



Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

State of West Virginia Master Agreement

Order Date: 09-17-2021

CORRECT ORDER NUMBER MUST
APPEAR ON ALL PACKAGES, INVOICES,
AND SHIPPING PAPERS. QUESTIONS
CONCERNING THIS ORDER SHOULD BE
DIRECTED TO THE DEPARTMENT
CONTACT.

Order Number:	CMA 0511 2688 BMS2200000001 1	Procurement Folder:	797901
Document Name:	MEDICAID MANAGED CARE RATE SETTING/PROGRAM ADMIN	Reason for Modification:	
Document Description:	MEDICAID MANAGED CARE RATE SETTING/PROGRAM ADMIN		
Procurement Type:	Central Master Agreement		
Buyer Name:			
Telephone:			
Email:			
Shipping Method:	Best Way	Effective Start Date:	2022-02-15
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2023-02-14

VENDOR

Vendor Customer Code: 000000191225
MYERS & STAUFFER LC
1349 Peachtree ST NE

Atlanta GA 30309

US

Vendor Contact Phone: 800-374-6858 Extension:

Discount Details:

	Discount Allowed	Discount Percentage	Discount Days
#1	No	0.0000	0
#2	No		
#3	No		
#4	No		

DEPARTMENT CONTACT

Requestor Name: Kelly (Jimmy) Dowden
Requestor Phone: (304) 356-4861
Requestor Email: jimmy.k.dowden@wv.gov

22
FILE LOCATION

INVOICE TO

PROCUREMENT OFFICER: 304-352-4286
HEALTH AND HUMAN RESOURCES
BUREAU FOR MEDICAL SERVICES
350 CAPITOL ST, RM 251
CHARLESTON WV 25301-3709
US

SHIP TO

PROCUREMENT OFFICER: 304-352-4286
HEALTH AND HUMAN RESOURCES
BUREAU FOR MEDICAL SERVICES
350 CAPITOL ST, RM 251
CHARLESTON WV 25301-3709
US

9-20-21
Bar

Purchasing Division's File Copy

Total Order Amount:

Open End

ENTERED

PURCHASING DIVISION AUTHORIZATION
SIGNED BY : Linda B Harper *Linda Harper*
DATE: 2021-09-16 9-20-21
ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM
DATE: *John S. Gram*
ELECTRONIC SIGNATURE ON FILE
9/22/2021

ENCUMBRANCE CERTIFICATION
DATE: *9/22/2021*
ELECTRONIC SIGNATURE ON FILE

Extended Description:

THE VENDOR, MYERS & STAUFFER LC, AGREES TO ENTER WITH THE AGENCY, WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, INTO AN OPEN-END CONTRACT TO PROVIDE MEDICAID ACTUARIAL SERVICES AND MANAGED CARE PROGRAM ADMINISTRATION AND OVERSIGHT PER THE SPECIFICATIONS, TERMS AND CONDITIONS, BID REQUIREMENTS, ADDENDUM 1 ISSUED 03/12/2021, ADDENDUM 2 ISSUED 03/23/2021, ADDENDUM 3 ISSUED 03/25/2021, AND THE VENDOR'S BID DATED 03/30/2021, INCORPORATED HEREIN BY REFERENCE, AND MADE A PART OF HEREOF.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
3	93151507				0.000000
	Service From	Service To			
	2022-02-15	2023-02-14			

Commodity Line Description: Technical Support Staff (non-actuary) \$200.00 per hour

Extended Description:

Technical Support Staff (non-actuary)

\$200.00 Per Hour

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
5	93151507				0.000000
	Service From	Service To			
	2022-02-15	2023-02-14			

Commodity Line Description: Managed Care Program Oversight Services \$2,969,953.00/year

Extended Description:

Managed Care Program Oversight Services Annual Cost

\$2,969,953.00 All-Inclusive Fixed Annual Amount (Inclusive of 12 Months)

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
6	93151507				0.000000
	Service From	Service To			
	2022-02-15	2023-02-14			

Commodity Line Description: Managed Care Oversight Ad Hoc Services \$175.00 per hour

Extended Description:

Managed Care Oversight Ad Hoc Services

\$175.00 per hour

GENERAL TERMS AND CONDITIONS:

1. CONTRACTUAL AGREEMENT: Issuance of a Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

2. DEFINITIONS: As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

2.1. "Agency" or "Agencies" means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

2.2. "Bid" or "Proposal" means the vendors submitted response to this solicitation.

2.3. "Contract" means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

2.4. "Director" means the Director of the West Virginia Department of Administration, Purchasing Division.

2.5. "Purchasing Division" means the West Virginia Department of Administration, Purchasing Division.

2.6. "Award Document" means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

2.7. "Solicitation" means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

2.8. "State" means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

2.9. "Vendor" or "Vendors" means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

3. CONTRACT TERM; RENEWAL; EXTENSION: The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

☒ **Term Contract**

Initial Contract Term: This Contract becomes effective on February 15, 2022 and the initial contract term extends until one (1) year.

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to three (3) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

☐ **Alternate Renewal Term** – This contract may be renewed for _____ successive _____ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

Delivery Order Limitations: In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

☐ **Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within _____ days.

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within _____ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that maintenance, monitoring, or warranty services will be provided for _____ year(s) thereafter.

☐ **One Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

☐ **Other:** See attached _____

4. AUTHORITY TO PROCEED: Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked in Section 3 above. If either "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the contract via change order to memorialize the official date that work commenced.

5. QUANTITIES: The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

☐ **Open End Contract:** Quantities listed in this Solicitation are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

☒ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

☐ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

☐ **One Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

6. EMERGENCY PURCHASES: The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.

7. REQUIRED DOCUMENTS: All of the items checked below must be provided to the Purchasing Division by the Vendor as specified below.

☐ **BID BOND (Construction Only):** Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

☐ **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of 100% of the contract. The performance bond must be received by the Purchasing Division prior to Contract award.

☐ **LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Purchasing Division prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable. Notwithstanding the foregoing, West Virginia Code § 5-22-1 (d) mandates that a vendor provide a performance and labor/material payment bond for construction projects. Accordingly, substitutions for the performance and labor/material payment bonds for construction projects is not permitted.

☐ **MAINTENANCE BOND:** The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.

☒ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

☒ Fellows of the Society of Actuaries
Member of the American Academy of Actuaries

☐

☐

☐

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications regardless of whether or not that requirement is listed above.

8. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below and must include the State as an additional insured on each policy prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether or not that insurance requirement is listed in this section.

Vendor must maintain:

☒ **Commercial General Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

☒ **Automobile Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

☒ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: \$10,000,000.00 per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

☒ **Commercial Crime and Third Party Fidelity Insurance** in an amount of: \$5,000,000.00 per occurrence.

☐ **Cyber Liability Insurance** in an amount of: _____ per occurrence.

☐ **Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.

☐ **Pollution Insurance** in an amount of: _____ per occurrence.

☐ **Aircraft Liability** in an amount of: _____ per occurrence.

☒ ***STATE OF WEST VIRGINIA MUST BE LISTED AS ADDITIONAL INSURED ON INSURANCE CERTIFICATE

☒ ***CERTIFICATE HOLDER SHOULD READ AS FOLLOWS:
WV DHHR
350 CAPITOL ST. RM 251
CHARLESTON, WV 25301

☐

☐

Notwithstanding anything contained in this section to the contrary, the Director of the Purchasing Division reserves the right to waive the requirement that the State be named as an additional insured on one or more of the Vendor's insurance policies if the Director finds that doing so is in the State's best interest.

9. WORKERS' COMPENSATION INSURANCE: The apparent successful Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

10. [Reserved]

11. LIQUIDATED DAMAGES: This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

☐ _____ for _____

☐ Liquidated Damages Contained in the Specifications

12. ACCEPTANCE: Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

13. PRICING: The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

14. PAYMENT IN ARREARS: Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears.

15. PAYMENT METHODS: Vendor must accept payment by electronic funds transfer and P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

16. TAXES: The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

17. ADDITIONAL FEES: Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

18. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available.

19. CANCELLATION: The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

20. TIME: Time is of the essence with regard to all matters of time and performance in this Contract.

21. APPLICABLE LAW: This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code or West Virginia Code of State Rules is void and of no effect.

