INS13013

REINSURANCE PRODUCT(S) FOR THE WEST VIRGINIA UNINSURED EMPLOYER FUND

The West Virginia Offices of the Insurance Commissioner (OIC), an agency within the West Virginia Department of Revenue, is soliciting quotations (offers) from qualified reinsurance firms (as defined below) for specific types of excess-of-loss reinsurance for catastrophic claims in the West Virginia Uninsured Employer Fund. The West Virginia Uninsured Employer Fund (UEF) is a Fund administered by the OIC which pays claims of injured West Virginia employees whose employers failed to procure mandatory West Virginia workers' compensation coverage. For more detailed information on the UEF, please reference the Request for Information (RFI) which was issued by the OIC in *June 2012*, identified as "Request for Information (RFI) for Reinsurance for West Virginia Uninsured Employer Fund (UEF) (INS 12019)".

Requirement for Reinsurance Intermediaries

The OIC is only soliciting actual quotes for the desired products, and is not by way of this RFQ soliciting the services of a reinsurance intermediary (broker). However, the OIC understands that reinsurance products are generally written by United States domestic reinsurance intermediaries, not directly by reinsurance firms, and that any responses to this RFQ are likely to come from an intermediary rather than directly from a reinsurance firm. Therefore, the OIC is willing to accept quotes from any reinsurance intermediary with the perquisites that the reinsurance intermediary involved in the subject transaction is appropriately licensed to do business in a United States Jurisdiction and is otherwise compliant with all federal and state laws. Confirmation of the same must be provided in any response. Further, any reinsurance intermediary involved in this process must have at least five (5) years of experience placing workers' compensation reinsurance and have placed at least \$100 million in workers' compensation insurance in the most recent calendar year (2011). Confirmation of this information should also be provided in the response.

"Qualified Reinsurance Firm" Defined

Any reinsurance firm submitting a quotation under this procurement shall meet or exceed the minimum qualification set for in this RFQ. Those quotations not meeting the mandatory specifications will be eliminated.

Any reinsurance firm submitting a quotation under this procurement shall meet or exceed the minimum qualifications as follows, and such qualifications shall be documented in the response:

- If a foreign insurer (to West Virginia), be duly admitted in a U.S. jurisdiction and otherwise compliant with all state and federal laws. The response must include the reinsurance firm's NAIC company code.
- If an alien insurer, be fully compliant with all laws of the domestic nation's jurisdiction and all applicable state and federal laws in the U.S. The firm must also be listed on the most recent quarterly version of the NAIC's listing of Alien Insurers. The response must include the reinsurance firm's Alien Insurance Identification Number (AIIN).

INS13013

REINSURANCE PRODUCT(S) FOR THE WEST VIRGINIA UNINSURED EMPLOYER FUND

- Have at least five (5) consecutive years of experience of having written at least \$1 billion in reinsurance, with at least \$100 million of the premium being workers' compensation reinsurance.
- Be rated by at least two (2) of the following financial rating institutions and have a financial rating by all of the following financial rating institutions which rate the firm as meeting the following minimum rating:
- AM Best: "A-" or better
- Standard & Poor's: "AA" or better
- Moody's: "AA" or better

Products Potentially Desired

The OIC is interested in procuring one (1) or more of the following products for the UEF for catastrophic exposures to the UEF. A "catastrophic exposure" as used in this product description means a single occurrence in which two (2) or more individuals are injured while working for an employer who should have had, but did not have, West Virginia workers' compensation coverage, and such individuals injured are otherwise by law covered by West Virginia's statutory workers compensation benefits as a result of such injury.

- A reinsurance treaty which provides \$10,000,000 of reinsurance in excess of a \$2,000,000 retention for a
 catastrophic occurrence, with a maximum any one life (MAOL) warranty of \$2,000,000.
- A reinsurance treaty which provides \$10,000,000 of reinsurance in excess of a \$3,000,000 retention for a catastrophic occurrence, with a MAOL warranty of \$3,000,000.
- A reinsurance treaty which provides \$10,000,000 of reinsurance in excess of a \$2,000,000 retention for a catastrophic occurrence, with an MAOL warranty of \$3,000,000.
- A reinsurance treaty which provides an additional layer of excess coverage in the amount of \$10,000,000 after
 the first \$10,000,000 in the above three (3) described products. A bidder may submit the quotation for this
 excess layer as part of a package quote (with the primary and secondary reinsurance layers packaged
 together) or as a separately quoted product for each or any of the above (3) primary reinsurance products.

Bid Amount

Bidders may submit quotations for any single product identified above or more than one. The amount of the quotation(s) submitted by each potential vendor shall be the total yearly premium cost for the

INS13013

REINSURANCE PRODUCT(S) FOR THE WEST VIRGINIA UNINSURED EMPLOYER FUND

product(s) for which the quotation(s) is(are) being submitted, including premium, all applicable commissions and any applicable taxes, surcharges and fees.

