

# **REQUEST FOR PROPOSALS**

**RIM#091313**

**FOR**

**ON-LINE DEFENSIVE DRIVING TRAINING**

**ISSUE DATE  
SEPTEMBER 13, 2013**

**BIDS DUE  
OCTOBER 25, 2013  
3:00 P.M.**

**West Virginia Board of Risk and Insurance Management  
90 MacCorkle Avenue, S.W., Suite 203  
South Charleston, WV 25303**

# REQUEST FOR PROPOSAL

## WEST VIRGINIA BOARD OF RISK AND INSURANCE MANAGEMENT

### RIM # 091313

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## SECTION ONE: GENERAL INFORMATION

- 1.1 **Purpose:** The West Virginia Board of Risk and Insurance Management hereinafter referred to as “BRIM”, is soliciting proposals for the purchase of a two (2) hour on-line defensive driving training program. Service includes providing an on-line defensive driver training program that allows for up to 32,500 training views and the ability to register, monitor, and track participation in the on-line defensive driving training program.
- 1.2 By signing and submitting its proposal, the successful vendor agrees to be bound by all the terms contained in this RFP.

A Request for Proposal (RFP) is generally used for the procurement of services in situations where price is not the sole determining factor and the award will be based on a combination of cost and technical factors (Best Value). Through its proposal, the bidder offers a solution to the objectives, problem, or need specified in the RFP, and defines how it intends to meet (or exceed) the RFP requirements.

- 1.2.1 **Compliance with Laws and Regulations:** The vendor shall procure all necessary permits and licenses to comply with all applicable Federal, State, or municipal laws, along with all regulations, and ordinances of any regulating body.

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

1.3 **Schedule of Events:**

|  |   |
|--|---|
| Release of the RFP   | <u>September 13, 2013</u>                         |
| Vendor Written Questions Time Period                             | <u>September 13, 2013 thru September 25, 2013</u> |
| Response to Vendor Questions<br>Mailed as an addendum to the RFP | <u>October 2, 2013</u>                            |
| Bids Due   | <u>October 25, 2013 at 3:00pm, E.D.T.</u>         |

1.4 **Inquiries:** Inquiries regarding specifications of this RFP must be submitted in writing to BRIM (e-mail inquiries will be accepted) with the exception of questions regarding the proposal submission which may be oral. The deadline for written inquiries is identified in the Schedule of Events, Section 1.3. All inquiries of specification clarification must be addressed to:

Jeremy C. Wolfe, Loss Control Manager  
West Virginia Board of Risk and Insurance Management  
90 MacCorkle Avenue, SW  
Suite 203  
South Charleston, WV 25303  
Fax: (304)-744-7120  
Phone: (304)-766-2646  
E-mail: [Jeremy.C.Wolfe@wv.gov](mailto:Jeremy.C.Wolfe@wv.gov)

**The vendor or anyone on the vendor's behalf, is not permitted to make any contact whatsoever with any member of the evaluation committee. Violation may result in the rejection of the bid. BRIM is the sole contact for any and all inquiries after this RFP has been released.**

1.5 **Verbal Communication:** Any verbal communication between the vendor and any State personnel is **not** binding. Only information issued in writing and added to the RFP specifications by an official written addendum by BRIM is binding.

1.6 **Addenda:** If it becomes necessary to revise any part of this RFP, an official written addendum will be issued by BRIM.

## **SECTION TWO: PROJECT SPECIFICATIONS**

2.1 **Location:** BRIM is located at 90 MacCorkle Avenue, SW, Suite 203, South Charleston, WV 25303.

2.2 **Background and Current Operating Environment:** BRIM administers a multifaceted insurance program including liability and property insurance for state agencies, county Boards of Education, political subdivisions, charitable or public service organizations, and emergency services agencies located throughout the State of West Virginia.

BRIM currently covers 102,074 employees, 28,921 vehicles and \$17,436,589,630 billion in property values in its property and liability insurance programs. BRIM meets the criteria for classification as a Public Entity Risk Pool. BRIM provides risk management loss control services to customers to prevent and/or minimize, to the extent reasonable and possible, unnecessary and preventable losses and claims.

The agency contact is:

Jeremy C. Wolfe  
Loss Control Manager  
West Virginia Board of Risk & Insurance Management  
90 MacCorkle Avenue SW, Suite 203  
South Charleston, WV 25303  
Fax: (304)-744-7120  
Phone: (304)-766-2646  
E-mail: Jeremy.C.Wolfe@wv.gov

2.3 **Qualifications and Experience:** Vendors will provide in **Attachment A: Vendor Response Sheet** information regarding their firm, such as staff qualifications and experience in completing similar projects; references; staff certifications or degrees applicable to this project; proposed staffing plan; descriptions of similar projects completed entailing the location of the project, project manager name and contact information, type of project, and what the project goals and objectives were and how they were met.

