

**STATE OF
WEST VIRGINIA**

*REQUEST FOR PROPOSALS
FOR
ACTUARIAL SERVICES
FOR
THE VALUATION OF POST-EMPLOYMENT BENEFITS (OPEB)
FOR THE WEST VIRGINIA RETIREE HEALTH BENEFIT
TRUST*

West Virginia Retiree Health Benefit Trust

January 8, 2015
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Section 1

General Information

1.01 Introduction

Purpose

The purpose of this Request for Proposals (RFP) is to solicit proposals from qualified firms to provide actuarial services for the Valuation of Other Post-Employment Benefits (OPEB) for the West Virginia Retiree Health Benefit Trust (RHBT or Agency) in compliance with the requirements of GASB 43 and 45 Pronouncements and any other such requirements which are announced prior to the completion of this valuation.

Background

RHBT (www.peia.wv.gov) is a fiduciary fund of the State of West Virginia, established as an irrevocable trust (Code section 5-16D-2) for the purpose of providing for and administering retiree post-employment health care benefits and the respective revenues and costs of those benefits. RHBT administers these benefits for approximately 41,000 retired employees and 19,000 eligible dependents, resulting in approximately 60,000 members being covered by the RHBT health plan. Total annual contributions to the RHBT for FY 2014 were \$267 million.

RHBT provides medical, prescription drug, and life insurance for eligible retirees of State agencies, colleges and universities, county boards of education, and other government entities as set forth in the West Virginia Code 5-16-2. For eligibility requirements click [here](#).

RHBT utilizes a Medicare benefit through the Humana Medicare Advantage and Prescription Drug Plan (MAPD) that combines Medicare Parts A, B and D into one comprehensive benefit package for its 42,000 Medicare members. RHBT takes full advantage of all Medicare subsidies available for both plan and member. Approximately 19,000 non-Medicare members are enrolled in PEIA's Preferred Provider Benefit (PPB) Plan A or B or the Managed Care Option.

PEIA's PPB benefit plan follows a traditional indemnity design. Healthcare providers are reimbursed for a broad array of covered services. Participants are responsible for some cost-sharing, in the form of premiums, deductibles and co-payments. The Managed Care Plan provides a wide range of comprehensive health care services for a fixed periodic payment. RHBT contracts with The Health Plan of the Upper Ohio Valley to provide this coverage for approximately 500 members. RHBT offers basic, optional life and dependent life insurance to retirees through Minnesota Life. Premiums for life insurance are paid by the retired policyholder. Open enrollment is held in the spring for the non-Medicare retirees, and the plan year coincides with PEIA's fiscal year, which runs July 1 through June 30. Medicare retirees'

open enrollment is in the fall with a calendar plan year and fiscal year of July 1 through June 30.

Upon retirement, eligible retirees may use their accrued sick and/or annual leave to extend employer-paid health insurance coverage. Three groups of employees, for purposes of eligibility have been established with different benefit coverages.

The three groups of employees are as follows:

- New retirees hired prior to June 30, 2001 with unused sick and annual leave credits currently have the choice to convert the sick and annual leave to health care benefits under PEIA. Employees hired prior to July 1, 1988 can convert 2 days of accrued leave for 100% of the premium for 1 month of single coverage and 3 days of accrued leave for 100% of the premium for 1 month of family coverage.
- Employees hired between July 1, 1988 and June 30, 2001 accrue monthly credits at the same rate, but 50% of the premium for 1 month.
- Employees hired on or after July 1, 2001 are not eligible for extended employer-paid insurance upon retirement.

For more detail click [here](#).

RHBT was created July 1, 2006 to maintain compliance with Governmental Accounting Standards Board Pronouncement 43 (GASB 43), which deals with the reporting requirements pertaining to Other Postemployment Benefits (OPEB) for the plan. The plan administered by RHBT is deemed a multiple employer cost sharing plan. This is a single plan with pooling (cost-sharing) arrangements for the participating employers. All risks, rewards and costs, including benefit costs, are shared and are not attributed individually to the employers.

RHBT's management determines the benefits of the plan. The funding of the plan with premiums, subsidies and cost-sharing mechanisms are set annually by the PEIA Finance Board, as recommended by RHBT's management and actuary, based upon anticipated utilization and participation. Retirees are charged premiums that cover approximately 30% of their health care costs. The remaining 70% is paid through premiums charged per active PEIA policy. This 70% is commonly referred to as the retiree subsidy or pay-go.

Medicare-eligible retired employees can also receive a subsidy in the form of a grant provided by PEIA called the Retired Employee Premium Assistance Program. A retiree with 5 or more years of service whose total annual household income is less than 250% of the federal poverty level may receive assistance in paying a portion of their monthly health premium and/or reduced out of pocket based on years of active service. The amount of assistance for which the retiree is eligible is based on years of active service and the percentage of federal poverty level.

Employees hired on or after July 1, 2010, will not receive any plan subsidy of their health insurance premiums at retirement.

1.02 Issuing Agent, Contacts and Time Requirements

The issuing agent for this RFP is Mr. Jason A. Haught, CFO, PEIA/RHBT.

All communication, inquiries, and final proposals regarding this RFP **must** be submitted in writing to:

Jason A. Haught, Chief Financial Officer
West Virginia Public Employees Insurance Agency
601 57th Street, SE, Suite 2
Charleston, West Virginia 25304-2345
Telephone: (304) 558-7850, Ext. 52642
Email: Jason.a.haught@wv.gov
Fax: 877-233-4295

All correspondence **must** be clearly marked "**RHBT - Actuarial Services For the Valuation of Other Post-Employment Benefits (OPEB) Proposal**". The cost proposal and technical proposal must be **submitted in separate and clearly labeled envelopes.**

Notification of Interest (Attachment F) must be received no later than 4:00 p.m., EST, March 5, 2015. A non-mandatory bidder's conference will be held February 26, at 10:00 a.m., at PEIA offices. This conference will provide an opportunity for potential bidders to submit questions. All bidders that completed the Notification of Interest timely will receive all copies of inquiries and responses. Proposals are due no later than 4:00 p.m., EST, April 13, 2015.

→ Time Requirements ←

RFP Issued	February 9, 2015
Non-Mandatory Bidder's Conference	February 26, 2015
Deadline for questions	March 2, 2015
Notification of Interest Returned	March 5, 2015
RFP Addendum with question responses	March 9, 2015
Proposals Due	April 13, 2015
Conduct Interviews of Top Bidders (if necessary)	To be Announced

1.03 Proposal Format and Submission (Mandatory)

Vendors must complete a response to all mandatory service specification requirements with explanations in order to be considered for selection. Each proposal must be formatted following the outline in Section 4 of this RFP. Failure on the part of the vendor to respond to specific requirements detailed in the RFP may be a basis for disqualification of the proposal.