22. COMPLIANCE WITH LAWS: Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

23. ARBITRATION: Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

24. MODIFICATIONS: This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

25. WAIVER: The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

26. SUBSEQUENT FORMS: The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

27. ASSIGNMENT: Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

28. WARRANTY: The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

29. STATE EMPLOYEES: State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

30. PRIVACY, SECURITY, AND CONFIDENTIALITY: The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

31. YOUR SUBMISSION IS A PUBLIC DOCUMENT: Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

32. LICENSING: In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

33. ANTITRUST: In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

34. VENDOR CERTIFICATIONS: By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

35. VENDOR RELATIONSHIP: The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

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

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

37. PURCHASING AFFIDAVIT: In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Purchasing Division affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

38. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE: This Contract may be utilized by other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"), provided that both the Other Government Entity and the Vendor agree. Any extension of this Contract to the aforementioned Other Government Entities must be on the same prices, terms, and conditions as those offered and agreed to in this Contract, provided that such extension is in compliance with the applicable laws, rules, and ordinances of the Other Government Entity. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.

39. CONFLICT OF INTEREST: Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

40. REPORTS: Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

☒ Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

☐ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at purchasing.division@wv.gov.

41. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state repository. The service provider is responsible for any costs associated with the fingerprint-based state and federal background inquiry.

After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision. The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check.

Revised 02/10/2021

Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

42. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS: Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
- c. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
- d. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

43. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL: In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a

“substantial labor surplus area”, as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

44. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE: W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the vendor must submit to the Agency a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-award interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

45. PROHIBITION AGAINST USED OR REFURBISHED: Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.



III. Designated Contact Information Form

DESIGNATED CONTACT: Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

Jerry Dubberly
(Name/Title)
Jerry Dubberly, Principal
(Printed Name and Title)
1349 Peachtree Street NE, Ste 1600, Atlanta, GA 30309
(Address)
(866) 758-3586 / (404) 524-0782
(Phone Number) / (Fax Number)
JDubberly@mslc.com
(email address)

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that I have reviewed this Solicitation in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

Myers and Stauffer LC
(Company)

Jerry Dubberly Principal
(Authorized Signature) (Representative Name, Title)

Jerry Dubberly, Principal
(Printed Name and Title of Authorized Representative)

3/29/2021
(Date)

(866) 758-3586 / (404) 524-0782
(Phone Number) (Fax Number)

Revised 02/10/2021

Medicaid Actuarial Services and Managed Care Program Administration

SPECIFICATIONS

- 1. PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Department of Health and Human Resources (“Department,” “DHHR”), located at 350 Capitol Street, Room 251, Charleston, WV 25301, to establish a contract for Medicaid Actuarial Services and Managed Care program administration and oversight. The Bureau for Medical Services (“BMS”) will serve as the lead agency for this contract. Services to be provided include, but are not limited to, rate development and certification for the Medicaid Managed Care program, inclusive of both the Mountain Health Trust (MHT) and Mountain Health Promise (MHP) programs, and other programs as requested; Managed Care program oversight (both MHT and MHP), assistance with reporting requirements per state and federal guidelines, assistance with current and new programs developed and operating under Bureau waivers, assistance in developing program budgets, and to provide the Department with additional consultation services and other work as requested by the Department, including payment analysis, development of responses to the Centers for Medicare and Medicaid Services (CMS) and other entities, etc. The Vendor may subcontract for Actuarial Services only.

As background, the State’s Medicaid program currently enrolls approximately 80% of Medicaid beneficiaries under managed care. Currently, dual-eligible (Medicare/Medicaid), Long-Term Care, and Intellectual/Developmental Disabilities (IDD), Aged and Disabled (AD), and Traumatic Brain Injury (TBI) waiver recipients are exempt. The State plans to transition these populations into a Managed Care environment in the future, but a timeline is not yet determined. The Medicaid Managed Care Program emphasizes the effective organization, financing, and delivery of health care services to improve Medicaid beneficiary access to care and enhance quality through the provision of coordinated services. BMS has developed comprehensive capitated risk contracts with qualified Managed Care Organizations (MCOs), for serving the Mountain Health Trust and Mountain Health Promise enrollees.

West Virginia Medicaid operates a fiscal year, which runs July 1 – June 30, 20xx. As such, rates and all Managed Care waiver materials must be submitted to CMS by March 31 of each year to remain in compliance with the submission of documents ninety (90) days in advance of the Managed Care contract start date.

This solicitation may be funded in whole or in part with Federal Funds and thus this solicitation and its resulting awarded contract are subject to the requirements of Attachment 1: Provisions Required for Federally Funded Procurements.

NOTE: the WVDHHR has developed an EEOP Utilization Report and it is available at: <http://www.wvdhhr.org/pdfs/H1.5%20Utilization%20Report%20and%20EEO%20policy.pdf>

Medicaid Actuarial Services and Managed Care Program Administration

- 2. DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.

2.1 “BMS” is the Bureau for Medical Services which administers the Medicaid program.

2.2 “Capitation” means a stipulated dollar amount established to cover the cost of health care delivered for a person. The term usually refers to a negotiated per capita rate to be paid periodically (monthly) to an MCO for a defined set of benefits.

2.3 “CHIP” means the Children’s Health Insurance Program.

2.4 “CMS” means the Centers for Medicare and Medicaid Services.

2.5 “Contract Services” means actuarial and consulting services as more fully described in these specifications.

2.6 “Department” is the Department for Health and Human Resources (“DHHR”)

2.7 “EPSDT” Early and Periodic Screening, Diagnostic and Treatment (**EPSDT**) is the child health component of Medicaid. Federal statutes and regulations state that children under age 21 who are enrolled in Medicaid are entitled to **EPSDT** benefits and that States must cover a broad array of preventive and treatment services.

2.8 “FEE-FOR-SERVICE (FFS)” means those services not paid for through a capitated arrangement with a Managed Care entity, but rather via the Medicaid fiscal agent.

2.9 “MCO” means Managed Care Organization; an organization that provides a managed health care plan.

2.10 “Mountain Health Trust” means the name of the State’s managed care program for Temporary Assistance for Needy Families (TANF), Affordable Care Act (ACA) Expansion, pregnant women, and Supplemental Security Income (SSI) recipients.

2.11 “Mountain Health Promise” means the name of the State’s managed care program for foster care, kinship care, adoption assistance, and Serious Emotion Disturbance (SED) waiver recipients.

2.12 “Pricing Page” means the pages, contained in wvOASIS upon which Vendor should list its proposed price for the Contract Services.

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2.13 “RFQ” means the official Request for Quotation published by the Purchasing Division.

2.14 “Solicitation” means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

3. QUALIFICATIONS: Vendor, or Vendor’s staff if requirements are inherently limited to individuals rather than corporate entities, shall have the following minimum qualifications: (Documentation demonstrating qualifications should be submitted with bid, but must be submitted within three (3) business days of request).

3.1. The Vendor(s) must have a minimum of ten (10) years of experience in the development of capitation rates for Medicaid managed care organizations and a minimum of five (5) years’ experience in Medicaid managed care contract and policy development and/or oversight. The vendor is required to have experience providing both services in at least two (2) states, either as a prime vendor or subcontractor.

3.2. Summarized below in Table 1 the required individual staffing qualifications for each position that the Bureau will utilize for both the actuarial services and program oversight components of the contract. In addition to these key positions, the vendor shall provide technical support staff and clerical support staff to assist with administrative duties that do not have required minimum qualifications, as needed. The number of actuarial staff needed will be driven by individual Statements of Work (SOW), with an annual estimation of hours outlined in the pricing page for cost estimation purposes.

TABLE 1:

Position (# of Staff)	Description and Qualifications
	The Project Management Lead will oversee that all contractual deliverables are fulfilled and provided within the required timeframes.
Project Management Lead (1)	The position is required to have a minimum of a Bachelor's Degree, with five (5) years' experience with Medicaid managed care.