2.4 **Project and Goals:** The mission or purpose of this project is to solicit the services of a licensed vendor, experienced in providing and coordinating on-line defensive driving training sessions for large scale training. The successful vendor will provide BRIM with a database to enable it to assign, manage, track, and provide enrollment status reports from BRIM insured during and after the training process. The vendor will also be asked to assist BRIM in managing and addressing concerns and questions as it relates to the training database. The on-line defensive driver training program will be provided to select BRIM insured state governmental agencies and county Boards of Education.

2.5 **Mandatory Requirements:**

The following mandatory requirements must be met by the vendor as a part of the submitted proposal. Failure on the part of the vendor to meet any of the mandatory specifications shall result in the disqualification of the proposal. The terms “must”, “will”, “shall”, “minimum”, “maximum”, or “is/are required” identify a mandatory item or factor. Decisions regarding compliance with any mandatory requirements shall be at the sole discretion of BRIM.

**BRIM will be responsible for gathering the list of users/trainees. The successful vendor will be responsible for assigning user ID’s and passwords.** BRIM will be responsible for the determination of which entities will receive services and at what intervals. BRIM will be the recipient of all reports/correspondence generated as a result of the services provided, and will disseminate reports/correspondence according to internal BRIM procedures.

**BRIM desires that the successful bidder perform the following services:**

- (A) Provide BRIM with an on-line defensive driving training program that will provide up to 32,500 views/training sessions.

(B) Provide a two (2) hour on-line defensive driving training program that focuses at a minimum on defensive driving with emphasis on avoiding the following:

- Backing incidents;
- Striking fixed objects;
- Front/rear-end collisions;
- Intersection collisions;
- Distracted driving.

If the above combinations cannot be provided, alternative combination of training topics can be provided.

(C) Provide technical database management such as:

- The development of a website address for BRIM officials and trainees to access the training program;
- The development of a training user instruction document and application within the on-line defensive driving training program's website;
- Provide a login section/page where trainees and BRIM officials can logon to enter the training program;
- Provide navigation menus that are similar to the following:
  1. Access to the training program;
  2. Manager-For use by BRIM officials only to register, track, and print training status Reports;
  3. Help section;
  4. Logout section.

(D) Provide an on-line defensive driving training program that will allow BRIM officials the below management abilities:

- The ability to assign, disseminate, and remove user id's and passwords of trainees;
- The ability to view and create completion reports of trainees according to their organizational name;
- The ability to print status reports for trainees individually and for organizations as a whole, or group;
- The ability for the trainees to receive a certificate of completion via e-mail following completion of the training program.

(E) Provide a method to track organizations and trainees, training status as either completed or not complete/incomplete;

(F) Provide BRIM a help line and a technical person that can assist BRIM in the event troubles or problems arise with the training program;

- (G) Provide customer service as needed to BRIM selected trainees/users (accessible for questions and assistance) relative to the terms of this contract;
- (H) Provide BRIM assurance of direct contact with an account manager and database manager throughout the terms of this contract;
- (I) Provide, if necessary and on an as needed basis (determined by BRIM) alternative methods of training for trainees/users that may not have access to necessary technology and systems for completion of the on-line training curriculum.

## SECTION THREE: VENDOR PROPOSAL

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

3.2 **Incurring Cost:** Neither BRIM nor any of its employees or officers shall be held liable for any expenses incurred by any vendor responding to this RFP, including but not limited to preparation, delivery, or travel.

3.3 **Proposal Format:** Vendors should provide responses in the format listed below:

**(A) Title Page:** Must state the RFP subject, number, vendor's name, business address, telephone number, fax number, name of contact person, e-mail address, and vendor signature and date.

**(B) Table of Contents:** Must clearly identify the material by section and page number.

**(C) Attachment A:** Within the attached response sheet (**Attachment A: Vendor Response Sheet**), vendor must provide the following: firm and staff qualifications and prior experience in completing similar projects; references; copies of staff resumes applicable to this project; location of office(s) where work will be performed (Central Office); proposed staffing plan; descriptions of past projects completed entailing the location of the project, project manager name and contact information, type of project, and what the project goals and objectives were and how they were met.

Also, describe the approach and methodology proposed for this project.