An original and five (5) hard copies, plus one electronic version of your Firm's proposal and all accompanying material must be enclosed in a sealed package plainly marked "RHBT - Actuarial Services For the Valuation of Other Post-Employment Benefits (OPEB) Proposal". **This package must be received no later than 4:00 p.m., EST, April 13, 2015, at West Virginia Public Employees Insurance Agency, 601 57th Street, SE, Suite 2, Charleston, West Virginia 25304-2345.** Should you choose to forward your proposals by mail, you should bear in mind that it must be mailed on a timely basis to assure receipt by the RHBT by the time and date specified. **No bids will be considered if received after this time and date.**

1.04 Contract Period

The contract period will be for three years with renewal options. The options will be negotiated at a later date to the mutual agreement of the parties.

1.05 Confidentiality/Public Record

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

News releases pertaining to this RFP or contract resulting therefrom will not be made without prior approval of the State of West Virginia, and then only in coordination with RHBT. Ownership of all data, materials and documentation originated and prepared for RHBT pursuant to the RFP shall belong exclusively to the State and be subject to public inspection in accordance with West Virginia State Code. Trade secrets or proprietary information submitted by the proposer shall not be subject to public disclosure under the West Virginia Freedom of Information Act; however, the contractor must identify the data or other materials to be protected and state the reason why protection is necessary.

Any and/or all PHI/ePHI created, transmitted and/or used in the scope of this project is confidential and shall be protected according to the provisions of Privacy and Security Rule(s) the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including the applicable provisions of the Health Information Technology for Economic and Clinical Health Act (HITECH) enacted as part of the American Reinvestment and Reauthorization Act of 2009 (ARRA).

1.06 Incurred Costs

The State of West Virginia and other parties to this RFP are not liable for any expense incurred in the preparation, submission, or presentation of proposals.

1.07 Status as Registered Vendor

All vendors competing for State business must be registered prior to the award of an actual purchase order or contract. The vendor must complete a Vendor Registration and Disclosure Statement, Form WV-1, and remit the required annual registration fee.

1.08 Terms of Contract

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

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

- *Arbitration* – Any references to arbitration contained in the agreement are unacceptable. The vendor shall present disputes arising out of the agreement to the West Virginia Court of Claims.
- *Hold Harmless* – Any clause requiring the Agency to indemnify or hold harmless any party is unacceptable. The vendor must hold harmless the Agency from any liability arising from the vendor's performance of services.
- *Governing Law* – The agreement shall be governed by the laws of the State of West Virginia.
- *Taxes* – Provisions in the agreement requiring the Agency to pay taxes are unacceptable. 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.
- *Payment* – Any references to prepayment are unacceptable. Payment will be in arrears.
- *Interest* – Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are unacceptable.
- *Recoupment* – Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is unacceptable.
- *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 unacceptable.

- *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 unacceptable.
- *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.
- *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.
- *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 or limiting the Vendor's liability under a warranty to a certain dollar amount or to the amount of the agreement is unacceptable. In addition, any limitation is unacceptable to the extent that it precludes any action for injury to persons or for damages to personal property.
- *Right to Terminate* – Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor.
- *Termination Charges* – Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is unacceptable. 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.
- *Renewal* – Any reference to automatic renewal is unacceptable. The agreement may be renewed only upon mutual written agreement of the parties.
- *Insurance* – Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is unacceptable.
- *Right to Notice* – Any provision for repossession of equipment without notice is unacceptable. However, the Agency does recognize a right of repossession with notice.
- *Acceleration* – Any references to acceleration of payments in the event of default or non-funding is unacceptable.
- *Amendments* – All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties.
- *Ownership of Work Product* – All work product, data, equipment or materials created or purchased under this contract belong to the Agency and must be delivered to the Agency at the Agency's request upon termination or completion of this contract. Vendor

agrees that all materials prepared under this contract are “works for hire” within the meaning of the copyright laws of the United States and assigns to the Agency all rights and interests the Vendor may have in the materials it prepares under this contract.

1.09 Right to Reject

The State reserves the right to reject any and all proposals submitted and to request additional information from all proposers or to withdraw the proposal if in the interests of the Agency.

1.10 Joint Effort Proposals

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

1.11 Proposal Included as Part of Agreement

RHBT anticipates making this RFP and respondent’s proposal part of the actual contractual agreement by reference.

1.12 Litigation Bond

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

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

1.13 Bidder's Total Waiver of Legal Challenge

Bidder may be relieved of this requirement by completing the waiver form that is attached to this document as Attachment A.

Section 2

Nature of Services Required

2.01 Purpose

The purpose of this solicitation is to acquire OPEB valuation services of June 30, 2015 and ensure compliance with the reporting requirements of the Governmental Accounting Standards Board (GASB) Standards 43 and 45 pronouncements and any other such requirements which are announced prior to the completion of this valuation.

2.02 Required Services

The following services are to be provided:

- 1) Perform actuarial valuation of the WV OPEB plan as prescribed by GASB 43. This valuation shall occur at a minimum every two years, or as the Board deems necessary.
 - (a) Actuaries will be provided with billing files from RHBT, claim files from vendors and a sick and annual leave warehouse file from WV Financial Accounting and Reporting Section. The leave warehouse has required significant reasonableness analysis by the current actuarial firm. Due to data integrity issues in the past with this file, developing assumptions based on 'clean' data is necessary. The sick and annual leave file is generally not available until October.
 - (b) Some retirees have the ability to choose between health insurance premiums or additional years of service credits for their pension in converting their leave. The sick and annual leave conversion requires the development of a methodology that will create an accurate representation of the choice a retiree will make with their leave balance.
 - (c) RHBT will anticipate completion of the valuation report by December 31 each year. Actuary will be asked to formally present the report to the WV PEIA Finance Board.
- 2) Prepare necessary information for inclusion in the States' Comprehensive Annual Financial Report (CAFR) and the RHBT Basic Financial Statements, Required Supplementary Information, and Other Financial Information.
- 3) Ensure actuarial reporting is in compliance with the requirements of the Governmental Accounting Standards Board (GASB) Standards 43 and 45 for RHBT and its participating employers.

Section 3

Mandatory Qualifications of Actuarial Firm

3.01 Minimum Requirements of Firm

The following information must be provided in the bid proposal to be considered. Failure to provide this data will result in disqualification.

