State of West Virginia
Offices of the Insurance Commissioner

REQUEST FOR PROPOSAL
OPEN END CONTRACT
FOR
CASUALTY ACTUARIAL CONSULTING
AND
ANALYTICAL SERVICES

INS#09121

1124 Smith Street
Charleston, WV 25301

REQUEST FOR PROPOSAL

State of West Virginia
Offices of the Insurance Commissioner
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REQUEST FOR PROPOSAL

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Part 1 GENERAL INFORMATION

1.1 Purpose:
The West Virginia Department of Revenue, Offices of the Insurance Commissioner ("Agency" or "OIC") is soliciting proposals to provide Casualty Actuarial Consulting and Analytical Services.

1.2 Project:
The mission or purpose of this project is to retain a qualified firm experienced in workers' compensation liability calculations to provide casualty actuarial consulting and analytical services for the OIC for the year beginning April 1, 2009. The initial contract is for one (1) year with the option of two (2) one-year renewals. These services are to be performed in accordance with actuarial standards of practice and generally accepted actuarial principles.

1.3 RFP Format:
This RFP has four parts. "Part 1" contains informational sections, "Part 2" describes the background and working environment of the project, "Part 3" is a statement of the specifications for the services requested pursuant to this RFP, contractual requirements, and general terms/conditions and "Part 4" explains the required format of the Bidder's response to this RFP, the evaluation criteria the Agency will use in evaluating the proposals received, and how the evaluation will be conducted.

1.4 Inquiries:
Additional information inquiries regarding specifications of this RFP must be submitted in writing to Vickie Marcum with the exception of questions regarding proposal submission, which may be oral. The deadline for written inquiries is identified in the Schedule of Events, Section 1.16.

All inquiries of specification clarification must be addressed to:

Vickie Marcum, Procurement Officer
WV Offices of the Insurance Commissioner
1124 Smith Street
Charleston, WV 25301
Fax: (304) 558-4967

Absolutely NO contact shall be made by the Vendor with any member of the evaluation committee. Violation of this clause may result in rejection of the bid. The

Procurement Officer named above is the sole contact for any and all inquiries after this RFP has been released.

1.5 Vendor Registration:
Vendors participating in this process should complete and file a ***Vendor Registration and Disclosure Statement*** (Form WV-1) and remit the registration fee. The bidder is not required to be a registered Vendor in order to submit a proposal, but **the successful bidder** must register and pay the fee prior to the award of an actual purchase order/contract.

1.6 Oral Statements and Commitments:
Vendors must clearly understand that any verbal representations made or assumed to be made during any oral discussions held between the bidder's representatives and any Agency personnel is **not** binding. Only the information issued in writing and added to the Request for Proposal specifications file by an official written addendum are binding.

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

1.8 Labeling of RFP Sections:
The sections within this RFP contain instructions governing how the Vendor's proposal is to be arranged, submitted and to identify the material to be included therein.

1.8.1 *Mandatory Requirements*
The mandatory sections included in part 3 and 4 require a response, and they describe the minimum requirements requested in this RFP. **Any specification or statement containing the word "must", "shall" or "will" are mandatory.** The bidder is required to meet the intent of the mandatory specifications in order to be eligible for consideration and to continue in the evaluation process. A simple "yes" or "no" response to these sections is not adequate. Failure to meet mandatory items shall result in disqualification of the Vendor's proposal and the evaluation process terminated for that bidder.

Decisions regarding compliance with the intent of any mandatory specification shall be at the sole discretion of the Agency.

1.8.2 *Contract Terms and Conditions*:
Section "3" details the contractual terms and conditions under which the Agency of West Virginia will enter into a contract.

1.8.3 *Informational Sections:*
All information specifications do not require a response from the Vendor. They are intended to aid the Vendor in structuring an effective proposal capable of meeting the needs of the issuing agency.

1.9 Proposal Format and Submission:
1.9.1 Vendors must complete a response to all mandatory specifications in order to be considered. Each proposal must be formatted as per the outline in Part 4 of this RFP. No

other arrangement or distribution of the proposal information may be made by the bidder. Failure on the part of the bidder to respond to specific requirements detailed in this RFP may be basis for disqualification of the proposal. The Agency reserves the right to waive any informality in the proposal format and minor irregularities.

1.9.2 All proposals must be submitted to the OIC **prior** to the date and time stipulated in this RFP as the opening date. All bids will be date and time stamped to verify official time and date of receipt.

1.9.3 Vendors mailing proposals should allow sufficient time for mail delivery to ensure timely arrival. The Agency cannot waive or excuse late receipt of a proposal which is delayed and late for any reason. The bid proposals must be received by the Agency prior to the specified date and time of the bid opening. Failure to deliver or the non-receipt of the bid by the Agency prior to the appointed date and hour shall result in the rejection of the bid. The Vendor is solely responsible for the receipt of bid by the Agency prior to the appointed date and hour of the bid opening. Any proposal received after the bid opening date and time will be immediately disqualified.

Vendors responding to this RFP shall submit:
One original technical and cost proposal, plus six (6) convenience copies to:

Vickie Marcum, Procurement Officer
WV Offices of the Insurance Commissioner
1124 Smith Street, Room 100
Charleston, WV 25301

The outside of the envelope or package(s) should be clearly marked:

Req#:	**INS#09121**
Opening Date:	**April 1, 2009**
Opening Time:	**2:00 PM**

1.10 Rejection of Proposals:

The Agency shall select the best value solution according to the evaluation criteria. However, the Agency reserves the right to accept or reject any or all proposals, in part or in whole at its discretion. The Agency reserves the right to withdraw this RFP at any time and for any reason. Submission of, or receipt by the Agency of proposals confers no rights upon the bidder nor obligates the Agency in any manner.

A contract based on this RFP and the Vendor's proposal, may or may not be awarded. Any contract resulting in an award from this RFP is not valid until properly approved and executed by the OIC and approved as to form by the Attorney General.

