

---

**The State of West Virginia**

**Public Employees Insurance Agency and the West Virginia Children's Health Insurance Program  
In partnership with the West Virginia Office of Technology**

**Information Security Vulnerability Assessment  
Request for Proposal**

**PEI 013002**

---

# TABLE OF CONTENTS

<b>I. EXECUTIVE OVERVIEW</b> .....	<b>3</b>
RFP Milestones.....	3
<b>II. BACKGROUND</b> .....	<b>4</b>
A. WV PEIA AND WV CHIP BACKGROUND .....	4
B. SCOPE, GOALS, OBJECTIVES OF REQUEST.....	4
C. CURRENT ENVIRONMENT OVERVIEW .....	5
<b>III. ANSWERING THE RFP</b> .....	<b>6</b>
A. RFP BACKGROUND INFORMATION .....	6
B. STATEMENT OF CONFIDENTIALITY.....	6
C. RESPONSE INSTRUCTIONS .....	7
1. Mandatory Conditions for Consideration .....	8
2. RFP Questions and Pre-Bid Meeting.....	12
3. Response Submission & Deadline .....	14
4. Addendum Acknowledgement.....	15
<b>IV. VENDOR EVALUATION</b> .....	<b>15</b>
A. EVALUATION CRITERIA .....	15
B. ACCURACY OF DOCUMENTATION .....	16
<b>V. VENDOR RFP RESPONSE</b> .....	<b>16</b>
A. EXECUTIVE SUMMARY OF COMPANY PROFILE.....	17
B. SCOPE CONFIRMATION.....	17
C. REQUIREMENT LIST .....	18
D. DESCRIPTION OF PRODUCTS AND SERVICES .....	20
E. COST.....	20
F. VENDOR PREFERENCE AND SMALL, WOMAN-OWNED, OR MINORITY OWNED BUSINESSES.....	21
G. CANCELLATION.....	21
<b>APPENDIX A – Performance Standards</b> .....	<b>22</b>
<b>APPENDIX B – Transmittal Form</b> .....	<b>23</b>
<b>APPENDIX C – Limited Data Use Agreement</b> .....	<b>24</b>
<b>APPENDIX D – Business Associate Agreement</b> .....	<b>26</b>
<b>APPENDIX E – Certification and Signature Page</b> .....	<b>31</b>
<b>APPENDIX F – Purchasing Affidavit</b> .....	<b>32</b>
<b>APPENDIX G – Vendor Preference Certificate</b> .....	<b>33</b>
<b>APPENDIX H – Agreement Addendum (WV 96)</b> .....	<b>34</b>

## I. EXECUTIVE OVERVIEW

The State of West Virginia, the West Virginia Public Employees Insurance Agency (WV PEIA), and the West Virginia Children’s Health Insurance Program (WV CHIP) are in the process of identifying firms who offer Information Security Vulnerability Assessment services.

The intent of the Request for Proposal (RFP) is to identify an Information Security assessment provider that can satisfy the requirements defined in this RFP. The selection process also includes but is not limited to a review and evaluation of the responses, reference checks, and cultural fit with the State of West Virginia, WV PEIA and WV CHIP.

Selection of vendor(s) will be based on:

- Compliance with all of the requirements of this RFP
- Vendor capabilities
- Client references
- Total cost of services

To facilitate the selection process and help the State of West Virginia, WV PEIA, and WV CHIP better understand your company and its products/services, it is requested that you provide all of the information requested in this document.

For your information, an overview of key project milestone dates is as follows:

<u>Milestone</u>	<u>Completion Date</u>
1. Request for Proposal Release.....	08/28/2012
2. Pre-bid meeting with prospective vendors (MANDATORY).....	09/13/2012
3. Questions on the RFP due.....	09/21/2012
4. Responses to questions from vendors.....	09/28/2012
5. Request for Proposal Response.....	10/05/2012
6. RFP Analysis .....	10/26/2012
7. RFP On-Site Review & Discussion with Finalists .....	11/5 thru 11/19/2012
8. Vendor Selection .....	12/01/2012
9. Final Contract Negotiations following cost approval .....	01/15/2013
10. Information Security Vulnerability Assessment Begins .....	02/18/2013
11. Delivery of Final Report .....	04/15/2013

## **II. BACKGROUND**

### **A. WV PEIA and WV CHIP Background**

WV PEIA is an employer based health plan offered to employees of the State of West Virginia and its political subdivisions. The plan relies on multiple third party contractors to support its operations therefore there are many information technology interfaces.

WV CHIP is a public plan offered to children who lack access to health insurance in families based on income. It is separate and distinct from the state Medicaid program, and uses the PEIA as its “benchmark” plan, as well as many of the same contractors for program operations. Eligibility for the program is determined by the WV Department of Health and Human Resources.

Both WV PEIA and WV CHIP rely heavily on the West Virginia Office of Technology for information technology support including, but not limited to: system upkeep and upgrades, telecommunications support, e-mail and information exchange, help desk support, and hardware issues.

Both WV PEIA and WV CHIP take their responsibilities for providing and maintaining the confidentiality, privacy, security, and integrity of the personally identifiable information (PII) and protected health information (PHI) they use and maintain very seriously and view those responsibilities as key organizational priorities. Both organizations have implemented policies and procedures, along with staff training processes to work toward that end.

**As this RFP is being issued by an Executive Branch agency it is subject to “piggyback” purchasing by other State covered entities such as the West Virginia Department of Health and Human Resources (WV DHHR), State hospitals, etc. Prices and/or fees quoted in prospective vendor responses should be considered applicable to other State of West Virginia covered entities should they choose to procure the type of services outlined in this Request for Proposals within 180 days of WV PEIA / WV CHIP contract award.**

Should any other State agency(ies) elect to purchase services under this RFP the prospective vendor(s) will receive an Executive overview of that/those agency(ies).

### **B. Scope, Goals, Objectives of Request**

The primary scope of this Request for Proposal encompasses the WV PEIA, and WV CHIP’s business offices, headquarters, and satellite locations.

The primary goals and objectives of the Network Vulnerability Assessment are to:

1. For WV PEIA and WV CHIP to have thorough documentation of their IT environments including interfaces and an overall system map.
2. Identify internal and external protected data vulnerabilities (actual and potential) in the context of best practices and the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

- a. Evaluate the public access points, e.g. web sites, ftp site(s), interfaces, etc. for real and/or potential security vulnerabilities.
  - b. If new requirements are identified as part of the HITECH Act as set forth in the American Recovery and Reinvestment Act (ARRA) of 2009, HIPAA related or other, prior to the completion of the Information Security Assessment the new requirements must be reviewed and included as part of the final deliverable.
3. Collaborate with Information Services leadership of the State of West Virginia Office of Technology, WV PEIA, and WV CHIP to assess the risk of each vulnerability and prioritize, as appropriate.
4. Develop recommendations to mitigate or remediate each vulnerability identified.
5. Develop a realistic action plan in the context of the State of West Virginia's environment(s) and available resources. Action plans need to include projected capital and operating expense required, as well as estimated level of effort by internal resource type and estimated duration of effort.