- 1) The supervising actuary must meet the American Academy of Actuaries Qualification Standards, be a Fellow of the Society of Actuaries and an Associate of the American Academy of Actuaries.
- 2) The supervising actuary must have significant prior experience in performing actuarial valuations for OPEB plans for government agencies with at least \$100 million in annual health insurance premiums or claims expense.
- 3) The bidding firm must meet all requirements imposed by West Virginia and other local laws, rules, and regulations, including not having a delinquent tax liability of any nature with the State of West Virginia.
- 4) The bidding firm must be compliant with the Actuary Code of Professional Conduct to adhere to high standards of conduct and practice.
 - a) The bidding firm must be qualified to issue a Public Statement of Actuarial Opinion in accordance with the Qualification of the American Academy of Actuaries (AAA) and to undertake this project according to Precept 2 of the Code of Professional conduct of the AAA.

Section 4

Guidelines for Proposal

4.01 Required Contents of Proposal to Provide Actuarial Services

For any bid to be considered, the bidder **must** submit the following information:

1. Background information of your firm including services it performs, ownership structure, the size of your firm and the location of the staff that will perform the services.
2. Disclose any disciplinary action, or litigation taken against the firm, or firm's staff regarding professional services.
3. A description of the services to be provided as described in Section 2.02 of this document, including the methodologies and/or models that would be used.

4. A detailed timeline of the project identifying key phases and estimates of the hours per phase.
5. The firm must demonstrate its experience with descriptions of previous valuation projects including the plan size and a brief description of the client, name of the primary actuaries that performed the work on this project and client reference information (contact person, email, phone number) for verification of the experience purported.
6. A prior OPEB valuation report compliant with GASB completed by your firm in the past 2 years.
7. A positive statement that the actuary has met each of the minimum qualifications set forth in Section 3.
8. Resumes for the key personnel who will be assigned to this engagement.
9. A discussion that provides evidence of the bidder's knowledge of the state, regional, and national healthcare market.
10. The cost proposal and technical proposal must be submitted in separate and clearly labeled envelopes.
11. Completion of the Bid Form in Section 5. This cost will be used to determine the cost portion of the proposal's score.
12. The No Debt Affidavit, Attachment B, WV-96, Attachment D, and the Business Associates Agreement (BAA), Attachment E, must be agreed to and signed by the successful firm.
13. Please provide an overview of your firm's transition plan if the contract is not renewed in the future.

Section 5

Evaluation Procedure

5.01 Evaluation Process

The following process will be used to evaluate vendor proposals:

1. A review committee will evaluate by consensus scoring each proposal submitted in response to these bid specifications.
2. Responses received within the time frame and in the form specified by the guidelines will first be evaluated to confirm that all proposal sections, as detailed, have been provided in the bid response. Any vendor failing to provide all required information will be eliminated from further consideration.

3. Each proposal will be reviewed and points awarded to all items indicated on the **PROPOSAL EVALUATION FORM**. Any proposal component may be awarded points not to exceed the maximum specified on the **PROPOSAL EVALUATION FORM**. The total technical score available is 70 points. Bidders failing to obtain a minimum score of 49 points will be disqualified.
4. All proposals will begin with the maximum points available and then reduced for any necessary reductions. Each proposal component will be summed to obtain a total figure.
5. RHBT, at its option, may elect to conduct interviews with the top rated bidder(s). There are no points specifically assigned to the interview. The purpose is to confirm and/or clarify responses to the RFP.

5.02 State's Rights

Vendors should note the State reserves the right to modify this evaluation structure if it is deemed necessary, or request additional information from vendors. It is the intention of the State to select the most qualified and cost-effective proposal based on the evaluation of the vendor's responses to this RFP. However, the State reserves the right to accept or reject any or all of these proposals, in whole or part. The State reserves the right to ask vendors for additional information and/or an oral presentation to clarify their proposals.

5.03 Cost Evaluation

The cost evaluation will be based on examination by the Evaluation Committee of each respondent's stated cost components, and will constitute 30% of the overall proposal's evaluation. This is a fixed cost contract. Billing is to be submitted with the detail by staff member of hours worked on each task. The total paid to the selected vendor will not exceed the proposed cost in any fiscal year unless both parties agree.

Cost scoring will be determined as follows:

1. Cost proposals must be provided in a separate envelope clearly labeled, "Cost Proposal".
2. The respondent submitting the lowest bid will receive the maximum 30 points.
3. All other respondent's will be evaluated by use of the following formula:

Lowest Cost of All Proposals

Cost of Proposal Under Evaluation X 30 points = Respondent's Score

5.04 Proposal Evaluation Form

	①	②
General Proposal Categories	Possible Points	Reviewer's Score
Description of Services to be Performed	5	
Experience with Similar Proposals	30	
Experience of Personnel Assigned	25	
Knowledge of GASB 43/45 and the State, Regional and National Healthcare Market	10	
Total Technical Score	70	
Cost Proposal	30	
Total Possible Points	100	

If a vendor fails to respond to any required component of the RFP, the vendor's proposal will be eliminated from consideration.

5.05 Bid form

Name of Proposing Firm:

Task	Hours	Total Proposed Cost Per Year
Bi-Annual OPEB Plan Actuarial Valuation		

Hourly Rates and Projected Work Distribution Assigned Staff:

	Hourly Rate	Projected Distribution
Partner	\$	
Senior Actuary	\$	
Staff Actuary	\$	
Administrative Staff	\$	
Total	N/A	100%

The hourly rates listed are considered firm for Fiscal Year 2015. Ancillary expenses (travel, meals, lodging, etc.) are to be included in proposed hourly rates.

