

Request for Proposal for
Pharmacy Benefit Management Services



RFP No.: PEI1600000001

Release Date: July 22, 2015

Intent to Bid & Written Questions Due: August 12, 2015 4:00PM Eastern Time

Bidder's Conference: August 17, 2015 1:00PM Eastern Time

Proposal Due Date: September 21, 2015 4:00PM Eastern Time

West Virginia Public Employees Insurance Agency
601 57th Street, SE, Suite 2
Charleston, West Virginia 25304-2345

TABLE OF CONTENTS

TABLE OF CONTENTS	2
1. INTRODUCTION	1
1.1 Objective of Request for Proposal	1
1.2 Background.....	1
1.3 Current Prescription Drug Coverage.....	1
1.4 Clarification of Procurement Offering.....	2
2. GENERAL INFORMATION	4
2.1 PEIA Representative.....	4
2.2 Key Proposal Dates	4
2.3 Intent to Bid Form	4
2.4 Written Questions	5
2.5 Bidder’s Conference.....	5
2.6 Confidential Information.....	5
3. PROCUREMENT PROCESS.....	7
3.1 Legal Basis	7
3.2 RFP Issuance and Amendments	7
3.3 Order of Responses	7
3.4 Certification.....	7
3.5 Proposal Submission Requirements	7
3.6 Proposal Withdrawal.....	9
3.7 Acceptance of Proposals	9
3.8 Oral Presentations.....	9
3.9 Site Visits.....	10
3.10 Contract Award Notice.....	10
3.11 Protest of Intended Award	10
3.12 Restrictions on Communications with State and Other Personnel.....	11
3.13 Evaluation Methodology.....	12
4. CONTRACTUAL SERVICES TERMS AND CONDITIONS	13
4.1 Term of Contract.....	13
4.2 Contract Administrator.....	13
4.3 Cost Liability	13
4.4 Bidder Responsibilities	13

4.5	News Releases	13
4.6	Freedom of Information/Disclosure	14
4.7	HIPAA Compliance	14
4.8	Gratuities or Kickbacks.....	14
4.9	Appropriations	14
4.10	Litigation Bond.....	14
4.11	Miscellaneous Provisions	15
4.11.1	Dispute Resolution.....	15
4.11.2	Arbitration	15
4.11.3	Hold Harmless	15
4.11.4	Governing Law	15
4.11.5	Taxes	15
4.11.6	Payment.....	16
4.11.7	Interest	16
4.11.8	Recoupment	16
4.11.9	Fiscal Year Funding.....	16
4.11.10	Statute of Limitation	16
4.11.11	Similar Services	16
4.11.12	Attorney Fees	16
4.11.13	Assignment.....	16
4.11.14	Limitation of Liability.....	17
4.11.15	Right to Terminate	17
4.11.16	Termination Charges	17
4.11.17	Cooperation Upon Termination.....	17
4.11.18	Renewal	17
4.11.19	Insurance.....	17
4.11.20	Right to Notice	17
4.11.21	Acceleration	17
4.11.22	Amendments	17
5.	PROPOSAL RESPONSE FORMAT.....	18
5.1	Technical Proposal.....	18
5.1.1	Transmittal Letter.....	18
5.1.2	Table of Contents	18
5.1.3	Confidential Information.....	19

5.1.4	Completed Forms	19
5.1.5	Attachment A: Technical Proposal Response	19
5.1.5.1	Attachment A-1: Bidder Information	20
5.1.5.2	Attachment A-2: Minimum Requirements	20
5.1.5.3	Attachment A-3: References	20
5.1.5.4	Attachment A-4: Implementation Team	20
5.1.5.5	Attachment A-5: Account Management Team	20
5.1.5.6	Attachment A-6: Administrative Requirements	21
5.1.5.7	Attachment A-7: Questionnaire	21
5.1.5.8	Attachment A-8: Subcontractor Questionnaire	21
5.1.5.9	Attachment A-9: Retail Network Pharmacy Chains	21
5.1.5.10	Attachment A-10: Retail Network Pharmacy Independent	21
5.1.5.11	Attachment A-11a: Access to Network Pharmacies – Broad Network (PEIA)	21
5.1.5.12	Attachment A-11b: Access to Network Pharmacies – Broad Network (CHIP)	22
5.1.5.13	Attachment A-12a: Access to Network Pharmacies – Limited Network (PEIA)	23
5.1.5.14	Attachment A-12b: Access to Network Pharmacies – Limited Network (CHIP)	24
5.1.5.15	Attachment A-13a: Pharmacy Disruption – PEIA	25
5.1.5.17	Attachment A-14: Formulary Analysis	25
5.1.5.18	Attachment A-15a: Formulary Disruption – PEIA	25
5.1.5.20	Attachment A-16: Performance Guarantees	26
5.1.5.21	Attachment A-17: Signature Page	26
5.1.5.22	Attachment A-18: Deviations Page	26
5.1.5.23	Response Attachments	26
5.2	Financial Proposal	27
5.2.1	Attachment B-1: Financial Proposal Requirements	27
5.2.2	Attachment B-2: Administrative Fee Breakdown	28
5.2.3	Attachment B-3: Financial Proposal A	28
5.2.4	Attachment B-4: Financial Proposal B	28
5.2.5	Attachment B-5: Financial Proposal C	28
5.2.6	Attachment B-6: Financial Proposal D	28
5.2.7	Attachment B-7: Financial Proposal E	28
5.2.8	Attachment B-8: Financial Proposal F	28
5.2.9	Attachment B-9: Clinical & Cost Management Programs	28
5.2.10	Attachment B-10: Deviations	29

5.3 Employer Group Waiver Plan (EGWP) Proposal 29
5.3.1 Attachment C-1: References – EGWP 29
5.3.2 Attachment C-2: Questionnaire – EGWP 29
5.3.3 Attachment C-3: Financial Proposal - EGWP 29

APPENDICES

- APPENDIX A: CLAIM DATA REQUIREMENTS
- APPENDIX B: ELIGIBILITY FILE LAYOUT
- APPENDIX C: LIMITED DATA USE AGREEMENT
- APPENDIX D: PURCHASING AFFIDAVIT
- APPENDIX E: BUSINESS ASSOCIATE AGREEMENT
- APPENDIX F: BIDDER’S LITIGATION WAIVER FORM
- APPENDIX G: VENDOR PREFERENCE CERTIFICATE
- APPENDIX H: INTENT TO BID FORM

1. INTRODUCTION

1.1 Objective of Request for Proposal

The objective of this Request for Proposal (RFP) is to solicit proposals for Pharmacy Benefits Management (PBM) services for the West Virginia Public Employees Insurance Agency (PEIA). PEIA currently provides prescription drug coverage for approximately 220,000 members.

PEIA is seeking bids for the following services:

- 1) PBM services for the actively employed members, non-Medicare and Medicare retirees and dependents;
- 2) Retiree Drug Subsidy (RDS) services for the Medicare-eligible retirees and Medicare-eligible dependents of retired employees;
- 3) Medicare Part D Employer Group Waiver Plan (EGWP) for Medicare-eligible retirees and Medicare-eligible dependents of retired employees. These services will only be used in the event a necessity arises to deviate from the current Medicare Advantage Prescription Drug Plan (MAPD) contract.

PEIA is seeking an initial three-year contract with possible annual renewals thereafter for each of the services listed above. In addition, the selected Bidder will be required to provide six months implementation and transition support beginning January 1, 2016.

1.2 Background

PEIA was established under the Public Employees Insurance Act of 1971, to provide hospital, surgical, group major medical, prescription drug, group life, and accidental death and dismemberment insurance coverage to eligible employees; and to establish and promulgate rules for the administration of these plans.

Benefits are made available to all active employees of the State of West Virginia and various related State agencies and local governments. Participants may elect health insurance coverage through a self-insured preferred provider benefit plan (PPB) or through external managed care organizations (MCO). Additionally, all participants may elect to purchase additional life insurance under the optional life insurance policy. For revenue, PEIA relies almost solely on the premiums paid directly by its participating employers and employees.

1.3 Current Prescription Drug Coverage

PEIA provides prescription drug benefits for its employees and their covered dependents, and also administers the benefit plan on behalf of the West Virginia Retiree Health Benefits Trust Fund for non-Medicare eligible retirees, Medicare eligible retirees, and their covered dependents. The covered populations include state employees, county and municipal employees as well as school and university faculty, teachers and other employees. The majority of Medicare eligible retirees (approximately 42,000) currently receive prescription benefits through a Medicare Advantage Prescription Drug (MAPD) Plan. A smaller number of Medicare eligible members receive prescription benefits through the standard benefit and participate in the Centers for Medicare and Medicaid Services (CMS) retiree drug subsidy (RDS) program. The population of Medicare eligible members fluctuates throughout the plan year ranging between 600 and 3,000.