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On-Site Program Manager (1)	<p>The On-Site Program Manager shall assist the Bureau with day-to-day MCO operations oversight, including addressing vendor inquiries and attending operations meetings.</p> <p>This position is required to have a minimum of a bachelor's degree, with three (3) years' experience in Medicaid operations, either with a State Agency, Federal Agency, or rendering services under contract to a State Agency.</p>
Research Analysts/Consultant (5)	<p>Research Analyst/Consultant positions will provide assistance in policy research and development, contract development and maintenance and other MCO oversight activities as outlined within the procurement.</p> <p>The position is required to have a minimum of a Bachelor's Degree, with two (2) years' experience working with Medicaid, either with a State Agency, Federal Agency, or rendering services under contract to a State Agency.</p>
Medicaid Policy Subject Matter Expert (0.5 FTE)	<p>The Medicaid Policy Subject Matter Expert shall be leveraged for consultation services on federal Medicaid regulation and policy and serve as a SME under both the program oversight and actuarial services sections.</p> <p>The position is required to have a minimum of Bachelor's Degree, with ten (10) years' experience in Medicaid policy research and development, either with a State Agency, Federal Agency, or rendering services under contract to either Agency type.</p>
Lead Actuary	<p>The Lead Actuary will oversee that all deliverables within each approved Statement of Work (SOW) is fulfilled as defined within the SOW.</p> <p>This position is required to have a minimum of ten (10) years' experience with Medicaid Managed Care rate setting, and shall be either a Fellow of the Society of Actuaries (FSA) and/or Member of the American Academy of Actuaries.</p>
Staff Actuary	<p>The Staff Actuary will assist the Lead Actuary in providing the deliverables defined within each approved SOW.</p> <p>This position is required to have a minimum of five (5) years' experience with Medicaid managed care rate setting or other insurance pricing, and shall be either a Fellow of the Society of Actuaries (FSA) and/or Member of the American Academy of Actuaries.</p>

Medicaid Actuarial Services and Managed Care Program Administration

4. MANDATORY REQUIREMENTS:

4.1 Mandatory Contract Services Requirements and Deliverables: Contract Services must meet or exceed the mandatory requirements listed below. All managed care program administration requirements are applicable to both the Mountain Health Trust and Mountain Health Promise program. The fixed monthly payment for these services shall be inclusive of completing the defined activities for both programs. Actuarial services shall be provided based on independent Statements of Work (SOW) and shall be reimbursed at the prevailing hourly rate upon the issuance of an approved delivery order. **The Vendor may subcontract Actuarial Services only.**

4.1.1 Managed Care Program Administration

4.1.1.1 The State Medicaid Managed Care Program, both Mountain Health Trust and Mountain Health Promise, currently operate under a 1915(b) waiver. Requests for services related to waiver analyses outside of the Managed Care waivers shall be accounted for under ad hoc services. Services provided under the ad hoc section will be done at an hourly rate and will require execution of an approved SOW and delivery order before work can commence.

4.1.1.2 The vendor shall provide oversight with current and new programs developed and operating under existing managed care waivers, new waivers, or waiver renewals.

4.1.1.3 The vendor shall assist with drafting 1915(b) waiver applications and associated quality strategies.

4.1.1.4 The vendor shall develop correspondence, such as waiver applications, letters to federal entities, etc. related to waivers or other managed care program needs.

4.1.1.5 The vendor shall conduct analyses of waiver programs and develop recommendations for improving effectiveness and efficiency of waiver programs.

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- 4.1.1.6** The vendor shall assist the Bureau with activities related to its 1115 waiver for Substance Use Disorder, including but not limited to, federal reporting requirements and other analyses, as needed, which will be administered under the managed care organizations.
- 4.1.1.7** The vendor shall provide policy impact analyses and support to the Bureau, including, but not limited to, reviewing and analyzing policy options, developing documents for review, programmatic impact assessments, conducting federal regulatory review, developing presentations, and assisting with implementation of strategies (i.e. preparation of work plans, facilitation of meetings, monitoring, and evaluation).
- 4.1.1.8** The vendor must agree to revise all analyses based on future releases or revisions of information at the state or federal level within an agreed upon timeframe between the vendor and Bureau.
- 4.1.1.9** The vendor shall monitor federal regulations and requirements for potential changes and provide analyses on program impact on an ongoing basis.
- 4.1.1.10** The vendor must develop and submit an Operations Plan within the first thirty (30) calendar days of contract award that addresses compliance with program requirements and services.
- 4.1.1.11** The vendor shall develop and maintain the MCO contracts associated with both Mountain Health Trust and Mountain Health Promise.
- 4.1.1.12** The vendor shall conduct annual network adequacy assessments, with approach to completing approved by the Bureau, for both MHT and MHP, in a mutually agreed upon schedule.
- 4.1.1.13** The vendor shall analyze and monitor Managed Care contract performance, as described in greater detail in 4.1.15.1.

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4.1.1.14 The vendor shall develop an annual report on MCO performance and compliance with contractual obligations within ninety (90) calendar days of the end of the reporting period. The end of the reporting period is the end of the state fiscal year annually. The annual report shall also address program enrollment, services available, cost savings resulting from the program, performance on key quality indicators, Medical Loss Ratio (MLR) overview, improvement strategies implemented, program goals, and other information as requested by the Bureau.

4.1.1.15 The vendor shall conduct program readiness documentation and desk reviews, as needed, for an undetermined number of managed care entities, dependent upon entry into the WV Medicaid program. Reviews shall also be provided on an on-going basis for existing MCOs, as deemed necessary by the Bureau to ensure continued programmatic compliance.

4.1.1.16 The vendor shall perform analyses and ongoing monitoring of MCO provider networks, conduct quarterly analyses of the MCOs' networks against program requirements.

4.1.1.17 The vendor shall develop MCO-specific reports and maps showing providers, clinics, and hospitals by specialty and location. Information shall be submitted within 10 calendar days of request, unless otherwise noted.

4.1.1.18 The vendor shall work with the bureau to develop a comprehensive reporting calendar for the MHT and MHP programs that complies with federal, state, and bureau-specific reporting requirements as defined by the managed care contracts. The current authorities can be accessed at:
<https://www.medicaid.gov/medicaid/managed-care/guidance/medicaid-and-chip-managed-care-final-rules/index.html#:~:text=On%20January%2017%2C%202017%2C%20CMS%20released%20a%20final,under%20Medicaid%20ma>

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naged%20care%20contracts%20and%20rate%20certifications.

WV State Code Chapter 9: <https://code.wvlegislature.gov/9/> .

4.1.1.19 The vendor must identify and comply with all federal and state Medicaid laws, regulations, and policies, as outlined by the Centers for Medicare and Medicaid Services and the Bureau for Medical Services, which can be accessed at www.medicaid.gov/medicaid/managed-care/index.html.
<http://www.dhhr.wv.gov/bms/Members/Managed%20Care/Pages/default.aspx>.

4.1.1.20 The vendor shall analyze Early Periodic Screening, Diagnosis and Treatment (EPSDT) service provisions and prepare federal and state reports on methods to improve efficiency, effectiveness, coordination and quality of those services in West Virginia as needed, in an agreed upon format and submission standard between the vendor and the Bureau.

4.1.1.21 The vendor must provide ad-hoc reports upon request on information including, but not limited to, comparisons of the Managed Care program with the fee-for-service program to improve the efficiency, effectiveness, and quality of the Managed Care program within the timelines established for each project as outlined by the Department. These ad-hoc reports will be based on an approved SOW and Delivery Order.

4.1.1.22 The vendor must provide an analysis tool with access for ten (10) state users for use in identifying medical service utilization patterns by category of service and medical and administrative cost profiles for all Managed Care cohorts, major lines of business, and individual Managed Care recipients to improve quality of care and outreach.

4.1.1.23 The vendor must provide all data, program and regulatory analyses required to respond to, but not limited to, Legislative,

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Federal, State, Budgetary, Provider or Advocacy requests in a timeframe that is mutually agreed upon by vendor and state.

- 4.1.1.24** The vendor must develop a strategy for MCO contracting, including options for performance targets, use of incentives and/or penalties, modifications to program requirements, implementation and oversight of a Managed Care medical loss ratio (MLR), and others as requested.
- 4.1.1.25** The vendor shall develop a comprehensive quality assessment and performance improvement strategy, that complies with federal regulations, Quality Improvement Systems for Managed Care (QISMC), CMS standards, other quality review programs, and input from enrollees, advocates, Managed Care organizations, and other stakeholders to identify options and recommendations for monitoring and evaluating the quality and appropriateness of care and services to enrollees.
- 4.1.1.26** The vendor shall meet with the State's Managed Care entities, provider groups and other parties as determined necessary by the Bureau at locations to be determined dependent upon availability of space at no additional cost to state.
- 4.1.1.27** The vendor shall assist in developing options for program expansion and assist in implementation of program expansion, including preparation of documents outlining options for program expansions, including cost savings, policy considerations, risks, issues, agency and bureau coordination requirements, and legal constraints, etc.
- 4.1.1.28** The vendor shall assist with the development of reports for WV House Bill
http://www.legis.state.wv.us/Bill_Status/bills_text.cfm?billdoc=HB4217%20SUB%20ENR.htm&yr=2014&sesstype=RS&billtype=B&houseorig=H&i=4217

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4.1.1.29 The vendor shall be responsible for collection of all required reports of the MCOs, reviewing reporting for any errors or omissions, generating reports for the Bureau based on the data reported, and maintaining a tracking log of the submission to be used in monitoring MCO contract compliance. Required reports and due dates of the MCOs are included in Exhibit C.