Exhibits (Links Provided)

Exhibit I: West Virginia Public Employees and West Virginia Retiree Health Benefit Trust Insurance Act

[West Virginia Public Employees Insurance Act](#)
[West Virginia Retiree Health Benefit Trust Fund](#)

Exhibit II: West Virginia Retiree Health Benefit Trust Financial Plan for Fiscal Year 2015

[West Virginia Retiree Health and Benefit Trust Financial Plan for Fiscal Year 2015](#)

Exhibit III: West Virginia Retiree Health Benefit Trust Fiscal Year 2014 Basic Financial Statements, Required Supplementary Information and Other Financial Information

[West Virginia Retiree Health Benefits Trust FY 2014 Basic Financial Statements, Required Supplementary Information and Other Financial Information](#)

Exhibit IV: West Virginia Public Employees Plan Year 2015 Summary Plan Descriptions and Shopper's Guide

[PEIA Plan Year 2015 Summary Plan Description](#)
[PEIA Plan Year 2015 Shopper's Guide](#)

Exhibit V: West Virginia Retiree Health Benefit Trust June 30, 2013 OPEB Valuation

[West Virginia Retiree Health Benefits Trust June 30, 2013 OPEB Valuation](#)

Exhibit VI: West Virginia Consolidated Public Retirement Board (CPRB) July 1, 2013 Actuarial Valuations

[West Virginia Public Employees' Retirement System](#)
[West Virginia Teachers' Retirement System](#)
[West Virginia Department of Public Safety Death, Disability and Retirement Fund \(Plan A\)](#)
[West Virginia State Police Retirement System \(Plan B\)](#)
[West Virginia Judges' Retirement System](#)
[West Virginia Deputy Sheriff Retirement System](#)
[West Virginia Emergency Medical Services Retirement System](#)
[West Virginia Municipal Police and Fire Retirement System](#)

Attachment A

**Proposer's Total Waiver
of Legal Challenge**

Proposer's Total Waiver of Legal Challenge

(Legal Name of Proposing Entity), hereinafter "Proposer," wishes to submit a Proposal in response to the Request For Proposal For Actuarial Services for the Valuation of Other Post-Employment Benefits (OPEB) (the RFP) issued _____ by the State of West Virginia Retiree Health Benefit Trust. The Proposer acknowledges that a mandatory requirement of the RFP is that the Proposer submit a litigation bond with its proposal.

In consideration of the waiver of said litigation bond requirement by the West Virginia Retiree Health Benefit Trust (RHBT), and in lieu of such bond, the Proposer agrees:

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

(Legal Name of Proposer)

By: _____
(Authorized Signature)

Title: _____
(Title of Authorized Representative)

Approved:

The West Virginia Retiree Health Benefit Trust

By: _____
(Authorized Representative)

Attachment B
No Debt Affidavit

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

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

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

DEFINITIONS:

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

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

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

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

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: _____

Authorized Signature: _____ Date: _____

State of _____

County of _____, to-wit:

Taken, subscribed, and sworn to before me this ____ day of _____, 20__.

My Commission expires _____, 20__.

AFFIX SEAL HERE

NOTARY PUBLIC _____

Attachment C

Vendor Preference Certificate

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 Vendor Preference, if applicable.

1. Application is made for 2.5% 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% 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% 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% 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% 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% vendor preference who is a veteran for the reason checked:

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

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

- Bidder has been or expects to be approved prior to contract award by the Purchasing Division as a certified small, women- and minority-owned business.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) reject the bid; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

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

Bidder: _____

Signed: _____

Date: _____

Title: _____

Attachment D
Agreement Addendum

AGREEMENT ADDENDUM

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

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

ACCEPTED BY:

STATE OF WEST VIRGINIA

VENDOR

Spending Unit: _____

Company Name: _____

Signed: _____

Signed: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attachment E
Business Associate Agreement

WV STATE GOVERNMENT

HIPAA BUSINESS ASSOCIATE ADDENDUM

This Health Insurance Portability and Accountability Act of 1996 (hereafter, HIPAA) Business Associate Addendum ("Addendum") is made a part of the Agreement ("Agreement") by and between the State of West Virginia ("Agency"), and Business Associate ("Associate"), and is effective as of the date of execution of the Addendum.

The Associate performs certain services on behalf of or for the Agency pursuant to the underlying Agreement that requires the exchange of information including protected health information protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (the "HITECH Act"), any associated regulations and the federal regulations published at 45 CFR parts 160 and 164 (sometimes collectively referred to as "HIPAA"). The Agency is a "Covered Entity" as that term is defined in HIPAA, and the parties to the underlying Agreement are entering into this Addendum to establish the responsibilities of both parties regarding HIPAA-covered information and to bring the underlying Agreement into compliance with HIPAA.

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

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

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

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
 - a. **Agency Procurement Officer** shall mean the appropriate Agency individual listed at: <http://www.state.wv.us/admin/purchase/vrc/agencyli.html>.
 - b. **Agent** shall mean those person(s) who are agent(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).
 - c. **Breach** shall mean the acquisition, access, use or disclosure of protected health information which compromises the security or privacy of such information, except as excluded in the definition of Breach in 45 CFR § 164.402.
 - d. **Business Associate** shall have the meaning given to such term in 45 CFR § 160.103.
 - e. **HITECH Act** shall mean the Health Information Technology for Economic and Clinical Health Act. Public Law No. 111-05. 111th Congress (2009).

- f. **Privacy Rule** means the Standards for Privacy of Individually Identifiable Health Information found at 45 CFR Parts 160 and 164.
- g. **Protected Health Information or PHI** shall have the meaning given to such term in 45 CFR § 160.103, limited to the information created or received by Associate from or on behalf of Agency.
- h. **Security Incident** means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.
- i. **Security Rule** means the Security Standards for the Protection of Electronic Protected Health Information found at 45 CFR Parts 160 and 164.
- j. **Subcontractor** means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.

2. Permitted Uses and Disclosures.

- a. **PHI Described.** This means PHI created, received, maintained or transmitted on behalf of the Agency by the Associate. This PHI is governed by this Addendum and is limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the original Agreement, and is described in Appendix A.
- b. **Purposes.** Except as otherwise limited in this Addendum, Associate may use or disclose the PHI on behalf of, or to provide services to, Agency for the purposes necessary to complete the tasks, or provide the services, associated with, and required by the terms of the original Agreement, or as required by law, if such use or disclosure of the PHI would not violate the Privacy or Security Rules or applicable state law if done by Agency or Associate, or violate the minimum necessary and related Privacy and Security policies and procedures of the Agency. The Associate is directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Agency.
- c. **Further Uses and Disclosures.** Except as otherwise limited in this Addendum, the Associate may disclose PHI to third parties for the purpose of its own proper management and administration, or as required by law, provided that (i) the disclosure is required by law, or (ii) the Associate has obtained from the third party reasonable assurances that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party by the Associate; and, (iii) an agreement to notify the Associate and Agency of any instances of which it (the third party) is aware in which the confidentiality of the information has been breached. To the extent practical, the information should be in a limited data set or the minimum necessary information pursuant to 45 CFR § 164.502, or take other measures as necessary to satisfy the Agency's obligations under 45 CFR § 164.502.

