "method of binding dispute resolution selected in the Agreement between the Owner and Contractor" and substitute "court award or judgment."

§11.3.10 Delete Section 11.3.10 in its entirety and substitute the following:

§11.3.10 The Contractor as fiduciary shall have the power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Contractor's exercise of this power, if such objection is made, the dispute shall be resolved as provided in Section 4.5. The Contractor as fiduciary shall, in that case, make settlement with insurers in accordance with directions of the Court. If distribution of the insurance proceeds as directed by the Court is required, the Court will direct such distribution.

§11.4 PERFORMANCE BOND AND PAYMENT BOND

§11.4.1 Add the following clauses to Section 11.4.1:

§11.4.1.1 The Contractor shall provide, at the Contractor's expense, a Performance Bond and a Labor and Material Payment Bond for 100% of the Contract Sum and, if applicable, a two-year roofing Maintenance Bond for the full value of the roofing system. The surety company must be one with which the Owner has no reasonable objection and it must be authorized to transact surety insurance business in the State of West Virginia.

§11.4.1.2 An attorney-in-fact who executes the bonds on behalf of the surety shall affix thereto a certified and current copy of power of attorney.

§11.4.1.3 The bonds shall be issued on State of West Virginia forms. The Contractor shall deliver the required bonds and all other contract documents to the Owner not later than 15 days following receipt of the Owner's notice of intent to award a Contract.

Add the following Section to Article 11:

§11.5 WAGE BOND

The Contractor, if engaged in construction work in West Virginia less than five consecutive years preceding the date of the Bid, shall post a wage bond with the West Virginia Department of Labor.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§13.6 INTEREST

§13.6 Delete Section 13.6 in its entirety and substitute the following:

Notwithstanding any other provision in the Contract Documents, any interest due and payable for payments due and unpaid under the Contract Documents shall be made pursuant to West Virginia Code.

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§13.7 TIME LIMITS ON CLAIMS

§13.7 Delete Section 13.7 in its entirety and substitute the following:

Any applicable statute of limitations shall be in accordance with West Virginia Code.

Add the following Sections to Article 13:

§13.8 WORKERS COMPENSATION

The Contractor shall provide proof of compliance with West Virginia Worker's Compensation laws and regulations.

§13.9 CONTRACTOR'S LICENSE

§11.7.1 West Virginia Code §21-11-2 requires that all persons desiring to perform contractual work in West Virginia shall be duly licensed. The West Virginia Contractor's Licensing Board is empowered to issue a contractor's license.

§11.7.2 West Virginia Code §21-11-11 requires any prospective Bidder to include the Bidder's contractor's license number on its Bid. The successful Bidder will be required to furnish a copy of its contractor's license in a classification appropriate to the Work prior to issuance of a purchase order/contract.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§14.1 TERMINATION BY THE CONTRACTOR

§14.1.1 Make the following changes in Section 14.1.1:

At the end of clause 14.1.1.3 delete "; or" and insert a period.

Delete clause 14.1.1.4 in its entirety.

§14.1.3 Delete Section 14.1.3 in its entirety and substitute the following:

§14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exist, the Contractor may, upon seven days written notice to the Owner and Architect, terminate the Contract. In such event, the Contractor shall be paid for all Work performed in accordance with the Contract Documents, for reasonable and proven termination expenses and a reasonable allowance for overhead and profit. However, such payment, exclusive of termination expenses, shall not exceed the Contract Sum as reduced by other payments made to the Contractor and further reduced by the value of Work as yet not completed. The Contractor shall be entitled to reasonable overhead, but not profit, on Work not performed.

§14.2 TERMINATION BY THE OWNER FOR CAUSE

§14.2.4 Delete Section 14.2.4 in its entirety and substitute the following:

§14.2.4 If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall not be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Owner shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§14.4.1 Delete Section 14.4.1 in its entirety and substitute the following:

§14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause upon thirty days written notice.

§14.4.3 Delete Section 14.4.3 in its entirety and substitute the following:

§14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment from the Owner on the same basis provided in Section 14.1.3 above.