1.11 Incurring Costs:

The Agency and any of its employees or officers shall not be held liable for any expenses incurred by any bidder responding to this RFP to prepare and deliver the proposal or to attend any mandatory pre-bid meeting or oral presentations.

1.12 Addenda:

If it becomes necessary to revise any part of this RFP, an official written addendum will be issued by the Agency to all Vendors of record.

1.13 Independent Price Determination:

A proposal will not be considered for award if the price in the proposal was not arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to prices with any competitor unless the proposal is submitted as a joint venture.

1.14 Price Quotations:

The price(s) quoted in the bidder's proposal will not be subject to any increase and will be considered firm for the life of the contract unless specific provisions have been provided for adjustment in the original contract.

1.15 Public Record:

1.15.1 *Submissions are Public Record.*

All documents submitted to the Agency related to purchase orders/contracts are considered public records. All bids, proposals, or offers submitted by bidders shall become public information and are available for inspection during normal official business hours in Agency's Administrative Services Office after the award is complete and the documents scanned.

1.15.2 *Written Release of Information.*

All public information may be released with or without a Freedom of Information 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 $0.50/page, or a minimum of $10.00 per request whichever is greatest.

1.15.3 *Risk of Disclosure.*

The only exemptions to disclosure of information are listed in West Virginia Code §29B-1-4. Primarily, trade secrets, as submitted by a bidder, are the only exemption to public disclosure. The submission of any information to the Agency by a Vendor puts the risk of disclosure on the Vendor. The Agency will make a reasonable effort not to disclose information that is within the guidelines of §29B-1-4 and is properly labeled "proprietary information not for public disclosure." The Agency does not guarantee non-disclosure of any information to the public.

1.16 Schedule of Events:

Release of the RFP	02/25/2009
Vendor's Written Questions Submission Deadline	03/11/2009
Addendum Issued	03/18/2009
Bid Opening Date	04/01/2009
Anticipated Contract Start Date	07/01/2009

1.17 Mandatory Pre-bid Conference:

A mandatory pre-bid conference shall not be conducted. The Agency is electing to utilize written questions and answers as an alternative.

1.18 Bond Requirements:
NOT APPLICABLE

1.19 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, 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.

PART 2 OPERATING ENVIRONMENT

2.1 Location:
The Agency is located at 1124 Smith Street, Charleston, WV 25301.

2.2 Background:
The OIC, which is an agency of the State of West Virginia, is the governmental body charged with the regulation and oversight of the insurance industry within the State. In addition to serving as the entity that regulates the recently privatized workers' compensation insurance market, the OIC is also charged with the administrative oversight of the current and former State run workers' compensation related funds. The oversight, management and financial reporting responsibilities of the following funds are now duties of the OIC: the Old Fund, which consists of the assets and liabilities transferred from the former Worker's Compensation Fund and was closed to future liabilities June 30, 2005, and the Coal-Workers Pneumoconiosis Fund, which was closed to future liabilities effective December 31, 2005. Currently in runoff status, the Old Fund still has a significant deficit balance so funding sources to provide a dedicated revenue stream were established with the passage of Senate Bill 1004, which was enacted by the Legislature on January 29, 2005. The OIC assumed the oversight of the Old Fund on January 1, 2006, and significant progress toward reducing the debt through the effective management of claims has been made, including the establishment of a settlement program. The Old Fund continues to improve its performance while in run off status which is helping the OIC to move toward an eventual loss portfolio transfer, which is the ultimate goal for the State. The Coal Worker's Pneumoconiosis's Fund is also in run off status and improved claims management strategies have proven effective. The CWP Fund has an adequate net asset balance and is expected to remain solvent through out the run off period.

The OIC is also responsible for the administration of active proprietary funds established by Senate Bill 1004. The active worker's compensation related funds include the Uninsured Employers' Fund, and two Self-Insured Funds. The net assets of these recently established funds are adequate at this time.

2.3 Contact Person(s)

The selected actuary's principal contact with the OIC will be the Insurance Commissioner or her designee, who will coordinate the assistance to be provided by the OIC to the actuary.

2.4 Financial Reporting Entity and Method of Reporting

The OIC has two kinds of funds:

- Governmental funds – Most of the OIC's basic services are included in the governmental fund.
- Proprietary funds – Proprietary funds include enterprise funds and account for activities that are operated in a manner similar to private-sector businesses.

2.5 Technical Operations

The OIC's accounting system consists of the West Virginia Financial Information Management System (WVFIMS) and internally developed spreadsheets.

Third party administrators (TPA) for the OIC are required to set case reserves for known claims. Each TPA has its own data processing system developed for claims management functions. The actuary will be required to produce IBNR reserves, and will be expected to work closely with the TPAs. The OIC IT and Financial Accounting Departments will also work closely with the selected actuary to provide and compile the necessary data extracts to support the actuary's work.

Self insured employers report loss data to the OIC so that the state can estimate their workers' compensation liabilities. They provide historical loss development triangles for paid losses, outstanding known case reserves, and total reported incurred losses beginning with calendar year 1998 data. Reserves on life pension claims prior to calendar year 1998 are calculated by OIC staff.

PART 3 PROCUREMENT SPECIFICATIONS

3.1 General Requirements:

The proposal shall set forth a work plan, including an explanation of the methodology to be followed. In developing the work plan, reference should be made to such sources of information as actuarial studies and related materials, manuals and programs, and financial and other management information systems.

Proposers must provide the following information about their approach to providing actuarial services:

a. Level of staff and number of hours to be assigned to each proposed segment of the engagement.
b. Approach to take in understanding and working closely with third party administrator case reserving.
c. Approach to and methodology of determining IBNR reserves.
d. Approach to and methodology of determining all reserves, if needed.

3.2 Scope of Work:

3.2.1 The vendor will perform annual casualty actuarial analyses and consulting for each of the workers' compensation funds administered by the OIC in accordance with actuarial standards of practice and generally accepted actuarial principles.

The analyses will cover all claim-related liabilities of the separate funds, including, but not limited to, reserves for the following:

1. Reported claims, with awards made (active claims)
2. Other reported claims (Unawarded claims)
3. Claims incurred but not reported (IBNR)
4. Self Insured Second Injury Claims (Old Fund Only)
5. Medical expenses (separately identified)
6. Occupational disease
7. Reopened claims
8. Anticipated and unanticipated contingencies

The actuary must work closely with the third party administrators case reserving. This work may include, but is not limited to, reconciling the actuary's reported claims reserve estimates with the TPA reserve estimates, interpreting TPA reserve estimates, and providing assistance in developing adjusting and conversion factors and formulas as needed.

The actuary must meet the time requirements of the auditors and the OIC for the preparation of his or her annual actuarial loss reserve reports and the OIC's annual financial statements.

The actuary must meet the financial reporting requirement of Governmental Accounting Standards Board Statement 10 (GASB 10), Accounting Financial Reporting for Risk Financing and Related Insurance Issues, and Financial Accounting Standards Board Statement 60 (FASB 60), Accounting and Reporting for Insurance Enterprises, and all other accounting requirements that are either applicable to the OIC or requested by the OIC. The actuary must provide reconciliations, tables, and schedules required by GASB 10 disclosure in the OIC's financial statements. The actuary must provide reconciliations, tables, and schedules required by any other current or future accounting standards for disclosure in the OIC's financial statements.

The actuary must provide certification of his or her loss reserve estimates and must provide a Statement of Actuarial Opinion on actuarially derived items in the OIC's financial statements.

The certified actuarial loss reserve reports, the Statement of Actuarial Opinion and the required financial statement schedules, tables and reconciliations for Fiscal Year 2009, ending June 30, 2009 must be completed and delivered to the OIC's Assistant Commissioner of Finance by September 30, 2009.

UNDER AN OPEN END CONTRACT: The actuary may provide additional services and advice on other actuarial matters as they arise subject to the limitations of the OIC's budget. These additional services may include appearances by the actuary's personnel before judicial, legislative, and executive bodies, or others to respond to questions of an actuarial nature or to give reports. These services may also include the preparation of written reports concerning the actuarial matters as deemed necessary by the OIC. Preparation of testimony and testimony before administrative hearing, tribunals, and State and federal courts may also be required. The actuary may be requested to provide training and support for the OIC actuarial and accounting staff. This training may include but is not limited to basic reserving methodologies, in depth reserve analysis including key issues, the data editing process, data extracts and preliminary decisions regarding loss development. Also, the OIC has recently revised the methods used for the purpose of calculating the amounts of security or bond to be provided by employers who wish to self-insure their workers' compensation risks. These calculations are used in conducting annual reviews of each of the self-insured employer accounts, both active and inactive, and previously posted security and bonds in order to determine the adequacy and sufficiency of the security and bonds. The actuary may be required to review these calculations and make any necessary or requested changes. The actuary will be required to modify the existing self-insured methodology to include updated IBNR and discount factors as of the end of December 31, 2008 and each year end thereafter. The methodology will also need to be adjusted to calculate another years' liability on the calendar year basis. Also, actuarial services and advice may be sought on matters related to the assessments for the Self-Insured Security Risk Pool and the Self-Insured Guaranty Fund.

All work under the proposed contract will be under the direction of the Insurance Commissioner or her designee. Written reports and actuarial audits must be submitted initially in draft form in order that any necessary changes may be discussed and agreed upon before final acceptance. Any public statements which may be required must be discussed with the OIC prior to the statements being made or released.

The actuary will issue reports for all services as described in this section.

3.2.2 Irregularities and illegal acts.

The vendor shall be required to give to the Director of the Financial Accounting and Reporting Section (FARS) of the West Virginia Department of Administration under the authority of Section 5A-2-33 of the State Code an immediate, written report of all irregularities and illegal acts of which the vendor becomes aware, as well as to the OIC's Assistant Commissioner of Finance.

Reporting to the Insurance Commissioner or her designee, the vendor must inform the OIC of each of the following:

1. The actuary's responsibility under generally accepted actuarial standards
2. Significant actuarial policies
3. Management judgments and actuarial estimates and projections
4. Significant revisions of past and current actuarial estimates and projections
5. Other information in documents containing actuarial estimates and projections.
6. Disagreements with management
7. Consultation with other actuaries

8. Major issues discussed with management prior to retention
9. Difficulties encountered in performing actuarial services

3.2.3 Working Paper Retention and Access to Working Papers

All working papers and reports must be retained, at the vendor's expense, for a minimum of five (5) years, unless the vendor is notified in writing by the OIC of the need to extend the retention period. The vendor will be required to make working papers available, upon request, to the following parties or their designees:

Insurance Commissioner,
West Virginia Offices of the Insurance Commissioner

Assistant Commissioner of Finance,
West Virginia Offices of the Insurance Commissioner

In addition, the vendor shall respond to the reasonable inquiries of successor actuaries and allow them to review papers relating to matters of continuing significance.

3.2.4 Time Requirements

Proposal Calendar
The key proposal process dates are listed in Section 1.16

Date Services May Commence
Actuarial services may commence upon award and receipt of fully executed purchase order.

Schedule for the Fiscal Year 2009 Actuarial Consulting and Analytical Services Required for the Annual Audit
A similar schedule will be developed for actuarial analysis necessary for audits of future fiscal years if the OIC exercises the option for renewals.

Each of the following shall be completed by the vendor no later than the times indicated in the timetable included in Appendix B.

1. **Entrance Conference**
   The vendor shall conduct an entrance conference with the Insurance Commissioner or her designee(s), within two (2) weeks of the contract award.

2. **Detailed Schedule of Data Needed**
   The vendor shall provide a detailed schedule of all data needed from the OIC, including the date this information is required to meet the reporting deadlines as set forth in Appendix B by May 30, 2009. If this deadline is not met, the vendor agrees to utilize the data requirements developed by the predecessor actuarial vendor.

3. **Draft Reports**

The vendor shall provide a draft of the annual actuarial loss reports, including all necessary reconciliations, tables, and schedules required by any current or future accounting standards disclosure to the Insurance Commissioner or her designee for their review by the date specified in Appendix B.

4. **Final Reports**
The vendor shall deliver the final annual actuarial loss reports to the respective management of the OIC by the dates specified in Appendix B.

Should the vendor fail to meet the submission deadlines for draft and final reports as outlined in Appendix B, the Insurance Commissioner or her designee may impose a late penalty fee of up to 10% reduction of the total contract price. However, this penalty will not be imposed if the vendor has received a written extension of the deadlines from the Insurance Commissioner or her designee in advance.

The Insurance Commissioner or her designee has the discretion to assess or waive the late penalty based upon the circumstances or reasons for the failure on the part of the vendor.

All requests for extensions of the deadlines for submission of reports must be made in writing to the Insurance Commissioner or her designee at least ten (10) working days before the first deadline for which an extension is requested. The request must include:

a. What deadlines the request applies to;

b. The new date of submission should the request be granted and the impact the request will have on subsequent report deadlines; and

c. A concise discussion of the reason(s) for the delay which includes the cause of the delay, what events precipitated that delay, what action was taken to resolve the issues involved without delay, and likelihood of meeting the new date of submission.

The Insurance Commissioner or her designee will either grant or reject the request within ten (10) working days of its receipt, in a written notification to the vendor.

5. **Entrance Conference, Progress Reporting, and Exit Conference**
The vendor shall hold an entrance conference with the Insurance Commissioner or her designee(s) to discuss the data that is needed, the work to be performed, and any anticipated problems.

The vendor shall meet periodically with the OIC's key personnel in order to report the progress of the work and identifying any problems, issues, and significant delays. The vendor shall provide the Assistant Commissioner of

Finance with written minutes of the meeting, including issues discussed and actions to be taken within three (3) working days after the meeting.

The vendor shall hold meetings as necessary with the Assistant Commissioner of Finance and other key personnel to summarize the results of their work and to review significant issues.

The vendor's annual actuarial loss reports will be reviewed and tested as part of the OIC's annual financial statement audit. Vendor personnel will meet with the auditors as needed to answer questions about the preparation, assumptions, and underlying data used in the report's preparation.

6. **Information and Assistance**
   The accounting staff of the OIC as well as management will be available to assist the vendor by providing information, documentation, and explanation.

7. **Report Preparation**
   Final report preparation, editing, and printing shall be the responsibility of the selected vendor.

3.3 Special Terms and Conditions:

3.3.1 Bid and Performance Bonds:
NOT APPLICABLE

3.3.2 Insurance Requirements:
The successful Vendor shall maintain, and provide evidence thereof, for the duration of the agreement, and any extensions thereof, insurance issued by a company or companies qualified to do business in the State of West Virginia in the following types and amounts:

A. Worker's Compensation Insurance covering all liability of the Vendor arising under the Worker's Compensation Act.
B. Comprehensive General Liability insurance in broad form, written on an "occurrence" basis, with a combined single limit of not less than One Million Dollars ($1,000,000) to include coverage for the following where exposure exists:
    1. Premises/operations
    2. Independent Contractors
    3. Products/Completed Operations
    4. Personal Injury
C. Professional Liability Insurance:
    1. Limit of Liability: $3,000,000 with a deductible not to exceed $50,000.
    2. Coverage: Errors and Omissions including liability assumed under this contract.
    3. Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences arising out of performance of the services required under the contract shall be maintained in full force and effect

under the policy or "tail" coverage for a period of at least two (2) years after termination of the services.

D. The Vendor agrees that with respect to the insurance requirement referenced above, the Agency shall be provided with certificates of insurance naming the OIC as an additional insured prior to commencement of the agreement and thereafter upon request with certificates evidencing renewals or replacements of said policies of insurance at least fifteen (15) days prior to the expiration of or the cancellation of any policies. Said notices of insurance shall be provided to:

Kathy Damron, Director of Administration
WV Offices of the Insurance Commissioner
PO Box 50543
Charleston, WV 25305-0543

E. The Vendor shall comply with the West Virginia Human Rights Act, as amended, and any rules and regulations promulgated in accordance therewith, include, but not limited to the Equal Employment Opportunity Clause, West Virginia Code.
F. In case of default by the Vendor, the Agency may procure the services from other sources and hold the Vendor responsible for any excess cost occasioned thereby.
G. Invoices shall be submitted to the address herein; payment to be made in accordance with the Prompt Payment Act. Payments are to be made after the delivery and receipt of services.
H. The selected Vendor will be required to assume responsibility for all services offered in this proposal. The Agency will consider the selected Vendor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the agreement
I. Interpretation or Correction of the RFP
    1. The Vendor shall promptly notify the Agency in writing of any ambiguity, inconsistency, or error they may discover upon examination of the RFP.
    2. Interpretations, corrections and changes to the RFP will be made by addendum. Interpretations, corrections, or changes made in any other manner will not be binding.
J. Any agreement resulting from this RFP shall be governed by and construed according to the laws of the State of West Virginia.
K. The Vendor agrees that any information concerning the management of claims or services provided in the course of this engagement shall remain confidential. Except as may be required by State or federal law, regulation, or order, the vendor agrees not to release any information concerning said claim services without prior approval of the Insurance Commissioner, or his/her designee or the consent of the claimant.

3.3.3 License Requirements:

The successful vendor must be appropriately licensed in the State of West Virginia with respect to all contract activities pursuant to the RFP award.

*3.3.4 **Litigation Bond/Guarantee:***
None required

*3.3.5 **Purchasing Affidavit:***

West Virginia State Code §5A-3-10a requires that all Vendors submit a Purchasing Affidavit which certifies that there are no outstanding obligations or debts owing the State of West Virginia. The Purchasing Affidavit is attached to this request for proposal which must be completed, signed, and returned with the Vendor's proposal. If bidding a joint proposal, a Purchasing Affidavit must be completed for both Vendors.

3.4 General Terms and Conditions:
By signing and submitting their proposal, the successful Vendor agrees to be bound by all the terms contained in Section Three (3) of this RFP.

*3.4.1 **Conflict of Interest:***
The Vendor affirms that it, its officers or members or employees presently have no interest and shall not acquire any interest, direct or indirect which would conflict or compromise in any manner or degree with the performance or its services hereunder. The Vendor further covenants that in the performance of the contract, the Vendor shall periodically inquire of its officers, members, and employees concerning such interests. Any such interests discovered shall be promptly presented in detail to the Agency.

*3.4.2 **Prohibition against Gratuities:***
The Vendor warrants that it has not employed any company or person other than a bona fide employee working solely for the Vendor or a company regularly employed as its marketing agent to solicit or secure the contract and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award of the contract.

For breach or violation of this warranty, the Agency shall have the right to annul this contract without liability at its discretion, and/or pursue any other remedies available under this contract or by law.

*3.4.3 **Certifications Related to Lobbying:***
The Vendor certifies that no federal appropriated funds have been paid or will be paid, by or on behalf of the company or an employee thereof, to any person for purposes of influencing or attempting to influence an officer or employee of any Federal entity, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Vendor shall complete and submit a disclosure form to report the lobbying.

Vendor agrees that this language of certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this contract was made and entered into.

3.4.4 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 the parties to this contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents.

The Vendor shall be responsible for selecting, supervising and compensating any and all individuals employed pursuant to the terms of this RFP and resulting contract. Neither the Vendor nor any employees or contractors of the Vendor shall be deemed to be employees of the State for any purposes whatsoever.

The 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, and licensing fees, etc. and for the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

The Vendor shall hold harmless the Agency, and shall provide the 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.

The Vendor shall not assign, convey, transfer, or delegate any of its responsibilities and obligations under this contract to any person, corporation, partnership, association or entity without expressed written consent of the Agency.

3.4.5 Indemnification:

The Vendor agrees to indemnify, defend and hold harmless the State of West Virginia and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition or 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.

3.4.6 Contract Provisions:

After the successful Vendor is selected, a formal contract document may be executed between the Agency and the Vendor. In addition, the RFP and the Vendor's response will be included as part of the contract by reference. The order of precedence is the contract, the RFP, and the Vendor's proposal in response to the RFP.

3.4.7 Governing Laws & Compliance:

This contract shall be governed by the laws of the State of West Virginia. The Vendor further agrees to comply with the Civil Rights Act of 1964 and all other applicable Federal, State, and local Government regulations.

3.4.8 Compliance with Laws and Regulations:

The Vendor shall procure all necessary permits and licenses to comply with all applicable laws, Federal, State or municipal, along with all regulations and ordinances, or any regulating body.

The Vendor shall pay any applicable sales, use, or personal property taxes arising out of this contract and the transactions contemplated thereby. Any other taxes levied upon this contract, the transaction, or the equipment, or services delivered pursuant hereto shall be borne by the contractor. It is clearly understood that the State of West Virginia is exempt from any taxes regarding performance of the scope of work of this contract.

3.4.9 Subcontracts/Joint Ventures:

The Vendor is solely responsible for all work performed under the contract and shall assume prime contractor responsibility for all services offered and products to be delivered under the terms of this contract. The Agency will consider the Vendor to be the sole point of contact with regard to all contractual matters. This Vendor shall not enter into written subcontracts for performance of work under this contract.

3.4.10 Term of Contract & Renewals:

This contract will be effective on or about April 15, 2009 and shall extend for the period of (1) year, at which time the contract may, upon mutual written consent, be renewed. Such renewals are for a period of up to one (1) year, with a minimum of two (2) one year renewals, or until such reasonable time thereafter as is necessary to obtain a new contract. The "reasonable time" period shall not exceed twelve (12) months. During the "reasonable time" period the Vendor may terminate the contract for any reason upon giving the Agency ninety (90) days written notice. Notice by the Vendor of intent to terminate will not relieve the Vendor of the obligation to continue to provide services pursuant to the terms of the contract.

Any change in Federal or State law, or court actions which constitute binding precedent in West Virginia, and which significantly alters the Vendor's required activities or any change in the availability of funds, shall be viewed as binding and shall warrant good faith renegotiation of the compensation paid to the Vendor by the Agency and of such other provisions of the contract that are affected. If such renegotiation proves unsuccessful, the

contract may be terminated by the State upon written notice to the Vendor at least thirty (30) days prior to termination of this contract.

3.4.11 Non-Appropriation of Funds:

If the Agency is not allotted funds in any succeeding fiscal year for the continued use of the service covered by this contract by the West Virginia Legislature, the State may terminate the contract at the end of the affected current fiscal period without further charge or penalty. The State shall give the Vendor written notice of such non-allocation of fund as soon as possible after the State receives notice. No penalty shall accrue to the State in the event this provision is exercised.

3.4.12 Contract Termination:

The Agency may terminate any contract resulting from this RFP immediately at any time the Vendor fails to carry out its responsibilities or to make substantial progress under the terms of the RFP and resulting contract. The Agency shall provide the Vendor with advance notice of performance conditions which are endangering the contract's continuation. If after such notice the Vendor fails to remedy the conditions contained in the notice, within the time period contained in the notice, the Agency shall issue the Vendor an order to cease and desist any and all work immediately. The Agency shall be obligated only for services rendered and accepted prior to the date of the notice of termination.

The contract may also be terminated upon mutual agreement of the parties with thirty (30) days prior notice.

3.4.13 Changes in Scope:

If changes in scope of the original contract become necessary a formal contract change order will be negotiated by the Agency and the Vendor, to address changes to the terms and conditions, costs of, or scope of work included under the contract. An approved contract change order is defined as one approved by the Agency and the West Virginia Attorney General's Office prior to the effective date of such amendment. An approved contract change order is required whenever the change affects the payment provision and/or the scope of the work. Such changes may be necessitated by new and amended Federal and State regulations and requirements. (No changes in scope are to be implemented except with the approval of the Agency.)

