

# **RFP #58002**

## **Data Center Upgrade – Emergency Generator**



Release of RFP: Wednesday, February 1, 2023

Mandatory Site Walk Thru: Friday, February 10 at 10:00 a.m.

Proposal Due Date: Wednesday, March 1, 2023 at 4:00 p.m.

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Mandatory Site Walk Thru will be held at 10:00 a.m. on Friday, February 10, 2023

Questions will be received until 4:00 p.m. on Wednesday, February 15, 2023

Proposals will be received until 1:00 p.m. on Wednesday, March 1, 2023

(All times listed are in the Eastern time zone)

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**SECTION 1: GENERAL INFORMATION**

1.1 Introduction: West Virginia Network (WVNET) is accepting proposals for the installation of a new diesel-powered emergency generator as part of an overall upgrade of all data center power and cooling systems. Separate RFPs will be issued to replace the data center's air conditioners and uninterruptible power supply (UPS).

The generator shall start automatically in the case of power failure. This will enable WVNET to operate normally regardless of the power source.

1.2 Instructions to Bidders: See Exhibit B.

1.3 General Terms and Conditions: See Exhibit C.

1.4 Schedule of Events:

Release of RFP: Wednesday, February 1, 2023

Mandatory Site Walk Thru: Friday, February 10, 2023 at 10:00 a.m.

Question Deadline: Wednesday, February 15, 2023 at 4:00 p.m.

Addendum/Response to Questions: Wednesday, February 22, 2023

Proposal Due Date: Wednesday, March 1, 2023 at 1:00 p.m.

Target Award Date: Wednesday, March 15, 2023

1.5 Point of Contact: The WVNET point of contact for questions, clarification and inquiries concerning the Request for Proposal (RFP) process is:

Phil Snitz, Manager of Business Operations  
West Virginia Network (WVNET)  
837 Chestnut Ridge Rd., Morgantown, WV 26505  
[psnitz@staff.wvnet.edu](mailto:psnitz@staff.wvnet.edu)  
(304) 293-5192 x50483

1.6 Posting of Information: This RFP and any addenda, including answers to questions, will be posted at <https://wvnet.edu/wvnet-bids/>

1.7 Questions: All questions concerning this RFP are to be sent via email to the point of contact listed in section 1.5 by the deadline listed in section 1.4. Telephone calls, verbal discussions, or other formats or delivery will not be accepted or answered. When submitting questions by e-mail, please reference the RFP number in the subject line.

1.8 Proposals shall remain in effect ninety (90) days from the submission date.

1.9 Expenses: The state will not be held liable for any expenses incurred by any bidder responding to this RFP including expenses to prepare or deliver the proposal or attend any oral presentation.

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1.10 Interviews: Discussions and/or interviews may be held with the bidders under final consideration prior to making a selection for award; however, the RFP may be awarded without such discussions or interviews.

1.11 Award: It is anticipated that a single contract will be awarded for all services. However, the state reserves the right to configure the contract in whatever manner is in its' best interests.

**SECTION 2: BACKGROUND INFORMATION**

2.1 West Virginia Network for Educational Telecomputing (WVNET) is a dynamic service organization providing telecommunications and computing services within West Virginia. Currently focused on state colleges and universities and administered by these entities, WVNET is transitioning to expand its impact by offering services to state government, K-12, public libraries and county government. As a centralized state resource, WVNET reacts to customer needs in providing efficient and cost-effective deployment of technology, training and support. You can learn more about WVNET by visiting <https://wvnet.edu/>.

2.2 The WVNET Data Center (constructed in 1975) consists of a secured, raised-floor environment (30' x 60') occupied by 42 racks of computer and networking equipment.

The power and cooling systems supporting this room include:

Computer Room Air Conditioners

- 4 Liebert DS077A (built in 2006)
- 1 Liebert FH290A (built in 1994)

Uninterruptible Power Supply (UPS)

- Liebert 610 (built in 2005)
- Eaton ATC-600 (automatic transfer switch)

Generator

- Generac SD500 (diesel powered, 500 kW rated)
- Model 5389680100 (built in 2005)

A diagram of the data center floor plan is attached in Exhibit A.