If any other State agencies elect to purchase services under this RFP, the aforementioned goals and objectives shall be replicated in their service agreement(s) and/or contract(s).

**C. Current WV PEIA / WV CHIP Environment Overview. A brief description of our networks and their components is provided. Once prospective vendors sign an appropriate Non-disclosure agreement (to be done at the pre-bid meeting), more detailed information will be provided.**

Both WV PEIA and WV CHIP utilize a Cisco based LAN with a Cisco Pix type firewall. The network(s) have VPN/Remote capabilities and there is a WAN. Employees have access to the internet with some restrictions in place. There is a wireless capability at the PEIA office(s). Network traffic is monitored from the WV Office of Technology Security Operations Center. There is some outside network monitoring utilizing Enterasys Dragon. Both WV PEIA and WV CHIP have multiple websites including, but not limited to public websites and an FTP site. Large files are shared with Business Associates through an FTP platform. WV PEIA and WV CHIP use Windows 2003 and 2008 Servers. Workstations operate on Windows XP and Windows 7. The agencies utilize desktop printers as well as business print centers located within their offices. Both agencies have staff that utilize laptops and/or other mobile computing devices. The staff of both agencies have been trained in HIPAA/HITECH as well as having had to take additional privacy and security training via the State of West Virginia's Learning Management System.

More specific information about the Environment will be provided at the Mandatory pre-bid meeting. Prospective vendor attendees at the pre-bid meeting will be required to sign a Non-disclosure Agreement. They will have the opportunity to ask questions of State of West Virginia staff with regard to the Environment.

### **III. ANSWERING THE RFP**

#### **A. RFP Background Information**

To facilitate the selection process as well as to help the State of West Virginia Office of Technology, WV PEIA, WV CHIP, and/or other State agencies better understand your company and its products/services, it is requested that you provide the information outlined in this document.

Key information regarding this RFP will be discussed at the pre-bid meeting. Prospective vendors are required to attend this meeting. Vendors will have the opportunity to ask questions directly to key State of West Virginia staff.

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”). This Contract shall be extended to the aforementioned Other Government Entities on the same prices, terms, and conditions as those offered and agreed to in this Contract. If the Vendor does not wish to extend the prices, terms, and conditions of its bid and subsequent contract to the Other Government Entities, the Vendor must clearly indicate such refusal in its bid. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.

#### **B. Statement of Confidentiality**

This Request for Proposal contains information proprietary to the State of West Virginia and its political subdivisions. Each recipient is entrusted to maintain its confidentiality. The information contained in the RFP may not be reproduced in whole or in part without the expressed permission of the State of West Virginia. The vendor agrees to maintain the confidentiality of any included information in the same manner that it protects the confidentiality of its own proprietary materials. Access to the enclosed materials shall be restricted to those engaged in the development of the proposal. Information provided by each vendor will be held in confidence, except as required by law, and will be used for the sole purpose of evaluating a potential business relationship with the respective vendor’s company.

**As the services requested in this RFP are part of the Administrative functions of the Public Employees Insurance Agency and WV CHIP, all prospective vendors will be required to sign and be held accountable to the State of West Virginia’s Business Associate Agreement as part of their RFP submission – see Appendix D attached. If other State agencies and/or entities elect to purchase services under this RFP, they may require the vendor(s) to execute a separate Business Associate Agreement as well. The vendor(s) would also be required to sign any and/or all documents required of the State agency(ies) purchasing services under this RFP. These Business Associate Agreements are not subject to edits, insertions, deletions, caveats, and/or exceptions and must be signed as written. Failure to sign the document(s) and submit a copy with a bid response shall be grounds for vendor disqualification.**

The RFP response, and any related documents, information, and discussions pertaining to the RFP response are to remain strictly confidential and must not be communicated to anyone not directly involved in the preparation of your response.

Unless otherwise indicated, the material in this RFP and any documentation attached to it is the property of the State of West Virginia. The contents of the RFP must be held in confidence and must not be disclosed to any third party other than is strictly necessary for the purpose of preparing the response to the RFP. If other parties need to be involved in the preparation of the response, then they must be approved by the State of West Virginia and/or its authorized agent(s). Any third parties and/or subcontractor(s) involved in the preparation shall be required to sign a non-disclosure agreement. The primary vendor contractor shall assume any and/or all liability for their performance as well as the performance of any and/or all subcontractor(s) not directly employed by the State of West Virginia.

**As the State of West Virginia is subject to provisions of the Freedom of Information Act and §29B of the West Virginia Code, certain parts of the RFP response may be subject to public disclosure upon request. The prospective vendors are asked and encouraged to clearly identify which parts of their RFP responses are proprietary and which parts may identify vulnerabilities that compromise and/or may potentially compromise the security of the State of West Virginia and its networks and/or information technology infrastructure. Should the results of the RFP submissions be requested under the Freedom of Information Act and §29B of the West Virginia Code, vendors will be given notice of said request(s) and be afforded the opportunity to seek appropriate legal protection(s) of their submitted information. The State of West Virginia will not take action on behalf of any vendor or prospective vendor to protect the proprietary nature of the information presented in their RFP response(s). The State of West Virginia reserves the right to take action(s) to protect the privacy and security of sensitive information and/or information which may not be subject to disclosure(s) under the Freedom of Information Act and §29B of the West Virginia Code.**

### **C. Response Instructions**

Each vendor must complete the following information in the manner indicated to be considered in the evaluation process. All questions and requirements, even those which are responded to with supplemental documentation, must be met. Candidates should avoid submitting voluminous or extraneous documentation, which are not organized and cross-referenced in the required format(s). WV PEIA and/or WV CHIP will not contact any prospective vendor(s) to report missing and/or incomplete information.

Vendors will be evaluated through their written response to this requirements document.

Vendors choosing to propose their solutions are required to complete this entire document; including all Appendices (A, B, C, D, E, F, G [if applicable], and H). The RFP contains the minimum information to be provided. Additional information may be supplied by prospective vendors as desired.

To be considered in the RFP evaluation process, all mandatory requirements included in this RFP must be agreed to; all sections completed including required and/or applicable Appendices; and all questions completely answered. Responses must be submitted in a .pdf format via email to WV PEIA and WV CHIP Contact ([thomas.d.miller@wv.gov](mailto:thomas.d.miller@wv.gov)) by \_\_\_\_\_. Please note there will be no extension of the response due date. Failure to submit a response is cause for disqualification. Furthermore, prospective vendors must send three (3) CD ROM copies and one (1) hard copy containing your response to the address listed in section III.C.3 by the appropriate due date.

## 1. Mandatory Conditions for Consideration

To ensure that the State of West Virginia, WV PEIA and WV CHIP are provided with adequate and accurate information relative to this important business decision, we insist that each prospective vendor commit in writing to the following conditions when responding to this Request for Proposal (RFP). These conditions shall apply not only to WV PEIA and WV CHIP, but to any and/or all State of West Virginia entities and/or political subdivisions that elect to purchase services under this RFP.

- ***Acknowledgement*** – By submitting a response to this RFP the vendor(s) acknowledge(s) that they have read and understand all of the terms and conditions of this RFP and that they agree to and will comply with all of this listed requirements and stipulations herein.
- ***Pre-Bid Meeting*** – There will be a pre-bid meeting regarding this RFP. Attendance at the pre-bid meeting is MANDATORY. Failure to attend the pre-bid meeting is grounds for disqualification as a vendor.
- ***Confidentiality*** – Information contained in this RFP is confidential to WV PEIA and WV CHIP. A vendor candidate and/or its agents shall not provide any of this information to any other vendor, individual, entity, and/or organization. Unauthorized release of information may be cause for vendor candidate disqualification.
- ***Business Associate Agreement*** – As this Security Assessment is part of the administrative function(s) of the covered entities, any and/or all prospective vendors shall sign a Business Associate Agreement (See Appendix D) with the covered entities as a condition of submitting a bid proposal for the scope of work specified in this RFP. Failure to sign and include the Business Associate Agreement(s) in your bid submission is grounds for immediate and irrevocable disqualification as a vendor.
- ***Preparation Costs*** – Any and all preparation costs incurred by the vendor candidate in responding to information requests, developing proposals, presentations, demonstrations



or any other activity are the sole responsibility of the vendor candidate and will not be reimbursed.

- **Vendor Registration** – Within sixty (60) days of contract award, and prior to any service(s) being provided under this RFP and/or subsequent contract award, the successful vendor shall complete the process(es) to become a registered approved vendor with the State of West Virginia’s Purchasing Division. Failure to qualify as a vendor can and may result in a forfeiture of contract award.
- **Subcontractors** – The primary vendor contractor shall assume any and/or all liability for their performance as well as the performance of any and/or all subcontractor(s) not directly employed by the State of West Virginia.
- **Right to Share RFP Responses** – The RFP response along with all supporting materials shall become the property of the State of West Virginia. WV PEIA, and WV CHIP reserve the right to share with other State agencies and any contracted consultant, any and all responses to this RFP, and any subsequent informational or contractual documents.
- **Representation of Fact** – By signing the RFP Response, the vendor is affirming that all facts contained in this response are true to the vendor’s knowledge. Failure by the vendor to accurately and truthfully represent facts in a consistent manner in any area of the response may result in disqualification from further consideration.
- **Price Quote Effectively** – Price quotes must be provided for all required and optional software, hardware and services and must be held constant for 180 days or until contract is signed with vendor of choice. Candidates are advised that price is only one of several factors which will be considered in the selection process.
- **Proposal Signature** – Your firm’s response to this RFP must be signed by a company official authorized to bind your organization.
- **Client References** – The WV PEIA/WV CHIP vendor selection team may desire to contact at least two (2) client references (similar in size and scope to WV PEIA and WV CHIP supplied by each vendor to discuss services rendered and discuss client satisfaction. All vendor candidates should be prepared to provide a list of client references, including their contact information, that are similar to the size and/or scope of this RFP.
- **Contractual Obligation** – Any provision of the selected candidate’s response to this RFP will become the basis for contractual obligation and will be considered binding upon the vendor of choice in all areas of contractual liability, except as specifically modified in any forthcoming contract, and will, by addendum, become part of the purchase contract.
- **Finalist Presentation(s)** - The State of West Virginia, WV PEIA, and WV CHIP reserve the right to ask vendor candidates to make in-person presentations related to their RFP responses. These may or may not be finalist presentations.
- **BAFO** - The State of West Virginia, WV PEIA, and WV CHIP reserve the right to enter into “Best and Final Offer” negotiations with one (1) or more finalists in an effort to obtain the most fiscally responsible solution for the State.

- **Contract Award** – The State of West Virginia, WV PEIA, and WV CHIP are not bound and/or legally obligated to award a contract based on this RFP. The parties reserve the right to abstain from action based on any factor(s) including, but not limited to: cost prohibitions and/or no suitable vendor identified.
- **Vendor Waiver of Right to Appeal Contract Award** – By submitting a response to this RFP, any and/or all prospective vendors waive their right to appeal and/or litigate any contract award made by the State of West Virginia, WV PEIA, and WV CHIP with regard to this RFP. The decision of the State of West Virginia, WV PEIA, and WV CHIP shall be considered final and not subject to challenge and/or contest.
- **Disputes and/or mediation** – this RFP and any subsequent contract awarded shall be governed by the laws of the State of West Virginia and its applicable political subdivision(s).
- **Taxes** - Provisions in the agreement or contract requiring the Agencies to pay taxes are deleted. As State entities, the Agencies are exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agencies file any tax returns or reports on behalf of Vendor or any other party.
- **Arbitration** – Any references to arbitration contained in an agreement or contract are unacceptable. Any claims against WV PEIA and/or WV CHIP under the agreement and/or contract shall be presented to the West Virginia Court of Claims.
- **Hold Harmless** – Any clause requiring WV PEIA and/or WV CHIP to indemnify or hold harmless the vendor(s) and/or any party is unacceptable. The vendor(s) must indemnify and hold harmless the State of West Virginia, WV PEIA, and WV CHIP from the acts or omissions of the vendor(s) or its employees, agents, contractors, and/or sub-contractors.
- **Interest** – Should the agreement or contract include a provision for interest on late payment(s), WV PEIA and WV CHIP agree to pay the maximum legal rate under West Virginia Law. All other reference to interest or late charges are unacceptable.
- **Recoupment** – Any language in the agreement or contract waiving WV PEIA’s or WV CHIP’s right to set-off, counterclaim, recoupment, or other defense is unacceptable.
- **Statute of Limitation** – Any clause limiting the time in which WV PEIA and/or WV CHIP may bring suit against the vendor(s), lessor, individual, or other party is unacceptable.
- **Similar Services** – Any provisions limiting WV PEIA’s and/or WV CHIP’s right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement or contract are unacceptable.
- **Attorney Fees** – WV PEIA and WV CHIP recognize an obligation to pay attorney’s fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
- **Limitation on Liability** – WV PEIA and WV CHIP, as State entities, cannot agree to assume the potential liability of a vendor. Accordingly, any limiting the vendor’s liability for direct damages or limiting the vendor’s liability under a warranty to a certain dollar amount or to the amount of the agreement or contract is unacceptable. In addition,

any limitation is unacceptable to the extent that it precludes any action for injury to persons or for damages to personal property.

- **Right to Terminate** - Agencies shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agencies agree to pay Vendor for services rendered or goods received prior to the effective date of termination.
- **Termination Charges** – Any provision requiring the State of West Virginia, WV PEIA, and/or WV CHIP to pay a fixed amount or liquidated damages upon termination of the agreement or contract is unacceptable. the State of West Virginia, WV PEIA, and/or WV CHIP may only agree to reimburse a vendor for actual cost(s) incurred or loss(es) sustained during the current fiscal year due to wrongful termination by the State of West Virginia, WV PEIA, and/or WV CHIP prior to the end of any current agreement term.
- **Renewal** – Any reference to automatic renewal is unacceptable. The agreement or contract may only be subject to renewal upon mutual written agreement of the parties.
- **Insurance** – Any provision requiring the State of West Virginia, WV PEIA, and/or WV CHIP to insure equipment or property of any kind in the name of the vendor as beneficiary or as an additional insured is unacceptable.
- **Right to Notice** – Any provision for repossession of property or equipment without notice is unacceptable.
- **Acceleration** – Any reference to acceleration of payments in the event of default or non-funding is unacceptable.
- **Amendments** – All amendments, modifications, alterations, or changes to the agreement or contract shall be in writing and signed of on by all parties.
- **Rejection of Candidates** – The State of West Virginia, WV PEIA, and WV CHIP reserve the right to reject any or all candidates from consideration based on their response to this RFP.
- **Vendor Relationship** - The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, *etc.* and the filing of all necessary documents, forms and returns pertinent to all of the foregoing. Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

- **Binder** – These mandatory conditions listed in this RFP shall be binding on any and/or all other agreements and/or contracts enacted in relation to this RFP.

## 2. RFP QUESTIONS AND PRE-BID MEETING

Vendors may submit questions relating to this RFP to the WV PEIA / WV CHIP Contact. Questions must be submitted in writing. All questions must be submitted on or before the date listed below and to the address listed below in order to be considered. A written response will be published in an RFP addendum if a response is possible and appropriate. Non-written discussions, conversations, or questions and answers regarding this Solicitation are preliminary in nature and are non-binding.

Any questions regarding the content, scope, or intent of this RFP should be directed via mail or email to the attention of:

Thomas D. Miller, MA, LPC, ALPS  
Privacy Officer, WV Department of Administration  
601 57<sup>th</sup> Street, SE, Suite 2  
Charleston, West Virginia 25304-2345  
Email: [thomas.d.miller@wv.gov](mailto:thomas.d.miller@wv.gov)  
304-558-7850, Extension 52663

All questions must be submitted in writing by the date specified in this document – Friday, September 21, 2012 at 5:00 p.m. EST (1700hrs). All questions submitted, along with the responses, will be submitted back to the group of prospective vendors as a group with the asking party de-identified. Each vendor must have a designated point of contact on this RFP. The WV PEIA/WV CHIP Contact will forward responses to vendor questions to that person.

Any verbal communication between the Vendor and any State personnel is not binding, including that made at the mandatory pre-bid conference. Only information issued in writing and added to the RFP by an official written addendum by WV PEIA and/or WV CHIP is binding.

All prospective vendors are required to attend the Mandatory pre-bid meeting to be held on Thursday, September 13, 2012 at 1:00 p.m. at the WV PEIA office located at 601 57<sup>th</sup> Street, SE, Charleston, West Virginia 25304. For additional information regarding this location, contact, Thomas D. Miller, at [thomas.d.miller@wv.gov](mailto:thomas.d.miller@wv.gov). 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 person attending the pre-bid meeting may represent more than one Vendor.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. The State will not accept any other form of proof or documentation to verify 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.

WV PEIA and WV CHIP strongly encourage in-person attendance at the pre-bid meeting but, recognizing economic limitations and budgets, prospective vendors may participate in the pre-bid meeting via telephone call in. If a prospective vendor is going to participate via phone, they must comply with the following:

- a. Prospective Vendors wishing to participate by phone will be required to notify the WV PEIA / WV CHIP Contact, Thomas D. Miller, at [thomas.d.miller@wv.gov](mailto:thomas.d.miller@wv.gov), of their intent to participate via phone no later than three (3) business days prior to the scheduled meeting. Failure to contact in a timely manner will disqualify a vendor from participation in the pre-bid meeting.
- b. WV PEIA and WV CHIP are not responsible for any technical issues beyond their control with regard to connectivity and/or a prospective vendors ability to connect to and/or attend the pre-bid meeting via telephone.
- c. While as many participants as needed from a vendor may listen in on the meeting, each vendor participating by phone will be allowed only one (1) person to ask questions or speak on behalf of that vendor. The coordination of questions from the prospective vendor(s) shall be the responsibility of the WV PEIA / WV CHIP Contact. Prospective vendors should include the names and titles of any and/or all of their staff and/or agents who will be attending and/or listening in on the call.
- d. Any prospective vendor participating by phone will be required to sign and return a Non-disclosure Agreement to the WV PEIA / WV CHIP Contact prior to receiving the call information for the pre-bid meeting. Said Non-disclosure Agreement shall be binding to any and/or all agents, employees, subcontractors, and/or other third parties involved with the prospective vendor with regard to this RFP.
- e. Any forwarding, dissemination, re-disclosure, and/or resending of the information discussed and/or distributed at the pre-bid meeting to any party or entity not bound by a Non-disclosure Agreement with WV PEIA and WV CHIP shall be grounds for immediate disqualification of a prospective vendor.

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. WV PEIA and WV CHIP reserve the right to correct and/or amend verbal responses provided at the pre-bid meeting. Official and binding answers to questions will be published in a written addendum to the RFP prior to bid opening.

### 3. Response Submission & Deadline

**RFP Technical Proposal Responses** must be submitted in a .pdf format via email to the PEIA and WV CHIP Contact, Thomas D. Miller, at [thomas.d.miller@wv.gov](mailto:thomas.d.miller@wv.gov), no later than \_\_\_\_\_ at 5 p.m. EST (1700hrs EST). “**SECURITY RISK ASSESSMENT TECHNICAL PROPOSAL WV PEIA/CHIP SEC RFP 2012**” should be in the subject line of the email communication. Furthermore, please send three (3) CD-ROM discs and one hard copy containing the Technical Responses to the RFP to the address listed below by the appropriate due date and time. CD ROM and hard copy(ies) must be clearly labeled “**SECURITY RISK ASSESSMENT TECHNICAL PROPOSAL WV PEIA/CHIP SEC RFP 2012**”. Vendors are encouraged to proof their submissions prior to sending.

**RFP Cost Proposal Responses** must be submitted in a separate .pdf format via a separate and distinct email to the PEIA and WV CHIP Contact, Thomas D. Miller, at [thomas.d.miller@wv.gov](mailto:thomas.d.miller@wv.gov), no later than \_\_\_\_\_ at 5 p.m. EST (1700hrs EST). “**SECURITY RISK ASSESSMENT COST PROPOSAL WV PEIA/CHIP SEC RFP 2012**” should be in the subject line of the email. Furthermore, please send three (3) CD-ROM discs and one hard copy containing all the cost proposal responses in a separate package than the RFP Technical Proposal Responses to the address listed below by the appropriate due date and time. CD ROM and hard copy(ies) must be clearly labeled “**SECURITY RISK ASSESSMENT COST PROPOSAL WV PEIA/CHIP SEC RFP 2012**”. Vendors are encouraged to proof their submissions prior to sending.

DO NOT SEND TECHNICAL AND COST PROPOSALS ENJOINED. THEY CAN BE SENT TOGETHER IN THE SAME ENVELOPE OR PACKAGE BUT MUST BE UNDER SEPARATE COVERS. – THEY WILL BE SCORED SEPARATELY AND DISTINCTLY.

Any and/or all attachments must be clearly labeled and referenced/cited within the body of the RFP response.

Please note that the CD-ROM discs should not be set to expire. If the CD ROMs are password protected, please be sure to deliver the password by the same deadline in a secure format. Please note there will be no extension of the response due date. The time stamp on the West Virginia PEIA email system reflecting receipt shall be considered the official time of receipt. Failure to submit is cause for disqualification.

The information contained in all responses must be valid for 180 calendar days following the response due date. The CD ROM and hard copy responses must be submitted under separate covers for the Technical and Cost Proposals by the stated deadline in a sealed package addressed to:

PEIA and WV CHIP Contact:  
Thomas D. Miller, MA, LPC, ALPS  
Privacy Officer

601 57<sup>th</sup> Street, SE  
Charleston, West Virginia 25304-2345  
304-558-7850, Extension 52663  
Email: [thomas.d.miller@wv.gov](mailto:thomas.d.miller@wv.gov)

RFP responses must be clearly labeled:

**SECURITY RISK ASSESSMENT WV PEIA/CHIP SEC RFP  
2012 – COST and/or TECHNICAL PEI 013002**

**4. ADDENDUM ACKNOWLEDGEMENT:**

Changes or revisions to this RFP will be made by an official written addendum issued by WV PEIA and/or WV CHIP. Vendor should acknowledge receipt of all addenda issued with this RFP by completing an Addendum Acknowledgment Form, a copy of which will be included with any RFP Addenda. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

**VENDOR EVALUATION**

**A. Evaluation Criteria**

To be evaluated as one of the potential vendors, each vendor must provide all of the information requested. Any information not provided that has been requested must have a detailed explanation as to why that information was not submitted. Vendors failing to agree to the mandatory requirements of this RFP are subject to disqualification and their cost proposals will not be scored. Entering “Not applicable” and/or “N/A” is not acceptable. Vendors responding in a satisfactory format will be evaluated by the vendor selection team based on the areas listed below (areas are not listed in order of importance):

- Did the vendor meet all of the Mandatory Requirements as outlined in this RFP
- Did the vendor complete and submit the Performance Standards (Appendix A), Transmittal Form (Appendix B), Limited Data Use Agreement (Appendix C), the Business Associate Agreement (Appendix D), the Certification and Signature Page (Appendix E), the Purchasing Affidavit (Appendix F), the Vendor Preference Certificate (if applicable)(Appendix G), and the Agreement Addendum (WV 96)(Appendix H)
- Vendor knowledge and experience
- Timeliness and comprehensiveness in responding to this RFP
- Ability of vendor to meet RFP requirements
- Client references

- Total cost (with appropriate detail) – Cost proposals will be evaluated after Technical proposals have been evaluated and scored.

WV PEIA and WV CHIP will assemble an RFP Evaluation Team that will be comprised of persons knowledgeable in the terms and scope intended by this RFP. That team may include representatives from other State agencies that could elect to purchase services under this RFP. WV PEIA and WV CHIP reserve the right to consult with third parties as part of the decision making process(es).

The evaluation criteria will be weighted by the selection team and applied to vendor responses in a uniform format to determine which vendor is the best business partner for the State. Technical Responses will be reviewed and scored first and then Cost Proposals will be reviewed to make up the final prospective vendor score. The Proposal review team reserves the right to ask questions for clarification during the review process from vendors if any and/or all of their responses are not clear to the reviewer(s). Once proposals have been submitted, prospective vendors may not ask questions of the State of West Virginia contact and/or of the proposal review team.

The evaluation criteria will be broken down as follows:

- 50% based on Technical capability and qualifications of the vendor(s)
- 50% based on the Cost proposal

## **B. Accuracy of Documentation**

Although care has been taken in preparing and delivering this RFP, it is the responsibility of the vendors to check this document for completeness and accuracy. Should any part of this RFP be found missing or appear to be unclear, vendors should immediately contact the WV PEIA and WV CHIP Contact via email at ([thomas.d.miller@wv.gov](mailto:thomas.d.miller@wv.gov)) for clarification. The State of West Virginia, WV PEIA, and WV CHIP will accept no liability for any omission or errors in this RFP that could have been identified by the vendors.

The State of West Virginia, WV PEIA, and WV CHIP reserve the right to ask questions for clarification on any and/or all part(s) of the RFP response. The vendor candidate shall have three (3) business days to respond to any and/or all questions for clarification.

## **VENDOR RFP RESPONSE**

The State of West Virginia, WV PEIA, and WV CHIP view its vendors as strategic business partners. As this RFP is requesting services that are an administrative support function related to the operations of a covered entity, please provide the following information so that we may develop a comparative profile of your organization.

*In your response, please be sure to specifically state which question is being answered (i.e., A1, B3, etc).*



## **A. Executive Summary of Company Profile:**

The executive summary should contain the following information [please limit to three (3) pages]:

1. Please describe the benefits you believe WV PEIA and WV CHIP will achieve through partnering with your company. Where possible, quantify the expected benefits. This may include the results of other benefit analysis performed or client contact names that may be referenced.
2. Please provide a brief description of your company and its products and services.
3. Please confirm the specific products and services that you are including in order to satisfy the RFP.
4. Please describe any experience that your company has had working with government agencies and/or entities. Include the names of at least two (2) other organizations of a similar size and scope. You will need to include the name and contact information for a person or persons at those organizations that can be used as a professional reference. You are encouraged to advise the person(s) listed that they will be contacted by the State of West Virginia for reference verification.
5. Please provide summary information describing your current base operation and share any satisfaction measures and results that you maintain.
6. Specify the name, title, address, email, telephone and fax numbers of the contact for your proposal.
7. Please provide a list of the key staff who will be working on this contract including brief bios that define education and experience. Include the amount of time – based on percentages – that those staff will be assigned to work on this project. Also please include the steps that your company takes to ensure the integrity and experience of your staff, e.g. background checks, etc.
8. List any and/or all relationships with any third party vendors and/or subcontractors who may be included in your proposed solution(s).

## **B. Scope Confirmation:**

The scope of this Request for Proposal encompasses the State of West Virginia and two (2) its covered entities – WV PEIA and WV CHIP. Other State of West Virginia covered entities can and may elect to purchase security assessment services under the terms and provisions of this RFP.

The primary goals and objectives of the Information Security Assessment are to:

1. For WV PEIA and WV CHIP to have thorough documentation of their IT environments including interfaces and an overall system map.
2. Identify internal and external information security vulnerabilities (actual and potential) in the context of best practices and the requirements of the HIPAA Security Rule(s), the HITECH Act, FTC “Red Flag Rules”, GLBA, NIST, ISO, and/or any other applicable State and/or Federal law(s), rule(s) and/or regulations, and/or consensus Standards

designed to and/or intended to promote the confidentiality, privacy, security, and integrity of personally identifiable information including protected health information. (HIPAA, PCI, FFIEC, or whatever standard is being applied)

3. Collaborate with Information Services leadership of the West Virginia Office of Technology, WV PEIA, and WV CHIP to assess the risk of each vulnerability and prioritize, as appropriate.
4. Develop practical recommendations to mitigate or remediate each vulnerability identified.
5. Develop a realistic action plan in the context of The State of West Virginia's environment(s) and available resources. Action plans need to include projected capital and operating expense required, as well as estimate level of effort by internal resource type and estimated duration of effort. The action plan should also include a recommended implementation plan which includes solutions based on practicality and fiscal responsibility.