As soon as possible after receipt of a written change request from the Agency, but in no event more than thirty (30) days thereafter, the Vendor shall determine if there is an impact on price with the change requested and provide the Agency a written statement to identifying any price impact on the contract or to state that there is no impact. In the event that price will be impacted by the scope change, the Vendor shall provide a description of the price increase or decrease involved in implementing the requested change.

NO CHANGE IN SCOPE SHALL BE IMPLEMENTED BY THE VENDOR UNTIL SUCH TIME AS THE VENDOR RECEIVES AN APPROVED WRITTEN CHANGE ORDER. TO PROCEED ON VERBAL APPROVAL ONLY IS TO DO SO AT THE VENDOR'S OWN RISK.

3.4.14 Invoices, Progress payments, & Retainage:

The Vendor shall submit invoices, in arrears, to the Agency at the address on the face of the purchase order labeled "Invoice To" pursuant to the terms of the contract. All invoices will be submitted to the OIC pursuant to the terms of the contract and paid in accordance with the Prompt Payment Act of 1990. Progress payments may be made at the option of the Agency on the basis of percentage of work completed if so defined in the final contract. Any provision for progress payments must also include language for a minimum 10% retainage until the final deliverable is accepted.

If progress payments are permitted, the Vendor is required to identify points in the work plan at which compensation would be appropriate. Progress reports must be submitted to the Agency with the invoice detailing progress completed or any deliverables identified. Payment will be made only upon approval of acceptable progress or deliverables as documented in the Vendor's report. Invoices may not be submitted more than once monthly and State law forbids payment of invoices prior to receipt of services.

3.4.15 Liquidated Damages:

The Vendor agrees that liquidated damages may be imposed at the rate of $1,000.00 PER DAY for failure to provide deliverables, meet miles stones identified to keep the project on target, or failure to meet specified deadlines. This clause shall in no way be considered exclusive and shall not limit the Agency's right to pursue any other additional remedy to which the Agency may have legal cause for action including further damages against the Vendor.

3.4.16 Record Retention (Access & Confidentiality):

Vendor shall comply with all applicable Federal and State of West Virginia rules and regulations, and requirements governing the maintenance of documentation to verify any cost of services or commodities rendered under this contract by Vendor. The Vendor shall maintain such records a minimum of five (5) years and make available all records to Agency personnel at Vendor's location during normal business hours upon written request by Agency within 10 days after receipt of the request.

The Vendor shall have access to private and confidential data maintained by Agency to the extent required for Vendor to carry out the duties and responsibilities defined in this contract. Vendor agrees to maintain confidentiality and security of the data made available and shall indemnify and hold harmless the State of West Virginia and the Agency against any and all claims brought by any party attributed to actions of breech of confidentiality by the Vendor, subcontractors, or individuals permitted access by Vendor.

3.4.17 Miscellaneous:

This Agreement may not be modified except in a writing signed by both parties. If any portion of this Agreement is held to be void, invalid or otherwise unenforceable, in whole or part, the other provisions shall remain in full force and effect.

PART 4 PROPOSAL FORMAT

4.1 Vendor's Proposal Format:

PROPOSALS NOT FOLLOWING THE FORMAT SPECIFICATIONS BELOW WILL NOT BE ACCEPTED.

The proposal must be formatted in the same order, providing the information listed below:

Title page – Should state the RFP Subject and number, the name of the Vendor, Vendor's business address, telephone number, name of authorized contact person to speak on behalf of the Vendor, and should be signed and dated.

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

TECHNICAL

Section I – **General Requirements**

The purpose of the proposal is to demonstrate the qualification, competence and capacity of the vendors seeking to provide the Agency with casualty actuarial consulting and analytical services in conformity with the requirements of the RFP. As such, the substance of proposals will carry more weight than their form or manner of presentation. The proposal must demonstrate the qualifications of the vendor and of the particular staff to be assigned to this engagement. It must also specify approaches that will meet the RFP's requirements.

a. Detailed Proposal
b. Proposer's Guarantee - The proposer's guarantee shown at Appendix C must be completed and included in the proposal.
c. Proposer's Warranty – The proposer's warranty shown at Appendix D must be completed and included in the proposal.

Section II – **Vendor Qualifications and Experience**

The proposal shall state the size of the vendor, the location of the office from which the work on this engagement will be performed, and the number and nature of the professional staff to be employed in this engagement on a full-time basis and the number and nature of the staff to be employed on a part-time basis.

The vendor shall provide information on the circumstances and status of any litigation taken or pending against the firm during the past three (3) years by any government regulatory bodies or professional organizations.

Section III – **Personnel Qualifications and Experience**

The vendor shall identify the principal supervisory and management staff including engagement directors, managers, and specialists who would be assigned to the engagement.

The vendor should provide as much information as possible regarding the number, qualifications, experience, and training, including relevant continuing professional

education, of the specific staff to be assigned to this engagement. The vendor also should indicate how the quality of staff over the term of the agreement will be assured.

Engagement directors, managers, other supervisory staff, and specialists may be changed if those personnel leave the vendor's employment, are promoted, or are assigned to another office. These personnel may also be changed for other reasons with the express prior written permission of the OIC. However, in either case, the OIC retains the right to approve or reject replacements, based upon their qualification, experience, or performance.

Consultants and vendor specialists mentioned in response to this RFP can only be changed with the express prior written permission of the Insurance Commissioner or her designee, who retains the right to approve or reject replacements.

Other personnel may be changed at the discretion of the proposer provided that replacements have substantially the same or better qualifications or experience.

Section IV – **Prior Engagements with the State of West Virginia**

The vendor shall list separately all engagements within the last five (5) years, ranked on the basis of total staff hours, for the State of West Virginia. For each engagement, list the principle client, total hours, the location of the vendor's office from which the engagement was performed, and the name and telephone number of the principle client contact.