3. Obligations of Associate.

- a. **Stated Purposes Only.** The PHI may not be used by the Associate for any purpose other than as stated in this Addendum or as required or permitted by law.
- b. **Limited Disclosure.** The PHI is confidential and will not be disclosed by the Associate other than as stated in this Addendum or as required or permitted by law. Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI unless Agency gives written approval and the individual provides a valid authorization. Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Associate will report to Agency any use or disclosure of the PHI, including any Security Incident not provided for by this Agreement of which it becomes aware.
- c. **Safeguards.** The Associate will use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the PHI, except as provided for in this Addendum. This shall include, but not be limited to:
 - i. Limitation of the groups of its workforce and agents, to whom the PHI is disclosed to those reasonably required to accomplish the purposes stated in this Addendum, and the use and disclosure of the minimum PHI necessary or a Limited Data Set;
 - ii. Appropriate notification and training of its workforce and agents in order to protect the PHI from unauthorized use and disclosure;
 - iii. Maintenance of a comprehensive, reasonable and appropriate written PHI privacy and security program that includes administrative, technical and physical safeguards appropriate to the size, nature, scope and complexity of the Associate's operations, in compliance with the Security Rule;
 - iv. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.
- d. **Compliance With Law.** The Associate will not use or disclose the PHI in a manner in violation of existing law and specifically not in violation of laws relating to confidentiality of PHI, including but not limited to, the Privacy and Security Rules.
- e. **Mitigation.** Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of the PHI by Associate in violation of the requirements of this Addendum, and report its mitigation activity back to the Agency.

f. **Support of Individual Rights.**

- i. **Access to PHI.** Associate shall make the PHI maintained by Associate or its agents or subcontractors in Designated Record Sets available to Agency for inspection and copying, and in electronic format, if requested, within ten (10) days of a request by Agency to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524 and consistent with Section 13405 of the HITECH Act.
- ii. **Amendment of PHI.** Within ten (10) days of receipt of a request from Agency for an amendment of the PHI or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such PHI available to Agency for amendment and incorporate any such amendment to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.526.
- iii. **Accounting Rights.** Within ten (10) days of notice of a request for an accounting of disclosures of the PHI, Associate and its agents or subcontractors shall make available to Agency the documentation required to provide an accounting of disclosures to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR §164.528 and consistent with Section 13405 of the HITECH Act. Associate agrees to document disclosures of the PHI and information related to such disclosures as would be required for Agency to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. This should include a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years from the date of disclosure, or longer if required by state law. At a minimum, such documentation shall include:
 - the date of disclosure;
 - the name of the entity or person who received the PHI, and if known, the address of the entity or person;
 - a brief description of the PHI disclosed; and
 - a brief statement of purposes of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
- iv. **Request for Restriction.** Under the direction of the Agency, abide by any individual's request to restrict the disclosure of PHI, consistent with the requirements of Section 13405 of the HITECH Act and 45 CFR § 164.522, when the Agency determines to do so (except as required by law) and if the disclosure is to a health plan for payment or health care operations and it pertains to a health care item or service for which the health care provider was paid in full "out-of-pocket."
- v. **Immediate Discontinuance of Use or Disclosure.** The Associate will immediately discontinue use or disclosure of Agency PHI pertaining to any individual when so requested by Agency. This includes, but is not limited to, cases in which an individual has withdrawn or modified an authorization to use or disclose PHI.

- g. Retention of PHI.** Notwithstanding section 4.a. of this Addendum, Associate and its subcontractors or agents shall retain all PHI pursuant to state and federal law and shall continue to maintain the PHI required under Section 3.f. of this Addendum for a period of six (6) years after termination of the Agreement, or longer if required under state law.
- h. Agent's, Subcontractor's Compliance.** The Associate shall notify the Agency of all subcontracts and agreements relating to the Agreement, where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum. Such notification shall occur within 30 (thirty) calendar days of the execution of the subcontract and shall be delivered to the Agency Procurement Officer. The Associate will ensure that any of its subcontractors, to whom it provides any of the PHI it receives hereunder, or to whom it provides any PHI which the Associate creates or receives on behalf of the Agency, agree to the restrictions and conditions which apply to the Associate hereunder. The Agency may request copies of downstream subcontracts and agreements to determine whether all restrictions, terms and conditions have been flowed down. Failure to ensure that downstream contracts, subcontracts and agreements contain the required restrictions, terms and conditions may result in termination of the Agreement.
- j. Federal and Agency Access.** The Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI, as well as the PHI, received from, or created or received by the Associate on behalf of the Agency available to the U.S. Secretary of Health and Human Services consistent with 45 CFR § 164.504. The Associate shall also make these records available to Agency, or Agency's contractor, for periodic audit of Associate's compliance with the Privacy and Security Rules. Upon Agency's request, the Associate shall provide proof of compliance with HIPAA and HITECH data privacy/protection guidelines, certification of a secure network and other assurance relative to compliance with the Privacy and Security Rules. This section shall also apply to Associate's subcontractors, if any.
- k. Security.** The Associate shall take all steps necessary to ensure the continuous security of all PHI and data systems containing PHI. In addition, compliance with 74 FR 19006 Guidance Specifying the Technologies and Methodologies That Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements under Section 13402 of Title XIII is required, to the extent practicable. If Associate chooses not to adopt such methodologies as defined in 74 FR 19006 to secure the PHI governed by this Addendum, it must submit such written rationale, including its Security Risk Analysis, to the Agency Procurement Officer for review prior to the execution of the Addendum. This review may take up to ten (10) days.
- l. Notification of Breach.** During the term of this Addendum, the Associate shall notify the Agency and, unless otherwise directed by the Agency in writing, the WV Office of Technology immediately by e-mail or web form upon the discovery of any Breach of unsecured PHI; or within 24 hours by e-mail or web form of any suspected Security Incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the Agency Procurement Officer at www.state.wv.us/admin/purchase/vrc/agencyli.htm and,

unless otherwise directed by the Agency in writing, the Office of Technology at incident@wv.gov or <https://apps.wv.gov/ot/ir/Default.aspx>.

The Associate shall immediately investigate such Security Incident, Breach, or unauthorized use or disclosure of PHI or confidential data. Within 72 hours of the discovery, the Associate shall notify the Agency Procurement Officer, and, unless otherwise directed by the Agency in writing, the Office of Technology of: (a) Date of discovery; (b) What data elements were involved and the extent of the data involved in the Breach; (c) A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data; (d) A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized; (e) A description of the probable causes of the improper use or disclosure; and (f) Whether any federal or state laws requiring individual notifications of Breaches are triggered.

Agency will coordinate with Associate to determine additional specific actions that will be required of the Associate for mitigation of the Breach, which may include notification to the individual or other authorities.

All associated costs shall be borne by the Associate. This may include, but not be limited to costs associated with notifying affected individuals.