**(D) Attachment B:** Must complete **Attachment B: Mandatory Specification Checklist**. By signing and dating this attachment, the vendor acknowledges that they meet or exceed each of these specifications as outlined in 2.5 of Section Two: Project Specifications. Vendors must demonstrate and describe their understanding of BRIM's objectives, the nature and scope of the work involved as listed in section 2.5 of this RFP, and how they will be able to meet BRIM's needs for each service item listed in section 2.5 of this RFP. BRIM reserves the right to require documentation detailing how each is met at its discretion.

**(E) Attachment C:** Must complete **Attachment C: Cost Sheet** included in this RFP and submit in a separate sealed envelope. Cost should be clearly marked.

**(F) Quality of Work:** Vendors must submit evidence of the quality of their work. This can be demonstrated by submitted examples of reports generated or work previously undertaken and a listing of other clients for whom services have been provided (as allowed). Recommendation letters can also be provided as desired.

**Note:** It will not suffice for vendors who may be currently doing business with BRIM to merely reference the past relationship without further evidence to meet this requirement.

**Scoring:** Will not be based solely on providing the disclosures or responses to section 3.3 of this RFP; but also by the quality and relevance of the disclosure or response provided.

**(G) Compliance:** Vendors must comply with all requirements contained in this RFP.

3.4 **Proposal Submission:** Proposals must be received in **two distinct parts**: technical and cost.

- **Technical proposals** must not contain any cost information relating to the project.
- **Cost proposal** shall be sealed in a separate envelope and will not be opened initially.

All proposals must be submitted to BRIM **prior** to the date and time stipulated in the RFP as the bid due date. All bids will be dated and time stamped to verify official time and date of receipt.

3.4.1 Vendors should allow sufficient time for delivery. In accordance with **West Virginia Code** §5A-3-11, BRIM cannot waive or excuse late receipt of a proposal, which is delayed or late for any reason. Any proposal received after the bid opening date and time will be immediately disqualified in accordance with State law.

**Vendors responding to this RFP shall submit:**

One original technical and cost proposal plus four (4) convenience copies to:

Jeremy C. Wolfe, Loss Control Manager  
West Virginia Board of Risk and Insurance Management  
90 MacCorkle Avenue, SW, Suite 203  
South Charleston, WV 25303

The outside of the envelope or package(s) for both the technical and the cost should be clearly marked:

Vendor:

Req #: RIM # 091313

Submission Deadline: October 25, 2013 at 3:00pm, E.D.T.

3.5 **Purchasing Affidavit:** **West Virginia Code** §5A-3-10a requires that all bidders submit an affidavit regarding any debt owed to the State. The affidavit must be signed and submitted prior to award. It is preferred that the affidavit be submitted with the proposal.

3.6 **Resident Vendor Preference:** In accordance with **West Virginia Code** §5A-3-37, vendors may make application for Resident Vendor Preference. Said application must be made on the Resident Vendor Certification form at the time of proposal submission.

- 3.7 **Cost Bid Opening:** All cost bids for qualifying proposals will be opened. Cost bids for non-qualifying proposals will also be opened but shall not be considered. A proposal may be deemed non-qualifying for a number of reasons including, but not limited to, the bidder's technical proposal failing to meet a mandatory requirement of the contract. Certain information, such as technical scores and reasons for disqualification, will not be available until after the contract award, pursuant to **West Virginia Code §5A-3-11(h)** and **West Virginia Code of State Rules § 148-1-6.2.5**.

## SECTION FOUR: EVALUATION AND AWARD

- 4.1 **Evaluation Process:** Proposals will be evaluated by a committee of three (3) or more individuals against the established criteria with points deducted for deficiencies. The vendor who demonstrates that they meet all of the mandatory specifications required; and has appropriately presented within their written response and/or during the oral demonstration (if applicable) their understanding in meeting the goals and objectives of the project; and attains the highest overall point score of all vendors shall be awarded the contract. The selection of the successful vendor will be made by a consensus of the evaluation committee.
- 4.2 **Evaluation Criteria:** All evaluation criteria is defined in the specifications section and based on a 100 point total score. Cost shall represent a minimum of 30 of the 100 total points.