A majority of prescriptions are processed at retail pharmacies, approximately 99%. Only a small portion of prescriptions delivered via mail-order, approximately 1%.

Currently all specialty medications require precertification, or prior authorization. Specialty drugs covered under pharmacy benefits are processed through the PBM. The medical vendor performs the prior authorization review using the medical vendor's clinical criteria but has access to the PBM system to enter the prior authorization.

Prior authorization of non-specialty medications is performed by the West Virginia University School of Pharmacy's Rational Drug Therapy Program (RDTP). RDTP staff currently conducts each prior authorization review based on the PBMs clinical criteria and has access to the PBM system to enter the prior authorization.

PEIA has a two-step appeals process. The PBM must handle the first level of appeals, except in cases where a clinical review is necessary. Clinical reviews or drugs requiring prior-authorization are reviewed by the West Virginia University School of Pharmacy's Rational Drug Therapy Program. The second level of appeals is handled by PEIA. As part of its proposal response, the Bidder must describe, in detail, its appeals process and the internal decision-making system to handle member appeals.

Bidders should note services provided under this contract will be made available to other West Virginia State agencies including, but not limited to, West Virginia Children's Health Insurance Program (CHIP). It is PEIA's expectation that the calculation of volume-related discounts and cost savings include covered lives, claims volume and other purchased services from all State agencies utilizing this contract. Note that each agency has separate management teams, plan designs, and requirements. Separate billing, rebate payment, and reporting is required for each agency.

Please refer to PEIA 2016 Summary Plan Descriptions (SPD) for a description of the current pharmacy benefit plan at www.peia.wv.gov. Plan descriptions for CHIP are available on their website: www.chip.wv.gov.

1.4 Clarification of Procurement Offering

The contract is scheduled to be awarded no later than December 31, 2015 with the contract to become effective on July 1, 2016. The benefit Plan Year will be July 1 to June 30 each year for actively employed and non-Medicare eligible participants, and January 1 to December 31 for Medicare participants. Subcontracting portions of the Bidder's key functions will be permitted by PEIA as long as the contract is in place at the time of the proposal submission. The winning Bidder will be solely responsible for all subcontractors. Subcontractors have no appeal rights under this RFP.

In addition, PEIA requires the successful Bidder to identify fully all of its revenue sources, and enter into a cost-plus relationship with PEIA. PEIA intends to contract with the successful Bidder on a per member per month (PMPM) administrative fee basis.

Recognizing the complexities of pharmacy benefit management, PEIA intends to work closely with the successful Bidder to assure the best possible results. Therefore, Bidders will be evaluated as to their flexibility, creativity, and capacity. The successful Bidder must demonstrate its ability and willingness to work with both drug retailers and drug manufacturers to find the most effective ways to control drug costs. These efforts must include appropriate therapeutic controls and careful monitoring of performance and pricing.

Bidders should also note that PEIA requires reporting, billing, and rebate payment to be provided separately for active State employees, non-State agency employees, and retirees (separately for non-Medicare, Medicare RDS retirees, and Medicare-eligible EGWP members). Bidders are expected to examine carefully all documentation, schedules and requirements stipulated in this RFP and respond to each requirement in the prescribed format. The successful Bidder must provide all staffing, systems and procedures required to perform the services described herein.

In addition to the provisions of this RFP, information provided during any finalist's presentations and the successful proposal will be incorporated by reference in the contract. Any additional clauses or provisions required by federal or state law or regulation in effect at the time of execution of the contract will also be included.

PEIA reserves the right to make a contract award without any further discussion with potential Bidders regarding the proposals received. Therefore, proposals should be submitted initially on the most favorable terms available to PEIA from a price and technical standpoint. PEIA reserves the right to conduct discussions with all responsible parties who submit proposals that pass the Mandatory Minimum Requirements described in this RFP. At PEIA's discretion, PEIA may also contact some or all of the Bidders to request additional information or clarification. All materials submitted by Bidders pursuant to such requests will be considered to be part of their proposals. PEIA also reserves the right to cancel this RFP at any time.

2. GENERAL INFORMATION

2.1 PEIA Representative

PEIA is issuing this RFP with assistance from Gabriel, Roeder, Smith and Company (GRS). All communication regarding this RFP should be directed to PEIA's representative at GRS:

Eric St. Pierre
Gabriel Roeder Smith & Company
5605 N. MacArthur Blvd.
Suite 870
Irving, TX 75038-2631
Telephone: (860) 841-7233
Email: Eric.St.Pierre@gabrielroeder.com
Fax: (469) 524-0003

The above person is the point of contact from the date of release of the RFP, until the selection of the successful Bidder. See Section 3.12 of this RFP regarding restrictions on communications with State and other personnel.

2.2 Key Proposal Dates

The following dates will apply during the proposal and implementation process. PEIA reserves the right to waive or modify specific terms and conditions contained in this RFP, and to waive, modify or extend deadlines specified herein.

Activity	Date/Time
Issue of RFP	Wednesday, July 22, 2015
Deadline for Submitting Intent to Bid Form & Written Questions	Wednesday, August 12, 2015 4:00PM ET
Bidder's Conference	Monday, August 17, 2015 1:00PM – 3:00PM ET
Release Final Q&A Document	Monday, August 24, 2015
Deadline for Proposal Submission	Monday, September 21, 2015 4:00PM ET
Finalist Interviews (if applicable)	October 26, 2015 – October 30, 2015
Implementation (if applicable)	December 1, 2015 – June 30, 2016
Effective date of PBM Contract	Friday, July 1, 2016

2.3 Intent to Bid Form

Bidders must submit, in writing, notification of the intent to bid on any or all of the services outlined in this RFP. Intent to Bid forms should be submitted via email to PEIA's representative named in Section 2.1 and should be received no later than the date and time shown in Section 2.2. Submission of the Intent to Bid form does not create an obligation to respond to this RFP and is not a prerequisite for submitting a response, however it is necessary to ensure receipt of any amendments or other notices and communications relating to this RFP.

2.4 Written Questions

Bidders may submit, in writing, any questions or clarifications prior to submitting a proposal to PEIA's representative named above in Section 2.1. Written questions received later than the date and time shown in Section 2.2, shall not be answered. All questions with responses will be provided to all potential Bidders who are known by the PEIA Representative on the date and time shown in Section 2.2. The questions can be submitted via email; however, PEIA assumes no liability for email transmission/receipt and will not acknowledge receipt except by addressing the question.

2.5 Bidder's Conference

PEIA will conduct a pre-proposal Bidder's Conference for all interested organizations to become more familiar with the requested services. Bidders will have the opportunity to ask clarifying questions at the Bidder's Conference and PEIA will make a reasonable attempt to answer all questions presented. Answers to questions raised at the conference will be sent to all potential Bidders who attended the conference. Oral answers will not be binding on PEIA. While attendance at the conference is not mandatory, PEIA encourages Bidders to have a representative from their organization attend this meeting. Representatives are required to sign a register as the representative of the named organization.

Bidders' Conference will be held on Monday, August 17th at 1:00 PM EST at:

West Virginia Public Employees Insurance Agency
601 57th Street, SE
Charleston, West Virginia 25304

Room: TBD
Dial-in Number: TBD

2.6 Confidential Information

In order to obtain Attachment D: Confidential Information, which contains confidential data that is necessary to complete a Proposal in response to this RFP, each Bidder must print, complete and return the Limited Data Use Agreement, which is included as Appendix C of this RFP. The Limited Data Use Agreement must be sent to the PEIA Representative identified in Section 2.1 and must be in the form outlined in Appendix C. A scanned copy with the appropriate signature, transmitted by e-mail to the email address listed in Section 2.1, is acceptable.

The information contained in Attachment D: Confidential Information includes the following:

- 1. Current Enrollment** – This file includes demographic data showing the date of birth, gender, state, ZIP Code and plan information for 111,448 currently covered active employees and retirees, as of July 1, 2015. Dependent information has not been included in this file.

This file also includes the date of birth, gender, state and ZIP Code information for 19,533 currently covered CHIP participants.

These files are to be used in completing the GeoAccess reports required in Attachment A-11: Access to Pharmacy (Broad) and Attachment A-12: Access to Pharmacy (Limited).

2. **Confidential Vendor Response Documents** – This includes data on the most utilized providers and facilities and disruption reports for completion of Attachment A-13a: Pharmacy Disruption – PEIA and Attachment A-13b: Pharmacy Disruption – CHIP. For completion of Attachment A-15a: Formulary Disruption – PEIA, data has been provided for the top brand drugs utilized by participants from July 1, 2013 through June 30, 2014. For completion of Attachment A-15b: Formulary Disruption - CHIP, data has been provided for the top brand drugs utilized by participants from July 1, 2013 through June 30, 2014.