4.1.1.30 The vendor shall provide an electronic tool that serves as a program compliance dashboard that will allow the Bureau to track, at a minimum, but to be refined by the Bureau:

- All deliverables submitted by the MCOs as outlined under the Managed Care contract
- MCO policies and procedure documents
- Contract and amendment language and version history
- MCO quality metrics and report card
- Network adequacy documents and readiness review materials
- Grievances and Appeals
- Vendor shall provide classroom-led training to staff on utilizing the project management system and maintain a training manual for reference.
- Platform must be hosted by the vendor and allow access for up to ten (10) users at any time. Settings must be configurable to meet state needs. The current state operating system is Windows 10. For teleconference capabilities, the State currently uses Skype for Business. The State will then switch over to Google Workplace at a point in the coming months for teleconferencing. There is no firm date on the switch to Google Workplace.

4.1.2 Actuarial services

4.1.2.1 The vendor shall complete the development, setting, certification, and/or review of rates for the State's Managed Care programs. Capitation rates for Managed Care shall be developed based on readily available State data and set by cohorts, including, but not limited to, age, gender, eligibility category, geographic location, and population risk factors.

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- 4.1.2.2** Vendor shall develop high, mid, and low capitation rate ranges for review.
- 4.1.2.3** Vendor must develop Managed Care rates at the individual MCO level, if the Bureau chooses to develop MCO-specific rates based on risk stratification.
- 4.1.2.4** Vendor shall participate and provide support in rate setting discussions and meetings as needed, and provide supporting documentation, including but not limited to, presentations, rate workbooks, spreadsheet files, and rate memos, as requested by Bureau staff for meetings.
- 4.1.2.5** Vendor shall work collaboratively with Department staff to improve the accuracy and efficiency of the existing data sources and new data sources used for rate development, and the methodologies used in the rate setting process. Collaboration shall include attending meetings, conference calls, and other requests that the Bureau deems necessary. It is the expectation of the Bureau that the vendor shall provide new and innovative ideas around the rate setting process and efficiencies of such. The Vendor shall facilitate direct communication channels between Actuary and the Department. The frequency shall be on an as-requested basis. The location of the meetings will be mutually agreed upon, either in-person or virtually.
- 4.1.2.6** Vendor shall provide the Bureau with reports and calculations in the formats specified by the Bureau, including all formulae, databases, data sets, and other documents as requested on an as needed basis in an agreed-upon standard format compliant to the data being requested.
- 4.1.2.7** The vendor shall assist the Department in identifying where rate uniformity can occur to ensure payments are made consistently across all bureaus by conducting a rate uniformity workgroup and analysis of all rates currently administered in a schedule to be

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coordinated between the vendor and Department. The analysis shall identify inconsistencies and recommendations to the Department for improving its rate setting process and helping align areas that are not in uniformity.

4.1.2.8 Vendor shall update the capitation rates based on data, pricing trends, changes resulting from federal and/or state requirements, program changes and certify such amendments, at a minimum of one time per fiscal year.

4.1.2.9 The vendor shall develop and successfully implement a plan to transition all data, methodologies, documentation, and ongoing projects to the next succeeding vendor, at least thirty (30) calendar days in advance of the contract end date.

4.1.2.10 The vendor shall coordinate with the State's fiscal agent to ensure accurate encounter, claims, and eligibility data is used for rate setting. Vendor shall review encounter data for completeness and/or inconsistencies as part of rate setting process, and provide a summary report of any inconsistencies to the Bureau for review on an ad hoc basis in a format agreed upon between the vendor and Bureau.

4.1.2.11 Vendor shall work with fiscal agent to ensure completeness of all reports used for state and federal reporting, as requested by the Bureau.

4.1.2.12 The vendor must gather, process, validate and analyze Managed Care encounter and claims data, including carved out services and provide technical assistance to the Managed Care organizations on data issues.

4.1.2.13 The vendor shall assist in development of methodologies for calculating Directed Payment Program amounts or other supplemental payments, and the associated preprints and quality strategies for such programs.

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4.1.2.14 The vendor must perform actuarial analysis and valuation of the costs or savings established by implementing programmatic changes, including, but not limited to, the transitioning of populations from FFS to managed care or alternate coverage options.

4.1.2.15 The vendor must agree to provide a detailed billing report with each invoice for actuarial services, which details the hours billed per staffing position, per staff member.

4.1.3 Ad Hoc Services

4.1.3.1 The contractor must provide the Bureau and/or Department with additional consultation and actuarial services and complete other work as requested.

4.1.3.2 The vendor shall provide a Statement of Work, including but not limited to, the number of project hours, resources to be used, and cost affiliated with each ad hoc request for review by the Bureau/Department.

4.1.3.3 The vendor shall provide a fixed hourly rate for programmatic services and a fixed hourly rate for actuarial services.

4.1.3.4 The vendor shall analyze the accuracy of payments and reimbursements related to changes under the Affordable Care Act (ACA) or other federal or state health care and/or payment provision rules, regulations, laws, or codes.

4.1.3.5 The vendor shall provide assistance in development of payment methodologies for other programs, including, but not limited to, long-term care, nursing home, and Home and Community Based Services waivers.

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4.1.3.6 The vendor shall assist with programmatic activities needed within other divisions of the Bureau for Medical Services outside of the Managed Care Unit

4.1.3.7 The vendor shall assist finance with all facets of the provider rate development and implementation process.

4.1.3.8 The vendor shall conduct research and recommend approaches in key areas of chronic care/disease management, pharmacy, eligibility and coverage, quality improvement, rural health, and other as requested.

4.1.3.9 The vendor shall provide assistance in overseeing continued implementation of the State's Serious Emotional Disorder (SED) 1915(c) waiver, which falls under the Mountain Health Promise program.

4.1.4 Service Level Agreement

4.1.4.1 The vendor shall agree to be bound to all service level agreements as defined within Attachment 3: Exhibit B Service Level Agreements.

4.1.5 All Services

4.1.5.1 The vendor agrees that the Department has the right to review and approve hiring of key staff and to request replacement staff if it is felt that qualifications and/or needs are not being adequately met.

5. CONTRACT AWARD:

5.1 Contract Award: The Contract is intended to provide Agency with a purchase price for the Contract Services. The Contract shall be awarded to the Vendor that provides the Contract Services meeting the required specifications for the lowest overall total cost as shown on the Pricing Pages.

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5.2 Pricing Page: Vendor should follow the instructions for Pricing (Exhibit A) Vendor should complete the Pricing Page by providing a fixed monthly cost for all Managed Care Oversight activities; an hourly rate for each actuarial staffing level for those activities under the Actuarial Services header; and an hourly program oversight rate and hourly actuarial services rate for services rendered under the ad hoc category. Estimated hours are for bid purposes only. Vendor should complete the Pricing Page in full as failure to complete the Pricing Page in its entirety may result in Vendor's bid being disqualified.

Vendor should type or electronically enter the information into the Pricing Pages through wvOASIS, if available, or as an electronic document.

- 6. PERFORMANCE:** Vendor and Agency shall agree upon a schedule for performance of Contract Services and Contract Services Deliverables, unless such a schedule is already included herein by Agency. In the event that this Contract is designated as an open-end contract, Vendor shall perform in accordance with the release orders that may be issued against this Contract.
- 7. PAYMENT:** Agency shall pay a combination of a fixed monthly rate for managed care program management services, and an hourly rate for actuarial services, as shown on the Pricing Pages, for all Contract Services performed and accepted under this Contract. Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.
- 8. TRAVEL:** Vendor shall be responsible for all mileage and travel costs, including travel time, associated with performance of this Contract. Any anticipated mileage or travel costs may be included in the flat fee or hourly rate listed on Vendor's bid, but such costs will not be paid by the Agency separately.
- 9. FACILITIES ACCESS:** Performance of Contract Services may require access cards and/or keys to gain entrance to Agency's facilities. In the event that access cards and/or keys are required:
 - 9.1.** Vendor must identify principal service personnel which will be issued access cards and/or keys to perform service.
 - 9.2.** Vendor will be responsible for controlling cards and keys and will pay replacement fee, if the cards or keys become lost or stolen.
 - 9.3.** Vendor shall notify Agency immediately of any lost, stolen, or missing card or key.



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9.4. Anyone performing under this Contract will be subject to Agency's security protocol and procedures.

9.5. Vendor shall inform all staff of Agency's security protocol and procedures.

10. VENDOR DEFAULT:

10.1. The following shall be considered a vendor default under this Contract.

10.1.1. Failure to perform Contract Services in accordance with the requirements contained herein.

10.1.2. Failure to comply with other specifications and requirements contained herein.

10.1.3. Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.

10.1.4. Failure to remedy deficient performance upon request.

10.2. The following remedies shall be available to Agency upon default.

10.2.1. Immediate cancellation of the Contract.

10.2.2. Immediate cancellation of one or more release orders issued under this Contract.

10.2.3. Any other remedies available in law or equity.

11. MISCELLANEOUS:

11.1. **Contract Manager:** During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract manager and his or her contact information below.