Section V – **Similar Engagements**

The vendor shall list the most significant engagements (maximum of five) performed in the last five (5) years that are similar to the engagement described in this RFP. These engagements should be ranked on the basis of total staff hours. Indicate the scope of work, date, engagement principles, total hours, and the name and telephone number of the principle client contact.

Section VI – **Specific Work Plan**

The proposal shall set forth a work plan, including an explanation of the methodology to be followed. In developing the work plan, reference should be made to such sources of information as actuarial studies and related materials, manuals and programs, and financial and other management information systems.

Proposers **must** provide the following information about their approach to providing actuarial services:

a. Level of staff and number of hours to be assigned to each proposed segment of the engagement
b. Approach to take in understanding and working closely with third party administrator case reserving
c. Approach to and methodology of determining IBNR reserves

d. Approach to and methodology of determining all reserves, if needed

Section VII – **Identification of Potential Problems**

The proposal shall identify and describe any potential problems in performing all services described in the RFP, the vendor's approach to resolving these problems, and any special assistance that will be requested of the OIC.

Section VIII – **Report Formats**

The proposal shall include sample formats for reports required under the RFP.

Section IX – **Licensed to Do Business in West Virginia**

An affirmative statement must be included indicating that the vendor is properly registered and licensed to do business in West Virginia.

Section X – **Cost Proposal**

Vendors must use Appendix A – Cost Proposal. If additional pages are required, please identify them as additional pages and attach to Appendix A.

If applicable, sign and submit the attached Resident Vendor Preference Certificate with the proposal.

1. **Total All – Inclusive Maximum Price**
   The cost proposal shall contain all pricing information relative to performing the engagement as described in the RFP. The total all-inclusive maximum price to be bid is to contain all direct and indirect costs including all out-of-pocket expenses (travel and miscellaneous).

   The OIC will not be responsible for expenses incurred in preparing and submitting the proposal. Such costs must not be included in the proposal.

   The first page of the cost proposal should include the following information:

   a. Name of Vendor
   b. Certification that the person signing the proposal is entitled to represent the vendor, empowered to submit the bid, and authorized to sign a contract with the OIC.
   c. A total all-inclusive maximum price for the one-year engagement.

   Proposers must clearly state in their cost proposals that, for any additional contract work necessitated by this engagement, they will be reimbursed at the same hourly rates as those quoted in the fixed fee quotation.

2. **Manner of payment**

Progress payments will be made on the basis of hours of work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with the vendor's sealed dollar cost proposal. Interim billings shall cover a period of not less than a calendar month.

Appendix A

COST PROPOSAL

Schedule of Fees and Expense
Specific All-Inclusive Actuarial Projects

	April 15, 2009 to April 14, 2010	Proposed April 15, 2010 to April 14, 2011
Reserves - Worker's Compensation Old Fund		
Reserves – Coal Worker's Pneumoconiosis Fund		
Reserves – Uninsured Employer's Fund		
Reserves – Self-Insured Funds		
Total, all inclusive maximum price, actuarial services, prices to be firm for one year after award.		

Signature: _____

Title: _____

Date: _____

Appendix A (Continued)

Hourly Rate Schedule

For non-specific, additional services and advice for other (not subject to specific fixed fee sub-categories) actuarial matters as they may arise subject to limitations of the OIC's budget. The actuary will base its charges on the hourly rates set forth below, plus out-of-pocket expenses (travel and miscellaneous*) incurred.

Designation	April 15, 2009 to April 14, 2010	Proposed April 15, 2010 to April 14, 2011

*Per diem expenses shall be billed at the per diem rates adopted by the State of West Virginia Governor's Travel Rules. The per diem rates currently are those stated by the Federal Per Diem guidelines as shown in the following website:

http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&programPage=%2Fep%2Fprogram%2FgsaBasic.jsp&channelId=15943&ooid=16365&pageTypeId=8203&P=MTT&programId=9704&contentType=GSA_BASIC

Appendix B

TIMETABLE FOR COMPLETION OF AUDIT

Required Submission or Event	Required Completion/Submission Date
Entrance Conference	Within two (2) weeks of award of contract
Detailed Schedule of Data Needed	Within five (5) weeks of award of contract **or by May 30, 2008.**
Data delivered by OIC to Consulting Actuary	July 11, 2009
Data clarifications, reruns, or adjustments needed before actuarial loss reports can be completed	July 25, 2009
Unsigned final draft with all modifications for the OIC annual actuarial loss reports submitted to OIC management for review	September 10, 2009
Final signed annual actuarial loss report for the OIC submitted to the OIC	September 30, 2009

Appendix C

PROPOSED GUARANTEES

The Proposed certifies it can and will provide and make available, at a minimum, all services set forth in Part 3, Procurement Specifications.

Signature of Official: _____

Name (Printed or typed): _____

Title: _____

Vendor: _____

Date: _____

Appendix D

PROPOSER WARRANTIES

1. Proposer warrants that it will not delegate or subcontract its responsibilities under this contract/agreement.

2. Proposer warrants that all information provided by it in connection with this proposal is true and accurate.

Signature: _____

Name (typed): _____

Title: _____

Vendor: _____

Date: _____

4.2 Evaluation Process:

Proposals will be evaluated by a committee of three (3) or more individuals in accordance with the criteria stated. The Vendor who meets all the mandatory specifications and attains the final highest point score of all vendors (possible one-hundred points maximum) shall be awarded the contract.

The selection of the successful Vendor will be made by a consensus of the evaluation committee. The Criteria and the assigned weight factors are as follows:

Evaluation Criteria: The following are the factors and point values:

A. Responsiveness ..... 5 points possible
B. Experience ..... 25 points possible
C. Qualifications ..... 15 points possible
D. General Approach ..... 5 points possible
E. Specific Work Plan ..... 20 points possible
F. Cost ..... 30 points possible

Total 100 points possible

Each cost proposal will be evaluated by use of the following formula:

Lowest Price of all Proposals
---------- x 30 = Price Score
Price of Proposal being Evaluated

Minimum Acceptable Score:

Vendors must score a minimum of 70% of the total technical points possible. The minimum qualifying score would be 70% (a score of 49 points for criteria A, B, C, D, E.) to be eligible for further consideration and to continue in the evaluation process. All vendors not attaining the minimum acceptable score (MAS) shall be disqualified and removed from further consideration.