If the Associate enters into a subcontract relating to the Agreement where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum, all such subcontracts or downstream agreements shall contain the same incident notification requirements as contained herein, with reporting directly to the Agency Procurement Officer. Failure to include such requirement in any subcontract or agreement may result in the Agency's termination of the Agreement.

- m. **Assistance in Litigation or Administrative Proceedings.** The Associate shall make itself and any subcontractors, workforce or agents assisting Associate in the performance of its obligations under this Agreement, available to the Agency at no cost to the Agency to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Agency, its officers or employees based upon claimed violations of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inaction or actions by the Associate, except where Associate or its subcontractor, workforce or agent is a named as an adverse party.

4. Addendum Administration.

- a. **Term.** This Addendum shall terminate on termination of the underlying Agreement or on the date the Agency terminates for cause as authorized in paragraph (c) of this Section, whichever is sooner.
- b. **Duties at Termination.** Upon any termination of the underlying Agreement, the Associate shall return or destroy, at the Agency's option, all PHI received from, or created or received by the Associate on behalf of the Agency that the Associate still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, the Associate shall extend the protections of this Addendum to the PHI and limit further uses and disclosures to the purposes that make the return or destruction of the PHI infeasible. This shall also apply to all agents and subcontractors of Associate. The duty of the Associate and its agents

and subcontractors to assist the Agency with any HIPAA required accounting of disclosures survives the termination of the underlying Agreement.

- c. **Termination for Cause.** Associate authorizes termination of this Agreement by Agency, if Agency determines Associate has violated a material term of the Agreement. Agency may, at its sole discretion, allow Associate a reasonable period of time to cure the material breach before termination.
- d. **Judicial or Administrative Proceedings.** The Agency may terminate this Agreement if the Associate is found guilty of a criminal violation of HIPAA. The Agency may terminate this Agreement if a finding or stipulation that the Associate has violated any standard or requirement of HIPAA/HITECH, or other security or privacy laws is made in any administrative or civil proceeding in which the Associate is a party or has been joined. Associate shall be subject to prosecution by the Department of Justice for violations of HIPAA/HITECH and shall be responsible for any and all costs associated with prosecution.
- e. **Survival.** The respective rights and obligations of Associate under this Addendum shall survive the termination of the underlying Agreement.

5. General Provisions/Ownership of PHI.

- a. **Retention of Ownership.** Ownership of the PHI resides with the Agency and is to be returned on demand or destroyed at the Agency's option, at any time, and subject to the restrictions found within section 4.b. above.
- b. **Secondary PHI.** Any data or PHI generated from the PHI disclosed hereunder which would permit identification of an individual must be held confidential and is also the property of Agency.
- c. **Electronic Transmission.** Except as permitted by law or this Addendum, the PHI or any data generated from the PHI which would permit identification of an individual must not be transmitted to another party by electronic or other means for additional uses or disclosures not authorized by this Addendum or to another contractor, or allied agency, or affiliate without prior written approval of Agency.
- d. **No Sales.** Reports or data containing the PHI may not be sold without Agency's or the affected individual's written consent.
- e. **No Third-Party Beneficiaries.** Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than Agency, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provisions in this Addendum. The interpretation of this Addendum shall be made under the laws of the state of West Virginia.
- g. **Amendment.** The parties agree that to the extent necessary to comply with applicable law they will agree to further amend this Addendum.
- h. **Additional Terms and Conditions.** Additional discretionary terms may be included in the release order or change order process.

AGREED:

Name of Agency: _____

Name of Associate: _____

Signature: _____

Signature: _____

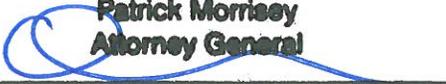
Title: _____

Title: _____

Date: _____

Date: _____

Form - WVBA-012004
Amended 06.26.2013

APPROVED AS TO FORM THIS 26th
DAY OF Jan 20 13
BY 
Patrick Morrissey
Attorney General

Appendix A

(To be completed by the Agency's Procurement Officer prior to the execution of the Addendum, and shall be made a part of the Addendum. PHI not identified prior to execution of the Addendum may only be added by amending Appendix A and the Addendum, via Change Order.)

Name of Associate: _____

Name of Agency: _____

Describe the PHI (do not include any actual PHI). If not applicable, please indicate the same.

WV STATE GOVERNMENT

HIPAA BUSINESS ASSOCIATE ADDENDUM

This Health Insurance Portability and Accountability Act of 1996 (hereafter, HIPAA) Business Associate Addendum ("Addendum") is made a part of the Agreement ("Agreement") by and between the State of West Virginia ("Agency"), and Business Associate ("Associate"), and is effective as of the date of execution of the Addendum.

The Associate performs certain services on behalf of or for the Agency pursuant to the underlying Agreement that requires the exchange of information including protected health information protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (the "HITECH Act"), any associated regulations and the federal regulations published at 45 CFR parts 160 and 164 (sometimes collectively referred to as "HIPAA"). The Agency is a "Covered Entity" as that term is defined in HIPAA, and the parties to the underlying Agreement are entering into this Addendum to establish the responsibilities of both parties regarding HIPAA-covered information and to bring the underlying Agreement into compliance with HIPAA.

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

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

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

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
 - a. **Agency Procurement Officer** shall mean the appropriate Agency individual listed at: <http://www.state.wv.us/admin/purchase/vrc/agencyli.html>.
 - b. **Agent** shall mean those person(s) who are agent(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).
 - c. **Breach** shall mean the acquisition, access, use or disclosure of protected health information which compromises the security or privacy of such information, except as excluded in the definition of Breach in 45 CFR § 164.402.
 - d. **Business Associate** shall have the meaning given to such term in 45 CFR § 160.103.
 - e. **HITECH Act** shall mean the Health Information Technology for Economic and Clinical Health Act. Public Law No. 111-05. 111th Congress (2009).

- f. **Privacy Rule** means the Standards for Privacy of Individually Identifiable Health Information found at 45 CFR Parts 160 and 164.
- g. **Protected Health Information or PHI** shall have the meaning given to such term in 45 CFR § 160.103, limited to the information created or received by Associate from or on behalf of Agency.
- h. **Security Incident** means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.
- i. **Security Rule** means the Security Standards for the Protection of Electronic Protected Health Information found at 45 CFR Parts 160 and 164.
- j. **Subcontractor** means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.