Contract Manager: Jerry Dubberly

Telephone Number: (866) 758-3586

Fax Number: (404) 524-0782

Email Address: JDubberly@mslc.com

Revised 12/12/2017

Exhibit B

Item #	RFQ Reference	Description of Service Level Agreement
1	Full Contract	Failure to provide any deliverable under this procurement within the defined timeframes, unless an extension is mutually agreed upon between parties, shall result in a \$500 per day service level agreement deduction/penalty until the satisfactory fulfillment of the deliverable.

EXHIBIT C: SUMMARY OF MHT AND MHP MCO REPORTING REQUIREMENTS

All MCO reports submitted under this Contract must reflect MHT and MHP program-related data only unless otherwise requested by BMS.

Reporting Requirement	Timeframe				
	Monthly	Quarterly	Annually	Other	Due Date
Quarterly Reporting					
MHT/MHP Quarterly Reporting Template		X			Within forty-five (45) calendar days of end of quarter (by the 15 th day of the second month following the end of the reporting period)
Quality Reporting					
Written Description of PIPs and Results			X		On or before July 15 th
PIP Progress Report		X			Within one-hundred twenty (120) days of end of quarter
HEDIS			X		On or before June 15 th (audited)
QAPI Annual Evaluation Report Including Status and Results			X		On or before June 15 th
QAPI CAP				X	Within thirty (30) days of identification of systemic problem
CAHPS Enrollee Survey Analysis, Action Plan and Evaluation			X		Annual analysis is due on or before August 15 th .
Accreditation Review Report				X	Upon completion or change in status
Encounter Data	X				Within thirty (30) days of end of month
Adult and Child Core Quality Measures			X		On or before September 1 st
Provider Reporting					
Provider Network Data	X				Electronic provider directories to be submitted to BMS' Enrollment Broker monthly

Reporting Requirement	Timeframe				
	Monthly	Quarterly	Annually	Other	Due Date
Provider Network Adequacy		X	X	X	<ul style="list-style-type: none"> Full network - Annually by October 31st All Network changes by specialty – Quarterly, 45 days after end of the quarter PCP changes –fourteen (14) days after the change Hospital changes – immediately Material changes of other providers affecting service delivery- fourteen (14) days after the change
Provider Satisfaction Survey			X		By June 30 th of each contract year.
Suspension and Adverse Enrollment Action Report (formerly the CAF Suspension and PDC reports)	X				By the 15 th of the following month
Financial Reporting					
Annual Financial Statements			X		On or before June 1 st
Offices of the Insurance Commissioner Reports – Quarterly and Annually		X	X		Concurrent with DOI submission
Third Party Liability Cases Not Pursued	X				The 15 th of each month (to include all events from the prior month)
Provider-Preventable Conditions			X		July 15 th
PCP Payment Methodology				X	Upon request from BMS
Directed Payments Report		X			45 days after each quarter, providing payment has been received from BMS.
MHT and MHP MLR Reports and Calculations			X		Eight (8) months after the end of the SFY
Recovery of All Overpayments Report (included in the FWA Report)	X				By the 15 th of the month
IMD Report	X				Submit on the 15 th and 30 th of each month
Hospital Paid Claims Report		X			45 days after each quarter to OAMR
Federal Reporting					
Hysterectomies and Sterilizations			X		Submit attestation by October 1 st
EPSDT Services and Reporting		X			45 days after each quarter

Reporting Requirement	Timeframe				
	Monthly	Quarterly	Annually	Other	Due Date
Other State Required Reporting					
Business Continuity Plan				X	Within ten (10) business days of BMS written request
Disaster Recovery Plan				X	Within ten (10) business days of BMS written request
Information Security Plan				X	Within ten (10) business days of BMS written request
System Quality Assurance Plan				X	Within ten (10) business days of BMS written request
Sexually Transmitted Diseases			X		Submit attestation by October 1 st
Tuberculosis			X		Submit attestation by October 1 st
Communicable Diseases			X		Submit attestation by October 1 st
MCO Annual Report			X		On or before April 1 st
Organization Chart			X		On or before October 1 st
Marketing Plan			X		On or before October 1 st
Subcontractor Monitoring Plan				X	Within ten (10) business days of BMS written request
Data Accuracy and Completeness Plan			X		On or before October 1 st
Activities Summary, Analyses, and Results of Provider/Beneficiary Utilization to Detect FWA			X		On or before June 15 th
HB 4217 Report			X		On March 30 th of each year
Alternative Payment Model Report			X		August 15 th
FWA Reporting	X				By the 15 th of the following month
Disclosure of Ownership Reporting			X	X	<ul style="list-style-type: none"> Annually, on or before July 1st; Upon request, within thirty-five (35) calendar days; or Upon change in ownership, within thirty-five (35) calendar days
FWA Internal Compliance Plan			X		On or before October 1 st
Parity in Mental Health and Substance Use Disorder (SUD) Benefits Compliance Plan			X		On or before June 30 th
Claims Aging Report	X				By the 15 th of the following month

Reporting Requirement	Timeframe				
	Monthly	Quarterly	Annually	Other	Due Date
Mental Health Services Access Report		X			As defined in Section 10.1, the MCO shall provide a mental health service utilization report that provides data on the mental health services approved and denied by the MCO, as well as the average wait time between referral to mental health appointment.
SUD Utilization/Finance Report	X				By the 10 th of the following month
PRTF and Children's Residential Services and Demographic Report	X				By the 15 th day of the following month
Monthly Member Status Report	X				By the 15 th day of the following month



Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

State of West Virginia
Centralized Request for Quote
Service - Misc

Proc Folder: 797901			Reason for Modification: ADDENDUM 3 TO PROVIDE ANSWERS TO VENDOR QUESTIONS
Doc Description: MEDICAID MANAGED CARE RATE SETTING/PROGRAM ADMIN			
Proc Type: Central Master Agreement			
Date Issued	Solicitation Closes	Solicitation No	Version
2021-03-25	2021-03-30 13:30	CRFQ 0511 BMS2100000002	4

BID RECEIVING LOCATION
BID CLERK DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION 2019 WASHINGTON ST E CHARLESTON WV 25305 US

VENDOR		
Vendor Customer Code:		
Vendor Name :		
Address :		
Street :		
City :		
State :	Country :	Zip :
Principal Contact :		
Vendor Contact Phone:	Extension:	

FOR INFORMATION CONTACT THE BUYER Crystal G Hustead (304) 558-2402 crystal.g.hustead@wv.gov		
Vendor Signature X	FEIN#	DATE

All offers subject to all terms and conditions contained in this solicitation

ADDITIONAL INFORMATION

THE STATE OF WEST VIRGINIA PURCHASING DIVISION FOR THE AGENCY, WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES (WV DHHR), IS SOLICITING BIDS TO ESTABLISH AN OPEN-END CONTRACT FOR MEDICAID ACTUARIAL SERVICES AND MANAGED CARE PROGRAM ADMINISTRATION AND OVERSIGHT PER THE ATTACHED DOCUMENTS.

QUESTIONS REGARDING THE SOLICITATION MUST BE SUBMITTED IN WRITING TO CRYSTAL.G.HUSTEAD@WV.GOV PRIOR TO THE QUESTION PERIOD DEADLINE CONTAINED IN THE INSTRUCTIONS TO VENDORS SUBMITTING BIDS

INVOICE TO

HEALTH AND HUMAN RESOURCES
BUREAU FOR MEDICAL SERVICES
350 CAPITOL ST, RM 251
CHARLESTON WV 25301-3709
US

SHIP TO

HEALTH AND HUMAN RESOURCES
BUREAU FOR MEDICAL SERVICES
350 CAPITOL ST, RM 251
CHARLESTON WV 25301-3709
US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Lead Actuary Services				

Comm Code	Manufacturer	Specification	Model #
93151507			

Extended Description:

Lead Actuary Services

\$____Per Hour X 5,000 Hours Annually

INVOICE TO

HEALTH AND HUMAN RESOURCES
BUREAU FOR MEDICAL SERVICES
350 CAPITOL ST, RM 251
CHARLESTON WV 25301-3709
US

SHIP TO

HEALTH AND HUMAN RESOURCES
BUREAU FOR MEDICAL SERVICES
350 CAPITOL ST, RM 251
CHARLESTON WV 25301-3709
US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
2	Staff Actuary Services				

Comm Code	Manufacturer	Specification	Model #
93151507			

Extended Description:

Staff Actuary Services

\$____Per Hour X 20,000 Hours Annually

INVOICE TO	SHIP TO
HEALTH AND HUMAN RESOURCES BUREAU FOR MEDICAL SERVICES 350 CAPITOL ST, RM 251 CHARLESTON WV 25301-3709 US	HEALTH AND HUMAN RESOURCES BUREAU FOR MEDICAL SERVICES 350 CAPITOL ST, RM 251 CHARLESTON WV 25301-3709 US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
3	Technical Support Staff (non-actuary)				

Comm Code	Manufacturer	Specification	Model #
93151507			

Extended Description:

Technical Support Staff (non-actuary)

\$____ Per Hour X 5,000 Hours Annually

INVOICE TO	SHIP TO
HEALTH AND HUMAN RESOURCES BUREAU FOR MEDICAL SERVICES 350 CAPITOL ST, RM 251 CHARLESTON WV 25301-3709 US	HEALTH AND HUMAN RESOURCES BUREAU FOR MEDICAL SERVICES 350 CAPITOL ST, RM 251 CHARLESTON WV 25301-3709 US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
4	Clerical Support Staff				

Comm Code	Manufacturer	Specification	Model #
93151507			

Extended Description:

Clerical Support Staff

\$____ Per Hour X 5,000 Hours Annually

INVOICE TO	SHIP TO
HEALTH AND HUMAN RESOURCES BUREAU FOR MEDICAL SERVICES 350 CAPITOL ST, RM 251 CHARLESTON WV 25301-3709 US	HEALTH AND HUMAN RESOURCES BUREAU FOR MEDICAL SERVICES 350 CAPITOL ST, RM 251 CHARLESTON WV 25301-3709 US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
5	Managed Care Program Oversight Services				

Comm Code	Manufacturer	Specification	Model #
93151507			

Extended Description:

Managed Care Program Oversight Services Annual Cost

All-Inclusive Fixed Annual Amount (Inclusive of 12 Months)

INVOICE TO	SHIP TO
HEALTH AND HUMAN RESOURCES BUREAU FOR MEDICAL SERVICES 350 CAPITOL ST, RM 251 CHARLESTON WV 25301-3709 US	HEALTH AND HUMAN RESOURCES BUREAU FOR MEDICAL SERVICES 350 CAPITOL ST, RM 251 CHARLESTON WV 25301-3709 US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
6	Managed Care Oversight Ad Hoc Services				

Comm Code	Manufacturer	Specification	Model #
93151507			

Extended Description:

Managed Care Oversight Ad Hoc Services

\$_____ per hour X 5,000 hours Annually

INVOICE TO	SHIP TO
HEALTH AND HUMAN RESOURCES BUREAU FOR MEDICAL SERVICES 350 CAPITOL ST, RM 251 CHARLESTON WV 25301-3709 US	HEALTH AND HUMAN RESOURCES BUREAU FOR MEDICAL SERVICES 350 CAPITOL ST, RM 251 CHARLESTON WV 25301-3709 US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
7	Actuarial Services Ad Hoc Services				

Comm Code	Manufacturer	Specification	Model #
93151507			

Extended Description:

Actuarial Services Ad Hoc Services

\$____ per hour X 5,000 hours Annually

SCHEDULE OF EVENTS

<u>Line</u>	<u>Event</u>	<u>Event Date</u>
1	VENDOR QUESTION DEADLINE	2021-03-05

SOLICITATION NUMBER: CRFQ BMS2100000002
Addendum Number: 3

The purpose of this addendum is to modify the solicitation identified as **CRFQ BMS2100000002** ("Solicitation") to reflect the change(s) identified and described below.

Applicable Addendum Category:

- ☐ Modify bid opening date and time
- ☐ Modify specifications of product or service being sought
- ☒ Attachment of vendor questions and responses
- ☐ Attachment of pre-bid sign-in sheet
- ☐ Correction of error
- ☒ Other

Description of Modification to Solicitation:

1. To provide answers to vendor questions
2. To provide revised Exhibit A Instructions for Pricing
3. To provide Qualifications Checklist
4. To provide Solicitation Change Log

No other changes, bid opening remains March 30, 2021 at 1:30 PM ET

Additional Documentation: Documentation related to this Addendum (if any) has been included herewith as Attachment A and is specifically incorporated herein by reference.

Terms and Conditions:

1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.
2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

ATTACHMENT A

CRFQ - 0511 BMS2100000002 MANAGED CARE OVERSIGHT AND ACTUARIAL SERVICES		
Q&A LOG Managed Care Oversight and Actuarial Services Questions		
Number	Spec Ref	Question
1		The issue is related to the weights assumed for the actuarial services and ad hoc – hourly portion of the bid. The weights were increased from the prior bid materially. Simply stated, one vendor may bid \$0 for the hourly portion and an exuberant fixed fee and still win, in fact, resulting in a much higher fixed cost to the state and in total. Did the state mean to use 5,000/20,000/5,000/5,000 weights without a multiplier of 12?
2		Whether companies from outside USA can apply for this opportunity?
3		Can we perform the tasks (related to this RFQ) outside USA?

Answer
The pricing instructions have been updated and included with Addendum 3.
There is not a provision to restrict vendors from other countries to submit a bid for this procurement. However, if Medicaid agencies engage in offshore outsourcing of administrative functions that include PHI, it could present potential vulnerabilities. For example, Medicaid agencies or domestic contractors who send PHI offshore may have limited means of enforcing provisions of BAAs that are intended to safeguard PHI. Although some countries may have privacy protections greater than those in the United States, other countries may have limited or no privacy protections. As such, data may not be stored offshore. In addition, SEC. 6505. PROHIBITION ON PAYMENTS TO INSTITUTIONS OR ENTITIES LOCATED OUTSIDE OF THE UNITED STATES. Section 1902(a) of the Social Security Act (42 U.S.C. 1396b(a)), as amended by section 6503, is amended by inserting after paragraph (79) the following new paragraph: “(80) provide that the State shall not provide any payments for items or services provided under the State plan or under a waiver to any financial institution or entity located outside of the United States” https://www.ssa.gov/OP_Home/ssact/title19/1902.htm#tn53 .
Staffing needs are dependent on the type of meeting. Staff may dial-in, however, the solicitation does require one onsite program manager. In addition, there are other meetings throughout the year that an onsite presence will be needed.

4		<p>Please confirm that that state allows the vendor to offshore functions under this contract only if the data is not stored offshore.</p>	<p>Yes. However, if Medicaid agencies engage in offshore outsourcing of administrative functions that include PHI, it could present potential vulnerabilities. For example, Medicaid agencies or domestic contractors who send PHI offshore may have limited means of enforcing provisions of BAAs that are intended to safeguard PHI. Although some countries may have privacy protections greater than those in the United States, other countries may have limited or no privacy protections. As such, data may not be stored offshore.</p> <p>In addition, SEC. 6505. PROHIBITION ON PAYMENTS TO INSTITUTIONS OR ENTITIES LOCATED OUTSIDE OF THE UNITED STATES. Section 1902(a) of the Social Security Act (42 U.S.C. 1396b(a)), as amended by section 6503, is amended by inserting after paragraph (79) the following new paragraph: "(80) provide that the State shall not provide any payments for items or services provided under the State plan or under a waiver to any financial institution or entity located outside of the United States" https://www.ssa.gov/OP_Home/ssact/title19/1902.htm#ftn53.</p>	
5		<p>Did the agency mean to use 5,000/20,000/5,000/5,000 as a fixed multiplier for the actuarial services? And 5,000 for the program ad hoc services?</p>	<p>The pricing instructions have been updated and included with Addendum 3.</p>	
6		<p>There are licenses and certifications required under the actuarial scope (FSA, ASA). Does the state require documents demonstrating active and good professional standing for the key staff to be submitted with this solicitation?</p>	<p>Documentation demonstrating qualifications should be submitted with bid, but must be submitted within three (3) business days of request.</p>	
7		<p>Can a vendor propose an alternative organizational structure where the Project Management Lead is not a contractual lead for the contract scope, i.e. propose a contract director?</p>	<p>No.</p>	
8	3.2, Table 1	<p>Given the COVID-19 pandemic, will the State permit the On-site Program Manager to work from a remote location until the end of the Public Health Emergency?</p>	<p>Yes, as mutually agreed upon between Vendor and State.</p>	
9	4.1.10	<p>Requires the submission of an "Operations Plan...that addresses compliance with program requirements and services." Please clarify if the Operations Plan is intended to detail how the successful bidder will monitor MCO compliance with program requirements and services OR is the plan designed to describe the successful bidder's plan to comply with the requirements and services under the contract resulting from this procurement.</p>	<p>The plan is designed to describe the successful bidder's plan to comply with the requirements and services under the contract resulting from this procurement.</p>	
10	4.1.11	<p>Please affirm the vendor is not expected to provide legal services or advice in the development of MCO contracts.</p>	<p>Yes. The vendor is not expected to provide legal services or advice in the development of MCO contracts.</p>	
11	4.1.25	<p>Requires the development of a comprehensive quality assessment and performance improvement strategy. Please affirm the base pricing for Commodity Line 5 (Managed Care Program Oversight Services) should not include the implementation or support of the strategy. Implementation and support, if requested would be considered ad hoc services under Section 4.1.3.</p>	<p>All services associated with 4.1.25 are to be included in the cost for commodity line five (5), the twelve (12) month annual cost. Ad hoc projects outside the scope of this requirement will be considered on a case by case basis.</p>	
12		<p>Is there a maximum page or font limitation for the contents of this RFQ response?</p>	<p>No.</p>	