3. **PY 2014 & 2015 Claims History** – This file includes de-identified claims data for each claim incurred from July 1, 2013 through June 30, 2015 and paid through July 16, 2015. The file contains payor (PEIA or CHIP), patient ID, pharmacy ID, prescriber ID, dispense date, NDC Code, days of therapy, metric quantity, DAW, number of refills, drug type, pharmacy type, claim type (i.e. original or reversal) and AWP.

(The SPDs for PY2014 and PY2015 can be found at www.peia.wv.gov/forms-and-downloads/summary_plan_description.)

4. **PY 2014 & 2015 Enrollment History** – This file includes the enrollment data for participants covered by the Plan between July 1, 2013 and June 30, 2015 and should be used in conjunction with the PY 2014 Claims History file. The enrollment file will include the following fields: payor (PEIA or CHIP), patient ID, patient date of birth, patient gender, Medicare status, plan name, begin date and end date.

Only those organizations who plan to respond to this RFP should submit the Limited Data Use Agreement. PEIA reserves the right, in its sole determination, to withhold Attachment D: Confidential Information from any requestor who cannot demonstrate its ability to meet the minimum requirements and/or provide the required services.

Upon receipt and approval of the Limited Data Use Agreement, Bidders will be provided with instructions on how to supply their organization's PGP key for data encryption and compression. Upon receipt of the PGP key, Bidders will be supplied login credentials for a secure FTP server. All data will be supplied to Bidders via the FTP server. Attachment D: Confidential Information will not be e-mailed to Bidders.

Note: Failure to complete all fields on the Limited Data Use Agreement may slow the processing of the request for Attachment D or may cause the request to be rejected. In such instances, PEIA will attempt to contact the submitter to resolve the deficiencies.

3. PROCUREMENT PROCESS

The following subsections provide information on the process to be followed for this procurement:

3.1 Legal Basis

The procurement process for this RFP will be conducted in accordance with the procurement policies and procedures established by PEIA. Pursuant to W. Va. Code §5-16-9(e); this purchase is not governed by the West Virginia Division of Purchasing.

3.2 RFP Issuance and Amendments

The Officials within PEIA have reviewed this RFP. The contents represent the best statement of the requirements and needs of PEIA. Final approval of the Contract rests with PEIA once all individual requirements have been met.

3.3 Order of Responses

Responses shall be made in the same order as provided in the specifications. Any organization seeking to provide administrative services must respond to appropriate sections of these specifications. Unless a variation from the specifications of the RFP is specifically noted in a response, the Bidder is agreeing to meet all specifications stated in this RFP.

3.4 Certification

An authorized officer of each Bidder submitting a proposal must certify that the Bidder complies with the RFP specifications by signing and returning the Signature Page included in this RFP. Failure to sign and return the Signature Page may result in disqualification of the submitted proposal.

3.5 Proposal Submission Requirements

Bidder's proposals shall be physically received by the PEIA Representative, **no later than the submission deadline outlined in Section 2.2. Facsimiles and emails of the Offer will not be accepted.**

Responses shall be mailed or delivered to:

Gabriel Roeder Smith & Company 5605 N. MacArthur Blvd. Suite 870 Irving, TX 75038-2631 Attn: Eric St. Pierre
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Delivery of the proposals shall be at the Bidder's expense and all proposals for PEIA shall be sent to the PEIA Representative. When submitting a proposal by regular mail, certified mail, or express mail, or delivery service, it is incumbent upon the Bidder to allow for sufficient time to permit delivery by the U.S. Postal Service or any other delivery service or agent. Bidders shall be solely responsible for ensuring their proposal is delivered to the address above prior to or at the stated delivery date and time. The time of receipt at the designated office is the time-date stamp on the proposal wrapper or other

documentation of receipt maintained by the PEIA representative. PEIA accepts no responsibility for mislabeled mail. Any and all damage that may occur due to shipping shall be the Bidder's responsibility. Late submissions shall not be accepted. Proposals that arrive late will not be accepted and will be returned to the sender unopened.

One (1) original and eight (8) identical copies of the proposal must be received by the PEIA Representative on or before the deadline outlined in Section 2.2. If supplemental materials are included with the proposal, each copy of the proposal must include such supplemental materials. The original copy shall bear an original signature of a legally authorized representative in blue ink and shall be marked as the "Original". Colors must reproduce in a legible manner on a black-and-white copier. One (1) complete copy of the "Original" proposal shall also be submitted on electronic media (e.g., USB Drive, CD-ROM, or DVD-ROM) in a Microsoft Office Word or Excel (version 2007 or 2010) format, with the exception of supplemental materials may be submitted in an Adobe .PDF format. Exhibits must be submitted in Microsoft Excel format.

Each Technical Proposal and each Cost Proposal shall be enclosed in a separately sealed envelope or package.

- The face of the package containing the original and copies, whether mailed or hand-delivered, shall bear the following legend, "PEIA PROPOSAL – CONFIDENTIAL"
- The original, eight (8) bound copies (three-ring binders are acceptable), one (1) unbound copy, and one electronic copy in a disk format (using Microsoft Word) of the Technical Proposal must be submitted under sealed cover and labeled on the outside as follows:
"PEIA Pharmacy Benefit Management"
"Technical Proposal"
- The original, eight (8) bound copies (three-ring binders are acceptable), one (1) unbound copy, and one electronic copy in a disk format (using Microsoft Word and Excel) of the Cost Proposal must be submitted under separate sealed cover and labeled on the outside as follows:
"PEIA Pharmacy Benefit Management"
"Cost Proposal"
- The original, eight (8) bound copies (three-ring binders are acceptable), one (1) unbound copy, and one electronic copy in a disk format (using Microsoft Word and Excel) of the EGWP Proposal must be submitted under separate sealed cover and labeled on the outside as follows:
"PEIA Pharmacy Benefit Management"
"EGWP Proposal"

The Technical Proposal must not contain any mention of the pricing guarantees, fees, or other information contained in the Cost Proposal or EGWP Proposal. However, information such as labor hours and categories, materials, subcontracts, and so forth, shall be contained in the Technical Proposal so that the Bidder's understanding of the scope of the work may be evaluated. The Technical Proposal shall disclose the Bidder's technical approach in as much detail as possible, including, but not limited to, the information required by the Technical Proposal instructions.

The format and content requirements for the Technical, Cost, and EGWP Proposals must adhere to the instructions contained in this RFP. Failure to respond to a specific requirement may be used as a basis for rejection of the proposal from further consideration, or result in a score of "zero" or a "fail" for a particular item. Emphasis should be placed on conformance to the RFP instructions, responsiveness to requirements and completeness and clarity of content. Elaborate proposals are neither necessary nor desired. If the proposal is presented in a fashion that makes evaluation difficult or overly time

consuming, it is likely that points will be lost in the evaluation process. Bidders shall not include any personal use items with the proposal.

All proposals must be delivered no later than the date shown in Section 2.2 of this RFP and only to the PEIA representative at the address listed in Section 2.1.

3.6 Proposal Withdrawal

Prior to the proposal due date, a Bidder may withdraw their proposal by submitting a written request for its withdrawal signed by the Bidder's authorized agent. The written withdrawal request will be directed to the PEIA Representative at the address listed in Section 2.1.

3.7 Acceptance of Proposals

PEIA will accept all proposals submitted according to the requirements and deadlines specified in this RFP. Each Bidder may submit only one proposal. PEIA reserves the right to reject any or all proposals received. It is understood that all proposals, whether rejected or not, will become the property of PEIA. After receipt of proposals, PEIA reserves the right to sign a contract, without negotiation, based on the terms, conditions, and premises of this RFP and the proposal of the selected Bidder(s) or to negotiate with a finalist or finalists.

All proposals must be responsive to all requirements in the RFP in order to be considered for Contract award.

After the opening of proposals, PEIA may ask any Bidder for written clarification of their proposal. In the event this clarification is requested, submission of the clarification shall be considered part of the original proposal. PEIA reserves the right to waive any or all minor irregularities in proposals, providing such action is in the best interest of PEIA. Where PEIA may waive minor irregularities, such waiver shall in no way modify the RFP requirements or excuse the Bidder from full compliance with RFP specifications and other Contract requirements if the Bidder is awarded the Contract. PEIA also reserves the right to reject any and all proposals received, or cancel this RFP, according to the best interest of PEIA.

Proposals must be valid for 180 days following the close date of this RFP. This period may be extended by written mutual agreement between the Bidder and PEIA.

