



State of West Virginia  
Agency Request for Proposals  
Financial

<b>Proc Folder:</b> 1663356			<b>Reason for Modification:</b> Addendum No. 1	
<b>Doc Description:</b> Investment Consulting Services for W.Va. SMART529 Program				
<b>Proc Type:</b> Agency Contract - Fixed Amt				
<b>Date Issued</b>	<b>Solicitation Closes</b>	<b>Solicitation No</b>	<b>Version</b>	<b>Phase</b>
2025-04-02	2025-05-06 11:30	ARFP 1300 STO2500000002	3	Final

BID RECEIVING LOCATION

WEST VIRGINIA STATE TREASURERS OFFICE  
322 70TH ST SE  
  
CHARLESTON WV 25304  
US

VENDOR

**Vendor Customer Code:**  
**Vendor Name :**  
**Address :**  
**Street :**  
**City :**  
**State :** **Country :** **Zip :**  
**Principal Contact :**  
**Vendor Contact Phone:** **Extension:**

FOR INFORMATION CONTACT THE BUYER

Kevin L Bowling  
304-558-5000  
lee.bowling@wvsto.gov

**Vendor Signature X** **FEIN#** **DATE**

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

INVOICE TO	SHIP TO
WEST VIRGINIA STATE TREASURERS OFFICE 322 70TH ST SE  CHARLESTON WV 25304 US	WEST VIRGINIA STATE TREASURERS OFFICE 322 70TH ST SE  CHARLESTON WV 25304 US

Line	Comm Ln Desc	Qty	Unit of Measure	Unit Price	Total Price
1	Investment advice (Year 1)	4.00000	QTR		

Comm Code	Manufacturer	Specification	Model #
84121700			

Extended Description:  
Investment advice

INVOICE TO	SHIP TO
WEST VIRGINIA STATE TREASURERS OFFICE 322 70TH ST SE  CHARLESTON WV 25304 US	WEST VIRGINIA STATE TREASURERS OFFICE 322 70TH ST SE  CHARLESTON WV 25304 US

Line	Comm Ln Desc	Qty	Unit of Measure	Unit Price	Total Price
2	Investment advice (Year 2)	4.00000	QTR		

Comm Code	Manufacturer	Specification	Model #
84121700			

Extended Description:  
Investment advice

INVOICE TO	SHIP TO
WEST VIRGINIA STATE TREASURERS OFFICE 322 70TH ST SE  CHARLESTON WV 25304 US	WEST VIRGINIA STATE TREASURERS OFFICE 322 70TH ST SE  CHARLESTON WV 25304 US

Line	Comm Ln Desc	Qty	Unit of Measure	Unit Price	Total Price
3	Investment advice - Optional Renewal - Year 3	4.00000	QTR		

Comm Code	Manufacturer	Specification	Model #
84121700			

Extended Description:  
Investment advice

INVOICE TO	SHIP TO
WEST VIRGINIA STATE TREASURERS OFFICE 322 70TH ST SE  CHARLESTON WV 25304 US	WEST VIRGINIA STATE TREASURERS OFFICE 322 70TH ST SE  CHARLESTON WV 25304 US

Line	Comm Ln Desc	Qty	Unit of Measure	Unit Price	Total Price
4	Investment advice - Optional Renewal - Year 4	4.00000	QTR		

Comm Code	Manufacturer	Specification	Model #
84121700			

Extended Description:  
Investment advice

INVOICE TO	SHIP TO
WEST VIRGINIA STATE TREASURERS OFFICE 322 70TH ST SE  CHARLESTON WV 25304 US	WEST VIRGINIA STATE TREASURERS OFFICE 322 70TH ST SE  CHARLESTON WV 25304 US

Line	Comm Ln Desc	Qty	Unit of Measure	Unit Price	Total Price
5	Investment advice - Optional Renewal - Year 5	4.00000	QTR		

Comm Code	Manufacturer	Specification	Model #
84121700			

**Extended Description:**  
Investment advice

**SCHEDULE OF EVENTS**

<u>Line</u>	<u>Event</u>	<u>Event Date</u>
1	Vendor Questions Deadline, 3:00pm	2025-04-21

	Document Phase	Document Description	Page 5
STO2500000002	Final	Investment Consulting Services for W.Va. SMART529 Program	

**ADDITIONAL TERMS AND CONDITIONS**

See attached document(s) for additional Terms and Conditions

## SOLICITATION NUMBER: ARFQ STO2500000002

### Addendum Number: 1

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The purpose of this addendum is to modify the solicitation identified as ARFQ STO25\*002 (“Solicitation”) to reflect the change(s) identified and described below.

#### **Applicable Addendum Category:**

- ☐ Modify bid opening date and time
- ☐ Modify specifications of product or service being sought
- ☐ Attachment of vendor questions and responses
- ☐ Attachment of pre-bid sign-in sheet
- ☒ Correction of error
- ☐ Other (Attach Purchasing Affidavit)

#### **Description of Correction of Error**

1. Clerical error on header of Specifications
2. Addition of Instructions to Vendors and General Terms and Conditions

#### **Terms and Conditions:**

1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.
2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

**ADDENDUM ACKNOWLEDGEMENT FORM**  
**SOLICITATION NO.: ARFQ STO2500000002**

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

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

**Addendum Numbers Received:**

(Check the box next to each addendum received)

<input checked="" type="checkbox"/> Addendum No. 1	<input type="checkbox"/> Addendum No. 6
<input 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 that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

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Company

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Authorized Signature

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Date

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

# **REQUEST FOR PROPOSAL**

WV State Treasurer's Office  
West Virginia SMART529 Investment Consulting Services  
ARFP STO2500000002

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- 6. Section 5: Vendor Proposal**
- 7. Section 6: Evaluation and Award**
- 8. Section 7: Vendor Protests**
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- 15. Exhibit 4: Draft Agreement**

## **SECTION ONE: GENERAL INFORMATION**

- 1.1. Purpose:** The West Virginia State Treasurer's Office, hereafter referred to as the "STO", is soliciting proposals from qualified vendors to provide investment consulting services for the West Virginia SMART529 Savings Program. The STO has issued this Request for Proposals (RFP) on behalf of the West Virginia College and Jumpstart Savings Program (Program) Board of Trustees (Board) to seek proposals from qualified firms (Vendors) to provide certain investment consulting services for the Program, in accordance with the specifications, terms and conditions of the RFP. "Services" include, without limitation, providing objective expert advice, providing reports, reviewing and recommending revisions to investment policies, reviewing and recommending investment options, reviewing offering statements, participation agreements and disclosure documents (between the Board and account holders, reviewing and providing recommendation on the shareholder voting policy, giving recommendations on shareholder voting proxies, attending board and committee meetings, conducting due diligence reviews and any other additional matters as agreed upon by the Board and the Vendor. This procurement is exempt from the requirements of the West Virginia Purchasing Division pursuant to W.Va. Code §12-3A-3 and §5-10B-3.

An RFP is generally used for the procurement of services in situations where price is not the sole determining factor and the award will be based on a combination of cost and technical factors (also known as Best Value Procurement). Through its proposal, the bidder offers a solution to the



# REQUEST FOR PROPOSAL

WV State Treasurer's Office

West Virginia SMART529 Investment Consulting Services

ARFP STO2000000002

objectives, problem, or need specified in the RFP, and defines how it intends to meet (or exceed) the RFP requirements.

By signing and submitting its proposal, the successful Vendor agrees to be bound by all the terms contained in this RFP.

**1.1. Term:** The initial term will be for two (2) years with the option of renewing upon the mutual written agreement of the parties for up to three (3) additional one (1) year periods, or until such time as the Board awards a purchase order pursuant to a solicitation for the Services. The current contract expires June 30, 2025 and the Program desires to have a new contract begin on or about July 1, 2025.

**1.2. Schedule of Events:**

Vendor's Written Questions Submission Deadline.....3:00pm EST on 04/21/2025  
Addendum Issued (tentative date)..... 04/22/2025  
Technical Bid Opening Date..... 05/06/2025  
Technical Bid Opening Time ..... 11:30 AM EST  
Cost Bid Opening Date ..... TBD

The STO will make effort to notify vendors originally included in the invitation notice of any addenda to this solicitation through direct notification; **however**, it is the Vendor's responsibility to check for updates in both wvOASIS.gov and the STO public web page before it responds with a proposal.

The **STO webpage address** is: Bidding Opportunities

The **wvOASIS webpage (Vendor Self Service Portal) address**, and general information for bid opportunities is: West Virginia VSS - Welcome to State of West Virginia Vendor and Sub Recipient Self Service

***Note: Responses for RFP solicitations are not currently accepted via wvOASIS.***

# **REQUEST FOR PROPOSAL**

WV State Treasurer's Office

West Virginia SMART529 Investment Consulting Services

ARFP STO2500000002

## **SECTION TWO: INSTRUCTIONS TO VENDORS SUBMITTING BIDS**

Instructions are attached

## **INSTRUCTIONS TO VENDORS SUBMITTING BIDS**

### **WV State Treasurer's Office (STO) Exempt Procurement**

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

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

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

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

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

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

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 (5) business days prior to a scheduled pre-bid will be discussed at the pre-bid meeting if possible. Any discussions or answers to questions at the pre-bid meeting are preliminary in nature and are non-binding. Official and binding answers to questions will be published in a written addendum to the Solicitation prior to bid opening.

**4. VENDOR QUESTION DEADLINE:** Vendors may submit questions relating to this Solicitation to the STO Purchasing Division designated buyer. Questions must be submitted in writing and be submitted on or before the date listed below and to the address listed below to be considered. A written response will be published in a Solicitation addendum if a response is possible and appropriate. Non-written questions, conversations, or questions and answers regarding this Solicitation are preliminary in nature and are nonbinding. Submitted emails should have the solicitation number in the subject line.

**Questions Submission Deadline:** 4/21/2025 **By:** 3:00pm EDT

**Submit questions to Buyer:** Lee Bowling

**State Treasurer's Office – Purchasing Division, 322 70<sup>th</sup> Street SE, Charleston, WV 25304**

**Fax:** (304) 340-1518 / **Buyer Email:** lee.bowling@wvsto.gov

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

**6. BID SUBMISSION:** All bids must be submitted on or before the date and time of the bid opening listed in Section 7 below. Vendors can submit bids electronically through wvOASIS, in paper form delivered to the STO Purchasing Division at the address listed below either in person or by courier, or in facsimile form by faxing to the STO Purchasing Division at the number listed below. For non-complex purchases, the STO may also allow for bids to be submitted via email. Notwithstanding the foregoing, the STO Purchasing Division may prohibit the submission of bids electronically through wvOASIS at its sole discretion. Such a prohibition will be contained and communicated in the wvOASIS system resulting in the Vendor's inability to submit bids through wvOASIS.