13		Did the BMS intend to use 5,000/20,000/5,000/5,000 as the weights for the hourly actuarial services with 5,000 for the program ad hoc services?	The pricing instructions have been updated and included with Addendum 3.
14		In addition to documenting minimum qualifications, should the vendor also submit a detailed description of how each task in the RFQ will be performed; or does the vendor need only to attest to the ability to meet all mandatory requirements?	At minimum, the Vendor needs only to attest to the ability to meet all mandatory requirements.
15		Please disclose the total amount the current vendor has billed for the fixed price, actuarial services and all additional ad hoc services for the time period Feb. 14, 2020 – to date.	Requesting copies of previously awarded contracts, other solicitations, or documents related to previous contracts through the question and answer process included in this solicitation is not appropriate. Requests for documentation of this nature can be obtained by interested parties through a Freedom of Information Act request.
16		Please clarify if there is a current on-site staff at BMS for the incumbent.	No, it is currently being waived due to the COVID-19 pandemic.
17		Given the current state office closures and for the purposes of this solicitation, may the vendor provide a job posting in lieu of the actual resume for the on-site position?	Yes, however all key staff must be approved by BMS prior to hiring.
18	Section 14	"Unit prices shall prevail in cases of a discrepancy in the Vendor's bid." Can BMS please clarify the meaning of the provision and possibly provide an example of such discrepancy.	The pricing submitted with BID for each unit of measure prevails. For example, for any commodity line based on an hourly estimate, the total dollars bid for that line divided by the hourly estimate will establish the per unit cost.
19	Section 11	Exceptions: Please clarify if vendors must disclose any and all known exceptions, including those related to the Limitations of Liability, during the bid submission and not a later date. If so, what format should vendors use?	Vendor must include exceptions with bid. The Vendor should supply a document noting any and all exceptions.
20	Section 39 (Bid Spec)	Can the state clarify how the conflict of interest should be disclosed? Is there a specific form to use?	The notification of a conflict of interest should be promptly disclosed to the Agency in writing. There is not a specific form to use.
21	Section 39 (Bid Spec)	Using this specific example, must the vendors disclose if any of their proposed staff currently have or are planning to have a client or contractual relationship with the local and national MCOs serving the West Virginia Medicaid market?	Yes.
22		Please clarify if the Project Management Lead is responsible for the delivery of the entire contract scope and not just the program oversight scope?	Yes. The Project Management Lead will oversee that all contractual deliverables are fulfilled and provided within the required timeframes.
23	4.1.22	The vendor is required to "provide an analysis tool with access for ten (10) state users for use in identifying medical service utilization patterns by category of service and medical and administrative cost profiles for all Managed Care cohorts, major lines of business, and individual Managed Care recipients to improve quality of care and outreach". Does the current vendor provide such tool at this time to BMS? If so, is BMS planning on transitioning this tool to a different successful bidder? Is this tool public?	No. The current vendor does not provide an analysis tool at this time.
24	4.1.10	Please confirm that rather than supplying a formal operational plan under Sec. 4.1.10, an attestation of our capability to perform the work is sufficient at the time of solicitation submission	Yes. An attestation of the capability to perform the work is sufficient at the time of solicitation submission.
25	Cost Page	The cost page does not contain a line for the actuarial ad hoc price. Please confirm that actuarial levels of staff will be billed as hourly for the ad hoc services.	Addendum 3 has incorporated Commodity Line 7. Commodity line 6 shall be used for Approved Managed Care Oversight Ad Hoc Projects, and Commodity Line 7 shall be used for Approved Actuarial Service Ad Hoc Projects.

26		Please clarify, if the state will require a separate approval for any key staff changes	Yes.
27		The RFQ pricing (Exhibit "A", Commodity Line 6) shows only a single Ad Hoc Services Commodity Line/Hourly rate. In accordance with 4.1.3.3, "The vendor shall provide a fixed hourly rate for programmatic services and a fixed hourly rate for actuarial services." This indicates there should be one hourly rate for <i>Program Oversight Ad Hoc Services</i> , and a separate hourly rate for <i>Actuarial Ad Hoc Services</i> ?	Addendum 3 has incorporated Commodity Line 7. Commodity line 6 shall be used for Approved Managed Care Oversight Ad Hoc Projects, and Commodity Line 7 shall be used for Approved Actuarial Service Ad Hoc Projects.
28		It appears that the current vendor provides at least six Lead Actuaries for the project. What is the minimum number of Lead Actuaries that should be provided under this bid given that there are two rate certifications and multiple DPP attestations?	Please see Section 3.2, which states, "the number of actuarial staff needed will be driven by individual Statements of Work (SOW), with an annual estimation of hours outlined in the pricing page for cost estimation purposes."

CRFQ: BMS210000003-Change Log		
RFQ Section:	Original Language:	Revised Language:
Commodity line 1	Lead Actuary Services \$ _____ Per Hour X 60,000 Hours (5,000 Hours X 12 Months)	Lead Actuary Services \$ _____ Per Hour X 5,000 Hours Annually
Commodity line 2	Staff Actuary Services \$ _____ Per Hour X 240,000 Hours (20,000 Hours X 12 Months)	Staff Actuary Services \$ _____ Per Hour X 20,000 Hours Annually
Commodity line 3	Technical Support Staff (non-actuary) \$ _____ Per Hour X 60,000 Hours (5,000 Hours X 12 Months)	Technical Support Staff (non-actuary) \$ _____ Per Hour X 5,000 Hours Annually
Commodity line 4	Clerical Support Staff \$ _____ Per Hour X 60,000 Hours (5,000 Hours X 12 Months)	Clerical Support Staff \$ _____ Per Hour X 5,000 Hours Annually
Commodity line 6	Ad Hoc Services \$ _____ per hour X 60,000 hours (5,000 hours X 12 months)	Managed Care Oversight Ad Hoc Services \$ _____ per hour X 5,000 hours Annually
Commodity line 7	No original language.	Actuarial Services Ad Hoc Services \$ _____ per hour X 5,000 hours Annually

EXHIBIT "A"
INSTRUCTIONS FOR PRICING

Commodity line 1-Enter Hourly rate X 5,000 Hours Annually

Commodity Line 2-Enter Hourly rate X 20,000 Hours Annually

Commodity Line 3-Enter Hourly rate X 5,000 Hours Annually

Commodity Line 4- Enter Hourly rate X 5,000 Hours Annually

Commodity Line 5- Enter All-Inclusive Fixed Annual Amount (Inclusive of 12 Months)

Commodity Line 6- Enter Hourly rate X 5,000 Hours Annually

Commodity Line 7-Enter Hourly rate X 5,000 Hours Annually

Notes:

- 1.) Total cost for all services will be used for purposes of bid evaluation.
- 2.) Contract services will be paid monthly in arrears.
- 3.) Payment for ad hoc services will be based on an approved Statement of Work (SOW) and an approved Delivery Order.
- 4.) All amounts bid shall include all general and administrative expenses, including travel, training, and supplies necessary to provide the services required in this solicitation.
- 5.) All hours included in the pricing calculation are for bid purposes only, and are not considered to be an annual project cap.
- 6.) Pricing included in year one quotation carries over to all subsequent optional renewal years.
- 7.) Cost for Commodity Line 5 will be invoiced in 12 equal monthly installments.