3.8 Oral Presentations

At the option of PEIA, oral presentations by selected Bidders may be required. Bidders will be notified if an oral presentation is required. Any cost incidental to an oral presentation shall be borne entirely by the Bidder and PEIA shall not compensate the Bidder. The Bidders should present complete, comprehensive proposals without relying on oral presentations, because PEIA reserves the right to award a contract without further discussions or an oral presentation. The Bidders may be requested to provide demonstrations of their proposed systems as part of their presentations. Presentations will be recorded and any representations made during the oral presentation will become part of the Bidder's proposal and are binding if a contract is awarded.

3.9 Site Visits

PEIA may request a site visit to review the Bidder's facilities or its subcontractors' facilities. This may include, but not be limited to, a review of policies and procedures, and any other area of operation that directly or indirectly affects the provisions of the RFP, Contract or the delivery of health care services.

Any cost incidental to the site visit by the Bidder shall be borne by the Bidder. PEIA will be responsible for its own travel and accommodations.

A readiness review may also be conducted on-site at the selected Bidder's facilities following execution of the Contract and before implementation of the Pharmacy Benefit Management services.

3.10 Contract Award Notice

The notice of the intended contract award shall be sent by certified mail or overnight mail to all Bidders who submitted a proposal. A contract award is contingent on approval by the PEIA Director.

3.11 Protest of Intended Award

Bidders that have submitted a ligation bond may protest the award in accordance with the following procedure. Protests based on the contract award must be submitted in writing to the Director of the West Virginia PEIA within five (5) working days from the date of Contract Award Notice. Protest should be sent to:

Ted Cheatham, Director
West Virginia Public Employees Insurance Agency
601 57th Street, SE
Suite 2
Charleston, West Virginia 25304-2345
Telephone: (304) 558-7850, ext. 52634

Protests may be submitted by FAX at (304) 558-2470.

All protests must contain:

1. The name and address of the protesting proposer
2. A statement of the grounds of the protest (See Legal Standard below)
3. Supporting documentation (if available)
4. The resolution or relief sought

Failure to submit all of this information shall be grounds for rejection of the protest by the Director of PEIA.

PEIA may refuse to review any protests when the matter involved is the subject of litigation before a court of competent jurisdiction; if the merits have previously been decided by a court of competent jurisdiction; or if it has been decided in a previous protest by the Director of PEIA.

Subcontractors under a proposer's proposal do not have standing to file a protest.

The Director will respond to the protest within five (5) business days of receipt of the written notice at the offices of PEIA.

Proposers in disagreement with the response of the Director may ask for further review of the protest by the Cabinet Secretary of the West Virginia Department of Administration. The request for further review should be sent to the address below within five (5) days of the Director's response:

Jason Pizatella, Acting Cabinet Secretary
West Virginia Department of Administration
State Capitol Complex, Building 1, Room E-119
1900 Kanawha Boulevard East
Charleston, WV 25305

Appeals may be submitted by FAX at (304) 558-2999.

If the protesting vendor believes that due to the nature of the contract award an expedited determination is required, a request that the matter be directed immediately to the Department of Administration Cabinet Secretary should be in the original protest submitted to the Director of PEIA. If the Director is in agreement with the reasons for the expedited request, the Director will forward the protest to the Department of Administration Cabinet Secretary and inform the requesting proposer of his/her actions.

Decisions by the Department of Administration Cabinet Secretary shall be considered to be the final level of administrative relief. Any further appeal of the administrative decision of the Department of Administration Cabinet Secretary must be directed to the Circuit Court of Kanawha County, Charleston, West Virginia.

Legal Standard

A protesting vendor should be advised, that the legal standard for a successful challenge has been established by the W. Va. Supreme Court as follows:

“A State agency which awards a public contract upon criteria other than price is clothed with a heavy presumption that the contracting agency has properly discharged its duties and exercised discretionary powers in a proper and lawful manner; accordingly, the burden of proof in any action challenging the award of a contract by an unsuccessful Bidder or taxpayer is upon the challenger who must show fraud, collusion, or such an abuse of discretion that it is shocking to the conscience.” Syl. Pt.3 State ex rel. E.D.S. Federal Corp. v. Ginsberg, 163 W.Va. 647, 259S.E.2d (1979).

3.12 Restrictions on Communications with State and Other Personnel

From the issue date of this RFP, shown in Section 2.2, until a Bidder is selected and announced, Bidders are prohibited from communicating with any PEIA representatives regarding this procurement, except for the contact listed in Section 2.1. This provision is not intended to restrict current Contractors from communicating with PEIA staff regarding ongoing operational matters. All communications related to this RFP are restricted to written communications except as set forth below. Bidders may not engage in attempting to influence, or lobbying activity, to influence the selection process via any unauthorized contact with any employee or officer of PEIA or the state of WV. Violation of this requirement shall disqualify the Bidder from further consideration. Any Bidder, by submitting its proposal, acknowledges that it will refrain from lobbying with, or otherwise contacting any of the above referenced individuals to try to influence the outcome of the selection process.

- The only exceptions to these restrictions are: PEIA staff and/or Bidder staff present at the Bidders' Conference for the purpose of addressing questions; or
- PEIA personnel involved in Oral Presentations by the Bidder

As described in this RFP, any clarification regarding the RFP will be issued in writing by PEIA. No statements, clarifications, or opinions regarding this RFP are valid or binding except those issued in writing by PEIA. Under no circumstances will questions be entertained except in writing or at the Bidders' Conference.

3.13 Evaluation Methodology

A point evaluation system has been designed. A total score of 100 points is possible for the technical and cost proposals combined. The technical proposal will represent 60 points (60%) of the total evaluation score while the cost proposal will represent 40 points (40%). Bidders shall submit their Proposals in accordance with the requirements set forth in Section 5. Finalist presentations and site visits may be used to validate the information presented in the proposal. As such, information obtained during oral presentations and/or site visits may be used to adjust the technical scores.

Proposing entities will be selected for the finalist presentation if they obtain a minimum acceptable score for the service(s) they propose. The minimum acceptable score for each technical proposal will be set at 45 points, equal to 75% of the total technical score.

4. CONTRACTUAL SERVICES TERMS AND CONDITIONS

4.1 Term of Contract

Prescription drug benefit management services are being requested from one PBM for an initial thirty-six (36) month period with possible annual renewals thereafter.

4.2 Contract Administrator

Upon approval of a Contract, and following execution of said Contract, PEIA shall direct the Bidder to administer the Contract on a day-to-day basis during the term of the Contract. However, administration of any Contract resulting from this Request implies no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions, and specifications of such Contract. That authority is retained by PEIA and other authorized representatives and these appointees are subject to change.

4.3 Cost Liability

PEIA assumes no responsibility or liability for costs incurred by any Bidder prior to the signing of any Contract resulting from this RFP. PEIA's responsibility and liability is limited to the terms and conditions of any Contract resulting from this RFP.

4.4 Bidder Responsibilities

The Bidder shall be required to assume responsibility for all contractual activities offered in this proposal whether or not that Bidder performs them. Further, PEIA shall consider the Primary Bidder to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, responses to this RFP should include *a list of subcontractors, including firm name and address, contact person, complete description of work to be subcontracted, and descriptive information concerning subcontractor's organizational abilities*. PEIA reserves the right to approve subcontractors for this project and to require the Primary Bidder to replace subcontractors found to be unacceptable. The Bidder is totally responsible for adherence by the subcontractors to all provisions of the Contract.

The Bidder and any subcontractors must commit to the entire contract period stated within this RFP, unless PEIA specifically agrees to a change of subcontractors. The Agreement between the Bidder and PEIA will not be assignable to another party without prior written permission from PEIA. The Bidder shall provide advance notice to PEIA on any intended sale of the contracting entity. PEIA will have the option of terminating the Contract with the Bidder upon the sale of the contracting entity.

4.5 News Releases

From the time the RFP is released and until a successful Bidder is announced, news releases pertaining to this document or the services, study, data, or project to which it relates, shall not be made without prior written PEIA approval, and then only in accordance with the explicit written instructions from PEIA. No results of the program are to be released without prior written approval of PEIA and then only to persons designated.

4.6 Freedom of Information/Disclosure

All documents in this RFP process are subject to West Virginia's Freedom of Information Act (FOIA) and may be disclosed upon request. The Bidder must clearly identify which data are considered proprietary. If PEIA receives a FOIA request for data, labeled by the Bidder as proprietary, PEIA will notify the Bidder, in writing, of the request to allow the Bidder time to obtain the appropriate court order to prevent the release of the information. Otherwise, PEIA will be compelled by state law to release such information.