Bids submitted in paper, facsimile, or email form must contain a signature. Bids submitted in wvOASIS are deemed to be electronically signed, however, additional information may be requested and/or signed based on directions in the Solicitation. Any bid received by the STO Purchasing Division staff is considered to be in the possession of the STO Purchasing Division and will not be returned for any reason.

**For Request for Proposal ("RFP") Responses Only:** Submission of a response to a Request for Proposal is not currently permitted in wvOASIS. In the event that Vendor is responding to a request for proposal, the Vendor shall submit one original technical and one original cost proposal prior to the bid opening date and time identified below, plus SIX (6) convenience copies of the technical proposal to the STO Purchasing Division at the address shown below. Additionally, the Vendor should clearly identify and segregate the cost proposal from the technical proposal in a separately sealed envelope.

**Bid Delivery Address and Fax Number:**

WV State Treasurer's Office  
Attn: Purchasing Division  
322 70<sup>th</sup> Street SE, Charleston, WV 25304  
Fax: (304) 340-1518

A bid shall contain the information listed below on the face of the envelope/box or the bid may be rejected by the STO. Note: information in *italics* is for information purposes only to assist in responding.

SEALED BID:

BUYER:

SOLICITATION NO.:

BID OPENING DATE:

BID OPENING TIME:

**7. BID OPENING:** Bids submitted in response to this Solicitation will be opened at the location identified below on the date and time listed below. Delivery of a bid after the bid opening date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when confirmation of delivery is provided by *wvOASIS* (in the case of electronic submission) or when the bid is time stamped by the official STO Purchasing Division time clock (in the case of hand delivery).

**Bid Opening Date:** May 6, 2025 **Time:** 11:30 AM EDT

**Bid Opening Location:** **WV State Treasurer's Office, Purchasing Division**  
**322 70<sup>th</sup> Street SE, Charleston WV 25304**

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

**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 Solicitation establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications.

The equality of any alternate being bid shall be determined by the STO at its sole discretion. Any Vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.

☐ This solicitation is based upon a standardized commodity established by the WV State Treasurer's Office under its exemption authority. Vendors are expected to bid the standardized commodity identified, or upon bid a comparable product that meets or exceeds the standard for consideration.

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

**12. COMMUNICATION LIMITATIONS:** Communication with anyone other than the designated buyer or STO Purchasing Division staff regarding this Solicitation during the solicitation, bid, evaluation or award periods, except through the STO Purchasing Division, is strictly prohibited without prior STO Purchasing Division approval.

**13. REGISTRATION:** Prior to Contract award, the apparent successful Vendor must be properly registered with the West Virginia Purchasing Division and must have paid the \$125 fee, if applicable. Other registrations, including but are not limited to business registration requirements of the WV Secretary of State, WV State Tax Department, and any other state or local entities, will also be required prior to receiving a contract/purchase order.

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

**15. WAIVER OF MINOR IRREGULARITIES:** The STO Purchasing Director reserves the right to waive minor irregularities in bids or specifications.

**16. ELECTRONIC FILE ACCESS RESTRICTIONS:** Vendor must ensure that its submission in wvOASIS can be accessed and viewed by the STO Purchasing Division staff immediately upon bid opening. The STO will consider any file that cannot be immediately accessed and viewed at the time of the bid opening (such as, encrypted files, password protected files, or incompatible files) to be blank or incomplete as context requires, and therefore unacceptable. A vendor will not be permitted to unencrypt files, remove password protections, or resubmit documents after bid opening to make a file viewable if those documents are required with the bid. A Vendor may be required to provide document passwords or removed access restrictions to allow the STO to print or electronically save documents provided that those documents are viewable by the STO prior to obtaining the password or removing the access restriction.

**17. NON-RESPONSIBLE:** The STO Purchasing Division Director reserves the right to reject the bid of any vendor as Non-Responsible when the STO Deputy Treasurer of Purchasing 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.

**18. ACCEPTANCE / REJECTION:** The State Treasurer's Office may accept or reject any bid in whole, or in part.

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

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

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

**20. WITH THE BID REQUIREMENTS:** In instances where the specifications require documentation or other information with the bid response, and a vendor fails to provide it with the bid, the STO Purchasing Division Director reserves the right to request those items after the bid opening and prior to the contract award pursuant to the authority to waive minor irregularities in bids or specifications. This authority does not apply to instances where state law mandates receipt with the bid.

**21. EMAIL NOTIFICATION OF AWARD:** The STO Purchasing Division will attempt to provide bidders with email notification of contract award when a solicitation that the bidder participated in has been awarded. For notification purposes, bidders must provide the STO Purchasing Division with a valid email address in the bid response. Bidders may also monitor wvOASIS or request the information from the STO Purchasing Division.

**22. ISRAEL BOYCOTT CERTIFICATION:** Vendor's act of submitting a bid in response to this solicitation shall be deemed a certification from bidder to the State that bidder is not currently engaged in, and will not for the duration of the contract, engage in a boycott of Israel.

## ADDENDUM ACKNOWLEDGEMENT FORM

**SOLICITATION NO.:** ARFP STO2500000002

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

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

Addendum Numbers Received:

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

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

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

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Company

---

Authorized Signature

---

Date

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



# **REQUEST FOR PROPOSAL**

WV State Treasurer's Office

West Virginia SMART529 Investment Consulting Services

ARFP STO2500000002

## **SECTION THREE: GENERAL TERMS AND CONDITIONS**

Terms and conditions are attached

## **GENERAL TERMS AND CONDITIONS**

### **West Virginia State Treasurer's Office - Exempt Procurement**

- 1. CONTRACTUAL AGREEMENT:** Issuance of an Award Document signed by the Treasurer, or his designee, and approved as to form by the Agency's Counsel constitutes acceptance of this Contract made by and between the West Virginia State Treasurer's Office ("STO") and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, signifies Vendor's agreement to be bound by and accept the terms and conditions contained in the Contract.
- 2. DEFINITIONS:** As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.
  - 2.1. "Agency"** means the West Virginia State Treasurer's Office ("STO").
  - 2.2. "Bid" or "Proposal"** means the vendors submitted response to this solicitation.
  - 2.3. "Board"** means the Board of Trustees of the West Virginia College and Jumpstart Savings Programs.
  - 2.4. "Contract"** means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.
  - 2.5. "Director"** means the Director of Purchasing of STO Purchasing Division.
  - 2.6. "Program"** means the SMART529 Savings Program.
  - 2.7. "Award Document"** means the document issued by the Agency that identifies the Vendor as the contract holder.
  - 2.8. "Solicitation"** means the official notice of an opportunity to supply the State with goods or services that is published by the STO Purchasing Division.
  - 2.9. "STO"** means the West Virginia State Treasurer's Office
  - 2.10. "Exempt"** means the solicitation/purchase is exempt from the requirements of the West Virginia Dept. of Administration - Purchasing Division.
  - 2.11. "Vendor" or "Vendors"** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or. the entity that has been awarded the Contract as context requires.

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

☒ **Term Contract**

**Initial Contract Term:** The Initial Contract Term will be for a period of Two (2) Years - Upon Award. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signature of either the STO Administration Division Assistant Treasurer, Purchasing Division Executive Director or other authorized designee, 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 the STO and the Vendor, and the Attorney General's Office, as applicable, as to form only as applicable. A request for Contract renewal should be submitted to the STO Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract.

Unless otherwise specified below, Renewal of this Contract is limited to Three ( 3 ) successive One (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Renewals must be approved by the Vendor and STO. **Automatic renewal of this Contract is prohibited.**

☐ **Alternate Renewal Term** – This contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. **Automatic renewal of this Contract is prohibited.** Renewals must be approved by the STO and the Vendor.

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

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

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within \_\_\_\_\_ days. Upon completion, of the work covered by the preceding sentence, the vendor agrees that:

☐ the contract will continue for \_\_\_\_\_ years;

☐ the contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year renewal periods or shorter periods provided that they do not exceed the total number of months contained in

all available renewals. **Automatic renewal of this Contract is prohibited.** Renewals must be approved by the Vendor and the STO.

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

☐ **Construction/Project Oversight:** This Contract becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures (electronic or written) of the STO Purchasing Division designee, and continues until the project for which the vendor providing oversight is complete.

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

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

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

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

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

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

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

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

**6. EMERGENCY PURCHASES:** The STO Assistant Treasurer of Administration, or the Executive Director of Purchasing, or their designee, may authorize the purchase of goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the STO from fulfilling its obligations under a One Time Purchase contract.

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

☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the STO Purchasing Division. The request may be prior to or after contract award at the STO's sole discretion.

☐

☐

☐

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

**8. INSURANCE:** The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below prior to Contract award. The insurance coverages identified below must be maintained throughout the life of the contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the STO with proof that the insurance mandated herein has been continued. Vendor must also provide the STO with the immediately notice of any changes in its insurance policies, including but not limited to, policy cancellation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether or not that insurance requirement is listed in this section. Vendor must maintain:

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

One Million Dollars per occurrence.

☒ **Automobile Liability Insurance** in at least an amount of: One Million Dollars per occurrence.

☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: \_\_\_\_\_ per occurrence. Notwithstanding the foregoing, Vendor is not required to list the State/STO as an additional insured for this type of policy.

☒ **Commercial Crime and Third Party Fidelity Insurance** in at least an amount of: One Million Dollars per occurrence.

☐ **Cyber Liability Insurance** in an amount of: \_\_\_\_\_ per occurrence.

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

☐ **Pollution Insurance** in an amount of: \_\_\_\_\_ per occurrence.

☐ **Aircraft Liability** in an amount of: \_\_\_\_\_ per occurrence.

Notwithstanding anything contained in this section to the contrary, the STO Assistant Treasurer of Administration or Executive Director of Purchasing reserves the right to waive the requirement that the STO be named as an additional insured on one or more of the Vendor's insurance policies if he/she finds that doing so is in the STO's best interest.

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

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

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

☐ \_\_\_\_\_ for \_\_\_\_\_.

☐ Liquidated Damages Contained in the Specifications

☐ Liquidated Damages Are Not Included in this Contract.

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

13. **PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the STO. A Vendor's inclusion of price adjustment provisions in its bid, without express authorization from the STO in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the STO and invoice at the lower of the contract price or the publicly advertised sale price.
14. **PAYMENT IN ARREARS:** Payment 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.
15. **PAYMENT METHODS:** The State's preferred payment methods are by electronic funds transfer and/or a State issued credit card, also known as 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). Payments requested by physical warrant/check are available but take additional time for processing and are only processed once per week.
16. **TAXES:** The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
17. **ADDITIONAL FEES:** Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State Treasurer's Office, included in the Contract, or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.
18. **FUNDING:** This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the STO 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.
19. **CANCELLATION:** The STO Assistant Treasurer of Administration, or the Executive Director of Purchasing reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The STO Assistant Treasurer of Administration or the Executive Director of Purchasing may also cancel any purchase order or Contract upon 30 days written notice to the Vendor.
20. **TIME:** Time is of the essence with regard to all matters of time and performance in this Contract.



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

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

**SUBCONTRACTOR COMPLIANCE:** Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

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

**24. MODIFICATIONS:** This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the STO and the Vendor. Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the STO Purchasing Division and/or Agency's Counsel as to form prior to the implementation of the change or commencement of work affected by the change. No Change shall be implemented by the Vendor until such time as the Vendor receives an approved written change order from the STO Purchasing Division.

**VENDOR NAME MODIFICATIONS:** If a Vendor has a change of name (and/or address) after the issuance of a contract, Vendor must notify the STO and also update its business registrations with all applicable State of West Virginia entities it has previously registered. If invoices do not match the name on the Contract and applicable business registrations, they must be held until compliance is verified. Address changes may require additional supporting information before accepting.

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

**26. SUBSEQUENT FORMS:** The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by the Vendor to the STO such as price lists, order forms, invoices, sales agreements, or maintenance agreements, any clauses that may void State law, including internet websites or

other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

27. **ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the STO, and any other government agency or office that may be required to approve such assignments.
28. **WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the STO; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.
29. **STATE EMPLOYEES:** STO employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.
30. **BANKRUPTCY:** In the event the Vendor files for bankruptcy protection, the State Treasurer's Office may deem this Contract null and void, and terminate this Contract without notice.
31. **PRIVACY, SECURITY, AND CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the STO, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the STO's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.
32. **YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the Solicitation and the resulting Contract are considered public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia and the Freedom of Information Act found in West Virginia Code §§ 29B-1-1 et seq.

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

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

33. **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. Obligations related to political subdivisions may include, but are not limited to,

business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the STO Purchasing Division 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. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

- 34. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting an Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency renders the initial payment to Vendor.
- 35. VENDOR NON-CONFLICT:** Neither Vendor nor its representatives are permitted to have any interest, nor shall they acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the STO.
- 36. VENDOR RELATIONSHIP:** The relationship of the Vendor to the STO/State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

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

- 37. INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and the STO, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.
- 38. NO DEBT CERTIFICATION:** The State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State. By submitting a bid, or entering into a contract with the STO, Vendor is (1) for construction contracts, the Vendor is not in default on any monetary obligation owed to the state or political subdivision of the state; and (2) for all other contracts, neither the Vendor nor any related party owe a debt as defined above, and neither the Vendor nor any related party are in employer default as defined in the statute cited above unless the debt or employer default is permitted under the statute.
- 39. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE:** This Contract may be utilized by and extends to other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts (“Other Government Entities”), provided, that both the Other Government Entity and the Vendor agree, and, have such authority to do so. Any extension of this Contract to the aforementioned Other Government Entities must be on the same prices, terms, and conditions as those offered and agreed to in this Contract, provided that such extension is in compliance with the applicable laws, rules, and ordinances of the Other Government Entity. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.
- 40. CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the STO.
- 41. REPORTS:** Vendor shall provide the STO with the following reports identified by a checked box below:
- ☒ Such reports as the STO may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures, etc.
- ☐ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by the agency. Unless otherwise provided for upon Contract award, quarterly reports should be delivered to the STO Purchasing Division via email at [purchasing@wvsto.com](mailto:purchasing@wvsto.com).

**42. BACKGROUND CHECK:** In accordance with W.Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol Complex based on results addressed from a criminal background check. Service providers should contact the WV Division of Protective Services at (304) 558-9911 for more information.

**43. JOINT PROPOSALS AND SUBCONTRACTING:** Joint Proposals are not permitted. Subcontracting is permitted subject to STO authorization. The purchase order/contract shall be awarded to the Vendor submitting the proposal. The Vendor awarded the purchase order/contract shall be the sole point of contact with regard to the purchase order and shall be solely responsible for all matters provided pursuant to the purchase order/contract, including without limitation, any tangible or intangible items provided by a subcontractor or other party.

**44. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS:** Except when authorized by the Director of the (WV Dept. of Administration) Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process.:
- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
  - 1. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
  - 2. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

**45. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL:**

In accordance with W.Va. Code § 5-19-1 et seq., and W.Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic  
*STO Gen T/C Exempt Purchasing (Rev 12/22/23)*

aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

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

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

- 46. 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 the Agency a disclosure of interested parties prior to beginning work under this Contract. Additionally, the Vendor must submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-work interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. 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.
- 47. PROHIBITION AGAINST USED OR REFURBISHED:** Unless expressly permitted in the solicitation published by the STO, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.
- 48. VOID CONTRACT CLAUSES:** This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State Law.
- 49. ISRAEL BOYCOTT:** Bidder understands and agrees that, pursuant to W.Va, Code § 5A-3-63, it is prohibited from engaging in a boycott of Israel during the term of this contract.

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

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(Printed Name and Title)

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(Address)

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(Phone Number) / (Fax Number)

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(Email address)

**CERTIFICATION AND SIGNATURE:** By signing below, or submitting documentation through wvOASIS, I certify that I have reviewed this Solicitation/Contract in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the STO that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation/Contract for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that this bid or offer was made without prior understanding, agreement, or connection with any entity submitting a bid or offer for the same material, supplies, equipment or services; that this bid or offer is in all respects fair and without collusion or fraud; that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; that I am authorized by the Vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration, or shall promptly register upon notification of any such requirement by the STO.

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(Company Name)

---

Printed Name and Title of Authorized Signatory

Date

---

(Authorized Signature)

---

(Phone Number)

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(Fax Number)

Email: 

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**REQUEST FOR PROPOSAL**  
WV State Treasurer's Office  
West Virginia SMART529 Investment Consulting Services  
ARFP STO2500000002

**SECTION FOUR: PROJECT SPECIFICATIONS**

**4.1. Location:** The executive office for the State Treasurer is located at the State Capitol, 1900 Kanawha Blvd. East, Building 1, Suite E-145, Charleston, WV. The SMART529 Savings Program staff is located at 315 70<sup>th</sup> Street SE, Charleston, WV 25304. All meetings are primarily held at the 315 70<sup>th</sup> Street location.

**4.2. Background and Current Operating Environment:**

The original Board of Trustees was created in 1997 with the passage of Enrolled Committee Substitute for Senate Bill 70, enacting W. Va. Code §18-30-1 et seq. (Act). The Act has been amended numerous times. The current name of the Board is the West Virginia College and Jumpstart Savings Programs Board of Trustees (Board). A copy of the current Act is attached (Exhibit 1A/1B) as well as additional information regarding the Board and the Program.

In 1998, the Board began offering an Internal Revenue Code §529 (Section 529) prepaid tuition plan known as the West Virginia Prepaid Tuition Plan (Prepaid Plan). In 2002, the West Virginia Legislature closed the Prepaid Plan to new enrollment, keeping existing contracts in effect until June 30, 2022. In June 2022, the Prepaid Tuition Plan Escrow Fund was created for potential future litigation. It is currently managed by the West Virginia Board of Treasury Investments and is invested in a money market pool. The Vendor will not provide services for the Prepaid Tuition Plan Escrow Fund.

In 2002, the Board developed its second Section 529 plan called the SMART529 Savings Program. The West Virginia State Treasurer's Office (STO) provides the day-to-day management and staffing of the Program and contracts with third parties via competitive bidding for program management and investment consulting services. The State of West Virginia offers three (3) SMART529 Savings Plans:

- **The Hartford SMART529** – A 529 plan that is sold nationally through financial advisors or other financial professionals. This plan offers age-based, static and individual 529 portfolios that are primarily constructed of actively managed Hartford Funds investment products. Plan website [HartfordFunds.com](http://HartfordFunds.com).
- **SMART529 Select** – A 529 plan that is direct sold nationally. This plan offers age-based and static 529 portfolios that are primarily constructed of actively managed investment products from Dimensional Fund Advisors (“DFA”). Plan website [SMART529Select.com](http://SMART529Select.com).
- **SMART529 WV Direct** – A 529 plan that is direct sold to West Virginia residents. This plan offers age-based, static and individual 529 portfolios that are primarily constructed of low-cost, passively managed investment funds. Plan website-[SMART529.com](http://SMART529.com).

Program administrative services are currently provided by the Hartford Funds Management Company, LLC (Program Manager). This contract expires September 30, 2028. The West



# REQUEST FOR PROPOSAL

## WV State Treasurer's Office

### West Virginia SMART529 Investment Consulting Services

#### ARFP STO2500000002

Virginia Savings Plan Trust Fund assets are managed by the Program Manager and Dimensional Fund Advisors (DFA).

Exhibits attached include WV Code 18-30A (Exhibit 1A), WV Code §44-6C (Exhibit 1B), (Exhibit 2A), Shareholder Voting Policy (Exhibit 2B), Basic Calendar of Services and Reports (Exhibit 3), Draft Agreement (Exhibit 4). Additional Program information is available at [www.SMART529.com](http://www.SMART529.com).

- 4.3. Qualifications and Experience:** Vendors should provide in **Attachment A: Vendor Response Sheet** information regarding their firm, such as staff qualifications and experience in completing similar projects; references; copies of any staff certifications or degrees applicable to this project; proposed staffing plan; descriptions of past projects completed entailing the location of the project, project manager name and contact information, type of project, and what the project goals and objectives were and how they were met. The STO reserves the right to contact any person or entity it believes prudent to inquire about the Vendor.

4.3.1 Provide the following information for your firm:

- a. Name
- b. Corporate Mailing Address
- c. Primary Contact, including telephone number and email address
- d. Organizational Chart
- e. List of office locations and the services provided by each location.  
Indicate which office will provide service for the STO.

4.3.2 Describe the scope and length of your experience as an investment consultant, particularly discussing your experience with Section 529 plans, discussing your research and consulting capabilities.

4.3.3 Briefly discuss your organization, including, without limitation, its legal structure, ownership (direct and indirect), control, history, lines of business, staffing numbers, pending contract(s) to merge or sell any portion of Vendor, any changes in senior management in the last three years, and other information that will assist in evaluating your organization.

4.3.4 As the STO reserves the right to authorize or prohibit subcontracting or any joint venture, please note that the STO views any entities providing any portion of the Services, other than the Vendor submitting the proposal, to be a subcontractor. State whether any of the Services will be subcontracted to another entity; fully describe these Services and the background and qualifications of the entity that will provide the Services; and disclose and explain any affiliation with you.