The Agency will select the successful vendor's proposal based on best value purchasing which is not necessarily the low bidder. Cost is considered but is not the sole determining factor for award. The Agency does reserve the right to accept or reject any or all proposals, in whole or in part, if to do so is felt to be in the best interests of the Agency.

The Vendor's failure to provide complete and accurate information may be considered grounds for disqualification. The Agency reserves the right to ask vendors for additional information to clarify their proposals. Nothing may be added to alter the written solution or method contained in the original proposal after the bid opening.

Technical Scoring Standards:

Proposing vendors will be grouped into two categories: Acceptable and Unacceptable. Upon completion of the technical scoring, those firms attaining 70% or more of the maximum possible points will be considered acceptable. Those firms with less than 70% will not be considered further.

The technical evaluation score sheet is broken down into five criteria with a list of questions under each of the criteria. The questions are intended to be used as a guideline for evaluation proposals. The committee may weigh issues not listed in the score sheet, provided that those additional issues are applied to all proposals.

Offices of the Insurance Commissioner
Casualty Actuarial Consulting and Analytical Services (INS#09121)
Technical Criteria

Name of Vendor: _____

		Score
1.	**Responsiveness of the proposal in clear language stating an understanding of the work to be done (5 points)** a. Does the proposal clearly define the scope and purpose of the assignment? b. Is the proposal clear and straightforward, concisely describing the proposer's capability of satisfying the requirements of the RFP? c Does the proposal indicate that the proposer understands the work to be performed? d. How well is the proposer's approach suited to the projects? e. Has the proposer demonstrated an understanding of the timeliness of completion of the work?	
2.	**Experience (25 points)** a. Are the actuaries proposed experienced with Workers' Compensation? b. Are the actuaries proposed experienced with GAAP and governmental GAAP? c. Does the vendor have experience in engagements similar to the one proposed? d Has the proposer designated a qualified/experienced project manager to oversee projects assigned under the contract? e. What are the years of experience of each person proposed for the engagement? f. What are the years of workers' compensation experience of each person proposed for the engagement? g. Does the list of individuals available to work on assignments include an appropriate range of experience/cost levels to match the level of work needed?	
3.	**Qualifications (15 points)** a. Is the size of the vendor's office to be assigned to the engagement appropriate for the level of work needed? b. How many personnel make up the actuarial department and what are their levels of expertise? c. What is the professional standing of the vendor's actuaries assigned to the engagement? d. Do any personnel available for the engagement have articles published in professional journals? Do any personnel conduct or teach seminars, conferences, college-level courses, etc.? Do any personnel sit on professional accounting, auditing, or actuarial boards or committee? e. How will the vendor assure that it will maintain a high quality of personnel throughout the engagement?	
4.	**General Approach (5 points)** a. Does the proposal clearly and thoroughly describe the work plan? b. Does the vendor identify any potential problems in performing the engagement? c. Does the vendor offer an acceptable approach to resolving the problems? d. Are the sample reports or formats of reports well-organized? e. Are the sample reports or formats of reports prepared and written in a manner that a reasonably educated and informed reader can understand?	
5.	**Specific Work Plan (20 points)** a. Does the proposal specifically address points in 4.1, Section 6, (under Technical, Specific Work Plan)? b. Are an adequate number of personnel proposed for the engagement? c. Are the estimated hours allocated for the work plan sufficient to meet the time requirements specified in the RFP? d. What is the extent of participation of senior consultants? Other professional personnel? Are the levels of participation satisfactory? e. Are the descriptions of the approaches and methodologies clear and thorough? f. Are the approaches and methodologies appropriate to the operations, procedures, & systems of the Agency? g. Are the approaches and methodologies adequate to fulfill the requirements of this RFP?	
	Total Points from Above	
	Cost Points	
	Total Points for this Proposal	

Evaluator:_____ **Date:** _____

RFQ No. _____

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

VENDOR OWING A DEBT TO THE STATE:
West Virginia Code §5A-3-10a provides that: 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.

PUBLIC IMPROVEMENT CONTRACTS & DRUG-FREE WORKPLACE ACT:
If this is a solicitation for a public improvement construction contract, the vendor, by its signature below, affirms that it has a written plan for a drug-free workplace policy in compliance with Article 1D, Chapter 21 of the ***West Virginia Code***. The vendor **must** make said affirmation with its bid submission. Further, public improvement construction contract may not be awarded to a vendor who does not have a written plan for a drug-free workplace policy in compliance with Article 1D, Chapter 21 of the ***West Virginia Code*** and who has not submitted that plan to the appropriate contracting authority in timely fashion. For a vendor who is a subcontractor, compliance with Section 5, Article 1D, Chapter 21 of the ***West Virginia Code*** may take place before their work on the public improvement is begun.

ANTITRUST:
In submitting a bid to any agency for the state of West Virginia, the bidder offers and agrees that if the bid is accepted the bidder will 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 the bidder.

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership or person or entity submitting a bid for the same materials, supplies, equipment or services and is in all respects fair and without collusion or fraud. I further certify that I am authorized to sign the certification on behalf of the bidder or this bid.

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

CONFIDENTIALITY:
The vendor agrees that he or she 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/noticeConfidentiality.pdf.

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.

Vendor's Name: _____

Authorized Signature: _____ Date: _____

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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 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.

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

Spending Unit: _____

Signed: _____

Title: _____

Date: _____

VENDOR

Company Name: _____

Signed: _____

Title: _____

Date: _____

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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.

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:**_____

**Check any combination of preference consideration(s) indicated above, which you are entitled to receive.*