4.7 HIPAA Compliance

The Bidder must agree to become a business associate of the PEIA, it must have policies and procedures in place consistent with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) standards for privacy and security of protected health information (45 CFR Parts 160 and 164) and any other applicable state or Federal law related to the privacy or security of information. The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the attorney General, and available online at the Purchasing Division's website (<http://www.wv.us/admin/purchase/vrc/hipaa.htm>) is hereby made part of the agreement resulting from this RFP.

4.8 Gratuities or Kickbacks

By submission of a proposal, the Bidder represents that it has not retained any person, agency, or entity to solicit or secure a State contract upon an agreement or understanding for a commission or a percentage, brokerage, or contingent fee. The State will not pay any brokerage fees for securing or executing any of the services outlined in this RFP. Therefore, all proposed fees must be net of commissions and percentage, contingent, brokerage, service, or finder's fees.

4.9 Appropriations

If the contract extends into more than one fiscal year (July 1 to June 30), and if appropriations are insufficient to support the contract, PEIA may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority.

4.10 Litigation Bond

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

The purpose of the litigation bond is to discourage unwarranted or frivolous lawsuits pertaining to the award of a contract from this 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 Bidder contests the award in a court of competent jurisdiction and the

grounds are found to be unwarranted or frivolous based on the facts of the award or applicable law as determined by the court.

The bond or alternate form must remain in effect for two years from the proposal submission date. After six (6) months, each Bidder may request, and the State anticipates granting, a release of the litigation bond or alternate form. However, the Bidder will be required to provide a release (signed and notarized in a form that is acceptable to the State) prior to release of the bond which states that the Bidder will not sue.

Failure to submit an appropriate bond or Litigation Waiver Form (Appendix F) with the proposal at the time of bid opening will result in automatic disqualification of the Bidder's proposal and the proposal will be considered non-responsive.

4.11 Miscellaneous Provisions

The following provisions will be incorporated into any agreement entered into between PEIA and the successful Bidder. The successful Bidder will be asked to sign a form accepting the provisions described below.

4.11.1 Dispute Resolution

If a dispute arises out of this Agreement, or any modifications made to the Agreement, the parties agree to meet and attempt to resolve the dispute by negotiations. If negotiations are not successful, the parties shall attempt to resolve the dispute and may consider non-binding mediation using the American Arbitration Association as the mediator, or such other firm or association as agreed upon by the parties. The parties agree to make a good faith attempt to resolve the dispute prior to litigation.

4.11.2 Arbitration

Any references to arbitration contained in the agreement are hereby deleted. Claims against PEIA or the State of West Virginia arising out of the agreement shall be presented to the West Virginia Court of Claims.

4.11.3 Hold Harmless

Any clause requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety. The successful Bidder must indemnify and hold harmless the State of West Virginia and PEIA for its acts or omissions arising out of the contract.

4.11.4 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.

4.11.5 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.

4.11.6 Payment

Any references to prepayment are deleted. Payment will be in arrears. As per West Virginia State Law, PEIA will pay all uncontested invoices within sixty (60) days of receipt at PEIA offices.

4.11.7 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.

4.11.8 Recoupment

Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is hereby deleted.

4.11.9 Fiscal Year Funding

Services 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.

4.11.10 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.

4.11.11 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.

4.11.12 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.

4.11.13 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.

4.11.14 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 hereby deleted. 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.

4.11.15 Right to Terminate

Agency shall have the right to terminate the agreement upon ninety (90) days written notice to Vendor.

4.11.16 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. Upon termination of this agreement, or any extension thereto, the Bidder has the duty to continue to provide any reports required by the agreement or any law or regulation.

4.11.17 Cooperation Upon Termination

In the event the agency elects to terminate the agreement, the vendor will cooperate in the transition to the new vendor, will process all claims in run-off, and will provide to agency in a timely manner a transfer of all necessary claim data in a format agreeable to agency.

4.11.18 Renewal

Following the initial thirty-six (36) month contract, the agreement may be renewed annually at the option of the Agency.

4.11.19 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.

4.11.20 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.

4.11.21 Acceleration

Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.

4.11.22 Amendments

All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties.

5. PROPOSAL RESPONSE FORMAT

Bidders shall submit their Proposals in accordance with the requirements set forth below. Regarding the Proposal, Bidders are hereby advised of the following:

Each Proposal shall be prepared simply and economically, providing a straightforward, concise description of the Bidder's ability to meet the requirements of this RFP as outlined in Attachment A-6: Administrative Requirements. Emphasis should be on completeness, clarity of content, responsiveness to the requirements and an understanding of PEIA's needs. **It is PEIA's intent to receive proposals that provide substantive content to address the specific information requested in this RFP and not pre-prepared marketing materials.**

Proposals that are qualified with conditional clauses, alterations, items not called for in the RFP documents, or irregularities of any kind are subject to disqualification by PEIA, at its option.

Representations made within the Proposal will be binding on the Bidders. PEIA will not be bound to act by any previous communication or Proposal submitted by the Bidder other than this RFP and any Proposal submitted in response to this RFP.

Any pages or information which the Bidder wishes to claim as confidential shall be clearly marked within the Proposal. Additionally, the Bidder shall provide a brief summary page after the Table of Contents explaining the confidential nature of the marked pages.

The Proposal shall include the following sections in the order in which they appear below. Each of the Attachments described in this section must be completed in the MS Excel format in which it is provided.

5.1 Technical Proposal

5.1.1 Transmittal Letter

A transmittal letter shall be provided with the Bidder's Proposal. The letter should bear the name and address of the Bidder and the name and number of this RFP. The purpose of this letter is to transmit the Proposal(s) and acknowledge the receipt of any addenda. The letter must include a statement that the RFP terms are accepted. Additionally, Bidders must include a statement in the letter certifying the price was arrived at independently and without any conflict of interest. The transmittal letter should be brief and signed in blue ink by an individual who is authorized to commit the Bidder to the services and requirements as stated in this RFP.

5.1.2 Table of Contents

The Proposal shall include a Table of Contents that lists page number references. The Table of Contents should be in sufficient detail to facilitate easy reference to the sections of the Proposal and separate attachments (which shall be included in the main Table of Contents). If supplemental materials are included with the Proposal, each copy of the Proposal must include such supplemental materials. Supplemental information (i.e., information not required) and attachments included by the Bidder should be clearly identified in the Table of Contents and provided as a separate section.

5.1.3 Confidential Information

Information which is claimed to be confidential is to be identified on a separate sheet(s) after the Table of Contents in the Bidder's Proposal. Such indication shall include the section(s) and page number(s) and a brief explanation for each claim of confidentiality.

5.1.4 Completed Forms

The following forms shall be completed and attached here. Each Form shall be filled out in its entirety and shall include the signature of the Bidder's authorized agent. Failure to complete, sign, and/or return all specified Forms may result in disqualification of the Bidder's Proposal.

- Appendix C: Limited Data Use Agreement
- Appendix D: Purchasing Affidavit
- Appendix E: Business Associate Agreement

The following forms are not mandatory, but may apply to the Bidder. If applicable, these complete forms should be included with the Bidder's proposal.

- Appendix F: Bidder's Litigation Waiver Form
- Appendix G: Vendor Preference Certificate

5.1.5 Attachment A: Technical Proposal Response

The following exhibits are located in the MS Excel (version 2007) documents labeled Attachment A: Technical Proposal Response and Attachment D: Confidential Information.

Attachment A: Technical Proposal Response will be made publically available. **Attachment D: Confidential Information** will be sent only to those Bidders who submit an executed Limited Data Use Agreement (Appendix C) to the PEIA Representative listed in Section 2.1.

Bidders shall complete each of the tabs in Attachment A according to the instructions described below and any additional instructions included at the top of each worksheet.

Cells which have been highlighted in yellow require a response from the Bidder. Response types throughout the documents include selecting from a pre-set drop down menu, entering a numerical value and/or writing a brief narrative. If the cell includes a drop down menu, the Bidder shall not provide a response that is not provided in the drop down list.

Microsoft Excel will only print the first 1,024 characters in each cell. Therefore, please limit the length of your response to 1,024 characters. Additional space has been provided in Attachment A-7b: Additional Questionnaire Answers for the Bidder to continue a response from Attachment A-7: Questionnaire.

In addition, the unlocked cells will automatically lock if the Bidder pastes an answer into a cell. This will prohibit the user from editing the cell(s) at a later time. The Bidder can use the Undo function to unlock the cell only if changes have not been saved since the paste occurred.

5.1.5.1 Attachment A-1: Bidder Information

The Bidder shall complete each section of Attachment A-1 as requested. The Bidder's Legal Name entered in Attachment A-1 will automatically be used to populate the Attachment A-17: Signature Page and Attachment A-18: Deviations Page, in addition to other areas of the MS Excel attachments.