Based on the request for services, the consulting firm should limit their assessment and recommendations to the following scope:

- Review the current design and configuration of all equipment deployed – Telephone, Fax, LAN, WAN, Wireless, ASA FW & ASA RA, FTP, VPN, and including the following:
- Internal and external scans of our network access via LAN, WAN, Wireless, VPN and Internet.

As stated, other State of West Virginia covered entities can and may elect to purchase security assessment services under the terms and provisions of this RFP. It would be expected that the goals and objectives of their Information Security Assessment(s) be the same and/or similar to the aforementioned.

### **C. Requirement List:**

In detail please demonstrate how your security analysis product or service will enable the following requirements to be met:

- A clearly defined scope (map) of what system(s) is are being assessed including any and/or all interfaces that are and/or were considered “boundaries”.
- Policy and Procedure Review
- Active Social Engineering
- Third Party Oversight Review

- System Inventory and Documentation Collection
- Physical/Environmental Security Review
- Personnel and IT Staff Training and Awareness Review
- Internal Vulnerability Assessment
- Host/Server/Network Analysis
- Network penetration and intrusion testing
- Access Control Review
  - Credentials/access for employees
  - Credentials/access for Business Associates and their staff
  - Credentials/access for contractors
  - Credentials/access for visitors/guests (auditors, etc.)
- Data Flow and Network Usage Analysis
- Wireless Network Security Analysis
- Testing of Deployed Security Measures
- Monitoring/Response Process Assessment

In addition please detail how your product or service would meet the following expected deliverables:

- Copies of collected notes, raw data, and raw logs collected during the course of the assessment.
- Summary of discovery findings and business impact
- Recommendations for addressing data flow and network usage security issues.
- Summary of an organizations monitoring and response program and its effectiveness on outside sources.
- A risk rating of existing vulnerabilities and exploits.
- Summary of security measures in place and their effectiveness in securing the network and minimizing intrusions and vulnerabilities.
- Identification of network security best practices and identity needed technology, policies, etc. to provide a secure environment. Please include a detailed description of how the “real world” environment compares to adopted policies and/or procedures. Simply put, describe what is being done versus what is supposed to be occurring.
- Details on all client systems connected to the networks that are discovered in the course of the engagement, including all information discovered about those systems (i.e. operating system, available services, interfaces, portals/links, version information, etc.).
- Recommendations for enhancements in regards to overcome potential physical vulnerabilities.

- Recommendations for heightened awareness and additional training.
- A detailing of all security findings and existing vulnerabilities to include a detailed analysis of the vulnerabilities, potential risk they present to the systems and the network, and regulatory compliance, documenting of the date, time, systems accessed, and the methodology utilized to do so.
- A prioritized list of vulnerability mitigation recommendations rated from high to low.
- Identification of network strengths and areas of improvement and where appropriate correlated with affected regulations.
- Cost analysis for mitigation steps to improve security. The cost analysis should be categorized into a risk versus benefit format that addresses likelihood of threat and/or vulnerability and potential consequences should that threat and/or vulnerability be exploited either accidentally or maliciously.

**D. Description of Products and Services:**

The products and services included in your response should address the following:

- D1. Detailed description of proposed solution / services.
- D2. Known vulnerabilities and solutions
- D3. Software tools that you will be using
- D4. Methodology of non-software based vulnerability assessments, e.g. site inspections, intrusion testing, social engineering, etc.
- D5. Minimum information that vendor will need to get started
- D6. A description of your Quality Control process.
- D7. A description of the team that the vendor will assign to the project including brief resumes outlining the experience and qualifications of team members.
- D8. The required professional references as requested in Section A, #4 of this RFP.

**E. Cost:**

Please provide a detailed cost proposal as part of your response. The cost(s) should be submitted as a fixed fee per agency. The vendor should submit a fixed fee broken down into hourly rates and/or rates for specific services provided for the scope of the RFP as well as any cost breaks and/or fee adjustments should the scope of work increase, e.g. other State of West Virginia covered entities enlist the services of the prospective vendor. Contingencies and/or fees not able to specifically calculated should include detailed descriptions including, but not limited to events and/or triggers that would prompt additional fees and/or costs. Any and all travel cost(s) related to performance of services outlined in this RFP should be included in the administrative and/or hourly fee(s) submitted. Vendors are encouraged to be as detailed as possible in the preparation and submission of their cost proposals. Any and/or all fees that are not fixed fee should be explained in detail.

The State of West Virginia, WV PEIA, WV CHIP, and any other State agency that purchases services under this RFP, shall not be responsible for the payment of any fee(s) and/or cost(s) not specifically itemized in the vendor's cost proposal(s).

The State of West Virginia, WV PEIA, WV CHIP, and any other State agency that purchases services under this RFP, shall not be responsible for any cost(s) associated with the preparation and/or submission of responses to the RFP.

**F. Vendor Preference and Small, woman-owned, or minority owned businesses:**

West Virginia Code, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the West Virginia Code. The certificate for application (included as Appendix G) is to be used to request such preference. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.

For any solicitations publicly advertised for bid on or after July 1, 2012, in accordance with West Virginia Code §5A-3-37(a)(7) and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to WV PEIA and WV CHIP with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to submission of its bid to receive the preferences made available to resident vendors. Preference for a non-resident small, woman-owned, or minority owned business shall be applied in accordance with W. Va. CSR § 148-22-9.

**G. Cancellation:**

The Director(s) of WV PEIA and/or WV CHIP reserve the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-7.16.2.

**APPENDIX A: PERFORMANCE STANDARDS**

The State of West Virginia, the West Virginia Public Employee’s Insurance Agency, and the West Virginia Children’s Health Insurance Program are public agencies and, as such, it is our fiduciary responsibility to ensure that public funds are spent in a responsible manner with vendor accountability.

The Bidder must agree to abide by the Performance Standards specified in the following table:

<b>Standard</b>	<b>Fees at Risk</b>
Failure to provide deliverables as scheduled due to no fault of the State of West Virginia, PEIA, and/or WV CHIP	10% of the total contract amount for each thirty (30) days delinquent. 5% of the total contract amount for each fifteen (15) days delinquent.
Breach of confidentiality related to the RFP and/or contract by the vendor.	Minimum 10% of the contract award per each breach. Amount assessed to be based on the type and scope of breach.
Failure to successfully register as an approved vendor with the State of West Virginia within sixty (60) days of contract award	Potential forfeiture of contract award. No fees will be paid and no system access will be given until vendor registration is complete.
Vendor offered: (Please specify)	
Vendor offered: (Please specify)	
Vendor offered: (Please specify)	

**APPENDIX B: TRANSMITTAL FORMS**

**B-1 State of West Virginia Transmittal Form**

I hereby attest to the following on behalf of \_\_\_\_\_:

- We have read, understand, and are able and willing to comply with all standards and participation requirements described in the RFP for the programs in which we are applying to participate, as well as in the corresponding contracts;
- All of the information contained in this proposal is accurate and truthful to the best of our knowledge;
- This proposal will be held firm until at least \_\_\_\_\_; and
- Neither we, nor any of our representatives have paid, agreed to pay, or will pay directly or indirectly to any person, firm, or corporation any money or valuable consideration for assistance in procuring or attempting to procure the agreement(s) referred to herein.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

---

**Applicant point of contact regarding proposal:**

Name \_\_\_\_\_

Title \_\_\_\_\_

Telephone \_\_\_\_\_

Fax \_\_\_\_\_

## APPENDIX C: LIMITED DATA USE AGREEMENT

A limited data set is a set of records containing protected health information (PHI), from which direct identifiers may have been removed, but in which certain potentially identifying information remains. The use or disclosure of a limited data set is limited to research, public health, and health care operations purposes only.

**Name of data recipient:** \_\_\_\_\_

**Description of data:** WV PEIA/WV CHIP data that may be disclosed in the course of conducting the security risk/vulnerability assessment.

**Purpose of use:** WV PEIA/WV CHIP may disclose a limited data set to a vendor contractor during the course of providing a security risk/vulnerability assessment as an administrative function under provisions of the Security Rule(s) of HIPAA. Said vendor will also have signed a State of West Virginia Business Associate Agreement.

### By signing this agreement the recipient agrees:

- Not to further use or disclose any of the information, outside the purpose listed above, without prior written permission from PEIA and/or WV CHIP or as otherwise required by law;
- That any further information requested by Recipient, or its Affiliates, regarding the data and/or any reports must be made in writing to WV PEIA and WV CHIP.
- Use appropriate safeguards to prevent use or disclosure of the information other than as provided for by the data use agreement;
- To notify WV PEIA and WV CHIP if any third party will be allowed access to the information provided as part of the performance of work under the scope of this RFP prior to that third party being granted access;
- Report to WV PEIA and WV CHIP any use or disclosure of the information not provided for by its data use agreement, of which it becomes aware;
- Ensure that any agent, including any affiliates, to whom it provides the limited data set agrees to the same restrictions and conditions that apply to the limited data set recipient with respect to such information; and
- Not to identify the information or to contact the individuals to whom the information pertains, if applicable.
- Properly and completely dispose of all data provided by WV PEIA and WV CHIP upon completion of the project described above in “Purpose of use.”



WV PEIA and/or WV CHIP may terminate the agreement if it notifies the recipient of a pattern of activity or practice that constitutes a material breach or violation of the data use agreement, or law, unless the recipient cures the breach or ends the violation within a reasonable time, as determined by PEIA/WV CHIP. PEIA/WV CHIP will take reasonable steps to cure the breach or end the violation and if such steps are unsuccessful PEIA/WV CHIP will discontinue disclosure and report the violation to the appropriate authorities.

---

Signature of Recipient Representative

---

Date

---

Signature of WV PEIA/WV CHIP  
Representative

---

Date

## APPENDIX D: BUSINESS ASSOCIATE AGREEMENT

### WV State Government Covered Entity HIPAA Business Associate Addendum

This Health Insurance Portability and Accountability Act of 1996 (hereafter, HIPAA) Business Associate Addendum (“Addendum”) supplements and is made a part of the Agreement (“Agreement”) by and between the West Virginia Public Employees Insurance Agency (PEIA), the West Virginia Children’s Health Insurance Program (WV CHIP) as the “Covered Entities”, and \_\_\_\_\_, located at \_\_\_\_\_, the Business Associate (“Associate”), and is effective as of \_\_\_\_\_, 2012, or such other compliance date as is specified in the Privacy Rule (defined below).

Whereas the parties have a business relationship; and

Whereas it is desirable, in order to further the continued efficient operations of Covered Entity to disclose to its Associate certain information which may contain confidential individually identifiable health information (hereafter, “Protected Health Information” or “PHI”); and

Whereas, it is the desire of both parties that the confidentiality of the PHI disclosed hereunder be maintained and treated in accordance with all applicable laws relating to confidentiality, including the Privacy Rule, and the parties do agree to at all times treat the PHI and interpret this Addendum consistent with that desire.

NOW THEREFORE; the parties agree that in consideration of the mutual promises herein, in the Agreement; and of the exchange of PHI hereunder that:

#### 1. **Definitions.**

Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy Rule

- a) **Privacy Rule.** Privacy Rule means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, as amended.
- b) **Security Rule.** Security Rule means the standards for the security of electronic protected health information found at 45 CFR Part 164, subpart C, as amended.
- c) **Required by Law.** Required by Law shall have the meaning set forth in 45 CFR 164.103.

#### 2. **PHI Disclosed; Permitted Uses.**

a. **PHI Described.** PHI (as defined in 45 CFR 160.103) disclosed by the Covered Entity to the Business Associate, PHI created by the Business Associate on behalf of the Covered Entity, and PHI received by the Associate from a third party on behalf of the Covered Entity are disclosable under this Addendum. The disclosable PHI is limited to the minimum necessary to complete the tasks, or to provide the services, associated with the terms of the original contract.

b. **Purposes.** Except as otherwise limited in this Addendum, Associate may use or disclose the PHI on behalf of, or to provide services to, the Covered Entity for the purposes necessary to complete the tasks associated with, and required by the terms of the original contract, if such use or disclosure of the PHI would not violate the Privacy or Security Rules if done by Covered Entity or violate state law or violate the minimum necessary policies and procedures of the Covered Entity.

### 3. **Obligations of Business Associate.**

(a) **Stated Purposes Only.** The PHI may not be used by the Associate for any purpose other than the proper management and administration of Associate or as stated in this Addendum or as Required by Law.

(b) **Limited Disclosure.** The PHI is confidential and will not be disclosed by the Associate other than as required by this Addendum, Required by Law or required for the proper management and administration of Associate provided that Associate obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will be held confidentially, used or further disclosed only as Required by Law or for the purposes for which it was disclosed and the person notifies Associate of any instances where the confidentiality of the PHI has been breached..

(c) **Safeguards.** The Associate will use appropriate safeguards to prevent use or disclosure of the PHI except as provided for in this Addendum, as stated in 164.504(e)(ii)(B). As of the compliance date set forth in 45 CFR 164.318, Associate shall maintain an appropriate level of administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI it creates, receives, maintains or transmits on behalf of Covered Entity. This shall include, but not be limited to:

(i) Limitation of the groups of its employees or agents to whom the PHI is disclosed to those reasonably required to accomplish the purposes stated in this Addendum, and the use and disclosure of the minimum PHI necessary;

(ii) Appropriate notification and training of its employees or agents to whom the PHI will be disclosed in order to protect the PHI from unauthorized disclosure;

(iii) Maintenance of a comprehensive written PHI privacy and security program that includes administrative, technical and physical safeguards appropriate to the size, nature, scope and complexity of the Associate's operations.

(d) **Compliance With Law.** The Associate will not use or disclose the PHI in a manner in violation of existing law and specifically not in violation of laws to which Associate is subject relating to confidentiality of PHI, as a business associate of Covered Entity.