The following are the evaluation factors and maximum points possible for technical point scores:

(A) Technical – 70 points

|                 |           |
|-----------------|-----------|
| (1) see 3.3 (C) | 20 points |
| (2) see 3.3 (D) | 20 points |
| (3) see 3.3 (F) | 20 points |
| (4) see 3.3 (G) | 10 points |

(B) Cost – 30 points

|                 |           |
|-----------------|-----------|
| (1) see 3.3 (E) | 30 points |
|-----------------|-----------|

Each cost proposal cost will be scored by use of the following formula for all vendors who attained the minimum acceptable score:

**Lowest price of all proposal**

$$\frac{\text{Lowest price of all proposal}}{\text{Price of Proposal being evaluated}} \times 30 = \text{Price Score}$$

- 4.2.1 **Technical Evaluation:** BRIM's evaluation committee will review the technical proposals, deduct points where appropriate, and make a final written recommendation to BRIM's Executive Director.
- 4.2.2 **Minimum Acceptable Score:** Vendors must score a minimum of 70% (49 points) of the total technical points possible. All vendors not attaining the minimum acceptable score (MAS) shall be considered as non-qualifying. A proposal may be deemed non-qualifying for a number of reasons including, but not limited to, the bidder's technical proposal failing to meet the minimum acceptable score and the bidder's technical proposal failing to meet a mandatory requirement of the contract. Cost bids for non-qualifying proposals will be opened but shall not be considered. Certain information, such as technical scores and



reasons for disqualification, will not be available until after the contract award, pursuant to **West Virginia Code §5A-3-11(h)** and **West Virginia Code of State Rules § 148-1-6.2.5**.

4.2.3 **Cost Evaluation:** BRIM's evaluation committee will review the cost proposals, assign appropriate points, and make a final recommendation to BRIM's Executive Director.

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

4.4 **Rejection of Proposals:** BRIM reserves the right to accept or reject any or all proposals, in part or in whole at its discretion. BRIM further reserves the right to withdraw this RFP at any time and for any reason. Submission of or receipt of proposals by BRIM confers no rights upon the bidder nor obligates BRIM in any manner.

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

## **SECTION FIVE: CONTRACT TERMS AND CONDITIONS**

5.1 **Contract Provisions:** The RFP and the vendor's response will be incorporated into the contract by reference. The order of precedence shall be the contract, the RFP and any addendum, and the vendor's proposal in response to the RFP. **The successful vendor must also complete the West Virginia Division of Purchasing's WV-96 Agreement Addendum form (Attachment 1).**

5.2 **Public Record:** All documents submitted to BRIM related to purchase orders or contracts are considered public records. All bids, proposals, or offers submitted by vendors shall become public information and are available for inspection during normal official business hours at BRIM's office after the bid opening. Certain information, such as technical scores and reasons for disqualification, will not be available until after the contract award, pursuant to **West Virginia Code §5A-3-11(h)** and **West Virginia Code of State Rules §148-1-6.2.5**.

5.2.1 **Risk of Disclosure:** The only exemptions to disclosure of information are listed in **West Virginia Code §29B-1-4**. Any information considered a trade secret must be separated from the vendor submission and clearly labeled as such. Primarily, only trade secrets, as submitted by a bidder, are exempt from public disclosure. The submission of any information to BRIM by a vendor puts the risk of disclosure on the vendor. BRIM does not guarantee non-disclosure of any information to the public.

5.2.2 **Written Release of Information:** All public information may be released with or without a Freedom of Information request; however, only a written request will be acted upon with duplication fees paid in advance. Duplication fees shall apply to all requests for copies of any document. Currently, the fees are 50 cents per page.

5.3 **Conflict of Interest:** Vendor affirms that neither it nor its representatives have any interest nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to BRIM.

5.4 **Vendor Relationship:** The relationship of the vendor and BRIM shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this contract. The vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents.

Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this RFP and resulting contract. Neither the vendor, nor any employees or subcontractors of the vendor, shall be deemed to be employees of BRIM for any purpose whatsoever.

Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, *et cetera* and the filing of all necessary documents, forms and returns pertinent to all of the foregoing.

Vendor shall hold BRIM harmless and shall provide BRIM with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

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

5.4.1 Subcontracts/Joint Ventures: The vendor is solely responsible for all work performed under the contract and shall assume prime contractor responsibility for all services offered and products to be delivered under the terms of this contract. BRIM will consider the vendor to be the sole point of contact with regard to all contractual matters. The vendor may, with the prior written consent of BRIM, enter into written subcontracts for performance of work under this contract; however, the vendor is totally responsible for payment of all subcontractors.

5.4.2 Indemnification: The vendor agrees to indemnify, defend, and hold harmless the State and BRIM, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the contract in a manner not authorized by the contract, or by Federal or State statutes or regulations; and (3) Any failure of the vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage laws.

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

5.5. **Term of Contract and Renewals:** This contract will be effective from January 1, 2014 through December 31, 2014 and may be renewed upon mutual consent. Such renewals are for a period of up to one (1) year, with a maximum of two (2) one-year renewals, or until such reasonable time thereafter as is necessary to obtain a new contract. The "reasonable time" period shall not exceed twelve (12) months. During the "reasonable time" period, vendor may terminate the

contract for any reason upon giving BRIM ninety (90) days written notice. Notice by vendor of intent to terminate will not relieve vendor of the obligation to continue providing services pursuant to the terms of the contract.