5.1.5.2 Attachment A-2: Minimum Requirements

To be eligible for consideration for this engagement, the Bidder must meet the following Minimum Requirements:

- 5.1 Qualified Bidders must have at least nine hundred thousand (900,000) covered lives across the Bidder's pharmacy benefit management book of business as of the Proposal submission date.
- 5.2 Qualified Bidders must have at least eight hundred and fifty million dollars (\$850,000,000) in annual pharmacy benefit premiums, services or product income.
- 5.3 Qualified Bidders must have at least five years experience providing pharmacy benefit management services **and** must also have at least five years experience in the administration of a retail pharmacy network.
- 5.4 Qualified Bidders must have least one (1) employer group of sufficient size (170,000 covered lives or more) and composition as PEIA.
- 5.5 Qualified Bidders must have three (3) government clients with at least 42,500 covered lives.

The Bidder shall complete Attachment A-2 as requested. The Bidder shall state how they specifically meet or exceed each requirement.

5.1.5.3 Attachment A-3: References

The Bidder shall complete each section of Attachment A-3 as requested. References provided should include at least one reference for which the proposed account manager currently provides service.

5.1.5.4 Attachment A-4: Implementation Team

The Bidder shall complete each section of Attachment A-4 as requested. In addition to providing detail on key members of the Implementation Team, the Bidder should include the proposed Implementation Plan for PEIA.

5.1.5.5 Attachment A-5: Account Management Team

The Bidder shall complete each section of Attachment A-5 as requested, providing detail on the key members of the Account Management Team proposed for PEIA.

5.1.5.6 Attachment A-6: Administrative Requirements

The Bidder shall complete the exhibit by selecting either “Agree” or “Disagree” from the drop down list next to each administrative requirement. For each requirement for which the Bidder selects “Disagree”, an explanation must be provided in Attachment A-18: Deviations Page.

5.1.5.7 Attachment A-7: Questionnaire

The Bidder shall answer each question in A-7: Questionnaire completely in the space provided. If additional space is needed, the response can be continued in Attachment A-7b: Additional Answers to Questionnaire. Continued responses should be labeled clearly with both the Section number (A-7) and the corresponding question number.

If a drop down list is available, the Bidder shall select a response from the list provided.

5.1.5.8 Attachment A-8: Subcontractor Questionnaire

The Bidder shall complete one section of the Subcontractor Questionnaire for each subcontractor proposed to perform any of the administrative requirements of this contract.

5.1.5.9 Attachment A-9: Retail Network Pharmacy Chains

PEIA is interested in the availability of key chain pharmacies to its participant population using both a broad, national network and a limited network. For each pharmacy chain listed by the Bidder, the Bidder should indicate the number of pharmacy locations included within the state of West Virginia and nationwide. Additionally, the Bidder should indicate whether the pharmacy chain is available in the broad, national network or limited network for the commercial plan.

5.1.5.10 Attachment A-10: Retail Network Pharmacy Independent

PEIA is interested in the availability of independent pharmacies to its participant population using both a broad, national network and a limited network. The Bidder should provide identifying information for each of the independent pharmacies located in West Virginia included in the proposed PEIA networks. Additionally, the Bidder should indicate whether the independent pharmacy is available in the broad, national network or limited network for the commercial plan.

5.1.5.11 Attachment A-11a: Access to Network Pharmacies – Broad Network (PEIA)

PEIA is interested in the availability of key pharmacies to its employee and retiree populations. To assist the Bidder in completing the standard GeoAccess analysis for pharmacies, PEIA will provide the Bidder with a PEIA census file as part of Attachment D: Confidential Information. The file will include the following fields: date of birth, gender, state, ZIP Code and plan information. **This file will be sent to only those Bidders who submit a Limited Data Use Agreement to PEIA’s Representative listed in Section 2.1 (See Appendix C).**

The Bidder shall complete a GeoAccess study using the census data provided by PEIA (*excluding the MAPD enrollees*) and the parameters shown below:

Access to Pharmacies	
Urban/Suburban Areas (1,000 or greater people per square mile)	1 within 5 miles
Rural Areas (Less than 1,000 people per square mile)	1 within 10 miles

This GeoAccess analysis should be prepared based on the PBMs proposed broad, national network. In Attachment A-11a: Access to Network Pharmacies – Broad Network (PEIA), the Bidder shall provide the following:

- The geo-mapping method used in the analysis
- A summary of the GeoAccess study results for pharmacies by WV county

For each West Virginia county, input the total number of network pharmacies and the total number of participants included in the analysis based on the confidential data provided. The number of participants meeting/not meeting the access standard and the average distance to a participating pharmacy shall be provided for Urban/Suburban and Rural areas separately. Please note that the Bidder needs only to populate the highlighted cells in the exhibit; cells corresponding to the combination of the urban, suburban and rural areas will be calculated based on the values entered in the highlighted cells.

Note that the census file provided in Attachment D: Confidential Information includes 74,538 PEIA participants not enrolled in the MAPD plan. Please check the output of the GeoAccess analysis and the summary table in Section B of A-11a: Access to Network Pharmacies – Broad Network (PEIA) to ensure that the totals are consistent with the census file provided.

5.1.5.12 Attachment A-11b: Access to Network Pharmacies – Broad Network (CHIP)

CHIP is interested in the availability of key pharmacies to its employee and retiree populations. To assist the Bidder in completing the standard GeoAccess analysis for pharmacies, the Bidder will be provided with a CHIP census file as part of Attachment D: Confidential Information. The file will include the following fields: date of birth, gender, state and ZIP Code. **This file will be sent to only those Bidders who submit a Limited Data Use Agreement to PEIA’s Representative listed in Section 2.1 (See Appendix C).**

The Bidder shall complete a GeoAccess study using the census data provided and the parameters shown below:

Access to Pharmacies	
Urban/Suburban Areas (1,000 or greater people per square mile)	1 within 5 miles
Rural Areas (Less than 1,000 people per square mile)	1 within 10 miles

This GeoAccess analysis should be prepared based on the PBMs proposed broad, national network. In Attachment A-11b: Access to Network Pharmacies – Broad Network (CHIP), the Bidder shall provide the following:

- The geo-mapping method used in the analysis
- A summary of the GeoAccess study results for pharmacies by WV county

For each West Virginia county, input the total number of network pharmacies and the total number of participants included in the analysis based on the confidential data provided. The number of participants meeting/not meeting the access standard and the average distance to a participating pharmacy shall be provided for Urban/Suburban and Rural areas separately. Please note that the Bidder needs only to populate the highlighted cells in the exhibit; cells corresponding to the combination of the urban, suburban and rural areas will be calculated based on the values entered in the highlighted cells.

Note that the census file provided in Attachment D: Confidential Information includes 19,533 CHIP participants. Please check the output of the GeoAccess analysis and the summary table in Section B of A-11b: Access to Network Pharmacies – Broad Network (CHIP) to ensure that the totals are consistent with the census file provided.

5.1.5.13 Attachment A-12a: Access to Network Pharmacies – Limited Network (PEIA)

PEIA is interested in the availability of key pharmacies to its employee and retiree populations. To assist the Bidder in completing the standard GeoAccess analysis for pharmacies, PEIA will provide the Bidder with a PEIA census file as part of Attachment D: Confidential Information. The file will include the following fields: date of birth, gender, state, ZIP Code and plan information. **This file will be sent to only those Bidders who submit a Limited Data Use Agreement to PEIA’s Representative listed in Section 2.1 (See Appendix C).**

The Bidder shall complete a GeoAccess study using the census data provided by PEIA (*excluding MAPD enrollees*) and the parameters shown below:

Access to Pharmacies	
Urban/Suburban Areas (1,000 or greater people per square mile)	1 within 5 miles
Rural Areas (Less than 1,000 people per square mile)	1 within 10 miles

This GeoAccess analysis should be prepared based on the PBMs proposed limited, national network. In Attachment A-12a: Access to Network Pharmacies – Limited Network (PEIA), the Bidder shall provide the following:

- The geo-mapping method used in the analysis
- A summary of the GeoAccess study results for pharmacies by WV county

For each West Virginia county, input the total number of network pharmacies and the total number of participants included in the analysis based on the confidential data provided. The number of participants meeting/not meeting the access standard and the average distance to a participating pharmacy shall be provided for Urban/Suburban and Rural areas separately.

Please note that the Bidder needs only to populate the highlighted cells in the exhibit; cells corresponding to the combination of the urban, suburban and rural areas will be calculated based on the values entered in the highlighted cells.

Note that the census file provided in Attachment D: Confidential Information includes 74,538 PEIA participants not enrolled in the MAPD plans. Please check the output of the GeoAccess analysis and the summary tables in Section B of Attachment A-12a: Access to Network Pharmacies – Limited Network (PEIA) to ensure that the totals are consistent with the census file provided.