2.3 Future WVNET data center utilization is expected to remain unchanged for the near future. There is substantial open and unused space in the data center. The existing power and cooling systems were installed when the data center was fully occupied with computer equipment. In the past few years, there has been a substantial reduction in the amount of computer equipment installed or hosted in the data center as the computer industry (and WVNET's customers) shift to cloud computing.

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**SECTION 3: SCOPE OF SERVICES**

This RFP may contain mandatory provisions identified by the use of the words “must, will and shall”. Failure to comply with a mandatory term in the RFP will result in bid disqualification.

3.1 Current System: WVNET has a Generac diesel-powered, 500 kW rated generator (built in 2005) installed outside the data center in a fence-enclosed space.

3.2 Replacement System: The replacement system must be a new (not used or reconditioned) Generac system or equivalent. If an alternative product is proposed, it must be equivalent or better in all aspects.

3.3 Infrastructure Reuse: Existing wiring, plumbing, or components can be reused, if appropriate, but must be specified in the bid.

If the new equipment requires the existing concrete pad to be extended and/or modified, contractor to provide concrete work.

3.4 Project Plan and Timeline: This will be a turn-key project. The vendor shall provide WVNET with a complete project plan. The project plan, and any subsequent changes, must be approved by the WVNET Director, or his designee, in advance of any work commencing.

3.4.1 Equipment Delivery and Removal: Vendor shall schedule the delivery or removal of equipment with the WVNET Director, or his designee, at least one week in advance.

3.4.2 Acceptance Testing: Vendor shall schedule and coordinate the start-up and testing of all newly-installed systems with the WVNET Director, or his designee, at least one week in advance.

3.5 Facility Access: Work inside the data center will be completed during normal business hours Monday-Friday, 8:00AM – 5:00PM, excluding State holidays, unless otherwise scheduled and approved. The removal of existing equipment and the installation of new equipment, including all plumbing and electrical connections, must be scheduled and approved in advance.

3.6 Documentation: At a minimum, the following documentation will be provided by the vendor to the WVNET Director, or his designee, prior to the completion of the project.

3.6.1 As-Built Plans: Upon project completion, contractor shall provide paper and electronic copies of as-built drawings. Drawings shall include wiring diagram and connections to existing system.

3.6.2 Service Warranty: Contractor will provide a full one (1) year warranty on all parts, labor, and equipment included in this proposal. Contractor will provide all warranty information in electronic and hard copy.

3.6.3 Training and Manuals: Contractor will instruct designated WVNET staff on all

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operations and safety features. At least one on-site training will be provided to staff. Contractor will provide staff with a copy of all equipment manuals and operation instructions.

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**SECTION 4: PROPOSAL FORMAT AND VENDOR INFORMATION**

Proposal content, clarity, and completeness are factors which will be considered in evaluating each proposal. Proposals should provide a straightforward and concise description of the bidder's ability to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.

The entire length of the proposal document must be 30 pages or less and shall include:

4.1 Title Page: The title page should show the RFP title and number, as well as the name and local address of the responding company.

4.2 Transmittal Letter: A transmittal letter signed by an official authorized to contractually bind the proposer is required. The transmittal letter shall state that the **proposal shall be valid for a 180-day period** and should include RFP number and title as well as the name, title, address, telephone number, and email address of the individual to whom correspondence and other contacts should be directed during the proposer selection process.

Address the cover letter to the contact listed in section 1.5.

4.3 Executive Summary: This section should be a brief narrative highlighting and summarizing the proposal. The summary should clearly convey that the proposer understands the nature of the work and the general approach to be taken. Provide a description of how the work will be conducted and the amount of time and effort that will be required of WVNET personnel.

4.4 Qualifications of Vendor: This section should include a brief description of the proposer's qualifications and previous experience on similar or related engagements. Describe the Firm's size, illustrating its ability to fulfill the terms of the RFP.

In addition, the selected proposer will be required to provide the certification of eligibility that the proposer and any of its sub-contractors have not been debarred or suspended from providing services in West Virginia prior to award.

4.5 Vendor Background and Experience: A minimum one (1) page description of the proposer's background and relevant public sector representation experience with no more than three (3) references within the past five (5) years. Include the name of the contact person, their company's name, their contact information (email address and telephone numbers), and the year in which the work was completed. References should be from clients comparable to the type and scope of services solicited in this RFP, with preference for higher education customers.