(e) **Report of Disclosure.** The Associate will promptly report to the Covered Entity, in writing, any use or disclosure of the PHI not provided for by this Addendum of which it becomes aware.

(f) **Mitigation.** Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of the PHI by Associate in violation of the requirements of this Addendum.

(g) **Documentation.** Associate agrees to document disclosures of the PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §§164.528 and 164.316. This should include a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years from the date of disclosure, or longer if required by state law. At a minimum, such PHI shall include: (i) the date of disclosure; (ii) the name of the entity or person who received the PHI, and if known, the address of the entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of purposes of the disclosure that reasonably informs the Individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure.

(h) **Accounting Rights.** Within ten (10) days of notice of a request for an accounting of disclosures of the PHI, Associate and its agents or subcontractors shall make available to Covered Entity the PHI required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under 45 CFR § 164.528.

(i) **Access to PHI.** Associate shall make the PHI maintained by Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within ten (10) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under 45 CFR § 164.524.

(j) **Amendment of PHI.** Within ten (10) days of receipt of a request from Covered Entity for an amendment of the PHI or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR § 164.526.

(k) **Retention of PHI.** Notwithstanding section 4.a. of this Addendum, Associate and its subcontractors or agents shall retain all PHI throughout the term of the Agreement and shall continue to maintain the PHI required under Section 3.g. of this Addendum for a period of six (6) years after termination of the Agreement, or longer if required of Associate under state law.

(l) **Agents, Subcontractors Compliance.** The Associate will ensure that any of its agents, including any subcontractors, to whom it provides any of the PHI it receives hereunder, or to whom it provides any PHI which the Associate creates or receives on behalf of the Covered Entity, agree to the restrictions and conditions which apply to the Associate hereunder.

(m) **Amendments.** The Associate shall make available to the specific Individual to whom it applies any PHI; make such PHI available for amendment; and make available the PHI required to provide an accounting of disclosures, all to the extent required by 45 CFR §§ 164.524, 164.526, and 164.528 respectively.

(n) **Federal Access.** The Associate shall make its internal practices books, and records relating to the use and disclosure of PHI received from, or created or received by the Associate on behalf of the Covered Entity available to the U.S. Secretary of Health and Human Services consistent with 45 CFR § 164.504.

#### 4. **Termination.**

(a) **Duties at Termination.** Upon any termination of this Addendum, if feasible, the Associate shall return or destroy all PHI received from, or created or received by the Associate on behalf of the Covered Entity that the Associate still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, the Associate shall extend the protections of this Addendum to the PHI and limit further uses and disclosures to the purposes that make the return or destruction of the PHI infeasible. This shall also apply to all agents and subcontractors of Associate. The duty of the Associate and its agents and subcontractors to assist the Covered Entity with any HIPAA required accounting of disclosures survives the termination of this Addendum.

(b) **Termination For Cause.** Covered Entity may terminate this Addendum if at any time it determines that the Associate has violated a material term of the Addendum. Covered Entity may, at its sole discretion, allow Associate a reasonable period of time to cure the material breach before termination.

(c) **Survival.** The respective rights and obligations of Associate under Section 3.k. of this Addendum shall survive the termination of this Addendum.

#### 5. **General Provisions/Ownership of PHI.**

(a) **Retention of Ownership.** Ownership of the PHI resides with the Covered Entity and is to be returned on demand.

(b) **Secondary PHI.** Any data or PHI generated from the PHI disclosed hereunder which would permit identification of an Individual must be held confidential and is also the property of Covered Entity.

(c) **Electronic Transmission.** Except as permitted by law or this Addendum, the PHI or any data generated from the PHI which would permit identification of an Individual must not be

transmitted to another party by electronic or other means for additional uses not authorized by this Addendum or to another contractor, or allied agency, or affiliate without prior written approval of Covered Entity.

(d) **No Sales.** Reports or data containing the PHI may not be sold without Covered Entity's or the affected Individual's written consent.

(e) **No Third-Party Beneficiaries.** Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Associate and their respective successors or assigns, any rights remedies, obligations or liabilities whatsoever.

(f) **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provisions in this Addendum. The interpretation of this Addendum shall be made under the laws of the state of West Virginia.

(g) **Amendment.** The parties agree that to the extent necessary to comply with applicable law they will agree to further amend this Addendum.

(h) **Additional Terms and Conditions.** Additional discretionary terms may be included in the original agreement, as amended.

**AGREED:**

Prospective Vendor of Security Assessment

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

West Virginia Public Employees Insurance Agency / WV Children's Health Insurance Program

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX E: CERTIFICATION AND SIGNATURE PAGE**

**CERTIFICATION AND SIGNATURE PAGE**

By signing below, I certify that I have reviewed this RFP Solicitation in its entirety; understand the requirements, terms and conditions, and other information contained herein; that I am submitting this bid or 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.

\_\_\_\_\_  
(Company)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Representative Name, Title)

\_\_\_\_\_  
(Phone Number)

\_\_\_\_\_  
(Fax Number)

\_\_\_\_\_  
(Date)

## PURCHASING AFFIDAVIT

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

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

**DEFINITIONS:**

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

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

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

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

**WITNESS THE FOLLOWING SIGNATURE:**

Vendor's Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_, to-wit:

Taken, subscribed, and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My Commission expires \_\_\_\_\_, 20\_\_\_\_.

**AFFIX SEAL HERE NOTARY PUBLIC** \_\_\_\_\_

*Purchasing Affidavit  
(Revised 07/01/2012)*



**APPENDIX G:**

**State of West Virginia  
VENDOR PREFERENCE CERTIFICATE**

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

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

\_\_\_ Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; **or**,

\_\_\_ Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; **or** 80% of the ownership interest of Bidder is held by another individual, partnership, association or corporation resident vendor who has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; **or**,

\_\_\_ Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; **or**,

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

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

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

\_\_\_ Bidder is a nonresident vendor employing a minimum of one hundred state residents or is a nonresident vendor with an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia employing a minimum of one hundred state residents who certifies that, during the life of the contract, on average at least 75% of the employees or Bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; **or**,

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

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

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

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

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

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

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

\_\_\_ Bidder has been or expects to be approved prior to contract award by the Purchasing Division as a certified small, women and minority-owned business. Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) reject the bid; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order. By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

**Under penalty of law for false swearing (West Virginia Code, §61-5-3), Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.**

**Bidder:** \_\_\_\_\_ **Signed:** \_\_\_\_\_

**Date:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**APPENDIX H: AGREEMENT ADDENDUM**

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any provision requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Payment will be in arrears.
6. **INTEREST** - Any provision for interest or charges on late payments is deleted. The Agency has no statutory authority to pay interest or late fees.
7. **NO WAIVER** - Any language in the agreement requiring the Agency to waive any rights, claims or defenses is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **FEES OR COSTS** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages to a certain dollar amount or to the amount of the agreement is hereby deleted. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to purchase insurance for Vendor's property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** - Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

**ACCEPTED BY:**

**STATE OF WEST VIRGINIA**

**VENDOR**

Spending Unit: \_\_\_\_\_

Company Name: \_\_\_\_\_

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_