5.1.5.14 Attachment A-12b: Access to Network Pharmacies – Limited Network (CHIP)

CHIP is interested in the availability of key pharmacies to its employee and retiree populations. To assist the Bidder in completing the standard GeoAccess analysis for pharmacies, the Bidder will be provide with a CHIP census file as part of Attachment D: Confidential Information. The file will include the following fields: date of birth, gender, state and ZIP Code. **This file will be sent to only those Bidders who submit a Limited Data Use Agreement to PEIA’s Representative listed in Section 2.1 (See Appendix C).**

The Bidder shall complete a GeoAccess study using the census data provided and the parameters shown below:

Access to Pharmacies	
Urban/Suburban Areas (1,000 or greater people per square mile)	1 within 5 miles
Rural Areas (Less than 1,000 people per square mile)	1 within 10 miles

This GeoAccess analysis should be prepared based on the PBMs proposed limited, national network. In Attachment A-12b: Access to Network Pharmacies – Limited Network (CHIP), the Bidder shall provide the following:

- The geo-mapping method used in the analysis
- A summary of the GeoAccess study results for pharmacies by WV county

For each West Virginia county, input the total number of network pharmacies and the total number of participants included in the analysis based on the confidential data provided. The number of participants meeting/not meeting the access standard and the average distance to a participating pharmacy shall be provided for Urban/Suburban and Rural areas separately. Please note that the Bidder needs only to populate the highlighted cells in the exhibit; cells corresponding to the combination of the urban, suburban and rural areas will be calculated based on the values entered in the highlighted cells.

Note that the census file provided in Attachment D: Confidential Information includes 19,533 CHIP participants. Please check the output of the GeoAccess analysis and the summary tables in Section B of Attachment A-12b: Access to Network Pharmacies – Limited Network (CHIP) to ensure that the totals are consistent with the census file provided.

5.1.5.15 Attachment A-13a: Pharmacy Disruption – PEIA

The Bidder shall complete this exhibit by indicating whether or not the named pharmacy is a member of the broad network and/or the limited network being proposed for PEIA. Valid responses are either “Yes” or “No”. All other responses will be treated as a “No” response.

In an effort to save paper, the Bidder is not required to include Attachment A-13a in its entirety. The appropriate print area has been defined in the spreadsheet and includes only the summary of “Yes” responses.

5.1.5.16 Attachment A-13b: Pharmacy Disruption – CHIP

The Bidder shall complete this exhibit by indicating whether or not the named pharmacy is a member of the broad network and/or the limited network being proposed for CHIP. Valid responses are either “Yes” or “No”. All other responses will be treated as a “No” response.

In an effort to save paper, the Bidder is not required to include Attachment A-13b in its entirety. The appropriate print area has been defined in the spreadsheet and includes only the summary of “Yes” responses.

5.1.5.17 Attachment A-14: Formulary Analysis

The Bidder shall submit to PEIA in MS Excel format with read/write capabilities its proposed Preferred Drug List (PDL), MAC Drug List, and Specialty Drug List. This list must contain the NDC-11 Code, drug name and price per metric quantity for each drug in the list. In addition, a list of drugs excluded from coverage shall also be provided in MS Excel format with read/write capabilities.

5.1.5.18 Attachment A-15a: Formulary Disruption – PEIA

PEIA is interested in the formulary disruption to its employee and retiree populations. PEIA will provide the Bidder with the top brand drugs utilized by the plan as part of Attachment D: Confidential Information. The file will include the following fields: NDC-11, prescription drug name, total days of therapy, prescription drug count. **This file will be sent to only those Bidders who submit a Limited Data Use Agreement to PEIA’s Representative listed in Section 2.1 (See Appendix C).**

Using the information provided in Attachment D: Confidential Information, the Bidder shall select from the drop down list to indicate the formulary tier (i.e. generic, preferred brand or non-preferred brand) for each non-specialty drug listed for both the proposed broad, national and limited networks.

In an effort to save paper, the Bidder is not required to include Attachment A-15a in its entirety. The appropriate print area has been defined in the spreadsheet and includes only the summary information by tier.

5.1.5.19 Attachment A-15b: Formulary Disruption – CHIP

CHIP is interested in the formulary disruption to its covered population. The Bidder will be provided with the top brand drugs utilized by the plan as part of Attachment D: Confidential Information. The file will include the following fields: NDC-11, prescription drug name, total

days of therapy, prescription drug count. **This file will be sent to only those Bidders who submit a Limited Data Use Agreement to PEIA's Representative listed in Section 2.1 (See Appendix C).**

Using the information provided in Attachment D: Confidential Information, the Bidder shall select from the drop down list to indicate the formulary tier (i.e. generic, preferred brand or non-preferred brand) for each non-specialty drug listed for both the proposed broad, national and limited networks.

In an effort to save paper, the Bidder is not required to include Attachment A-15b in its entirety. The appropriate print area has been defined in the spreadsheet and includes only the summary information by tier.

5.1.5.20 Attachment A-16: Performance Guarantees

The Bidder shall indicate its willingness to comply with each of the Reporting Measurements and standards. Any deviations to the standard/goal shall be described in detail in Attachment A-18: Deviations. In addition, the Bidder shall provide its proposed Amount at Risk as a fixed dollar amount per Performance Guarantee.

At a minimum, the criterion identified in Attachment A-16 serves as a benchmark for performance measurements. Actual performance metrics and penalties will be finalized during contract negotiations between PEIA and the selected Bidder(s).

5.1.5.21 Attachment A-17: Signature Page

The Bidder shall complete this attachment and provide documentation granting authorization for the signing officer to bind the Bidder to the agreements and representations made in the Bidder's Proposal. Label the documentation as A-17: Authorization Documentation.

5.1.5.22 Attachment A-18: Deviations Page

The Bidder shall complete this attachment regardless of whether or not deviations from the administrative requirements or performance guarantees are proposed. The top right of the worksheet includes macros for the Bidder to indicate whether or not deviations are included in the table below the signature line.

Prior to printing the final Proposal, the Bidder shall ensure that the print area of this document is set appropriately. If no deviations are claimed, then the print area shall end following the title of the individual signing the document. Otherwise, the print area shall end following the last deviation described in the table.

5.1.5.23 Response Attachments

The following response attachments shall be included in the following order:

- Tab A-1: Certificates of Insurance
- Tab A-1: URAC Accreditation
- Tab A-1: Financial Statements

- Tab A-1: Financial Ratings
- Tab A-4: Implementation Plan
- Tab A-6: Approved Rebate Audit Organizations
- Tab A-7: Formulary Development Criteria
- Tab A-7: Detailed Utilization Management Program List
- Tab A-7: Sample Contract
- Tab A-7: Sample Refill Order Form
- Tab A-7: Patient Advisory Information
- Tab A-7: Sample Employee Communications Materials
- Tab A-7: Customer Satisfaction Survey
- Tab A-7: Sample Standard Reporting Package
- Tab A-7: Injectable/Biotech Product Fee Schedule
- Tab A-14: Preferred Drug List
- Tab A-14: MAC Drug List
- Tab A-14: Specialty Drug List
- Tab A-14: Excluded Drug List
- Tab A-17: Authorization Documentation

5.2 Financial Proposal

PEIA is interested in evaluating the pricing offers for both a broad, national network and a limited network. For each network proposed, the Bidder shall provide guarantees for pricing (as a percent off of AWP), dispensing fees (as a dollar amount per script) and rebates (as a dollar amount per brand script). In addition, the Bidder shall propose fully loaded Administrative Fees on a per member per month (PMPM) basis.

Alternative financial proposals A – F are being requested from each Bidder. Attachment B-3: Financial Proposal - Alternative A represents the current PEIA program. Attachment B-8: Financial Proposal - Alternative F represents the current CHIP program. PEIA and other West Virginia State agencies including, but not limited to, CHIP may select from any of the alternative financial proposals submitted by the Bidder.

To assist each Bidder in preparing its financial proposals, PEIA will provide the Bidder with a de-identified claims file as part of Attachment D: Confidential Information. The claims included in this data set will be for those drugs dispensed during Plan Year 2013 (July 1, 2012 through June 30, 2013) and Plan Year 2014 (July 1, 2013 through June 30, 2014). **This file will be sent to only those Bidders who submit a Limited Data Use Agreement to PEIA’s Representative listed in Section 2.1 (See Appendix C).**

The Financial Proposal shall be submitted in a sealed envelope labeled as “Attachment B: Financial Proposal”.

5.2.1 Attachment B-1: Financial Proposal Requirements

The Bidder shall complete this attachment by indicating the organization's acceptance of the Financial Proposal requirements.

5.2.2 Attachment B-2: Administrative Fee Breakdown

The Bidder shall complete this attachment by confirmation that each item listed has been included in the administrative fees quoted in Tab B-3 through Tab B-8.