4.6 Vendor Staffing and Project Organization: This section should identify key personnel who will be assigned to this project, including their qualifications and experience.

4.7 Project Schedule and Services Rendered: Provide a proposed schedule and project timeline that ensures completion of the requested services. Include a chronological timeline of major activities and checkpoints.

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4.8 Cost Proposal: Provide a cost proposal for services to be rendered to WVNET for performance of the scope of work listed. Proposal must include a clearly understandable listing and breakdown of all charges. This includes all costs associated with the installation of the new, proposed equipment and the removal of the old, existing systems must be included in the proposal cost, including any electrical, plumbing, or construction work or any associated or additional equipment required.

Any items required to make the system operational that are not included in the bid will be the vendor's sole responsibility. If any error or omission of equipment or service is made by the vendor, the vendor will incur any additional costs at their own expense.

**Estimates shall be good for 180 days after bid proposal deadline.**

**A HARDCOPY OF THE COST PROPOSAL IS TO BE PROVIDED IN A SEPARATE, SEALED ENVELOPE AND LABELED AS "PROFESSIONAL FEE INFORMATION".**

It should also contain the same information as the response Title Page (section 4.1).

4.9 Appendices: Under this section, proposers shall provide all required forms and documents listed in the RFP. These documents are not part of the 30-page limitation.



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**SECTION 5: BIDDER RESPONSE AND EVALUATION CRITERIA**

5.1 Proposal Submission: Deliver one (1) hardcopy original and a flash/thumb drive with an electronic copy of the proposal on or before the date required in Section 1.4. The outside of the envelope should be clearly marked with the RFP number and marked to the attention of the contact listed in Section 1.5.

**PROPOSALS RECEIVED AFTER THE DUE TIME AND DATE WILL NOT BE CONSIDERED. IT IS THE BIDDER'S SOLE RESPONSIBILITY TO ENSURE TIMELY DELIVERY OF THE PROPOSAL.**

5.2 The proposal will be evaluated on a one-hundred (100) point scale with points assigned as outlined below.

**Vendors failing to score at least 70% or 49 points for Sections 5.2.1 and 5.2.2 will not be considered to have met the minimum acceptable score. Any vendor not meeting the minimum acceptable score will NOT have their prices opened and will NOT be considered for award of the bid.**

5.2.1 Qualifications, Experience and Company Background – 40 points

Responses to Sections 4.4 and 4.5 will be reviewed and evaluated here.

5.2.2 Services – 30 points

Responses to Sections 4.6 and 4.7 will be reviewed and evaluated here.