Schedule of Events

Notice of Release of the Request	October 31, 2012
Vendor's Written Questions Submission Deadline	November 28, 2012
OIC Written Response to Questions	December 12, 2012
Submission Deadline (Must be received by OIC)	January 9, 2013

Issuing Office/Contact Point for this RFQ

This RFQ is being issued by the West Virginia Offices of the Insurance Commissioner. Inquiries about this RFQ, or requests for additional information, must be directed to:

Vickie Marcum, Administrative Support Manager WV Offices of the Insurance Commissioner Administrative Services Division 1124 Smith Street PO Box 50543 Charleston, West Virginia 25305-0130

Telephone: (304) 558-6279 ext. 1191

Facsimile: (304) 558-4967

Other than contacting the individual identified above, no contact with the West Virginia Offices of the Insurance Commissioner staff specifically concerning this RFQ is permitted following issuance of this RFQ. Any contact related to this RFQ may disqualify the Vendor who violates this requirement.

Expenses Incurred

The State of West Virginia and the West Virginia Offices of the Insurance Commissioner will not be liable for any expenses incurred by any Vendor in the preparation and submission of quotations for this RFQ.

INS13013

REINSURANCE PRODUCT(S) FOR THE WEST VIRGINIA UNINSURED EMPLOYER FUND

Termination/Cancellation of this RFQ

The OIC reserves the right to modify, withdraw, and/or cancel this RFQ at any time, even after the submission of responding quotations, if such withdrawal is to the benefits of the State of West Virginia or the OIC. If this RFQ is withdrawn, no contract awards will be made pursuant to this RFQ.

Assignment

The relationship of the selected firm to the State of West Virginia and to the West Virginia Offices of the Insurance Commissioner will be that of an independent contractor, with no principal-agent or employer-employee relationships created by the parties to any resultant agreement. The firm shall not assign, convey, transfer, or delegate any of its responsibilities or obligation under the resultant agreement without prior written approval of the Offices of the Insurance Commissioner. Such approval may be granted by the sole discretion of the Offices of the Insurance Commissioner. No assignments, if any are granted, shall release the vendor from its liability for the prompts and effective performance of the obligations hereunder.

Governing Law

The contract resulting from this RFQ will be governed exclusively by the laws of West Virginia. Further, the State of West Virginia asserts its Eleventh Amendment right not to be sued in any federal court.

Taxes

The State of West Virginia and the West Virginia Offices of the Insurance Commissioner are exempt from Federal Excise taxes and from State and local sales and use taxes on the services to be supplied as a result of any contracts resulting from this RFQ. Consequently, the State of West Virginia and the West Virginia Offices of the Insurance Commissioner will have no responsibilities for the payment of any taxes that become payable by the successful firm.

Acceptance Period for Quotations

The quotations submitted in response to the RFQ shall remain fixed and valid for a period a period of six (6) month commencing on the date the quotations are due.

INS13013

REINSURANCE PRODUCT(S) FOR THE WEST VIRGINIA UNINSURED EMPLOYER FUND

Firm Information

Responding firms should include the following information with their bid proposal submittal. The West Offices of the Insurance Commissioner reserves the right to request this and any additional information at any time during the bid evaluation process prior to their recommendation of award notification to the West Virginia Purchasing Division.

- (a) Name and address of the firm submitting the quotation along with the federal employer identification number (FEIN) of the vendor, if the vendor is a U.S. domestic firm, or a notation that the vendor does not have a FEIN if they are not a U.S. domestic firm.
- (b) Date of registration to do business in the State of West Virginia. Foreign and/or alien corporations and businesses do not need to register to do business in West Virginia to submit a quotation, but must do so before a contract can be issued.

DETAILED QUOTES (OFFERS): (PLEASE FEEL FREE TO ATTACH SEPARATELY)