5.2.3 Attachment B-3: Financial Proposal A

The Bidder shall complete the table in its entirety which is based on the current PEIA program which uses a broad, national network, an open specialty pharmacy network and an open formulary.

5.2.4 Attachment B-4: Financial Proposal B

The Bidder shall complete the table in its entirety which is based on a limited retail network, an open specialty pharmacy network and an open formulary.

5.2.5 Attachment B-5: Financial Proposal C

The Bidder shall complete the table in its entirety which is based on a broad, national network, an open specialty pharmacy network and a closed formulary.

5.2.6 Attachment B-6: Financial Proposal D

The Bidder shall complete the table in its entirety which is based on a limited network, an open specialty pharmacy network and a closed formulary.

5.2.7 Attachment B-7: Financial Proposal E

The Bidder shall complete the table in its entirety which is based on a broad, national network, a closed specialty pharmacy and an open formulary.

5.2.8 Attachment B-8: Financial Proposal F

The Bidder shall complete the table in its entirety which is based on the current CHIP program which uses a broad, national network, a closed specialty pharmacy and a closed formulary.

5.2.9 Attachment B-9: Clinical & Cost Management Programs

In Table I, the Bidder shall provide a listing and brief description of those programs currently available through the PBM which have been included in the proposed administrative fees in Tabs B-3 through B-8.

In Table II, the Bidder shall provide the name, a brief description and the proposed PMPM cost of those programs currently available through the PBM but have not been included in the proposed administrative fees in Tabs B-3 through B-8.

5.2.10 Attachment B-10: Deviations

The Bidder shall complete and sign this attachment regardless of whether or not deviations from Attachment B-1: Financial Proposal Requirements. The top right of the worksheet includes macros for the Bidder to indicate whether or not deviations are included in the table below the signature line.

5.3 Employer Group Waiver Plan (EGWP) Proposal

West Virginia PEIA currently offers integrated Medicare Advantage/Prescription Drug (MAPD) plans to its Medicare eligible participants. While it is not anticipated that a stand-alone Medicare Part D plan, or EGWP, will be offered to Medicare eligible participants during the course of this contract, PEIA is interested in obtaining the Bidder's financial proposal for an EGWP plan. This pricing may only be utilized if the MAPD were no longer offered to eligible participants.

5.3.1 Attachment C-1: References – EGWP

The Bidder shall provide two references for clients for whom the Bidder currently provides EGWP services on either a fully insured or self-funded basis.

5.3.2 Attachment C-2: Questionnaire – EGWP

The Bidder shall answer each question in Attachment C-2: Questionnaire completely/briefly in the space provided. If a drop down list is available, the Bidder shall select a response from the list provided.

5.3.3 Attachment C-3: Financial Proposal - EGWP

The Bidder shall provide guarantees for pricing (as a percent off of AWP), dispensing fees (as a dollar amount per script) and rebates (as a dollar amount per brand script). In addition, the Bidder shall propose fully loaded Administrative Fees on a per member per month (PMPM) basis.

APPENDICES

- A. Claim Data Requirements
- B. Eligibility File Layout
- C. Limited Data Use Agreement
- D. Purchasing Affidavit
- E. Business Associate Agreement
- F. Bidder's Litigation Waiver Form
- G. Vendor Preference Certificate
- H. Intent to Bid

APPENDIX A: CLAIM DATA REQUIREMENTS

1. SSN of the Employee
2. First Name of the Employee
3. SSN of the Patient
4. First Name of the Patient
5. Middle Initial of the Patient
6. Patient's Gender
7. Patient's Date of Birth
8. Patient's ZIP Code
9. Patient's Relationship to the Insured
10. Metric Quantity
11. Days of Therapy
12. Package Size
13. Refill Number
14. Strength
15. Submitted Charges
16. AWP Amount
17. Not Covered Amount
18. Not Covered Reason(s)
19. Discount Amount
20. Ingredient Cost
21. Dispensing Fee
22. Covered Charge
23. Copay
24. Deductible
25. Amount Paid by the Plan
26. Type of Claim (Original, Positive Adjustment, Negative Adjustment)
27. Claim Number; Unique Claim Identification
28. Dispense Date
29. Paid Date
30. Received Date
31. Adjustment Date
32. Adjustment Reason
33. DUR Indicator
34. Drug Type (Single-Source, Multi-Source, Generic)
35. DAW code
36. Formulary Indicator
37. Maintenance Indicator
38. NDC Code
39. Drug Name
40. Therapeutic Classification(s)
41. NABP
42. DEA ID of the Prescriber
43. Pharmacy Type (i.e. Mail Order, Retail)
44. Electronic / Paper Claim Indicator

APPENDIX B: ELIGIBILITY FILE LAYOUT

Below is a sample of the eligibility file that will be provided by PEIA:

1. Record Type
2. Client Identifier
3. Participant ID
4. Alternate Participant ID #1
5. Participant Effective Date
6. Participant First Name
7. Participant Last Name
8. Participant Middle Initial
9. Address Line 1
10. Address Line 2
11. Address Line 3
12. Address Line 4
13. City
14. State
15. Zip Code
16. Zip Reserve
17. Date of Birth
18. Gender Code
19. Contract/Family ID
20. Dependent ID
21. Relationship Code
22. Client Group ID
23. PCP ID
24. Transaction Date
25. Participant Expiration Date
26. Dollar Amount of Deductibles Accrued - Prior Year
27. Dollar Amount of Deductibles Accrued - Current Year
28. Plan Stop Loss Dollars - Prior Year
29. Plan Stop Loss Dollars - Current Year
30. Medicare ID
31. Lifetime Claim Accrual
32. Copay Waiver Flag
33. Coverage Code Status
34. Print ID Card Flag
35. Admin Hold Eff Date
36. Admin Hold Exp Date
37. Primary Carrier Flag
38. Plan Stop Loss Amount Code
39. Member Level Address Type
40. Contract Type
41. Member SSN
42. Medicare Flag
43. Phone Number
44. Demographic Level 1
45. Demographic Level 2
46. Demographic Level 3
47. Demographic Level 4
48. Demographic Level 5
49. Demographic Level 6
50. Alternate Participant ID # 2
51. Alternate Participant ID # 3
52. County Code
53. Diabetes Program Indicator
54. Transplant Program Indicator
55. Tobacco Program Indicator

APPENDIX C: LIMITED DATA USE AGREEMENT

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

Name of data recipient: _____

Description of data: De-identified PEIA Paid Prescription Drug Claim Data for its population.

Purpose of use: PEIA will be disclosing a limited data set to Pharmacy Benefit Managers (PBM) that will be submitting bids in response to this RFP as part of its health care operations. The data will be used by bidding PBMs to prepare the cost estimate portion of its proposal.

By signing this agreement the recipient agrees:

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

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

Signature of Recipient Representative

Date

Signature of PEIA Representative

Date

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 exceed five percent of the total contract amount.

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

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: _____

Authorized Signature: _____ Date: _____

State of _____

County of _____, to-wit:

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

My Commission expires _____, 20____.

AFFIX SEAL HERE

NOTARY PUBLIC _____

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: _____

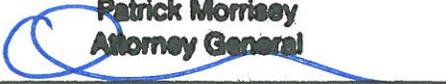
Title: _____

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.

APPENDIX F: BIDDER'S LITIGATION WAIVER FORM

_____, hereinafter "Bidder," wishes to submit a Proposal in response to the Request For Proposals for the Pharmacy Benefit Management Services (the RFP) issued on July 22, 2015 by the Public Employees Insurance Agency for the State of West Virginia (PEIA). The Bidder acknowledges that a mandatory requirement of the RFP is that the Bidder submit a litigation bond with its proposal.

In consideration of the waiver of said litigation bond requirement by the PEIA, and in lieu of such bond, the Bidder agrees:

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

Legal Name of Bidder

By:

Authorized Signature

Date

Title:

Title of Authorized Signature

Approved:

Public Employees Insurance Agency for the State of West Virginia

By:

Authorized Signature

Date

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.

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: _____
Date: _____

Signed: _____
Title: _____

APPENDIX H: INTENT TO BID FORM

Form Due Date: August 12, 2015

Gabriel Roeder Smith & Company
5605 N. MacArthur Blvd.
Suite 870
Irving, TX 75038-2631

ATTN: Eric St. Pierre

RE: West Virginia PEIA PBM RFP #PEI1600000001

This is to advise that we are in receipt of the above referenced RFP. We also wish to advise that we will be quoting the following services:

Services	Yes	No	Reason For Decline
Pharmacy Benefit Management			

Name and Title

Signature

Date

Name of Company

Phone Number

Email Address