5.2.3 Price – 30 points

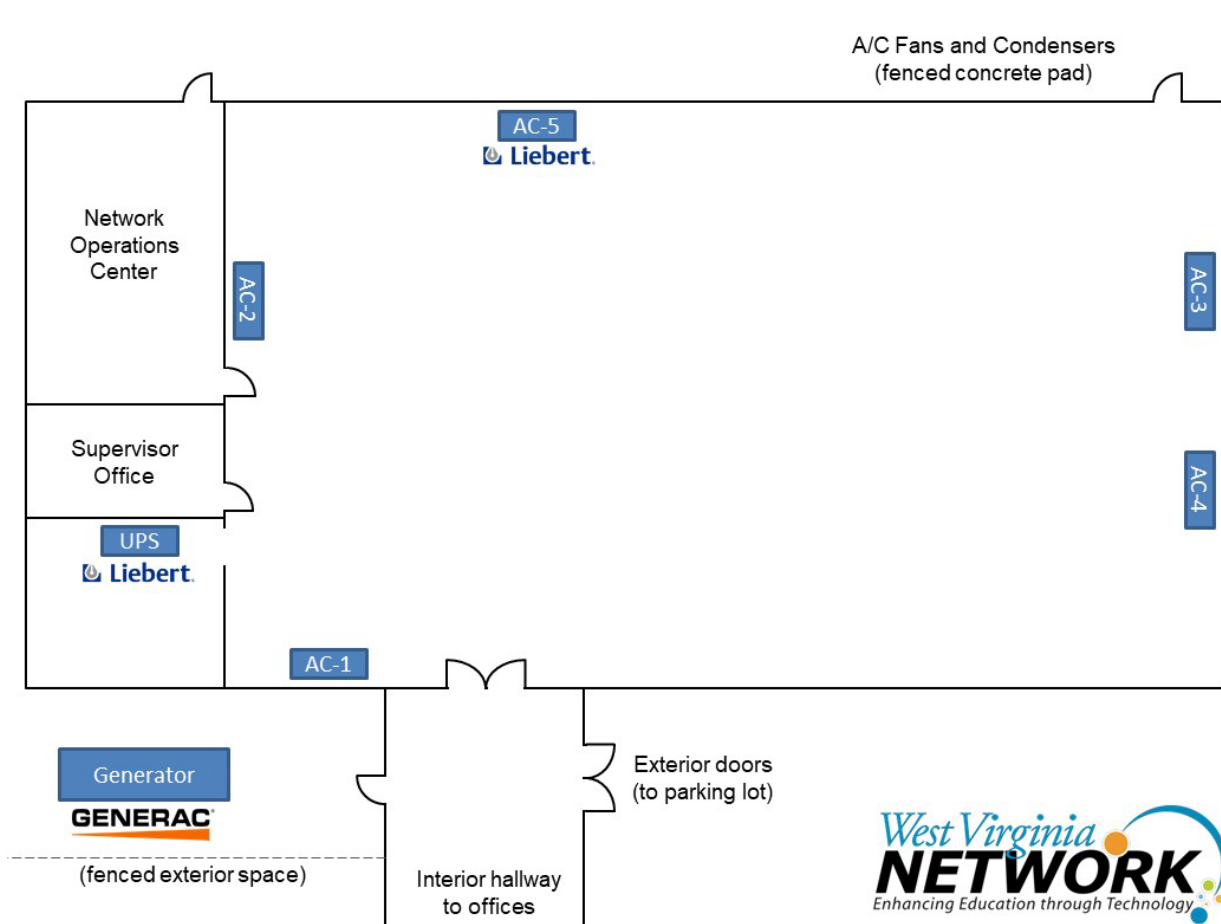
The lowest bid will receive the full 30 points. Each higher bid will receive a percentage of the 30 points on a ratio basis compared to the lowest bid cost.

5.3 Award will be made to the bidder receiving the highest point total.

5.4 In the event that mutually acceptable terms cannot be reached within a reasonable period of time, with the highest ranked bidder, the state reserves the right to undertake negotiations with the next highest ranked bidder and so on until mutually acceptable terms can be reached.

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**EXHIBIT A: DATA CENTER FLOOR PLAN**



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**EXHIBIT B: INSTRUCTIONS TO BIDDERS**

**1. REVIEW DOCUMENTS THOROUGHLY:** The attached documents contain an RFP for bids. Please read these instructions and all documents attached in their entirety. These instructions provide critical information about requirements that if overlooked could lead to disqualification of a vendor's bid. All bids must be submitted in accordance with the provisions contained in these instructions and the Request for Proposals (RFP). Failure to do so may result in disqualification of vendor's bid.

**2. MANDATORY TERMS:** The RFP may contain mandatory provisions identified by the use of the words "must," "will," and "shall." Failure to comply with a mandatory term in the RFP will result in bid disqualification.

**3. PREBID MEETING:** The item identified below shall apply to this RFP.

A pre-bid meeting will not be held prior to bid opening

A **MANDATORY PRE-BID** meeting will be held at the following place and time:

10:00 a.m. on Friday, February 10, 2023

West Virginia Network  
837 Chestnut Ridge Rd.  
Morgantown, WV 26505

All vendors submitting a bid must attend the mandatory pre-bid meeting. Failure to attend the mandatory pre-bid meeting shall result in disqualification of the vendor's bid. No one individual is permitted to represent more than one vendor at the pre-bid meeting. Any individual that does attempt to represent two or more vendors will be required to select one vendor to which the individual's attendance will be attributed. The vendors not selected will be deemed to have not attended the pre-bid meeting unless another individual attended on their behalf.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. Any person attending the pre-bid meeting on behalf of a vendor must list on the attendance sheet his or her name and the name of the vendor he or she is representing.