INS13013

REINSURANCE PRODUCT(S) FOR THE WEST VIRGINIA UNINSURED EMPLOYER FUND

Cost Sheet

The West Virginia Offices of the Insur like price quotes for Reinsurance Tree	Total Cost per Policy Year	
amounts (as notes above bidders may	bid on any or all of these	
products):	<i>y</i>	
\$10,000,000 of reinsurance in excess of a \$2,000,000 retention for a catastrophic occurrence, with a maximum any one life warranty of \$2,000,000.		\$
\$10,000,000 of reinsurance in excess of a \$3,000,000 retention for a catastrophic occurrence, with a maximum any one life warranty of \$3,000,000.		\$
\$10,000,000 of reinsurance in excess of a \$2,000,000 rete maximum any one life warranty of \$3,000,000.		\$
A reinsurance treaty which provides an additional layer \$10,000,000 after the first \$10,000,000 in the above three (a the quotation for this excess layer as part of a package reinsurance layers packaged together) or as a separately quotation primary reinsurance products. If the bidder is submitting cost per policy year here. If the bidder is submitting as a post per policy year for the additional layer separately hadditionally incorporate the additional layer cost in the parameter in the primary layer product quote that it also includes	3) described products. A bidder may submit e quote (with the primary and secondary oted product for each or any of the above (3) as a separate product, simply state the total package quote, still separately note the total here, noting it is part of a package quote. ckage product total cost per policy year, and	\$
Bidder's Company Name:		
Bidder's Address:		
Remittance Address: (if different)		
Phone Number:		
Fax Number:		
Email Address:		100
Authorized Signature:	Date:	

INS13013

REINSURANCE PRODUCT(S) FOR THE WEST VIRGINIA UNINSURED EMPLOYER FUND

Rev. 10/24/12

GENERAL TERMS AND CONDITIONS: (Agency Delegated Procurement Only)

- 1. CONTRACTUAL AGREEMENT: Issuance of a Purchase Order signed by the Agency, and approved as to form by the Attorney General's office if required, constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.
- 2. **DEFINITIONS:** As used in this Solicitation / Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation / Contract.
 - 2.1 "Agency" means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation.
 - 2.2 "Contract" means the binding agreement that is entered into between the State and the Vendor to provide the goods and services requested in the Solicitation.
 - 2.3 "Purchase Order" means the document signed by the Agency and the Agency, and approved as to form by the Attorney General, that identifies the Vendor as the successful bidder and Contract holder.
 - 2.4 "Solicitation" means the official solicitation published by the Agency and identified by number on the first page thereof.
 - 2.5 "State" means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.
 - 2.6 "Vendor" or "Vendors" means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.
- 3. **PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification.
- 4. ALTERNATES: Any model, brand, or specification listed herein establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the Agency at its sole discretion. Any Vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.
- 5. **EXCEPTIONS AND CLARIFICATIONS:** The Solicitation contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions, clarifications, or other proposed

INS13013

REINSURANCE PRODUCT(S) FOR THE WEST VIRGINIA UNINSURED EMPLOYER FUND

modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification.

- **6. ACCEPTANCE/REJECTION:** The State may accept or reject any bid in whole, or in part. Vendor's signature on its bid signifies acceptance of the terms and conditions contained in the Solicitation and Vendor agrees to be bound by the terms of the Contract, as reflected in the Purchase Order, upon receipt.
- 7. **REGISTRATION:** Prior to Contract award, the apparent successful Vendor must be properly registered with the West Virginia Purchasing Division and must have paid the \$125 fee if applicable.
- 8. **FUNDING:** This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available.
- 9. PAYMENT: Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears, to the Agency at the address on the face of the purchase order labeled "Invoice To."
- 10. UNIT PRICE: Unit prices shall prevail in cases of a discrepancy in the Vendor's bid.
- 11. **INTEREST:** Interest attributable to late payment will only be permitted if authorized by the West Virginia Code. Presently, there is no provision in the law for interest on late payments.
- 12. PREFERENCE: Vendor Preference may only be granted upon written request and only in accordance with the West Virginia Code § 5A-3-37 and the West Virginia Code of State Rules. A Resident Vendor Certification form has been attached hereto to allow Vendor to apply for the preference. Vendor's failure to submit the Resident Vendor Certification form with its bid will result in denial of Vendor Preference. Vendor Preference does not apply to construction projects.
- 13. SMALL, WOMAN-OWNED, OR MINORITY-OWNED BUSINESSES: 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 the Purchasing Division 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.
- 14. TAXES: The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
- 15. CANCELLATION: The Agency reserves the right to cancel this Contract immediately upon written notice to the vendor if the product supplied does not conform to the specifications contained in the Contract. The Agency may cancel any purchase or Contract upon 30 days written notice to the Vendor.

INS13013

REINSURANCE PRODUCT(S) FOR THE WEST VIRGINIA UNINSURED EMPLOYER FUND

- 16. WAIVER OF MINOR IRREGULARITIES: The Agency reserves the right to waive minor irregularities in bids or specifications.
- 17. TIME: Time is of the essence with regard to all matters of time and performance in this Contract.
- 18. APPLICABLE LAW: This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code or West Virginia Code of State Rules is void and of no effect.
- 19. COMPLIANCE: Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendors acknowledge that they have reviewed, understand, and will comply with all applicable law.
- 20. PREVAILING WAGE: On any contract for the construction of a public improvement, Vendor and any subcontractors utilized by Vendor shall pay a rate or rates of wages which shall not be less than the fair minimum rate or rates of wages (prevailing wage), as established by the West Virginia Division of Labor under West Virginia Code § 21-5A-1 et seq. and available at http://www.sos.wv.gov/administrative-law/wagerates/Pages/default.aspx. Vendor shall be responsible for ensuring compliance with prevailing wage requirements and determining when prevailing wage requirements are applicable. The required contract provisions contained in West Virginia Code of State Rules § 42-7-3 are specifically incorporated herein by reference.
- 21. ARBITRATION: Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.
- 22. MODIFICATIONS: This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary, no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Agency and the Attorney General's office (Attorney General approval is as to form only).
- 23. WAIVER: The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue to remain in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.
- 24. SUBSEQUENT FORMS: The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.
- 25. ASSIGNMENT: Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