5.6 **Non-Appropriation of Funds:** If funds are not appropriated for BRIM in any succeeding fiscal year for the continued use of the services covered by this contract, BRIM may terminate the contract at the end of the affected current fiscal period without further charge or penalty. BRIM shall give the vendor written notice of such non-appropriation of funds as soon as possible after BRIM receives notice. No penalty shall accrue to BRIM in the event this provision is exercised.

5.7 **Changes:** If changes to the contract become necessary, a formal contract change order will be negotiated by BRIM and the vendor.

As soon as possible, but not to surpass thirty (30) days after receipt of a written change request from BRIM, the vendor shall determine if there is an impact on price with the change requested and provide BRIM a written statement identifying any price impact on the contract. The vendor shall provide a description of any price change associated with the implementation.

**NO CHANGE SHALL BE IMPLEMENTED BY THE VENDOR UNTIL SUCH TIME AS THE VENDOR RECEIVES AN APPROVED WRITTEN CHANGE ORDER FROM BRIM.**

5.8 **Price Quotations:** The price(s) quoted in the vendor's proposal will not be subject to any increase and will be considered firm for the life of the contract unless specific provisions have been provided in the original specifications.

5.9 **Invoices and Progress Payments:** The vendor shall submit invoices, in arrears, to BRIM at the address on the face of the purchase order labeled "Invoice To." Progress payments may be made at the option of BRIM on the basis of percentage of work completed if so defined in the final contract.

5.10 **Contract Termination:** BRIM may terminate any contract resulting from this RFP immediately at any time the vendor fails to carry out its responsibilities or to make substantial progress under the terms of this RFP and resulting contract. BRIM shall provide the vendor with advance notice of performance conditions which may endanger the contract's continuation. If after such notice the vendor fails to remedy the conditions within the established timeframe, BRIM shall order the vendor to cease and desist any and all work immediately. BRIM shall be obligated only for services rendered and accepted prior to the date of the notice of termination.

The contract may be terminated by the State with thirty (30) days prior notice pursuant to **West Virginia Code of State Rules § 148-1-7.16.2.**

5.11 **Special Terms and Conditions:**

5.11.1 Insurance Requirements: (*Insurance certificates are required prior to award, but are not required at the time of bid*).

- Professional liability (medical, advertising, *et cetera*)
- General liability with a policy limit of \$1,000,000
- Workers Compensation

5.11.2 License Requirement: All licenses as required by law.

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

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

# Attachment A: Vendor Response Sheet

## Section 3.3 (C):

Provide a response regarding the following: firm and staff qualification and prior experience in completing similar projects; references; copies of staff resumes applicable to this project; location of office(s) where work will be performed (Central Office); proposed staffing plan; descriptions of past projects completed entailing the location of the project, project manager name and contact information, type of project, and what the project goals and objectives were and how they were met.

Also, describe the approach and methodology proposed for this project.

# Attachment B: Mandatory Specification Checklist

List each of the mandatory specifications contained in Section 3.3 (D) and provide a response regarding how each specification will be met.

**I certify that the proposal submitted meets or exceeds all the mandatory specifications of this Request for Proposal. Additionally, I agree to provide any additional documentation deemed necessary by the State of West Virginia to demonstrate compliance with said mandatory specifications.**

\_\_\_\_\_  
(Company)

\_\_\_\_\_  
(Representative Name, Title)

\_\_\_\_\_  
(Contact Phone/Fax Number)

\_\_\_\_\_  
(Date)

## **Attachment C: Cost Sheet**

Cost information below as detailed in the Request for Proposal (RFP) and submitted in a separate sealed envelope. Cost should be clearly marked. If applicable, sign and submit the Resident Vendor Preference Certificate with the proposal.

**COST PROPOSAL SHALL BE SEALED IN A SEPARATE ENVELOPE FROM TECHNICAL PROPOSAL AND SHALL INCLUDE AN ITEMIZED COST PER HOUR FOR THE MANDATORY REQUIREMENTS SET FORTH IN SECTION 2.5 OF THE RFP.**

# **ATTACHMENT 1**



**AGREEMENT ADDENDUM**

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

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

**ACCEPTED BY:**

**STATE OF WEST VIRGINIA**

**VENDOR**

Spending Unit: \_\_\_\_\_

Company Name: \_\_\_\_\_

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_