2. Permitted Uses and Disclosures.

- a. **PHI Described.** This means PHI created, received, maintained or transmitted on behalf of the Agency by the Associate. This PHI is governed by this Addendum and is limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the original Agreement, and is described in Appendix A.
- b. **Purposes.** Except as otherwise limited in this Addendum, Associate may use or disclose the PHI on behalf of, or to provide services to, Agency for the purposes necessary to complete the tasks, or provide the services, associated with, and required by the terms of the original Agreement, or as required by law, if such use or disclosure of the PHI would not violate the Privacy or Security Rules or applicable state law if done by Agency or Associate, or violate the minimum necessary and related Privacy and Security policies and procedures of the Agency. The Associate is directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Agency.
- c. **Further Uses and Disclosures.** Except as otherwise limited in this Addendum, the Associate may disclose PHI to third parties for the purpose of its own proper management and administration, or as required by law, provided that (i) the disclosure is required by law, or (ii) the Associate has obtained from the third party reasonable assurances that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party by the Associate; and, (iii) an agreement to notify the Associate and Agency of any instances of which it (the third party) is aware in which the confidentiality of the information has been breached. To the extent practical, the information should be in a limited data set or the minimum necessary information pursuant to 45 CFR § 164.502, or take other measures as necessary to satisfy the Agency's obligations under 45 CFR § 164.502.

3. Obligations of Associate.

- a. **Stated Purposes Only.** The PHI may not be used by the Associate for any purpose other than as stated in this Addendum or as required or permitted by law.
- b. **Limited Disclosure.** The PHI is confidential and will not be disclosed by the Associate other than as stated in this Addendum or as required or permitted by law. Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI unless Agency gives written approval and the individual provides a valid authorization. Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Associate will report to Agency any use or disclosure of the PHI, including any Security Incident not provided for by this Agreement of which it becomes aware.
- c. **Safeguards.** The Associate will use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the PHI, except as provided for in this Addendum. This shall include, but not be limited to:
 - i. Limitation of the groups of its workforce and agents, to whom the PHI is disclosed to those reasonably required to accomplish the purposes stated in this Addendum, and the use and disclosure of the minimum PHI necessary or a Limited Data Set;
 - ii. Appropriate notification and training of its workforce and agents in order to protect the PHI from unauthorized use and disclosure;
 - iii. Maintenance of a comprehensive, reasonable and appropriate written PHI privacy and security program that includes administrative, technical and physical safeguards appropriate to the size, nature, scope and complexity of the Associate's operations, in compliance with the Security Rule;
 - iv. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.
- d. **Compliance With Law.** The Associate will not use or disclose the PHI in a manner in violation of existing law and specifically not in violation of laws relating to confidentiality of PHI, including but not limited to, the Privacy and Security Rules.
- e. **Mitigation.** Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of the PHI by Associate in violation of the requirements of this Addendum, and report its mitigation activity back to the Agency.

f. **Support of Individual Rights.**

- i. **Access to PHI.** Associate shall make the PHI maintained by Associate or its agents or subcontractors in Designated Record Sets available to Agency for inspection and copying, and in electronic format, if requested, within ten (10) days of a request by Agency to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524 and consistent with Section 13405 of the HITECH Act.
- ii. **Amendment of PHI.** Within ten (10) days of receipt of a request from Agency for an amendment of the PHI or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such PHI available to Agency for amendment and incorporate any such amendment to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.526.
- iii. **Accounting Rights.** Within ten (10) days of notice of a request for an accounting of disclosures of the PHI, Associate and its agents or subcontractors shall make available to Agency the documentation required to provide an accounting of disclosures to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR §164.528 and consistent with Section 13405 of the HITECH Act. Associate agrees to document disclosures of the PHI and information related to such disclosures as would be required for Agency to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. This should include a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years from the date of disclosure, or longer if required by state law. At a minimum, such documentation shall include:
 - the date of disclosure;
 - the name of the entity or person who received the PHI, and if known, the address of the entity or person;
 - a brief description of the PHI disclosed; and
 - a brief statement of purposes of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
- iv. **Request for Restriction.** Under the direction of the Agency, abide by any individual's request to restrict the disclosure of PHI, consistent with the requirements of Section 13405 of the HITECH Act and 45 CFR § 164.522, when the Agency determines to do so (except as required by law) and if the disclosure is to a health plan for payment or health care operations and it pertains to a health care item or service for which the health care provider was paid in full "out-of-pocket."
- v. **Immediate Discontinuance of Use or Disclosure.** The Associate will immediately discontinue use or disclosure of Agency PHI pertaining to any individual when so requested by Agency. This includes, but is not limited to, cases in which an individual has withdrawn or modified an authorization to use or disclose PHI.

- g. Retention of PHI.** Notwithstanding section 4.a. of this Addendum, Associate and its subcontractors or agents shall retain all PHI pursuant to state and federal law and shall continue to maintain the PHI required under Section 3.f. of this Addendum for a period of six (6) years after termination of the Agreement, or longer if required under state law.
- h. Agent's, Subcontractor's Compliance.** The Associate shall notify the Agency of all subcontracts and agreements relating to the Agreement, where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum. Such notification shall occur within 30 (thirty) calendar days of the execution of the subcontract and shall be delivered to the Agency Procurement Officer. The Associate will ensure that any of its subcontractors, to whom it provides any of the PHI it receives hereunder, or to whom it provides any PHI which the Associate creates or receives on behalf of the Agency, agree to the restrictions and conditions which apply to the Associate hereunder. The Agency may request copies of downstream subcontracts and agreements to determine whether all restrictions, terms and conditions have been flowed down. Failure to ensure that downstream contracts, subcontracts and agreements contain the required restrictions, terms and conditions may result in termination of the Agreement.
- j. Federal and Agency Access.** The Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI, as well as the PHI, received from, or created or received by the Associate on behalf of the Agency available to the U.S. Secretary of Health and Human Services consistent with 45 CFR § 164.504. The Associate shall also make these records available to Agency, or Agency's contractor, for periodic audit of Associate's compliance with the Privacy and Security Rules. Upon Agency's request, the Associate shall provide proof of compliance with HIPAA and HITECH data privacy/protection guidelines, certification of a secure network and other assurance relative to compliance with the Privacy and Security Rules. This section shall also apply to Associate's subcontractors, if any.
- k. Security.** The Associate shall take all steps necessary to ensure the continuous security of all PHI and data systems containing PHI. In addition, compliance with 74 FR 19006 Guidance Specifying the Technologies and Methodologies That Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements under Section 13402 of Title XIII is required, to the extent practicable. If Associate chooses not to adopt such methodologies as defined in 74 FR 19006 to secure the PHI governed by this Addendum, it must submit such written rationale, including its Security Risk Analysis, to the Agency Procurement Officer for review prior to the execution of the Addendum. This review may take up to ten (10) days.
- l. Notification of Breach.** During the term of this Addendum, the Associate shall notify the Agency and, unless otherwise directed by the Agency in writing, the WV Office of Technology immediately by e-mail or web form upon the discovery of any Breach of unsecured PHI; or within 24 hours by e-mail or web form of any suspected Security Incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the Agency Procurement Officer at www.state.wv.us/admin/purchase/vrc/agencyli.htm and,

unless otherwise directed by the Agency in writing, the Office of Technology at incident@wv.gov or <https://apps.wv.gov/ot/ir/Default.aspx>.