INS13013

REINSURANCE PRODUCT(S) FOR THE WEST VIRGINIA UNINSURED EMPLOYER FUND

- 26. WARRANTY: The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and/or (c) be free from defect in material and workmanship.
- 27. STATE EMPLOYEES: State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.
- **28. BANKRUPTCY**: In the event the Vendor files for bankruptcy protection, the State of West Virginia may deem this Contract null and void, and terminate this Contract without notice.
- 29. HIPAA BUSINESS ASSOCIATE ADDENDUM: The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, is available online at http://www.state.wv.us/admin/purchase/vrc/hipaa.html and is hereby made part of the agreement provided that the Agency meets the definition of a Covered entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the Vendor.
- 30. CONFIDENTIALTIY: The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in http://www.state.wv.us/admin/purchase/privacy/default.html.
- 31. **DISCLOSURE:** Vendor's response to the Solicitation and the resulting Contract are considered public documents and will be disclosed to the public in accordance with the laws, rules, and policies governing the West Virginia Freedom of Information Act (FOIA). Those laws include, but are not limited to, West Virginia Code § 29B-1-1 et seq.

If a Vendor considers any part of its bid to be exempt from public disclosure, Vendor must so indicate by specifically identifying the exempt information, identifying the exemption that applies, providing a detailed justification for the exemption, segregating the exempt information from the general bid information, and submitting the exempt information as part of its bid but in a segregated and clearly identifiable format. Failure to comply with the foregoing requirements will result in public disclosure of the Vendor's bid without further notice. A Vendor's act of marking all or nearly all of its bid as exempt is not sufficient to avoid disclosure and WILL NOT BE HONORED. Vendor's act of marking a bid or any part thereof as "confidential" or "proprietary" is not sufficient to avoid disclosure and WILL NOT BE HONORED. In addition, a legend or other statement indicating that all or substantially all of the bid is exempt from disclosure is not sufficient to avoid disclosure and WILL NOT BE HONORED.

Vendor will be required to defend any claimed exemption for nondisclosure in the event of an administrative or judicial challenge to the State's nondisclosure. Vendor must indemnify the State for any costs incurred related to any exemptions claimed by Vendor. Any questions regarding the applicability of the various public records laws should be addressed with the Vendor's own legal counsel prior to bid submission.

INS13013

REINSURANCE PRODUCT(S) FOR THE WEST VIRGINIA UNINSURED EMPLOYER FUND

- 32. LICENSING: Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, this Agency, the West Virginia Secretary of State's Office, the West Virginia Tax Department, or any other state agency or political subdivision. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Agency to verify that the Vendor is licensed and in good standing with the above entities.
- 33. ANTITRUST: In submitting a bid to, signing a contract with, or accepting a Purchase Order from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.
- 34. VENDOR CERTIFICATIONS: By signing its bid or entering into this Contract, Vendor certifies (1) that its bid was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid for the same material, supplies, equipment or services; (2) that its bid is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this RFQ in its entirety; understands the requirements, terms and conditions, and other information contained herein. Vendor's signature on its bid also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency.

The individual signing this bid on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

- 35. PURCHASING CARD ACCEPTANCE: The State of West Virginia currently utilizes a Purchasing Card program, administered under contract by a banking institution, to process payment for goods and services. The Vendor must accept the State of West Virginia's Purchasing Card for payment of all orders under this Contract.
- 36. VENDOR RELATIONSHIP: The relationship of the Vendor to the Agency 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 Agency or 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.

RFQ No.	
REQ 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 befo	re me this day of	,;	20
My Commission expires	, 20		
VEELA SEVI HEDE	NOTARY PUBLIC	c	

WV-96 Rev. 9/11

AGREEMENT ADDENDUM

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

- 1. <u>DISPUTES</u> 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.
- 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. <u>LIMITATION OF LIABILITY</u> 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. <u>AMENDMENTS</u> 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.

VIENTO AN

ACCEPTED BY:

STATE OF WEST VIRGINIA	YEADOR
Spending Unit:	Company Name:
Signed:	Signed:
Title:	Title:
Date:	Date: