



Pain Management Drug Testing AUDIT

Request for Quotation

December 12, 2014

Request for Quotations

Pain Management Drug Test Benchmark Audit

The West Virginia Public Employees Insurance Agency (PEIA) is seeking a vendor audit for potential abuse perpetrated by PEIA providers concerning Pain Management Drug Testing.

Background

PEIA is an agency of the State of West Virginia which administers benefits for approximately 65,000 active employees and COBRA participants. PEIA also administers benefits for 37,000 retired employees and surviving dependents on behalf of the West Virginia Retiree Health Benefits Trust Fund. There are 126,000 eligible dependents, resulting in approximately 228,000 members being covered by the PEIA health plan. Combined total annual health premiums and capitations are approximately \$735 million.

A comprehensive fee-for-service health benefit plan, the Preferred Provider Benefit (PPB) plan, is offered to all eligible participants statewide (as well as members in other jurisdictions) and is administered by a third party. PEIA also offers a managed care plan option statewide, and currently contracts with a managed care organization. Approximately 6,000 policyholders are enrolled in managed care plans, 66,000 are enrolled in the indemnity plan and 30,000 Medicare retirees are members of the Medicare Advantage and plan. Medicare retirees are also enrolled in Medicare Prescription Drug Plan (PDP).

In the PEIA PPB plan, participants are responsible for cost sharing in the form of an annual medical deductible, coinsurance, and copayments; they also pay a separate prescription drug deductible and copayments. Amounts paid by the individual in the prescription program do not apply to the maximum annual medical out-of-pocket amount. The prescription drug program is administered by a separate vendor.

Participants in the PPB Plan may use any provider in West Virginia they choose; they are not required to use a select group of providers, nor must they go through primary care providers to gain access to more specialized providers. By law, all providers in West Virginia who provide health care services or supplies to PEIA members must accept assignment of benefits, and cannot bill PEIA patients for any amount by which their charges exceed the maximum fees established by PEIA for each service.

Scope of Work

PEIA desires to have auditing and recovery services to ensure that the Agency pays only covered services for truly eligible members; that these services are appropriate, justified and provided in accordance with Plan policies and procedures; that the services are billed within standard coding conventions, including, but not limited to ICD-9, HCPCS, and NCCI; and to identify member or prescriber outliers that may indicate potential fraud, waste or abuse.

As a result of these audits, PEIA seeks identification and reporting of improper payments for substantiation by the TPA, with subsequent recovery of overpayments. Throughout this document, the term “improper payment” is used to refer collectively to overpayments and underpayments. For purposes of this project, an

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eligibility error, incorrect code, or other discrepancy, that does not change claim(s) payment amount when corrected, is NOT considered an improper payment.

Pain Management Drug Test Benchmarks - Audit should include, but not be limited to the following:

1. Averages available for results such as no abnormality detected;
2. How often and Procedure followed if Illicit substances found;
3. How often and Procedure followed if un-prescribed medication found;
4. How often and Procedure followed if Prescribed drug not found;
5. How often and Procedure followed if Drug above expected range;
6. How often and Procedure followed if Drug under expected range;
7. Medical necessity;
8. Diagnosis of physician match coding of claim;
9. Billing for procedures or services that were not actually performed;
10. Double billing (billing both PEIA and the member or other insurance);
11. "Up-coding" by a provider for service or procedure;
12. Any other matters identified by the Contractor that may strengthen the financial integrity of the Plan or Plan benefits;
13. During audit process and upon completion, PEIA expects to receive user-friendly status reports;
14. After completion of the audit amounts to be recovered should be clearly defined;
15. Review and respond (or provide recommendations) to appeals related to audits.

Pain Management Drug Test Benchmarks – Other Necessary Information:

1. PEIA's third party administrator is HealthSmart Benefit Solutions;
2. PEIA's TPA does have offset/withholding rights for improper payments. The current process includes a notification and request for payment from HealthSmart, then a second request for payment, and after 60 days repayment is automatically withheld from future payments;
3. The TPA will handle recoupment of improper payments;
4. The TPA will verify all improper payments;
5. The Contracted Audit team will notify providers of improper payments;
6. The Managed Care Plan is not part of this audit;
7. Pharmacy Benefits are not part of this audit;
8. Dental benefits are not part of this audit;
9. PEIA's position on photocopies for medical records is that we paid for the service and as such the provider must provide records to be in compliance with our audits;
10. All plan policies and procedures are located on PEIA's website (<http://www.peia.wv.gov/policies/Pages/default.aspx>);
11. The contractor will be responsible for answering any appeals from providers related to the audit findings within 60 days of the date of the appeal;
12. Claims data will be received from PEIA's database administrator, Mike Madalena. Copies of actual claims for the sample selected will be received from PEIA Staff;
13. The audit population will include only in-state providers;
14. This audit will be performed with HIPPA compliance and as such all Personal Health Information (PHI) will be confidential;
15. Sample size should equal – 95% confidence level and margin of error less than 5%.
16. The population is approximately 44,080 claims.

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Staging of Contract Deliverables

PEIA shall pay on a project stage basis, as shown on the Pricing Summary Form Exhibit B), for all Contract Services performed and accepted under this Contract. Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

Bid Amount

The amount of the bid submitted by each potential vendor shall be for all services rendered. Vendor shall be responsible for all mileage and travel costs, including travel time, associated with performance of this Contract. Any anticipated mileage or travel costs should be included in the Vendor's bid, but such costs will not be paid separately by the Agency (See Exhibit B).

Inquiries

Bidders may submit, in writing, any specific questions or clarifications prior to the date shown in the following Time Requirements section. Written questions received later than the date and time shown in the following Time Requirements section, shall not be answered. All questions with responses will be provided to all potential Bidders who are known, on the date and time shown in the following Time Requirements section. The questions may be submitted via fax or email; however, PEIA assumes no liability for assuring accurate/complete FAX/email transmission/receipt and will not acknowledge receipt except by addressing the question.

The issuing agent for this RFQ is the PEIA. All communication, inquiries, and final quotations regarding this RFQ **must** be submitted in writing to the following individual:

Ms. Karen A. Hall, MBA, CPA
Quality Assurance and Compliance Manager
WV Public Employees Insurance Agency
601 57th St., SE, Suite 2
Charleston, WV 25304-2345
Fax: 1 877 233-4295
Email: Karen.A.Hall@wv.gov

The Vendor, or anyone on the Vendor's behalf, is not permitted to make any contact whatsoever with any member of the evaluation committee. Violations may result in rejection of the bid.

Time Requirements

Notification of interest and all questions must be received no later than 4:00 p.m., Friday, January 9, 2015. The notification of interest will simply state that the vendor would like the opportunity to submit a bid on this project. Quotes are due no later than 4:00 p.m., Friday, February 6, 2015.

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In response to this RFQ, please submit an all-inclusive quotation for the completed work, a detailed timeline for this project, and three references, including company name, contact name, address and telephone number. These references should be organizations for which you have completed work similar to that described in this RFQ. (See Exhibit G.)

→ Time Requirements ←

RFQs Issued	Friday	December 12, 2014
Notification of Interest Form	Friday	January 9, 2015
Questions Submitted to PEIA	Friday	January 9, 2015
Question Answers to Vendor	Friday	January 23, 2015
Quotes Due	Friday	February 6, 2015
Evaluation of Quotes		February 6-February 27, 2015
Award Contract	Friday	February 27, 2015
Contract Begins	Monday	March 2, 2015

Contract Period

The contract period will begin on March 2, 2015 and will continue until the completion of the audit.

Confidentiality/Public Record

PEIA requests that all information provided to prospective firms as part of this RFQ, as well as all subsequent evaluations and discussions, be used exclusively for purposes of responding to the RFQ and any subsequent discussions related thereto.

News releases that pertain to this RFQ, or contract resulting therefrom, must not be made without prior approval of the State of West Virginia, and then only in coordination with PEIA.

Ownership of all data, materials and documentation originated and prepared for PEIA pursuant to the RFQ shall belong exclusively to the State.

Vendor shall have access to private and confidential data maintained by the participating agencies to the extent required for the Vendor to carry out the duties and responsibilities defined in this contract. Vendor agrees to maintain confidentiality and security of the data made available, shall comply with all applicable confidentiality laws or regulations, including HIPAA, and shall indemnify and hold harmless the State and the participating agencies against any and all claims brought by any party attributed to actions of breach of confidentiality by the Vendor, subcontractors, or individuals permitted access by the Vendor.

Vendor agrees to the terms of the West Virginia State Government Covered Entity HIPAA Business Associate Addendum. (See Exhibit A.)

Submissions Are Public Record

All documents submitted that are related to purchase orders or contracts are considered public records. All bids, proposals, or offers submitted by bidders shall become public information and are available for inspection during official, normal business hours in the PEIA offices.

Written Release of Information

All public information may be released with or without a Freedom of Information Act request; however, only a written request will be acted upon with duplication fees paid in advance. Duplication fees shall apply to all requests for copies of any document. Currently the fees are \$1.00 per page, or a minimum of \$10.00 per request, whichever is greater.

Risk of Disclosure

The only exemptions from disclosure of information are listed in West Virginia Code §29B-1-4. Primarily, trade secrets as submitted by a bidder are the only exemption from public disclosure. The submission of any information to the State by a vendor puts the risk of disclosure on the vendor. The State will make a reasonable effort not to disclose information that is legitimately within the guidelines of §29B-1-4 and is properly, and in good faith, labeled "proprietary information not for public disclosure." The State does not guarantee non-disclosure of any information to the public. Designation of an entire proposal or excessive portions of the proposal as "proprietary" is not considered to be in good faith and will be disregarded.

Incurred Costs

The State of West Virginia and PEIA are not liable for any expense incurred in the preparation, submission, or presentation of proposals.

Status as Registered Vendor

All vendors must be registered with the State of West Virginia **prior** to the award of an actual purchase order or contract. The vendor must complete a Vendor Registration and Disclosure Statement, Form WV-1, and remit the required annual registration fee. Please go to the State of West Virginia's Purchasing Division website at <http://www.state.wv.us/admin/purchase/> for complete information and related form.

Vendors must also be registered with the West Virginia Secretary of State (SOS) to do business in West Virginia. Please contact the SOS at 304-558-6000 for further details.

Terms of Contract

The performance of the contract awarded pursuant to this document is contingent upon adequate funding being appropriated by the West Virginia Legislature for such purposes. In the event the Legislature fails to appropriate sufficient funds for the continuation of the contract, then the contract will be canceled without penalty at the end of the fiscal year.

The terms of the contract must be consistent with the following:

- *Arbitration* – Any references to arbitration contained in the agreement are unacceptable. The vendor shall present disputes arising out of the agreement to the West Virginia Court of Claims.

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- *Hold Harmless* – Any clause requiring the participating agencies to indemnify or hold harmless any party is unacceptable. The vendor must hold harmless the participating agencies from any liability arising from the vendor's performance of services.
- *Governing Law* – The agreement shall be governed by the laws of the State of West Virginia.
- *Taxes* – Provisions in the agreement requiring the participating agencies to pay taxes are unacceptable. As State entities, the participating agencies are exempt from federal, state, and local taxes and will not pay taxes for any vendor, including individuals, and will not file any tax returns or reports on behalf of vendor or any other party.
- *Payment* – Any references to prepayment are unacceptable. Payment will be in arrears.
- *Interest* – Should the agreement include a provision for interest on late payments, the participating agencies agree to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are unacceptable.
- *Recoupment* – Any language in the agreement waiving the participating agencies' rights to set-off, counterclaim, recoupment, or other defense is unacceptable.
- *Statute of Limitation* – Any clauses limiting the time in which the participating agencies may bring suit against the vendor, lessor, individual, or any other party are unacceptable.
- *Similar Services* – Any provisions limiting the participating agencies' rights to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are unacceptable.
- *Attorney Fees* – The participating agencies 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.
- *Assignment* – Notwithstanding any clause to the contrary, the participating agencies reserve 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 the participating agencies prior to assigning the agreement.
- *Limitation of Liability* – The participating agencies, as State entities, cannot agree to assume the potential liability of a vendor. Accordingly, any provision 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 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* – The participating agencies shall have the right to terminate the agreement upon thirty (30) days written notice to the vendor.

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- *Termination Charges* – Any provision requiring the participating agencies to pay a fixed amount or liquidated damages upon termination of the agreement is unacceptable. The participating agencies 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 participating agencies prior to the end of any current agreement term.
- *Renewal* – Any reference to automatic renewal is unacceptable. The agreement may be renewed only upon mutual written agreement of the parties.
- *Insurance* – Any provision requiring the participating agencies to insure equipment or property of any kind and name the vendor as beneficiary or as an additional insured is unacceptable.
- *Right to Notice* – Any provision for repossession of equipment without notice is unacceptable. However, the participating agencies do recognize a right of repossession with notice.
- *Acceleration* – Any references to acceleration of payments in the event of default or non-funding is unacceptable.
- *Amendments* – All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by the parties.
- *Indemnification* – The vendor agrees to indemnify, defend and hold harmless the State and the participating agencies, its officers and employees from and against any and all claims arising from the vendors acts or failure to act, including but not limited to: (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; (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 laws.
- *Business Associate* - The prospective vendor will be performing an Administrative Function on behalf of PEIA, a Health Plan and a Covered Entity as defined by §45 CFR 160.103, and will be considered a Business Associate of PEIA. The prospective vendor shall be fully compliant with any and/or all provisions of the Privacy and Security Rule(s) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including the provisions of the Health Information Technology for Economic and Clinical Health Act (HITECH) as adopted as part of the American Reinvestment and Reauthorization Act of 2009 (ARRA) and the Omnibus Rule(s) that went into effect September 23, 2013. The prospective vendor will be required to sign the West Virginia Executive Branch Business Associate Agreement prior to beginning any work under this proposed contract.

Right to Reject

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The State reserves the right to reject any and all proposals submitted and to request additional information from all bidders or to withdraw the RFQ if in the best interest of the participating agencies.

Joint Effort Proposals

Joint effort quotations **will not** be considered.

Quotation Included as Part of Agreement

PEIA anticipates making this RFQ and bidder's quotation part of the actual contractual agreement by reference.

Minimum Requirements

THESE ARE ABSOLUTE REQUIREMENTS. FAILURE TO MEET ANY ONE OF THE REQUIREMENTS LISTED BELOW SHALL RESULT IN DISQUALIFICATION FROM FURTHER CONSIDERATION IN THIS BID PROCESS.

Evaluation of the Quotation will be awarded to the Vendor that meets the minimum requirements specified below for the lowest overall total cost as shown on the Pricing Page.

1. An introductory section should be included in the quote which includes the name, address, and telephone number of the firm, the name and telephone number of the contact person with the firm, and the date of submission of the proposal
2. The vendor must meet all requirements imposed by West Virginia and other local laws, rules, and regulations, including not having a delinquent tax liability of any nature with the State of West Virginia. Vendors must submit with the proposal a "Purchasing Affidavit" (See Exhibit E).

PEIA will waive the litigation bond if the bidder submits in writing on a form acceptable to PEIA a complete waiver of any rights to challenge this RFQ/award in any jurisdiction or venue. The only acceptable alternative to the litigation bond is the submission of a signed Waiver of Legal Challenge

3. The vendor must agree to comply with all "Terms of Contract" Section.
4. The vendor must demonstrate knowledge of Medicare's reimbursement guidelines and provide PEIA with resumes demonstrating this knowledge for the staff assigned to this audit. See Exhibit H.
5. The vendor must have work experience, similar to that described in this audit, with three (3) different clients during the past five years. A brief description of the completed or ongoing work and each client's company name, contact name, address and telephone number must be submitted as a reference. Exhibit G
6. The vendor must include copies of all the attached forms. (Exhibit A if planning on bidding, Exhibits C, D, E, and F with your bid.
7. The vendor must provide a detailed work plan reflecting the general audit requirements outlined in the Section titled Scope of Work that presents key activities, milestones, and timing for completion of the functional area reviews and overall audit (i.e., project timeline). The project plan shall consider the staging of deliverables outlined in the Section titled Scope of Work and address such activities as implementing data transfers, executing confidentiality agreements, system access requirements, business system training requirements, applying knowledge of federal and state requirements, and other activities relevant to demonstrating Vendor's ability to provide the requested services timely.
8. Proposing company must submit proposals for each individual RFQ as follows:

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1. five (5) bound copies of each proposal, one (1) unbound original of the each proposal and one electronic copy of both; and
2. **technical and cost proposals must be prepared as separate documents and submitted under separate cover.**

Litigation Bond

Each bidder responding to this RFQ is required to submit a litigation bond in the amount of 5% of submitted bid made payable to the State of West Virginia Public Employees Insurance Agency. A surety company licensed to do business in the State of West Virginia with the West Virginia Insurance Commission, on a form acceptable to the State, and countersigned by a West Virginia Resident Agent must issue this bond. The only acceptable alternate forms of the bond are (1) company certified check (not an individual), and (2) a cashier's check.

The purpose of the litigation bond is to discourage unwarranted or frivolous lawsuits pertaining to the award of a contract from this RFQ. Secondly, the bond provides a mechanism for the State of West Virginia, the participating agencies, and it's officers, employees, or agents thereof to recover damages, including (but not limited to) attorney fees, loss of revenue, loss of grants or portions thereof, penalties imposed by the federal government and travel expenses which may result from any such litigation. A claim against the bond will be made if the bidder contests the award in a court of competent jurisdiction and the grounds are found to be unwarranted or frivolous based on the facts of the award or applicable law as determined by the court. The bond or alternate form must remain in effect for two years from the proposal submission date. After six (6) months, each bidder may request, and the State anticipates granting, a release of the litigation bond. However, the bidder will be required to provide a release (signed and notarized in a form that is acceptable to the State) prior to release of the bond which states that the bidder will not sue.

The PEIA will waive the litigation bond if the bidder submits in writing on a form acceptable to the PEIA a complete waiver of any rights to challenge the bidder award in any jurisdiction or venue. The only acceptable alternative to the litigation bond is the submission of this signed "Bidder's Total Waiver of Legal Challenge" form included with the vendor's bid. (See Exhibit C)

Failure to submit an appropriate bond, alternate bond, or signed waiver form with the proposal at the time of bid opening will result in automatic disqualification of the vendor's proposal and the proposal will be considered non-responsive.

Purchasing Affidavit

It is required that all vendors submit a Purchasing Affidavit which certifies that there are no outstanding obligations or debts owed to the State of West Virginia. The Purchasing Affidavit **must** be completed, signed and returned **with** the vendor's proposal. (See Exhibit E.)

Insurance Requirements

The vendor must possess and maintain Professional Liability Insurance in a form acceptable to the participating agencies, which shall cover the vendor, its officers, employees, and agents for any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, or omission committed by the

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vendor in the performance of its duties and responsibilities as the administrator under this contract, including any hold harmless and/or indemnification agreement. The Professional Liability Insurance shall be maintained from the inception of the vendor's service under the contract until at least three (3) years after completion of all services required under the contract.

Specific Instructions for Responding to This RFQ

In order to simplify the review process and to obtain maximum comparability, the quotes should be organized in the manner specified below:

- a. An introductory section should include the subject, name, address, and telephone and fax numbers of the firm; name, telephone number and e-mail address of the contact person; and the date of submission of the proposal. Your quotation must be signed by an individual who is capable of legally binding your firm.
- b. Please answer all the questions in the same order they are asked. The answers should be as concise as possible. If you would like to provide additional information beyond what is asked, please provide that at the end of your proposal.
- c. An affirmative statement should be included, which states that the work will be performed within the time specified.
- d. **technical and cost proposals must be prepared as separate documents and submitted under separate cover.**

Failure on the part of the vendor to respond to specific requirements detailed in the RFQ may be a basis for disqualification of the proposal.

Contract Award

This is a service contract and all bids should include an all-inclusive price. This bid amount shall include travel costs. The fees quoted must be firm for the duration of the resulting agreement.

In providing pricing information, please be very clear as to what assumptions you are making in regards to PEIA's supply of resources for both people and hardware.

You are required to complete the Pricing Summary Form, (Exhibit B.) by inputting the respective pricing information. Vendor should complete the Pricing Page in full as failure to complete the Pricing Page in its entirety may result in Vendor's bid being disqualified.

Vendor should type or electronically enter the information into the Pricing Summary Form to prevent errors in the evaluation.

Exhibit A

NOTIFICATION OF INTEREST

(Due Date: January 9, 2015)

Firms interested in submitting a proposal must return this "Notification of Interest" by January 9, 2015.

To: Ms. Karen A. Hall, MBA, CPA
 Quality Assurance and Compliance Manager
 WV Public Employees Insurance Agency
 601 57th St., SE, Suite 2
 Charleston, WV 25304-2345
 Fax: 1 877 233-4295
 Email: Karen.A.Hall@wv.gov

From:			
	FIRM		
	MAILING ADDRESS		
	CITY	STATE	ZIP
	NAME AND TITLE OF INDIVIDUAL		
	TELEPHONE NUMBER		
	FAX NUMBER		

Please consider this Notification of Interest intent to submit a proposal to the RFQ issued by the Public Employees Insurance Agency of the Department of Administration for professional auditing services for PEIA's Preferred Provider Benefit Plan.