The Associate shall immediately investigate such Security Incident, Breach, or unauthorized use or disclosure of PHI or confidential data. Within 72 hours of the discovery, the Associate shall notify the Agency Procurement Officer, and, unless otherwise directed by the Agency in writing, the Office of Technology of: (a) Date of discovery; (b) What data elements were involved and the extent of the data involved in the Breach; (c) A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data; (d) A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized; (e) A description of the probable causes of the improper use or disclosure; and (f) Whether any federal or state laws requiring individual notifications of Breaches are triggered.

Agency will coordinate with Associate to determine additional specific actions that will be required of the Associate for mitigation of the Breach, which may include notification to the individual or other authorities.

All associated costs shall be borne by the Associate. This may include, but not be limited to costs associated with notifying affected individuals.

If the Associate enters into a subcontract relating to the Agreement where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum, all such subcontracts or downstream agreements shall contain the same incident notification requirements as contained herein, with reporting directly to the Agency Procurement Officer. Failure to include such requirement in any subcontract or agreement may result in the Agency's termination of the Agreement.

- m. **Assistance in Litigation or Administrative Proceedings.** The Associate shall make itself and any subcontractors, workforce or agents assisting Associate in the performance of its obligations under this Agreement, available to the Agency at no cost to the Agency to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Agency, its officers or employees based upon claimed violations of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inaction or actions by the Associate, except where Associate or its subcontractor, workforce or agent is a named as an adverse party.

4. Addendum Administration.

- a. **Term.** This Addendum shall terminate on termination of the underlying Agreement or on the date the Agency terminates for cause as authorized in paragraph (c) of this Section, whichever is sooner.
- b. **Duties at Termination.** Upon any termination of the underlying Agreement, the Associate shall return or destroy, at the Agency's option, all PHI received from, or created or received by the Associate on behalf of the Agency that the Associate still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, the Associate shall extend the protections of this Addendum to the PHI and limit further uses and disclosures to the purposes that make the return or destruction of the PHI infeasible. This shall also apply to all agents and subcontractors of Associate. The duty of the Associate and its agents

and subcontractors to assist the Agency with any HIPAA required accounting of disclosures survives the termination of the underlying Agreement.

- c. **Termination for Cause.** Associate authorizes termination of this Agreement by Agency, if Agency determines Associate has violated a material term of the Agreement. Agency may, at its sole discretion, allow Associate a reasonable period of time to cure the material breach before termination.
- d. **Judicial or Administrative Proceedings.** The Agency may terminate this Agreement if the Associate is found guilty of a criminal violation of HIPAA. The Agency may terminate this Agreement if a finding or stipulation that the Associate has violated any standard or requirement of HIPAA/HITECH, or other security or privacy laws is made in any administrative or civil proceeding in which the Associate is a party or has been joined. Associate shall be subject to prosecution by the Department of Justice for violations of HIPAA/HITECH and shall be responsible for any and all costs associated with prosecution.
- e. **Survival.** The respective rights and obligations of Associate under this Addendum shall survive the termination of the underlying Agreement.

5. General Provisions/Ownership of PHI.

- a. **Retention of Ownership.** Ownership of the PHI resides with the Agency and is to be returned on demand or destroyed at the Agency's option, at any time, and subject to the restrictions found within section 4.b. above.
- b. **Secondary PHI.** Any data or PHI generated from the PHI disclosed hereunder which would permit identification of an individual must be held confidential and is also the property of Agency.
- c. **Electronic Transmission.** Except as permitted by law or this Addendum, the PHI or any data generated from the PHI which would permit identification of an individual must not be transmitted to another party by electronic or other means for additional uses or disclosures not authorized by this Addendum or to another contractor, or allied agency, or affiliate without prior written approval of Agency.
- d. **No Sales.** Reports or data containing the PHI may not be sold without Agency's or the affected individual's written consent.
- e. **No Third-Party Beneficiaries.** Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than Agency, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provisions in this Addendum. The interpretation of this Addendum shall be made under the laws of the state of West Virginia.
- g. **Amendment.** The parties agree that to the extent necessary to comply with applicable law they will agree to further amend this Addendum.
- h. **Additional Terms and Conditions.** Additional discretionary terms may be included in the release order or change order process.

AGREED:

Name of Agency: _____

Name of Associate: _____

Signature: _____

Signature: _____

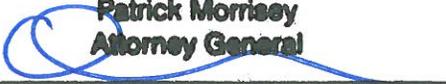
Title: _____

Title: _____

Date: _____

Date: _____

Form - WVBA-012004
Amended 06.26.2013

APPROVED AS TO FORM THIS 26th
DAY OF Jan 20 13
Patrick Morrissey
Attorney General
BY 

Appendix A

(To be completed by the Agency's Procurement Officer prior to the execution of the Addendum, and shall be made a part of the Addendum. PHI not identified prior to execution of the Addendum may only be added by amending Appendix A and the Addendum, via Change Order.)

Name of Associate: _____

Name of Agency: _____

Describe the PHI (do not include any actual PHI). If not applicable, please indicate the same.

Attachment F
Notification of Interest

Notification Of Interest

(Due Date: March 5, 2015)

Firms interested in submitting a proposal **must** return this "Notification of Interest" by March 5, 2015.

To: Jason A. Haught, Chief Financial Officer
West Virginia Public Employees Insurance Agency/
West Virginia Retiree Health Benefit Trust
601 57th Street, SE, Suite 2
Charleston, West Virginia 25304-2345
Telephone: (304) 558-7850, Ext. 52642
Email: Jason.a.haught@wv.gov
Fax: (877) 233-4295

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

Please consider this Notification of Interest intent to submit a proposal to the RFP issued by the West Virginia Retiree Health Benefit Trust of the Department of Administration for Actuarial Services for the Valuation of Post-Employment Benefits (OPEB) for the Fiscal Year ended June 30, 2015.

SIGNED	DATE
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