4.3.5 Discuss any arrangements you have with any investment, money management or broker-dealer entities and a brief description of the terms of each arrangement.

4.3.6 Discuss any investigation, charge, bankruptcy or insolvency proceedings, litigation, arbitration or settlement in the last two (2) years involving Vendor and any subcontractor you propose to use in connection with providing any of the Services contemplated by this

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RFP that may affect your relationship with or that could be considered a material conflict of interest with the Board, the STO or the State of West Virginia.

- 4.3.7 Discuss no more than five (5) of your engagements in the last three (3) years comparable to a potential engagement with the Board or that demonstrate the ability of your firm to provide Services for the Board. If Vendor is unable to provide this information due to client confidentiality, please summarize the information using general language. Each entity listed will be contacted as a reference. Include the following information:

- a. Entity name
- b. Address
- c. Contact person
- d. Telephone number
- e. Email address
- f. Length of relationship

- 4.3.8 For the period of 2020 through the date of your proposal, list the total number and size of accounts gained, terminated, or not renewed by a client and specify the number of clients gained. Provide a brief description of the reason for the loss.

- 4.3.9 Describe Vendor's business plan and long-term goals for the future. Do you offer anything that may not be offered by other consultants?

- 4.3.10 State the name of the individual who would be primarily responsible for providing services, his/her duties and brief resume (including his or her qualifications and licenses). Include their experience in working with public entities and describe their anticipated roles with regard to STO account as well as how many years in this industry and how many years with the company. For the individual primarily responsible for the account, state how many other accounts/clients he/she is assigned or backs up. Provide a resume for each individual that will be directly involved as support staff for the STO account.

- 4.3.11 Describe Vendor's business continuity/disaster recovery plan.

- 4.3.12 Describe succession planning and/or backup planning in the event the primary consultant is not available to work on the account.

- 4.4. Project and Goals:** The primary role of the Vendor under an engagement pursuant to this RFP is to provide Basic Services that will enable the Board to make educated and well-reasoned decisions regarding the investment of the assets it manages. Vendor should provide its response in **Attachment A: Vendor Response Sheet** based on the following:

- 4.4.1 Vendor should provide an overview of how the Services will be provided through the award of this RFP.

- 4.4.2 To differentiate your ability to effectively provide the Services, provide written responses to the following:

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- 4.4.2.1 What steps would you take at the initiation of the engagement to become familiar with the Board, the Program and its investments? If you are the current Vendor, what would you do to demonstrate your renewed commitment to the Board?
- 4.4.2.2 What specific issues and areas of concern would you address in the performance of due-diligence reviews conducted on behalf of the Board? Include samples of questionnaires your firm might use during this process in the Miscellaneous section of your proposal. What strategies would you recommend to address problems with investment managers, such as substandard performance or poor customer service?
- 4.4.2.3 Discuss the types of reports you offer and your ability to customize reports, providing samples in the Miscellaneous section of your proposal. Include a sample quarterly report.
- 4.4.2.4 In regard to the requested Services within this RFP, discuss your fiduciary responsibilities. Will your firm contract as a co-fiduciary?
- 4.4.2.5 What consulting or other services do you offer that you believe would be of interest to the Board?
- 4.4.2.6 State any other matters you believe should be considered in evaluating your proposal.

#### 4.5. Mandatory Requirements

**The following mandatory requirements must be met by the Vendor as a part of the submitted proposal. Failure on the part of the Vendor to meet any of the mandatory specifications shall result in the disqualification of the proposal.** The terms “must”, “will”, “shall”, “minimum”, “maximum”, or “is/are required” identify a mandatory item or factor.

All Services performed shall comply with the requirements of WV Code §44-6C-1 et seq. (Exhibit 1B). Decisions regarding compliance with any mandatory requirements shall be at the sole discretion of the STO Purchasing Division. Vendors are to provide confirmation of the fulfillment of all Mandatory Requirements as set forth on **Attachment B: Mandatory Specification Checklist**

- 4.5.1 Vendor must be authorized to do business in and with the State of West Virginia or obtain such authorization within thirty (30) calendar days of being notified by the STO to obtain the authorization.
- 4.5.2 Vendor must be a registered adviser under the Investment Advisers Act of 1940 (explain if you are exempt from registration).
- 4.5.3 Vendor must have a minimum of five (5) years' experience in providing Services to at

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least two 529 plans, as requested in this RFP for IRC §529 plans, to clients with at least \$1 billion of assets under management.

- 4.5.4 Vendor must have at least one (1) team member assigned to the engagement with a Chartered Financial Analyst® designation.
- 4.5.5 Vendor's primary consultant or team leader must have a minimum of three (3) years' experience providing similar consulting services.
- 4.5.6 Vendor must not be currently providing accounting, auditing, actuarial or investment management services to the Board (does not include the Services described in this RFP).
- 4.5.7 Vendor must have no conflict of interest in connection with the Board, the STO and the State of West Virginia.
- 4.5.8 Standards: Vendor must provide all analyses using commonly accepted methods and standards used by investment professionals and prepare and maintain all charts, assumptions and backup data necessary to verify the conclusions articulated within a report or document.

#### 4.6. Basic Services

- 4.6.1 Advice: Vendor must provide objective third-party advice and counsel.
- 4.6.2 Consultation: Vendor must include consultation time with the Board, Program staff and the Program Manager, by telephone and email, sufficient to maintain good communication on the planning, progress-toward-completion and review of all of the Services described in this RFP.
- 4.6.3 Reports - Generally: Vendor must provide reports and documents in a manner and format requested by the Board in an electronic (digital) format, and, if requested, as fifteen (15) printed copies. The electronic versions of the documents will be as follows: spreadsheets must be Microsoft Excel files, expository reports must be Microsoft Word and/or searchable Adobe PDF-format files; and database files must be compatible with Microsoft Access software.
- 4.6.4 Customized Reports: Provide customized reports, as requested by the STO.
- 4.6.5 Benchmarks: Identify and recommend appropriate measurement of benchmarks used to assess investment performance. Review investment performance against appropriate benchmarks, including investment performance for each asset.
- 4.6.6 Fees: Provide an analysis of all fees, including without limitation, investment management fees, fund ratios and eligibility for lower fee opportunities as plan assets grow.

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- 4.6.7 Investment Policy: Vendor must assist the Board with the maintenance of an appropriate, up-to-date investment policy for the Savings Plan Trust Fund. Review the policy at least annually and assess and/or recommend proposed changes. Work with the Board, Program Manager, investment managers and others to help ensure proper implementation of Board policy.
- 4.6.8 Shareholder Voting Policy: Vendor must assist with the maintenance of the Shareholder Voting Policy. Review the policy at least annually and recommend proposed changes. Advise the Board on any shareholder proxy statements it may receive.
- 4.6.9 Investment Performance Reports: Vendor must analyze and report on the performance of the Savings Trust Fund investments, including benchmark and peer reviews, make recommendations to the Board and review the reports with Program staff, the Program Manager and at Board meetings. Submit quarterly investment performance reports within one (1) month of the end of the reporting period.
- 4.6.10 Quarterly Investment Market Commentary: Vendor must provide a one-page, current commentary of market conditions, economic matters, and other issues and matters affecting investment market performance within one month of quarter end. Report to the Board, additionally, any major events which may have a positive or negative effect on the Savings Plan Trust Fund in a timely fashion.
- 4.6.11 Investment Proposal Review: Vendor must assist in planning and evaluating proposed investments and modifications to existing options.
- 4.6.12 Continuing Education Program: Vendor must provide an educational presentation on investment and fiduciary topics, approximately fifty (50) minutes in length, at one (1) regular Board meeting each year.
- 4.6.13 Board and Committee Meetings: Vendor must attend at least three (3) Board or other designated meetings in-person at a Charleston, West Virginia area location each year. Participate in other meetings virtually upon request of the Board.
- 4.6.14 Due Diligence Reviews: Vendor must assist the Board and Program staff in due diligence reviews, and travel to and participate in on-site due diligence review meetings at the offices of Program investment managers annually, as needed, and provide written reports to the Board.
- 4.6.15 Morningstar Annual Review: Vendor must participate in preparatory meetings, review and support materials for the ratings process, and participate during the analyst review if requested.
- 4.6.16 Policy and Document Review: Vendor must review and comment on proposed changes to Board policy; and all offering statements, supplemental documents, participation agreements and disclosure documents between the Board and the Savings Plan account owners; and other documents related to investments, as requested.

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4.6.17 Review of Program Manager Solicitation: The current Program Manager contract expires September 30, 2028. Vendor will review and provide commentary if requested by Board or staff.

4.6.18 Vendor may be requested to provide Additional Services that the Vendor offers but are not included in the Basic Services described herein. A Statement of Work specifying the Additional Services and the fee shall be negotiated by the parties. The hourly rate of the fee shall not exceed the hourly rate the Vendor proposes on its Cost Proposal Form. There is no guarantee the Board will request any Additional Services. In the event a Vendor does not state an hourly rate for Additional Services, the Board may obtain the Additional Services from another Vendor. **PLEASE NOTE: Any and all rates and cost-related factors are ONLY to be listed on the Cost Proposal Form (Attachment C).**

4.7. **Oral Presentations:** The Agency has the option of requiring oral presentations of all Vendors participating in the RFP process. If this option is exercised, it will be listed in the Schedule of Events (Section 1.3) of this RFP. During oral presentations, Vendors may not alter or add to their submitted proposal but only clarify information. A description of the materials and information to be presented is provided below:

4.7.1 Materials and Information Required at Oral Presentation:

4.6.1.1 Vendors must be prepared to answer questions regarding their proposals. The person who would be responsible for this account is expected to attend and participate in the presentation.

4.6.1.2 Vendor should provide an overview of its firm and how it will provide the Services requested by this RFP.

## SECTION FIVE: VENDOR PROPOSAL

5.1. **Economy of Preparation:** Proposals should be prepared simply and economically providing a straightforward, concise description of the Vendor's abilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of the content.

**\*\* NOTE \*\* Vendors proposals should not exceed 30 (thirty) pages excluding any requested exhibits or attachments.**

5.2. **Incurring Cost:** Neither the State nor any of its employees or officers shall be held liable for any expenses incurred by any Vendor responding to this RFP, including but not limited to preparation, delivery, or travel.

5.3. **Proposal Format:** Vendors should provide responses in the format listed below:

**Title Page:** State the RFP subject, number, Vendor's name, business address, telephone number, fax number, name of contact person, e-mail address, and

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Vendor signature and date.

**Table of Contents:** Clearly identify the material by section and page number.

**Attachment A:** Within the attached response sheet (**Attachment A: Vendor Response Sheet**), Vendor should provide the following as listed in Section 4.3: firm and staff qualifications and experience in completing similar projects; references; copies of any staff certifications or degrees applicable to this project; proposed staffing plan; descriptions of past projects completed entailing the location of the project, project manager name and contact information, type of project, and what the project goals and objectives were and how they were met.

Also, describe the approach and methodology proposed for this project. This should include how each of the goals and objectives listed is to be met as listed in Section 4.4.

**Attachment B:** Complete **Attachment B: Mandatory Specification Checklist**. By signing and dating this attachment, the Vendor acknowledges that they meet or exceed each of these specifications as outlined in Section 4.5: Project Specifications. The State reserves the right to require documentation detailing how each is met at its discretion.

**Attachment C:** Complete **Attachment C: Cost Sheet** included in this RFP and submit in a **separate sealed envelope** within the response packet. “Cost” should be clearly marked on the outside of the envelope.

**Oral Presentations:** If established by the Agency in the Schedule of Events (Section 1.3), all Vendors participating in this RFP that have met the requirements specified in the RFP will be required to provide an oral presentation, based on the criteria set in Section 4.6. During oral presentations, Vendors may not alter or add to their submitted proposal, but only to clarify information.

**5.4. Proposal Submission:** Proposals must be received in **two distinct parts**: technical and cost.

- **Technical proposals** must not contain any cost information relating to the project.
- **Cost proposal** shall be sealed in a separate envelope and will not be opened initially.

**Vendor is to provide ONE (1) original Technical and ONE (1) original Cost proposal.**

**Vendor is to also provide 6 (six) convenience copies of its Technical proposal.**

**Vendor is requested to provide an exact copy of the Technical response on a CD-ROM, DVD**

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**or USB flash drive in Adobe PDF or Microsoft Word with its proposal or immediately upon request by the designated buyer/contact person named within the solicitation document.**

All proposals must be submitted to the STO Purchasing Division **prior** to the date and time stipulated in the RFP as the opening date. All bids will be dated and time stamped to verify official time and date of receipt. Bids not received prior to the proposal opening date and time as required shall be immediately disqualified. All submissions must be in accordance with the provisions listed below and in *Section Two: Instructions to Bidders Submitting Bids* above.

- 5.5. Technical Bid Opening:** The STO Purchasing Division will open and announce only the technical proposals received prior to the date and time specified in the Request for Proposal. The technical proposals shall then be provided to the Agency evaluation committee.
- 5.6. Cost Bid Opening:** The STO Purchasing Division shall schedule a date and time to publicly open and announce cost proposals when the STO Purchasing Division has approved the technical recommendation of the evaluation committee. All cost bids for qualifying proposals will be opened. Cost bids for non-qualifying proposals will also be opened but shall not be considered. A proposal may be deemed non-qualifying for a number of reasons including, but not limited to, the bidder's technical proposal failing to meet the minimum acceptable score and the bidder's technical proposal failing to meet a mandatory requirement of the contract. Certain information, such as technical scores and reasons for disqualification, will not be available until after the contract award.



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**SECTION SIX: EVALUATION AND AWARD**

- 6.1 Evaluation Process:** Proposals will be evaluated by a committee of three (3) or more individuals against the established criteria with points deducted for deficiencies. The Vendor who demonstrates that they meet all of the mandatory specifications required; and has appropriately presented within their written response and/or during the oral demonstration (if applicable) their understanding in meeting the goals and objectives of the project; and attains the highest overall point score of all Vendors shall be awarded the contract. The STO reserves the right to contact any Vendor to clarify or elaborate on the proposal. No new or additional matter may be discussed. The selection of the successful Vendor will be made by a consensus of the evaluation committee.
- 6.2 Evaluation Criteria:** All evaluation criteria is defined in the specifications section and based on a 100 point total score. Cost shall represent a minimum of 30 of the 100 total points.

The following are the evaluation factors and maximum points possible for technical point scores:

• Qualifications and experience	50 Points Possible
• Project and Goals	20 Points Possible
• (Oral interview, if applicable)	(n/a) Points Possible
• Cost	<u>30 Points Possible</u>
<b>Total</b>	<b>100 Points Possible</b>

Each cost proposal cost will be scored by use of the following formula for all Vendors who attain the minimum acceptable score:

$$\frac{\text{Lowest price of all proposals}}{\text{Price of Proposal being evaluated}} \times 30 = \text{Price Score}$$

- 6.2.1 Technical Evaluation:** The Agency evaluation committee will review the technical proposals, deduct points where appropriate, and make a final written recommendation to the STO Purchasing Division.
- 6.2.2 Minimum Acceptable Score:** Vendors must score a minimum of 70% (49 points) of the total technical points possible. All Vendors not attaining the minimum acceptable score (MAS) shall be considered as non-qualifying. A proposal may be deemed non-qualifying for a number of reasons including, but not limited to, the bidder's technical proposal failing to meet the minimum acceptable score and the bidder's technical proposal failing to meet a mandatory requirement of the contract. Cost bids for non-qualifying proposals will

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also be opened but shall not be considered. Certain information, such as technical scores and reasons for disqualification, will not be available until after the contract award.

- 6.2.3 Cost Evaluation: The Agency evaluation committee will review the cost proposals, assign appropriate points, and make a final recommendation to the STO Purchasing Division.

### **SECTION SEVEN: VENDOR PROTESTS**

#### **7.1 Types of Protests**

##### **7.1.1 Protests of Requirements, Specifications or Terms**

By issuing the RFP, the STO intends to encourage competition among eligible Vendors. Any protest, complaint or problem with the RFP, including any requirement, specification or term contained in the RFP or any combination thereof, must be filed in writing with the STO Assistant Treasurer of Purchasing no later than three (3) working days prior to the Proposal Opening Date specified in the RFP. Protests received after that date will not be considered.

##### **7.1.2 Protests of Award**

After selection of the apparent successful Vendor, the STO Assistant Treasurer of Purchasing will send a written Notice to each Vendor regarding the award. Each Vendor will have until the date specified in the notice to file a written protest as to the award. Protests received after that date will not be considered.

#### **7.2 Written Letter of Protest**

The written letter of protest must contain the name and address of the protesting Vendor, the RFP number, a statement explaining why the protest has been filed, the relief sought, and any other information that may assist the STO Assistant Treasurer of Purchasing in reaching a decision on the matter. The STO Assistant Treasurer of Purchasing must receive the letter of protest by the appropriate deadline to be considered.

#### **7.3 Review of Protest and Issuing Decision**

The STO will review the letter of protest and issue a written decision. The STO may contact the protestor or any other entity he or she considers necessary to reach a decision. Opening of the proposals, evaluation of the proposals or award of the purchase order may be delayed, as considered appropriate by the STO.

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## **Attachment A: Vendor Response Sheet**

### **Section 3 - Qualifications and Experience**

*Provide a response regarding the following: firm and staff qualifications and experience in completing similar projects; references; copies of any staff certifications or degrees applicable to this project; proposed staffing plan; descriptions of past projects completed entailing the location of the project, project manager name and contact information, type of project, and what the project goals and objectives were and how they were met.*

4.3.1 Provide the following information for your firm:

- a. Name
- b. Corporate Mailing Address
- c. Primary Contact, including telephone number and email address
- d. Organizational Chart
- e. List of office locations and the services provided by each location. Indicate which office will provide service for the STO.

4.3.2 Describe the scope and length of your experience as an investment consultant, particularly discussing your experience with Section 529 plans, discussing your research and consulting capabilities.

**Vendor Response:**

4.3.3 Briefly discuss your organization, including, without limitation, its legal structure, ownership (direct and indirect), control, history, lines of business, staffing numbers, pending contract(s) to merge or sell any portion of Vendor, any changes in senior management in the last three years, and other information that will assist in evaluating your organization.

**Vendor Response:**

4.3.4 As the STO reserves the right to authorize or prohibit subcontracting or any joint venture, please note that the STO views any entities providing any portion of the Services, other than the Vendor submitting the proposal, to be a subcontractor. State whether any of the Services will be subcontracted to another entity; fully describe these Services and the background and qualifications of the entity that will provide the Services; and disclose and explain any affiliation with you.

**Vendor Response:**

4.3.5 Discuss any arrangements you have with any investment, money management or broker-dealer entities and a brief description of the terms of each arrangement.

**Vendor Response:**

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- 4.3.6 Discuss any investigation, charge, bankruptcy or insolvency proceedings, litigation, arbitration or settlement in the last two (2) years involving Vendor and any subcontractor you propose to use in connection with providing any of the Services contemplated by this RFP that may affect your relationship with or that could be considered a material conflict of interest with the Board, the STO or the State of West Virginia.

#### **Vendor Response:**

- 4.3.7 Discuss no more than five (5) of your engagements in the last three (3) years comparable to a potential engagement with the Board or that demonstrate the ability of your firm to provide Services for the Board. If Vendor is unable to provide this information due to client confidentiality, please summarize the information using general language. Each entity listed will be contacted as a reference. Include the following information:
- a. Entity name
  - b. Address
  - c. Contact person
  - d. Telephone number
  - e. Email address
  - f. Length of relationship

#### **Vendor Response:**

- 4.3.8 For the period of 2020 through the date of your proposal, list the total number and size of accounts gained, terminated, or not renewed by a client and specify the number of clients gained. Provide a brief description of the reason for the loss.

#### **Vendor Response:**

- 4.3.9 Describe Vendor's business plan and long-term goals for the future. Do you offer anything that may not be offered by other consultants?

#### **Vendor Response:**

- 4.3.10 State the name of the individual who would be primarily responsible for providing services, his/her duties and brief resume (including his or her qualifications and licenses). Include their experience in working with public entities and describe their anticipated roles with regard to STO account as well as how many years in this industry and how many years with the company. For the individual primarily responsible for the account, state how many other accounts/clients he/she is assigned or backs up. Provide a resume for each individual that will be directly involved as support staff for the STO account.

#### **Vendor Response:**

- 4.3.11 Describe Vendor's business continuity/disaster recovery plan.

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### **Vendor Response:**

- 4.3.12 Describe succession planning and/or backup planning in the event the primary consultant is not available to work on the account.

### **Vendor Response:**

## **Section 4 - Project and Goals**

*The primary role of the Vendor under an engagement pursuant to this RFP is to provide Basic Services that will enable the Board to make educated and well-reasoned decisions regarding the investment of the assets it manages. Vendor should provide its response based on the following:*

- 4.4.1 Vendor should provide an overview of how the Services will be provided through the award of this RFP.

### **Vendor Response:**

- 4.4.2 To differentiate your ability to effectively provide the Services, provide written responses to the following:

- 4.4.2.1 What steps would you take at the initiation of the engagement to become familiar with the Board, the Program and its investments? If you are the current Vendor, what would you do to demonstrate your renewed commitment to the Board?

### **Vendor Response:**

- 4.4.2.2 What specific issues and areas of concern would you address in the performance of due-diligence reviews conducted on behalf of the Board? Include samples of questionnaires your firm might use during this process in the Miscellaneous section of your proposal. What strategies would you recommend to address problems with investment managers, such as substandard performance or poor customer service?

### **Vendor Response:**

- 4.4.2.3 Discuss the types of reports you offer and your ability to customize reports, providing samples in the Miscellaneous section of your proposal. Include a sample quarterly report.

### **Vendor Response:**

- 4.4.2.4 In regard to the requested Services within this RFP, discuss your fiduciary responsibilities. Will the firm contract as a co-fiduciary?

### **Vendor Response:**

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4.4.2.5 What consulting or other services do you offer that you believe would be of interest to the Board?

**Vendor Response:**

4.4.2.6 State any other matters you believe should be considered in evaluating your proposal.

**Vendor Response:**

## **Attachment B: Mandatory Specification Checklist**

*Provide a response below for the following items contained in subsection 4.5 of the RFP.*

*For each of the Mandatory Requirements, Vendor shall only answer **YES / COMPLY** or **NO**. Vendor shall not qualify or limit its response to any Mandatory Requirement. Any proposal that does not have a **YES / COMPLY** response to each and every Mandatory Requirement shall be disqualified.*

4.5.1 Vendor must be authorized to do business in and with the State of West Virginia or obtain such authorization within thirty (30) calendar days of being notified by the STO to obtain the authorization.

**Vendor Response:**

4.5.2 Vendor must be a registered adviser under the Investment Advisers Act of 1940 (explain if you are exempt from registration).

**Vendor Response:**

4.5.3 Vendor must have a minimum of five (5) years' experience in providing Services, to at least two 529 plans, as requested in this RFP for IRC §529 plans, to clients with at least \$1 billion of assets under management.

**Vendor Response:**

4.5.4 Vendor must have at least one (1) team member assigned to the engagement with a Chartered Financial Analyst® designation.

**Vendor Response:**

4.5.5 Vendor's primary consultant or team leader must have a minimum of three (3) years of experience providing similar consulting experience.

**Vendor Response:**

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- 4.5.6 Vendor must not be currently providing accounting, auditing, actuarial or investment management services to the Board (does not include the Services described in this RFP).

**Vendor Response:**

- 4.5.7 Vendor must have no conflict of interest in connection with the Board, the STO and the State of West Virginia.

**Vendor Response:**

- 4.5.8 Advice: Vendor must provide objective third-party advice and counsel.

**Vendor Response:**

#### **4.6 Basic Services**

- 4.6.1 Advice: Vendor must provide objective third-party advice and counsel.

**Vendor Response:**

- 4.6.2 Consultation: Vendor must include consultation time with the Board, Program staff and the Program Manager, by telephone and email, sufficient to maintain good communication on the planning, progress-toward-completion and review of all of the Services described in this RFP.

**Vendor Response:**

- 4.6.3 Reports - Generally: Vendor must provide reports and documents in a manner and format requested by the Board in an electronic (digital) format, and, if requested, as fifteen (15) printed copies. The electronic versions of the documents will be as follows: spreadsheets must be Microsoft Excel files, expository reports must be Microsoft Word and/or searchable Adobe PDF-format files; and database files must be compatible with Microsoft Access software.

**Vendor Response:**

- 4.6.4 Customized Reports: Provide customized reports, as requested by the STO.

**Vendor Response:**

- 4.6.5 Benchmarks: Identify and recommend appropriate measurement of benchmarks used to assess investment performance. Review investment performance against appropriate benchmarks, including investment performance for each asset.

**Vendor Response:**

- 4.6.6 Fees: Provide an analysis of all fees, including without limitation, investment management fees,

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fund ratios and eligibility for lower fee opportunities as plan assets grow.

#### **Vendor Response:**

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- 4.6.8 Shareholder Voting Policy: Vendor must assist with the maintenance of the Shareholder Voting Policy. Review the policy at least annually and recommend proposed changes. Advise the Board on any shareholder proxy statements it may receive.
- 4.6.9 Investment Performance Reports: Vendor must analyze and report on the performance of the Savings Plan Trust Fund investments, including benchmark and peer reviews, make recommendations to the Board and review the reports with Program staff, the Program Manager and at Board meetings. Submit quarterly investment performance reports within one (1) month of the end of the reporting period.

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- 4.6.10 Quarterly Investment Market Commentary: Vendor must provide a one-page, current commentary of market conditions, economic matters, and other issues and matters affecting investment market performance within one month of quarter end. Report to the Board, additionally, any major events which may have a positive or negative effect on the Savings Plan Trust Fund in a timely fashion.

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- 4.6.11 Investment Proposal Review: Vendor must assist in planning and evaluating proposed investments and modifications to existing options.

#### **Vendor Response:**

- 4.6.12 Continuing Education Program: Vendor must provide an educational presentation on investment and fiduciary topics, approximately fifty (50) minutes in length, at one (1) regular Board meeting each year.

#### **Vendor Response:**

- 4.6.13 Board and Committee Meetings: Vendor must attend at least three (3) Board or other designated meetings in-person at a Charleston, West Virginia area location each year. Participate in other meetings virtually upon request of the Board.

#### **Vendor Response:**



# REQUEST FOR PROPOSAL

WV State Treasurer's Office

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- 4.6.14 Due Diligence Reviews: Vendor must assist the Board and Program staff in due diligence reviews, and travel to and participate in on-site due diligence review meetings at the offices of Program investment managers annually, as needed, and provide written reports to the Board.

**Vendor Response:**

- 4.6.15 Morningstar Annual Ratings Review: Vendor must participate in preparatory meetings in advance of the review, provide reporting as needed for the annual ratings process and participate during the analyst review, if requested.

**Vendor Response:**

- 4.6.16 Policy and Document Review: Vendor must review and comment on proposed changes to Board policy; and all offering statements, supplemental documents, participation agreements and disclosure documents between the Board and the Savings Plan account owners; and other documents related to investments, as requested.

**Vendor Response:**

- 4.6.17 Review of Program Manager Solicitation: The current Program Manager contract expires September 30, 2028. Vendor will review and provide commentary if requested by Board or staff.

**Vendor Response:**

- 4.6.18 Vendor may be requested to provide Additional Services that the Vendor offers but are not included in the Basic Services described herein. A Statement of Work specifying the Additional Services and the fee shall be negotiated by the parties. The hourly rate of the fee shall not exceed the hourly rate the Vendor proposes on its Cost Proposal Form. There is no guarantee the Board will request any Additional Services. In the event a Vendor does not state an hourly rate for Additional Services, the Board may obtain the Additional Services from another Vendor. **PLEASE NOTE: Any and all rates and cost-related factors are ONLY to be listed on the Cost Proposal Form (Attachment C).**

By signing below, I certify that I have reviewed this Request for Proposal in its entirety; understand the requirements, terms and conditions, and other information contained herein; that I am submitting this proposal for review and consideration; that I am authorized by the bidder to execute this bid or any documents related thereto on bidder's behalf; that I am authorized to bind the bidder in a contractual relationship; and that, to the best of my knowledge, the bidder has properly registered with any State agency that may require registration.

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(Company)

# **REQUEST FOR PROPOSAL**

WV State Treasurer's Office

West Virginia SMART529 Investment Consulting Services

ARFP STO2500000002

(Representative Name and Title)

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(Contact Phone / Fax Number)

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(Date)

# REQUEST FOR PROPOSAL

WV State Treasurer's Office  
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## Attachment C: Cost Sheet

*Cost information below as detailed in the Request for Proposal and submitted in a **separate sealed envelope**. Cost should be clearly marked on the outside.*

Vendor Name: \_\_\_\_\_

**Vendor must complete this Cost Proposal Form and submit it in a separate, sealed envelope, marked "Cost Proposal" with its Proposal. All fees shall remain fixed during the term of the purchase order and be all inclusive. No separate administrative or travel expenses will be paid.** Fill in the blanks and then total as indicated.

**A. Required Fees for Basic Services:**

Vendor hereby proposes to provide the Basic Services contemplated in the RFP for the following fee amount per year, payable **quarterly in arrears**:

Basic Services Term Year 1 \$ \_\_\_\_\_ per quarter x 4 \$ \_\_\_\_\_

Basic Services Term Year 2 \$ \_\_\_\_\_ per quarter x 4 \$ \_\_\_\_\_

Optional - Year 3 \$ \_\_\_\_\_ per quarter x 4 \$ \_\_\_\_\_

Optional - Year 4 \$ \_\_\_\_\_ per quarter x 4 \$ \_\_\_\_\_

Optional - Year 5 \$ \_\_\_\_\_ per quarter x 4 \$ \_\_\_\_\_

**TOTAL (Years 1 – 5)** \$ \_\_\_\_\_

Evaluation will include the total costs of the base term (Years 1 and 2) and Optional Years 3 – 5.

**B. Hourly Fee for Additional Services**

Vendor hereby proposes to provide Additional Services at the following rate per hour, pursuant to a Statement of Work negotiated by the Parties:

\$ \_\_\_\_\_ per hour

## **EXHIBIT 1-A**

### **West Virginia Code, §18-30A**

ARTICLE 30A. WEST VIRGINIA JUMPSTART SAVINGS ACT.

#### **§18-30A-1. Short Title.**

This article shall be known, and may be cited as, the “West Virginia Jumpstart Savings Act”.

#### **§18-30A-10. Opening a Jumpstart Savings Account; deposits.**

(a) Beginning on July 1, 2022, a person may open a Jumpstart Savings Account.

(b) To open a Jumpstart Savings Account, the account owner must:

(1) Provide all information required by the Treasurer;

(2) Make a minimum opening deposit, if required by the board; and

(3) Name a single person as the designated beneficiary: *Provided*, That the designated beneficiary may be the account owner himself or herself, or another person: *Provided, however*, That the beneficiary may not be a business, corporation, or enterprise.

(c) The Treasurer will deposit \$100 from the College and Jumpstart Savings Administrative Account into a newly opened Jumpstart Savings Account if the following criteria are met:

(1) The designated beneficiary is a resident of West Virginia;

(2) Any minimum deposit required by the board is made to the account within 30 days of the account’s opening; and

(3) The account is opened when the designated beneficiary is under 18 years of age; or

(4) The account is opened within the 180 days following the date of the designated beneficiary’s enrollment in an apprenticeship, training, or educational program described in §18-30A-3(a)(12) of this code.

(d) Any person may make a contribution to a Jumpstart Savings Account after the account is opened, subject to applicable state and federal laws.

(e) The Treasurer shall prescribe all forms required to open and make deposits to a Jumpstart Savings Account and make the forms available in a prominent location on the Treasurer’s website.

(f) The board may establish minimum deposits or amounts for accounts to be considered active and may establish procedures to close inactive accounts.

#### **§18-30A-11. Distributions.**

(a) A distribution from a Jumpstart Savings Account that was used to pay for qualified expenses is not subject to the increasing income tax modification provided in §11-21-12m(c) of this code.

(b) A change in the designated beneficiary of a Jumpstart Savings Account is not a distribution for the purposes of this article or §11-21-1 *et seq.* of this code if the new beneficiary is a family member of the prior beneficiary.

(c) Pursuant to the rule-making authority provided in this article, the board shall promulgate rules specifying the expenditures that constitute qualified expenses, according to §18-30A-3(a)(11)(D) of this code.

#### **§18-30A-12. State tax benefits related to a Jumpstart Savings Account.**

(a) As provided in §11-21-12m, §11-21-25, and §11-24-10a of this code, contributions, distributions, and employer matching contributions are eligible for specified decreasing modifications in determining taxable income, or specified tax credits against tax imposed by §11-21-1 *et seq.* and §11-24-1 *et seq.* of this code.

(b) Nothing in this article nor in §11-21-12m, §11-21-25, or §11-24-10a of this code shall be construed to decrease or otherwise impact any person's federal tax obligations or to authorize any act which violates federal law.

#### **§18-30A-13. Reports and account; annual audit.**

(a) In addition to any other requirements of this article, the board shall:

(1) Prepare and provide an annual summary of information on the financial condition of the Jumpstart Savings Trust Fund and statements on the savings program accounts to the respective account owners; and

(2) Prepare, or have prepared, a quarterly report on the status of the program, including the Jumpstart Savings Trust Fund and the College and Jumpstart Savings Administrative Account, and provide a copy of the report to the Joint Committee on Government and Finance: *Provided*, That the report submitted pursuant to §18-30-10 of this code fulfills this subdivision's requirement concerning the College and Jumpstart Savings Administrative Account.

(b) All accounts administered under the program, including the Jumpstart Savings Trust Fund, are subject to an annual external audit by an accounting firm, selected by the board, of which all members or partners assigned to head the audit are members of the American Institute of Certified Public Accountants. The audit shall comply with the requirements and standards in §5A-2-33 of this code.

#### **§18-30A-14. Records; confidentiality.**

(a) Notwithstanding any other provision of this code, the board and an apprenticeship provider, training or educational institution, or employer, are authorized to exchange information regarding participants in the program to carry out the purposes of this article: *Provided*, That the tax information confidentiality provisions of §11-10-5d of this code shall apply to tax returns and tax return information.

(b) Records containing personally identifying information regarding Jumpstart Savings Account holders and beneficiaries is exempt from disclosure under §29B-1-1 *et seq.* of this code.

#### **§18-30A-15. Limitation on liability.**

Nothing in this article creates any obligation of the board, the Treasurer, the state, or any agency or instrumentality of the state to guarantee for the benefit of any account holder or designated beneficiary with respect to the:

- (1) Return of principal;
- (2) Rate of interest or other return on any account; or
- (3) Payment of interest or other return on any account.

#### **§18-30A-16. Legislative rules required.**

Prior to the commencement of the program, the board shall promulgate legislative, procedural, or emergency rules, or any combination thereof, in accordance with the provisions of §29A-3-1 *et seq.* of this code, that include at a minimum, the following:

- (1) Requirements for any contract to be entered between the board and an account holder upon opening a Jumpstart Savings Account to ensure compliance with the requirements of this article and applicable state and federal laws;
- (2) Examples of qualified expenses, as described in §18-30A-11 of this code; and
- (3) Procedures for opening Jumpstart Savings Accounts, making contributions thereto, requesting distributions therefrom, and instructions for accessing any necessary forms.

#### **§18-30A-2. Findings.**

(a) The Legislature recognizes the importance of cultivating an environment in West Virginia where our tradespersons and entrepreneurs can be successful in their careers and remain in their home state. The Legislature finds that a savings and investment program to assist our citizens who wish to embark on a new trade or establish a new business within this state, is an investment in the future of West Virginia and its hardworking citizens.

(b) The Legislature further finds that, whenever possible, this article should be read in *pari materia* and construed in harmony with the West Virginia College Savings Program Act, §18-30-1 *et seq.* of this code.

(c) The Legislature further finds that interests in the Jumpstart Savings Program Trust are intended:

- (1) To qualify for relevant federal securities law exemptions for public instrumentalities of a state; and
- (2) To be exempt from registration under Chapter 32 of the West Virginia Code, titled the “Uniform Securities Act.”

### **§18-30A-3. Definitions.**

(a) For the purposes of this article, the following terms shall have the following meanings:

(1) "Account owner" means the person who opens and invests money into a Jumpstart Savings Account, as provided in this article.

"Advanced Career Education" or ACE, shall mean the same as that term is used in §18-25-11 of this code.

(2) "Beneficiary" means the person designated as a beneficiary at the time an account is established, or the individual designated as the beneficiary when the beneficiary is changed.

(3) The "board" means the Board of Trustees of the West Virginia College and Jumpstart Savings Programs created in §18-30-4 of this code.

(4) "Contribution" means any amount of money deposited into a Jumpstart Savings Account according to the procedures established and required by the board or the Treasurer.

(5) "Deduction" as used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Deduction means and refers to a deduction allowable under the federal income tax code for the purpose of determining federal taxable income or federal adjusted gross income, unless text clearly indicates otherwise.

(6) "Distributee" has the same meaning provided in §11-21-12m of this code.

(7) "Distribution" means any disbursement from an account.

(8) The term "family member", as used to describe a person's relationship to a designated beneficiary, includes any of the following:

(A) The spouse of the beneficiary;

(B) A child of the beneficiary or a descendant of the beneficiary's child;

(C) A brother, sister, stepbrother, or stepsister of the beneficiary;

(D) The father or mother of the beneficiary, or an ancestor of either;

(E) A first cousin of the beneficiary;

(F) A stepfather or stepmother of the beneficiary;

(G) A son or daughter of a brother or sister of the beneficiary;

(H) A brother or sister of the father or mother of the beneficiary;

(I) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the beneficiary; or

(J) The spouse of any person described in paragraphs (B) through (I) of this subdivision.

(K) Any term set forth in this subdivision means and includes such term as established through a lawful adoption, including, but not limited to, adoptions of a child or children, or other natural person, by a natural person or natural persons who are not the father, mother, or stepparent of the child or person.

(9) "Labor organization" means any organization, agency, association, union, or employee representation committee of any kind that exists, in whole or in part, to assist employees in negotiating with employers concerning grievances, labor disputes, wages, rates of pay, or other terms or conditions of employment.

(10) The "program" refers to the Jumpstart Savings Program established by this article.

(11) "Qualified expense" means an account distribution, or any amount thereof, expended by an account beneficiary in the taxable year of receipt of the distribution or the next succeeding taxable year that:

(A) Is allowable as a federal personal income tax deduction pursuant to 26 U.S.C. § 162, as an ordinary and necessary business expense, and is incurred in carrying on a qualifying profession;

(B) Is allowable as a federal personal income tax deduction pursuant to 26 U.S.C. § 195(b), as a business start-up expenditure, and is incurred in carrying on a qualifying profession; or

(C) Is expended for goods, services, or other expenses that qualify for a federal personal income tax deduction for depreciation or amortization over time, pursuant to a provision of 26 U.S.C. § 161-199a and that are used to carry on a qualifying profession; or

(D) Is not allowable as any one of the federal personal income tax deductions described in paragraphs (A) through (C) of this subdivision and is expended for:

(i) The purchase of tools, equipment, or supplies used exclusively in a qualifying profession;

(ii) Costs to establish a business in this state to practice a qualifying profession; or

(iii) Fees for required certification or licensure in a qualifying profession: *Provided*, That in no event shall any dues, fees, subscriptions, or any other payments to a labor organization constitute qualified expenses for the purposes of this article; and

(iv) Is not reimbursed by the taxpayer's employer.

(12) "Qualifying profession" means an occupation, profession, or trade for which the designated beneficiary is required to:

(A) Complete an apprenticeship program registered and certified with the United States Department of Labor, as provided in 29 U.S.C. § 50;

(B) Complete an apprenticeship program required by any provision of this code or a legislative rule promulgated pursuant to this code;

(C) Earn a license or certification from an Advanced Career Education (ACE) career center; or



(D) Earn an associate degree or certification from a community and technical college or from a school or program, authorized by the West Virginia Council for Community or Technical College Education or a similar agency in another state, to award associates degrees or technical certifications;

(E) Earn a license or certification from a career and technical education or vocational training program at a public secondary school; or

(F) Complete any other apprenticeship or educational program consistent with the purposes of this article, as approved by the board.

(13) The "Treasurer" refers to the West Virginia State Treasurer or his or her designee.

(b) The amendments to this section adopted during the regular session of the Legislature, 2023, are effective January 1, 2023.

#### **§18-30A-4. West Virginia Jumpstart Savings Program established.**

The West Virginia Jumpstart Savings Program is hereby established, to be operable on or before July 1, 2022. The board shall implement and administer the program under the terms and conditions required by this article.

#### **§18-30A-5. The Board of Trustees of the West Virginia College and Jumpstart Savings Programs.**

The West Virginia Jumpstart Savings Program shall be administered by the Board of Trustees of the West Virginia College and Jumpstart Savings Programs. The board is created in §18-30-4 of this code and is a public instrumentality of the State of West Virginia.

#### **§18-30A-6. Powers of the board to implement and administer the Jumpstart Savings Program.**

(a) The board shall implement and administer the Jumpstart Savings Program in accordance with this article and all applicable laws and regulations.

(b) The board is authorized to take any lawful action necessary to effectuate the provisions of this article and successfully administer the program, subject to applicable state and federal law, including, but not limited to, the following:

(1) Adopt and amend bylaws;

(2) Execute contracts and other instruments for necessary goods and services, employ necessary personnel, and engage the services of private consultants, auditors, counsel, managers, trustees, and any other contractor or professional needed for rendering professional and technical assistance and advice: *Provided*, That selection of these services is not subject to the provisions of §5A-3-1 *et seq.* of this code: *Provided, however*, That all expenditures and monetary and financial transactions may be subject to periodic audits by the Legislative Auditor;

(3) Implement the program through use of financial organizations as account depositories and managers, as provided in §18-30A-9 of this code;

- (4) Develop and impose requirements, policies, procedures, and guidelines to implement and manage the program;
  - (5) Establish the method by which funds shall be allocated to pay for administrative costs and assess, collect, and expend administrative fees, charges, and penalties;
  - (6) Authorize the assessment, collection, and retention of fees and charges against the amounts paid into and the earnings on the trust funds by a financial institution, investment manager, fund manager, West Virginia Investment Management Board, the Board of Treasury Investments, or other professional managing or investing the trust funds and accounts;
  - (7) Invest and reinvest any of the funds and accounts under the board's control with a financial institution, an investment manager, a fund manager, the West Virginia Investment Management Board, the Board of Treasury Investments, or other professional investing the funds and accounts: *Provided*, That investments made under this article shall be made in accordance with the provisions of §44-6C-1 *et seq.* of this code;
  - (8) Solicit and accept gifts, including bequests or other testamentary gifts made by will, trust, or other disposition; grants; loans; aid; and property, real or personal of any nature and from any source, or to participate in any other way in any federal, state, or local governmental programs in carrying out the purposes of this article: *Provided*, That the board shall use the property received to effectuate the desires of the donor, and shall convert the property received into cash within 90 days of receipt; and
  - (9) Propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code, including emergency rules when necessary.
- (c) The board may enter into agreements with other states or agencies of, subdivisions of, or residents of those states related to the program or a program that is substantially similar to the Jumpstart Savings Program established by another state.
- (d) The power and duties of the board provided in this article are in addition to the powers and duties of the board provided in §18-30-1 *et seq.* of this code.

#### **§18-30A-7. Powers and duties of the Treasurer.**

- (a) In order to implement and administer the program, the Treasurer shall:
- (1) Provide support staff and office space for the board;
  - (2) Establish and monitor, at the direction of the board, the methods and processes by which the funds held in accounts are deposited and distributed;
  - (3) Charge and collect any necessary administrative fees, penalties, and service charges in connection with any agreement, contract, or transaction relating to the program;
  - (4) Develop marketing plans and promotional material to ensure that potential program beneficiaries will be aware of the program and the advantages the program offers; and

(5) Present the annual evaluations and reports required by §18-30A-13 of this code at any meeting or proceeding of the Legislature or the Office of the Governor upon request.

(b) In order to implement and administer the program, the Treasurer may:

(1) Collect all necessary information from program account holders and beneficiaries;

(2) Create forms necessary for implementation of the program;

(3) Propose legislative rules for legislative approval, in accordance with the provisions of §29A-3-1 *et seq.* of this code, that are necessary to effectuate the provisions and purposes of this article; and

(4) Perform all other lawful actions necessary to effectuate the provisions of this article, subject to applicable state and federal law.

**§18-30A-8. West Virginia Jumpstart Savings Program Trust and Trust Fund created; administrative account.**

(a) There is hereby established the Jumpstart Savings Program Trust, a public instrumentality of the State of West Virginia. The Jumpstart Savings Program Trust shall offer and issue interests in the trust to eligible members of the public.

(b) There is hereby also established a Jumpstart Savings Program Trust Fund Account, titled the Jumpstart Savings Trust Fund, within the accounts held by the Treasurer or with a financial institution, an investment manager, a fund manager, the West Virginia Investment Management Board, the Board of Treasury Investments, or any other person for the purpose of managing and investing the trust fund. Assets of the Jumpstart Savings Program Trust are held in trust for account owners and beneficiaries.

(c) The Jumpstart Savings Trust Fund shall receive all moneys from account owners on behalf of beneficiaries or from any other source, public or private. Earnings derived from the investment of the moneys in the Jumpstart Savings Trust Fund shall remain in the fund, held in trust in the same manner as contributions, except as refunded, applied for purposes of the beneficiaries, and applied for purposes of maintaining and administering the program.

(d) The corpus, assets, and earnings of the Jumpstart Savings Trust Fund do not constitute public funds of the state and are available solely for carrying out the purposes of this article. Any contract entered into by, or any obligation of the board on behalf of and for the benefit of the program, does not constitute a debt or obligation of the state but is solely an obligation of the Jumpstart Savings Trust Fund.

(e) All interest derived from the deposit and investment of moneys in the Jumpstart Savings Trust Fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the trust fund may not be credited or transferred to the State General Fund or to any other fund.

(f) In order to fulfill the charitable and public purposes of this article, neither the earnings nor the corpus of the Jumpstart Savings Trust Fund is subject to taxation by the state or any of its political subdivisions.

(g) Notwithstanding any provision of this code to the contrary, money in the Jumpstart Savings Trust Fund is exempt from creditor process and not subject to attachment, garnishment, or other process; is not available as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or charge; and is not subject to seizure, taking, appropriation, or application by any legal or equitable process or operation of law to pay any debt or liability of any account owner, beneficiary, or successor in interest.

(h) The College and Jumpstart Savings Administrative Account, established in §18-30-8 of this code, shall receive all fees, charges, and penalties collected by the board. All expenses incurred by the board or the Treasurer in developing and administering the program shall be payable from the College and Jumpstart Savings Administrative Account.

**§18-30A-9. Use of financial organizations as program depositories and managers.**

(a) The board may implement the program through use of financial organizations as account depositories and managers. The board may solicit proposals from financial organizations to act as depositories and managers of the program. Financial organizations submitting proposals shall describe the investment instruments which will be held in accounts. The board may select more than one financial organization and investment instrument for the program. The board shall select financial organizations to act as program depositories and managers based on the following criteria:

- (1) The financial stability and integrity of the financial organization;
- (2) The safety of the investment instrument being offered;
- (3) The ability of the financial organization to satisfy recordkeeping and reporting requirements;
- (4) The financial organization's plan for promoting the program and the investment the organization is willing to make to promote the program;
- (5) The fees, if any, proposed to be charged to the account owners;
- (6) The minimum initial deposit and minimum contributions that the financial organization will require;
- (7) The ability of the financial organization to accept electronic deposits and withdrawals, including payroll deduction plans; and
- (8) Other benefits to the state or its residents included in the proposal, including fees payable to the state to cover expenses of operation of the program.

(b) The board may enter into any contracts with a financial organization necessary to effectuate the provisions of this article. Any management contract shall include, at a minimum, terms requiring the financial organization to:

- (1) Take any action required to keep the program in compliance with requirements of this article and any other applicable state or federal law;
- (2) Keep adequate records of each account, keep each account segregated from each other account, and provide the board with the information necessary to prepare the statements required by this article and other applicable state and federal laws;
- (3) Compile, summarize, and total information contained in statements required to be prepared under this article and applicable state and federal laws and provide such compilations to the board;
- (4) Provide the board with access to the books and records of the program manager and with any other information needed to determine compliance with the contract, this article, and any other applicable state or federal law;
- (5) Hold all accounts for the benefit of the account owner or owners;
- (6) Be audited at least annually by a firm of certified public accountants selected by the program manager and provide the results of such audit to the board;
- (7) Provide the board with copies of all regulatory filings and reports made by the financial organization during the term of the management contract or while the financial organization is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager shall make available for review by the board and the Treasurer the results of any periodic examination of such manager by any state or federal banking, insurance, or securities commission, except to the extent that such report or reports may not be disclosed under law; and
- (8) Ensure that any description of the program, whether in writing or through the use of any medium, is consistent with the marketing plan developed pursuant to the provisions of this article.

(c) The board may:

- (1) Enter into contracts it deems necessary for the implementation of the program, including, but not limited to, a contract with a financial institution, manager, consultant or other professional to provide services to both the Jumpstart Savings Program, and the College Savings Program, established in §18-30-1 *et seq.* of this code;
- (2) Require that an audit be conducted of the operations and financial position of the program depository and manager at any time if the board has any reason to be concerned about the financial position, the record-keeping practices, or the status of accounts of such program depository and manager; and
- (3) Terminate or decline to renew a management agreement. If the board terminates or does not renew a management agreement, the board shall seek to promptly transfer such accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.

## **EXHIBIT 1-B**

### **West Virginia Code §44-6C**

#### **ARTICLE 6C. UNIFORM PRUDENT INVESTOR ACT.**

##### **§44-6C-1. Prudent investor rule.**

(a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this article.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust instrument. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust instrument.

##### **§44-6C-2. Standard of care; portfolio strategy; risk and return objectives.**

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

- (1) General economic conditions;
- (2) The possible effect of inflation or deflation;
- (3) The expected tax consequences of investment decisions or strategies;
- (4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property and real property;
- (5) The expected total return from income and the appreciation of capital;
- (6) Other resources of the beneficiaries;
- (7) Needs for liquidity, regularity of income and preservation or appreciation of capital; and
- (8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this article.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

(g) (1) Unless otherwise directed by the terms of the trust instrument, the duties of a trustee of an irrevocable life insurance trust with respect to acquiring or retaining a contract of insurance upon the life of the grantor, or the lives of the grantor and the grantor's spouse, do not include a duty:

(A) To determine whether the contract is or remains a proper investment;

(B) To exercise policy options available under the contract in the event the policy lapses or is terminated due to failure to pay premiums; or

(C) To diversify the contract.

(2) A trustee is not liable to the beneficiaries of the trust or to any other party for any loss arising from the absence of those duties upon the trustee.

#### **§44-6C-3. Diversification.**

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

#### **§44-6C-4. Duties at inception of trusteeship.**

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements and other circumstances of the trust, and with the requirements of this article.

#### **§44-6C-5. Loyalty.**

A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

#### **§44-6C-6. Impartiality.**

If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

#### **§44-6C-7. Investment costs.**

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust and the skills of the trustee.

#### **§44-6C-8. Reviewing compliance.**

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

#### **§44-6C-9. Delegation of investment and management functions.**

(a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of subsection (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state

(e) The delegating trustee is not responsible for the decisions, actions or inactions of the trustee to whom those duties and powers have been delegated if the delegating trustee has exercised reasonable care, skill and caution in establishing the scope and specific terms of the delegation and in reviewing periodically the performance of the trustee to whom the duties and powers have been delegated and the trustee's compliance with the scope and specific terms of the delegation.

#### **§44-6C-10. Language invoking standard of article.**

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this article: "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule" and "prudent investor rule".

#### **§44-6C-11. Application to existing trusts.**

This article applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this article governs only decisions or actions occurring after that date.

#### **§44-6C-12. Uniformity of application and construction.**

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among the states enacting it.

#### **§44-6C-13. Short title.**

This article may be cited as the "West Virginia Uniform Prudent Investor Act".

#### **§44-6C-14. Severability.**

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

#### **§44-6C-15. Effective date.**



This article takes effect on July 1, 1996.