Add the following Section to Article 14:

§14.5 FISCAL YEAR FUNDING

§14.5 Work performed under this Contract is to continue in the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this Work. In the event funds are not appropriated for this Work, this Contract becomes of no effect and is null and void after June 30.

ARTICLE 15 CLAIMS AND DISPUTES

§15.2 INITIAL DECISION

§15.2.1 In the third sentence of Section 15.2.1, insert "or litigation" following the word "mediation".

§15.2.5 Delete the last sentence in Section 15.2.5 and substitute the following:

Approval or rejection of a claim by the Initial Decision Maker shall be final and binding on the parties unless it is pursued further by either party in accordance with Section 15.2.6.

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§15.2.6 Make the following change to clause 15.2.6.1:

In the last sentence, delete "or pursue binding dispute resolution proceedings."

§15.2.8 Delete Section 15.2.8 in its entirety.

§15.3 MEDIATION

§15.3.1 Delete "binding dispute resolution" and substitute "litigation in a court of competent jurisdiction."

§15.3.2 Delete Section 15.3.2 in its entirety and substitute the following:

§15.3.2 The parties shall endeavor to resolve their Claims by non-binding mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement.

§15.4 ARBITRATION

§15.4 Delete Section 15.4 in its entirety and substitute the following:

§15.4 SETTLEMENT OF CLAIMS

§15.4.1 The Constitution of West Virginia grants the State sovereign immunity from any and all Claims against the public treasury. This immunity applies and is extended to all agencies of the State, including the Owner. It shall be in full force and effect as it relates to this Contract. The West Virginia Legislature, recognizing that certain Claims against the State may constitute a moral obligation of the State and should be heard, has established the West Virginia Court of Claims for this purpose. Notwithstanding any provision to the contrary in the Contract Documents, all references to arbitration are hereby deleted and all Claims of the Contractor for monetary relief, and only of the Contractor, arising out of or related to this Contract shall be decided by the West Virginia Court of Claims. The following Sections have been rewritten to bring them into conformance with the foregoing.

§15.4.2 Claims by the Owner may be brought against the Contractor in the Circuit Court of Kanawha County, West Virginia, or in any other court that has jurisdiction, as the Owner may elect.

§15.4.3 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 15.1.6, 9.10.4 and 9.10.5, shall, within 30 days after submission of the decision by the Initial Decision Maker, be settled for the Contractor by the West Virginia Court of Claims or, for the Owner, by the Circuit Court of Kanawha County or any other court of jurisdiction as the Owner may elect.

§15.4.4 Notice of such action shall be filed in writing with the other party to the Contract, and a copy of such notice shall be filed with the Initial Decision Maker and the Architect, if applicable.

§15.4.5 During court proceedings, the Owner and the Contractor shall comply with Section 15.1.3.

§15.4.6 Claims shall be made within the time limits specified in Section 15.2.6.1.

§15.4.7 The party filing a Claim must assert in the demand all Claims then known to that party on which action is permitted.

Add the following Article:

ARTICLE 16 EQUAL OPPORTUNITY

§16.1 COMPLIANCE WITH REGULATIONS UNDER TITLE VI OF THE FEDERAL CIVIL RIGHTS ACT OF 1964 AND EXECUTIVE ORDER 65-2 BY THE GOVERNOR OF WEST VIRGINIA DATED DECEMBER 15, 1965

§16.1.1 The Contractor agrees that it will comply with Title VI of the Federal Civil Rights Act of 1964 (P.L. 88352) and the regulations of the State of West Virginia, to the end that no person in the State, or in the United States, shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under any program or activity for which the Contractor receives any recompense or other consideration of value, either directly or indirectly from the State; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this Agreement.

§16.1.2 If any real property or structure thereon is provided or improved, this assurance shall obligate the Contractor, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which any State payment is extended or for another purpose involving the provision of similar services or benefits. If any other goods or services are so provided, this assurance shall obligate the Contractor for the period during which it supplies such goods or services.

§16.1.3 The Contractor recognizes and agrees that such right to provide property, goods or services to the State will be extended in reliance on the representations and agreements made in assurance, and that the State shall have the right to seek judicial enforcement of this assurance. This is binding on the Contractor, its successors, transferee, and assignee, or any authorized person on behalf of the Contractor.

END OF SUPPLEMENTARY CONDITIONS TO AIA DOCUMENT A201-2007

ATTACHMENT A

AIA A201-2007 Supplementary Conditions to Standard form of Agreement Between Owner and Contractor

State of West Virginia

Any provisions of the Contract Documents that conflict with these Supplementary Conditions shall be null and void unless they have been approved in writing by the applicable State purchasing officer and the Attorney General, and are clearly identified as such in the bid documents.

The Owner and Contractor hereby agree to the full performance of the covenants contained herein.

IN WITNESS WHEREOF, the Owner and Contractor have entered into this Agreement as of the effective date as stated in the A101-2007 Agreement.

Owner:

Contractor:

By:

By:

Title:

Title:

Date:

Date:

APPROVED AS TO FORM THIS 25th DAY OF March, 2010

DARRELL V. MCGRAW, JR., ATTORNEY GENERAL

BY: *Dawn E. Wayfield*
DEPUTY ATTORNEY GENERAL

ATTACHMENT A



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

PRODUCER INSURANCE AGENCY'S NAME AND ADDRESS	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED CONTRACTOR'S NAME AND ADDRESS	INSURERS AFFORDING COVERAGE INSURER A: INSURER'S NAME INSURER B: INSURER'S NAME INSURER C: INSURER'S NAME INSURER D: INSURER E:	NAIC #

COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COM/OP AGG \$2,000,000
A		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
B		EXCESS / UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$ \$ \$
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under SPECIAL PROVISIONS below				<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Employers liability includes coverage for W. Va. Code §23-4-2 (Mandolidis). Owner, Architect and Architect's Consultants are to be named as additional insureds. (Insert project's name and address)

CERTIFICATE HOLDER STATE AGENCY'S NAME AND ADDRESS	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
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ATTACHMENT A

ACORD™ CERTIFICATE OF PROPERTY INSURANCE	DATE
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PRODUCER INSURANCE AGENCY'S NAME AND ADDRESS	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. COMPANIES AFFORDING COVERAGE COMPANY A INSURER'S NAME COMPANY B COMPANY C COMPANY D
INSURED CONTRACTOR'S NAME AND ADDRESS	

COVERAGES

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.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	COVERED PROPERTY	LIMITS
	<input type="checkbox"/> PROPERTY <input type="checkbox"/> CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input type="checkbox"/> SPECIAL <input type="checkbox"/> EARTHQUAKE <input type="checkbox"/> FLOOD				<input type="checkbox"/> BUILDING <input type="checkbox"/> PERSONAL PROPERTY <input type="checkbox"/> BUSINESS INCOME <input type="checkbox"/> EXTRA EXPENSE <input type="checkbox"/> BLANKET BUILDING <input type="checkbox"/> BLANKET PERS PROP <input type="checkbox"/> BLANKET BLDG & PP	\$ \$ \$ \$ \$ \$ \$
A	<input checked="" type="checkbox"/> INLAND MARINE TYPE OF POLICY Inst/Builder's Risk <input type="checkbox"/> CAUSES OF LOSS <input type="checkbox"/> NAMED PERILS <input type="checkbox"/> OTHER	(if applicable)			<input checked="" type="checkbox"/> BUILDING <input checked="" type="checkbox"/> TRANSIT <input checked="" type="checkbox"/> OFF-SITE <input type="checkbox"/> STORAGE	\$CONTRACT AMT \$ 20% \$ 20% \$ \$
	<input type="checkbox"/> CRIME TYPE OF POLICY					\$ \$ \$
	<input type="checkbox"/> BOILER & MACHINERY					\$ \$
	<input type="checkbox"/> OTHER					

LOCATION OF PREMISES/DESCRIPTION OF PROPERTY

 PROJECT NAME AND ADDRESS

SPECIAL CONDITIONS/OTHER COVERAGES

 Owner is to be named as additional insured.

CERTIFICATE HOLDER STATE AGENCY'S NAME AND ADDRESS	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
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