Additionally, the person attending the pre-bid meeting should include the vendor's e-mail address, phone number, and fax number on the attendance sheet. It is the vendor's responsibility to locate the attendance sheet and provide the required information. Failure to complete the attendance sheet as required may result in disqualification of vendor's bid.

All vendors should arrive prior to the starting time for the pre-bid. Vendors who arrive after the starting time but prior to the end of the pre-bid will be permitted to sign in but are charged with knowing all matters discussed at the pre-bid.

Questions submitted at least five business days prior to a scheduled pre-bid will be discussed at the pre-bid meeting if possible. Any discussions or answers to questions at the pre-bid meeting

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are preliminary in nature and are non-binding. Official and binding answers to questions will be published in a written addendum to the RFP prior to bid opening.

**4. VENDOR QUESTION DEADLINE:** Vendors may submit questions relating to this RFP. Questions must be submitted in writing. All questions must be submitted on or before the date listed below and to the e-mail address listed below to be considered. Submitted e-mails should have RFP number in the subject line.

A written response will be published in an RFP addendum if a response is possible and appropriate. Non-written discussions, conversations, or questions and answers regarding this RFP are preliminary in nature and are nonbinding.

Submit Questions to: [psnitz@staff.wvnet.edu](mailto:psnitz@staff.wvnet.edu)

Question Submission Deadline: Wednesday, February 15, 2023 at 4:00 p.m.

**5. VERBAL COMMUNICATION:** Any verbal communication between the vendor and any WVNET personnel is not binding, including verbal communication at the mandatory pre-bid conference. Only information issued in writing and added to the RFP by an official written addendum is binding.

**6. BID SUBMISSION:** All bids must be mailed or hand delivered to the following address:

West Virginia Network  
837 Chestnut Ridge Rd.  
Morgantown, WV 26505

Clearly identify the RFP number on the envelope.

Vendor responses should include one (1) original and a flash/thumb drive with an electronic copy of the bid by the date and time shown in Section 7 (below). Additionally, the vendor should clearly identify and segregate the cost proposal from the technical proposal in a separately sealed envelope.

**7. BID OPENING:** Bids submitted in response to this RFP will be opened at the location identified below on the date and time listed below. Delivery of a bid, whether by e-mail or delivery, after the bid opening date and time will result in bid disqualification.

Bid Opening Date and Time: Wednesday, March 1, 2023 at 1:00 p.m.

Bid Opening Location: West Virginia Network, 837 Chestnut Ridge Rd., Morgantown, WV

**8. ADDENDUM ACKNOWLEDGEMENT:** Changes or revisions to this RFP will be made by an official written addendum. Vendor should acknowledge receipt of all addenda issued with this RFP by completing an Addendum Acknowledgment Form, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

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**9. BID FORMATTING:** Vendor should type or electronically enter the information onto its bid to prevent errors in the evaluation. Failure to type or electronically enter the information may result in bid disqualification.

**10. ALTERNATE MODEL OR BRAND:** Any model, brand, or specification listed in this RFP establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by WVNET's sole discretion. Any vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide such information for alternate items, including equivalency justification, may be grounds for rejection of a vendor's bid.

**11. EXCEPTIONS AND CLARIFICATIONS:** The RFP contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions, clarifications, or other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the RFP may result in bid disqualification.

**12. COMMUNICATION LIMITATIONS:** Communication with WVNET or any of its employees regarding this RFP during the bid, evaluation, or award periods, except through the contact listed in section 1.5, is strictly prohibited without prior approval.

**13. REGISTRATION:** Prior to award of any contract award in the amount of \$25,000 or greater, the apparent successful vendor must be properly registered with the West Virginia Purchasing Division and must have paid the \$125 fee, if applicable.

**14. UNIT PRICE:** Unit prices shall prevail in cases of a discrepancy in the vendor's bid.

**15. WAIVER OF MINOR IRREGULARITIES:** WVNET reserves the right to waive minor irregularities in bids or specifications .

**16. NON-RESPONSIBLE:** WVNET reserves the right to reject the bid of any vendor as Non-Responsible in accordance with W. Va. Code of State Rules § 148-1- 5.3, when the Director determines that the vendor submitting the bid does not have the capability to fully perform or lacks the integrity and reliability to assure good-faith performance.”