SIGNED	DATE
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Exhibit B

PRICING SUMMARY FORM

Name of Firm:

COST: Staged Rates and Projected Work Distribution Assigned Staff:

Description of Project Phase	Total Cost
Preliminary Data Collection and Analysis	
Sample Selection and Analysis	
External gathering of records & testing	
Reporting of results to PEIA	
Total	

The cost listed is considered firm during the awarded contract. Ancillary expenses (travel, meals, lodging, etc.) are to be included in proposed rates.

Exhibit C

BIDDERS LITIGATION WAIVER FORM

_____, hereinafter “Bidder,” wishes to submit a Proposal in response to the Request For Quotation for Auditing Services (the RFQ) issued on May 30, 2014 by the Public Employees Insurance Agency for the State of West Virginia (PEIA). The Bidder acknowledges that a mandatory requirement of the RFQ is that the Bidder submit a litigation bond or waiver with its proposal. In consideration of the waiver of said litigation bond requirement by the PEIA, and in lieu of such bond, the Bidder agrees:

That the Bidder completely waives and foregoes any and all legal right or ability it may now have, or in the future acquire, to initiate any sort of challenge to or against the selection of a Bidder and/or the ultimate award of a contract or contracts pursuant to the RFQ. This Waiver is entered voluntarily by a representative authorized to legally bind the Bidder and shall be binding on the Bidder, its successors, assigns, heirs and any others claiming under the legal rights of the Bidder. This Waiver shall apply to any and all types of action, in challenge to or seeking to attack, in any way, the RFQ selection process, or the subsequent award of contract(s) to the successful Bidder, including but not limited to, administrative, judicial, or collateral actions.

<i>Legal Name of Bidder</i>

By:		
	<i>Authorized Signature</i>	<i>Date</i>

Title:	
	<i>Title of Authorized Signature</i>

Approved:

Public Employees Insurance Agency for the State of West Virginia

By:		
	<i>Authorized Signature</i>	<i>Date</i>

Exhibit D

BUSINESS ASSOCIATE INFORMATION FORM

See Attached Form.

Exhibit E

RFQ No. _____

STATE OF WEST VIRGINIA
Purchasing Division
PURCHASING AFFIDAVIT

West Virginia Code §5A-3-10a states: 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 the debt owed is an amount greater than one thousand dollars in the aggregate.

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.

“Debtor” means any individual, corporation, partnership, association, Limited Liability Company or any other form or business association owing a debt to the state or any of its political subdivisions. “Political subdivision” means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. “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.

EXCEPTION: The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this 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.

Under penalty of law for false swearing (*West Virginia Code §61-5-3*), it is hereby certified that the vendor affirms and acknowledges the information in this affidavit and is in compliance with the requirements as stated.

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 12/15/09)

Exhibit F

WV-96 **AGREEMENT ADDENDUM**
Rev. 10/07

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 clause 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** - Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are deleted.
7. **RECOUPMENT** - Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense 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. **ATTORNEY FEES** - 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 hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is hereby deleted.

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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: _____

Exhibit G

Vendor Experience Reference Information	
Reference #1 Name	
Contact Person	
Position	
Address Line 1	
City, State, Zip	
Telephone Number	
Email Address	
Project Description	
Project Dates	
Personnel Assigned	
Reference #2 Name	
Contact Person	
Position	
Address Line 1	
City, State, Zip	
Telephone Number	
Email Address	
Project Description	
Project Dates	
Personnel Assigned	

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Reference #3 Name	
Contact Person	
Position	
Address Line 1	
City, State, Zip	
Telephone Number	
Email Address	
Project Description	
Project Dates	
Personnel Assigned	

Exhibit H

Vendor Personnel Resume	
Name	
Title	
Relevant Experience	
Relevant Certifications	
Education	
Vendor Personnel Resume	
Name	
Title	
Relevant Experience	
Relevant Certifications	
Education	

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Vendor Personnel Resume	
Name	
Title	
Relevant Experience	
Relevant Certifications	
Education	
Vendor Personnel Resume	
Name	
Title	
Relevant Experience	
Relevant Certifications	
Education	