**17. ACCEPTANCE/REJECTION:** WVNET may accept or reject any bid in whole, or in part if it is found to be in the best interest of WVNET and the State of West Virginia.

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

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

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

**19. INTERESTED PARTY DISCLOSURE:** West Virginia Code § 6D-1-2 requires that the vendor submit a disclosure of interested parties to the contract for all contracts with an actual or estimated value of at least \$1 million. That disclosure must occur on the form prescribed and approved by the WV Ethics Commission prior to contract award.

A copy of that form is included with this RFP or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

**20. WITH THE BID REQUIREMENTS:** In instances where these specifications require documentation or other information with the bid, and a vendor fails to provide it with the bid, WVNET reserves the right to request those items after bid opening and prior to contract award

**21. EMAIL NOTIFICATION OF AWARD:** WVNET will attempt to provide bidders with e-mail notification of contract award when an RFP that the bidder participated in has been awarded. For notification purposes, bidders must provide WVNET with a valid email address in the bid response. Bidders may also monitor WVNET’s website to determine when a contract has been awarded.

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**EXHIBIT C: GENERAL TERMS AND CONDITIONS**

- 1. CONTRACTUAL AGREEMENT:** Issuance of a Purchase Order signed by the WVNET’s Director, or their designee, and approved as to form by the Attorney General’s Office constitutes acceptance by WVNET of this Contract made by and between the WVNET and the Vendor. Vendor’s signature on its bid, or on the Contract if the Contract is not the result of a bid RFP, signifies vendor’s agreement to be bound by and accept the terms and conditions contained in this Contract.
  
- 2. DEFINITIONS:** As used in this RFP/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this RFP/Contract.
  - 2.1. “Agency” or “Agencies”** means the agency, institution, board, commission, or other entity of the State of West Virginia that is identified on the first page of the RFP or any other public entity seeking to procure goods or services under this Contract.
  - 2.2. “Bid” or “Proposal”** means the vendors submitted response to this RFP.
  - 2.3. “Director”** means the individual authorized to sign Purchase Order/Contracts.
  - 2.4. “WVNET”** means the West Virginia Network for Educational Telecomputing, the entity identified on the first page of the RFP who is issuing the solicitation.
  - 2.5. “Contract” or “Purchase Order”** means the binding agreement that is entered into between WVNET and the vendor to provide the goods or services requested in the RFP.
  - 2.6. “Award Document”** means the document signed by WVNET and approved as to form by the Attorney General, that identifies the vendor as the contract holder.
  - 2.7. “RFP”** means the official notice of an opportunity to supply WVNET with goods or services.
  - 2.8. “State”** means the State of West Virginia and/or any of its agencies, institutions, commissions, boards, institutions etc. as context requires.
  - 2.9. “Vendor” or “Vendors”** means any entity submitting a bid in response to the RFP, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.
  
- 3. CONTRACT TERM; RENEWAL; EXTENSION:** The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

[ ] **Term Contract**

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**Initial Contract Term:** The Initial Contract Term will be for a period of one (1)-year. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

**Renewal Term:** This Contract may be renewed upon the mutual written consent of WVNET and the Vendor, with approval of the Attorney General’s Office (Attorney General approval is as to form only) for four (4) successive years. Any request for renewal should be delivered to WVNET thirty (30) days prior to the expiration date of the contract.

Automatic renewal of this Contract is prohibited.

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

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

**Other:** Contract Term specified in \_\_\_\_\_

**4. AUTHORITY TO PROCEED:** Vendor is authorized to begin performance of this contract upon receipt of a signed Purchase Order.

**5. QUANTITIES:** The quantities required under this Contract shall be identified in the RFP/Purchase Order.

**6. INSURANCE:** The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below and must include WVNET as an additional insured on each policy prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, vendor shall provide WVNET with proof that the insurance mandated herein has been continued. Vendor must also provide WVNET with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award.

Vendor must maintain:

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

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



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- Cyber Liability Insurance** in an amount of \$1,000,000.00 per occurrence.  
 **Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.

- 7. WORKERS' COMPENSATION INSURANCE:** Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.
- 8. ACCEPTANCE:** Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to WVNET that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the RFP for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the RFP unless otherwise indicated.
- 9. PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this RFP/Contract by WVNET. A vendor may request the inclusion of price adjustment provisions in its bid, but final approval of any price adjustments will be made by WVNET. Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.
- 10. PAYMENT IN ARREARS:** Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software maintenance, licenses, or subscriptions may be paid annually in advance.
- 11. PAYMENT METHODS:** Vendor must accept payment by electronic funds transfer and/or P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)
- 12. TAXES:** The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
- 13. ADDITIONAL FEES:** Vendor is not permitted to charge additional fees or assess additional charges that were not expressly provided for in the RFP.
- 14. FUNDING:** This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, WVNET may notify the vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.
- 15. CANCELLATION:** WVNET reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the

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specifications contained in the Contract.

**16. APPLICABLE LAW:** This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution or West Virginia Code, is void and of no effect.

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

**PERMITS AND LICENSES:** Vendor shall obtain all permits and licenses, paying all fees as required, for execution of the Contract. In addition, the Vendor shall arrange for necessary inspections required by the City, County, State, and other authorities having jurisdiction, and submit certificates of approval to WVNET.

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

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

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

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

**22. ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the vendor without the express written consent of WVNET and the Attorney General's Office (as to form only).

**23. WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by WVNET; (b) be merchantable and fit for the purpose intended; and (c)

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be free from defect in material and workmanship.

**24. STATE EMPLOYEES:** State employees (including WVNET employees) are not permitted to utilize this Contract for personal use and the vendor is prohibited from permitting or facilitating the same.

**25. PRIVACY, SECURITY, AND CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from WVNET, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to WVNET's policies, procedures, and rules.

**26. LICENSING:** Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Upon request, the vendor must provide all necessary releases to obtain information to enable WVNET to verify that the vendor is licensed and in good standing with the above entities.

**SUBCONTRACTOR COMPLIANCE:** Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up to date on all state and local obligations as described in this section. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

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

**28. VENDOR CERTIFICATIONS:** By signing its bid or entering into this Contract, vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this RFP in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to

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WVNET. The individual signing this bid or offer on behalf of the vendor certifies that he or she is authorized by the vendor to execute this bid or offer, or any documents related thereto on vendor's behalf; and that he or she is authorized to bind the vendor in a contractual relationship.

**29. VENDOR RELATIONSHIP:** The relationship of the vendor to WVNET shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this RFP and resulting contract. Neither the vendor, nor any employees or subcontractors of the vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless WVNET and shall provide the State and WVNET with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

**30. INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and WVNET, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

**31. PURCHASING AFFIDAVIT:** In accordance with West Virginia Code §5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to WVNET affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

**32. CONFLICT OF INTEREST:** Vendor, its officers, members, or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members, and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to WVNET.

**33. BACKGROUND CHECK:** In accordance with W. Va. Code §15-2D-3, the State

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

**34. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE:** W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the vendor must submit to WVNET a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre- award interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this RFP or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

**35. PROHIBITION AGAINST USED OR REFURBISHED:** Unless expressly permitted in the RFP published by WVNET, vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

**36. VOID CONTRACT CLAUSES –** WVNET is requiring the vendor to follow the provisions of West Virginia Code §5A-3-62, which automatically voids certain contract clauses that violate State law.

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**EXHIBIT D: CERTIFICATION AND SIGNATURE**

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

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Name and Title (printed)

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Address

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Email Address

Phone Number

**2. CERTIFICATION AND SIGNATURE:** By signing below, or submitting documentation through e-mail, I certify that: I have reviewed this RFP in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to WVNET that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the RFP for that product or service, unless otherwise stated herein; that the vendor accepts the terms and conditions contained in the RFP, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

*By signing below, I further certify that I understand that WVNET is requiring the vendor to follow the provisions of WV State Code 5A-3-62 which automatically voids certain contract clauses that violate State law.*

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Vendor/Company Name

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Authorized Signature

Date

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Name and Title of Authorized Representative (Printed)

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Email Address

Phone Number

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**EXHIBIT E: ADDENDUM ACKNOWLEDGEMENT**

Instructions: Please acknowledge receipt of all addenda issued with this RFP by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

Acknowledgment: I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

Addendum Numbers Received:

*(Check the box next to each addendum received)*

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

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

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Vendor/Company Name

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Authorized Signature

Date

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