Specifications Section	Applicable To:	General Description	Document Name, if applicable	Page Number/Location in Vendor's Bid
3.1	Vendor	The Vendor(s) must have a minimum of ten (10) years of experience in the development of capitation rates for Medicaid managed care organizations and a minimum of five (5) years' experience in Medicaid managed care contract and policy development and/or oversight. The vendor is required to have experience providing both services in at least two (2) states, either as a prime vendor or subcontractor.		
3.2, Table 1	Lead Project Manager (1)	Project Management Lead must have a minimum of a Bachelor's Degree, with five (5) years' experience with Medicaid managed care.		
3.2, Table 1	On-Site Program Manager (1)	On-Site Program Manager must have a minimum of a Bachelor's Degree, with three (3) years' experience in Medicaid operations, either with a State Agency, Federal Agency, or rendering services under contract to a State Agency.		
3.2, Table 1	Research Analysts/Consultant (5)	The position is required to have a minimum of a Bachelor's Degree, with two (2) years' experience working with Medicaid, either with a State Agency, Federal Agency, or rendering services under contract to a State Agency.		
3.2, Table 1	Medicaid Policy Subject Matter Expert (0.5 FTE)	The position is required to have a minimum of Bachelor's Degree, with ten (10) years' experience in Medicaid policy research and development, either with a State Agency, Federal Agency, or rendering services under contract to either Agency type.		
3.2, Table 1	Lead Actuary	This position is required to have a minimum of ten (10) years' experience with Medicaid Managed Care rate setting, and shall be either a Fellow of the Society of Actuaries (FSA) and/or Member of the American Academy of Actuaries.		
3.2, Table 1	Staff Actuary	This position is required to have a minimum of five (5) years' experience with Medicaid managed care rate setting or other insurance pricing, and shall be either a Fellow of the Society of Actuaries (FSA) and/or Member of the American Academy of Actuaries.		

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: WV DHHR

Signature: Becky Manning

Title: Deputy Commissioner

Date: September 7 2021

Name of Associate: Myers and Stauffer LC

Signature: Jerry Dubberly Digitally signed by Jerry Dubberly
Date: 2021.09.02 15:12:51 -04'00'

Jerry L. Dubberly

Title: Principal

Date: 09/02/2021

Form - WVBAA-012004
Amended 06.26.2013

APPROVED AS TO FORM THIS 26th
DAY OF Jan 20 17
Patrick Morrissey
Attorney General
BY [Signature]

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: Myers and Stauffer LC

Name of Agency: DHHR/BMS

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

Member, Provider, + Claims data
and profiles

Attachment A

Provisions Required for Federally Funded Procurements

1. **Federal Funds:** This purchase is being funded in whole or in part with Federal Funds and is subject to the requirements established in 2 CFR § 200. Pursuant to 2 CFR § 200.317 the provisions of 2 CFR §§ 200.322 and 200.326 are expressly included in this solicitation below and incorporated into any contract resulting from this solicitation by reference.
2. **2 CFR §200.322 Procurement of recovered materials:** A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
3. **§200.326 Contract provisions:** Pursuant to the requirements contained in 2 CFR §§ 200.317 and 200.326, the following provisions are included any contract resulting from this solicitation, to the extent that the provisions are applicable.

(A) At a minimum, the administrative, contractual, or legal remedies contained in W. Va. CSR § 148-1-5 and the applicable definitions contained in W. Va. CSR § 148-1-2 apply to any contract resulting from this solicitation in instances where contractors violate or breach contract terms for contracts for more than the simplified acquisition threshold currently set at \$150,000 (which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908).,

West Virginia Code of State Rules § 148-1-5 states:

§ 148-1-5. Remedies.

5.1. The Director may require that the spending unit attempt to resolve any issues that it may have with the vendor prior to pursuing a remedy contained herein. The spending unit must document any resolution efforts and provide copies of those documents to the Purchasing Division.

5.2. Contract Cancellation.

5.2.a. Cancellation. The Director may cancel a purchase or contract immediately under any one of the following conditions including, but not limited to:

5.2.a.1. The vendor agrees to the cancellation;

5.2.a.2. The vendor has obtained the contract by fraud, collusion, conspiracy, or is in conflict with any statutory or constitutional provision of the State of West Virginia;

5.2.a.3. Failure to honor any contractual term or condition or to honor standard commercial practices;

5.2.a.4. The existence of an organizational conflict of interest is identified;

5.2.a.5. Funds are not appropriated or an appropriation is discontinued by the legislature for the acquisition.

5.2.a.6. Violation of any federal, state, or local law, regulation, or ordinance.

5.2.b. The Director may cancel a purchase or contract for any reason or no reason, upon providing the vendor with 30 days' notice of the cancellation.

5.2.c. Opportunity to Cure. In the event that a vendor fails to honor any contractual term or condition, or violates any provision of federal, state, or local law, regulation, or ordinance, the Director may request that the vendor remedy the contract breach or legal violation within a time frame the Director determines to be appropriate. If the vendor fails to remedy the contract breach or legal violation or the Director determines, at his or her sole discretion, that such a request is unlikely to yield a satisfactory result, then he or she may cancel immediately without providing the vendor an opportunity to perform a remedy.

5.2.d. Re-Award. The Director may award the cancelled contract to the next lowest responsible bidder (or next highest scoring bidder if best value procurement) without a subsequent solicitation if the following conditions are met:

5.2.d.1. The next lowest responsible bidder (or next highest scoring bidder if best value procurement) is able to perform at the price contained in its original bid submission, and

5.2.d.2. The contract is an open-end contract, a one-time purchase contract, or a contract for work which has not yet commenced.

Award to the next lowest responsible bidder (or next highest scoring bidder if best value procurement) will not be an option if the vendor's failure has in any way increased or significantly changed the scope of the original contract. The vendor failing to honor contractual and legal obligations is responsible for any increase in cost the state incurs as a result of the re-award.

5.3. Non-Responsible. If the Director believes that a vendor may be non-responsible, the Director may request that a vendor or spending unit provide evidence that the vendor either does or does not have the capability to fully perform the contract requirements, and the integrity and reliability necessary to assure good faith performance. If the Director determines that the vendor is non-responsible, the Director shall reject that vendor's bid and shall not award the contract to that vendor. A determination of non-responsibility must be evaluated on a case-by-case basis and can only be made after the vendor in question has submitted a bid. A determination of non-responsibility will only extend to the contract for which the vendor has submitted a bid and does not operate as a bar against submitting future bids.

5.4. Suspension.

5.4.a. The Director may suspend, for a period not to exceed one (1) year, the right of a vendor to bid on procurements issued by the Purchasing Division or any state spending unit under its authority if:

5.4.a.1. The vendor has exhibited a pattern of submitting bids and then requesting that its bid be withdrawn after bids have been publicly opened. For purposes of this provision, a pattern is two or more instances in any 12 month period.

5.4.a.2. The vendor has exhibited a pattern of poor performance in fulfilling his or her contractual obligations to the State. Poor performance includes, but is not limited to, two or more instances of any of the following: violations of law, regulation, or ordinance; failure to deliver timely; failure to deliver quantities ordered; poor performance reports; and failure to deliver commodities, services, or printing at the quality level required by the contract.

5.4.a.3. The vendor has breached a contract issued by the Purchasing Division or any state spending unit under its authority and refuses to remedy that breach.

5.4.a.4. The vendor's actions have given rise to one or more of the grounds for debarment listed in section 5A-3-33d.

5.4.b. Vendor suspension for the reasons listed in section 5.4 above shall occur as follows:

5.4.b.1. Upon a determination by the Director that a suspension is warranted, the Director will serve a notice of suspension to the vendor.

5.4.b.2. A notice of suspension must inform the vendor:

5.4.b.2.A. Of the grounds for the suspension;

5.4.b.2.B. Of the duration of the suspension;

5.4.b.2.C. Of the right to request a hearing contesting the suspension;

5.4.b.2.D. That a request for a hearing must be served on the Director no later than five (5) working days of the vendor's receipt of the notice of suspension;

5.4.b.2.E. That the vendor's failure to request a hearing no later than five (5) working days of the receipt of the notice of suspension will be deemed a waiver of the right to a hearing and result in the automatic enforcement of the suspension without further notice or an opportunity to respond; and

5.4.b.2.F. That a request for a hearing must include an explanation of why the vendor believes the Director's asserted grounds for suspension do not apply and why the vendor should not be suspended.

5.4.b.3. A vendor's failure to serve a request for hearing on the Director no later than five (5) working days of the vendor's receipt of the notice of suspension will be deemed a waiver of the right to a hearing and may result in the automatic enforcement of the suspension without further notice or an opportunity to respond. 5.4.b.4. A vendor who files a timely request for hearing but nevertheless fails to provide an explanation of why the asserted grounds for suspension are inapplicable or should not result in a suspension, may result in a denial of the vendor's hearing request.

5.4.b.5. Within five (5) working days of receiving the vendor's request for a hearing, the Director will serve on the vendor a notice of hearing that includes the date, time and place of the hearing.

5.4.b.6. The hearing will be recorded and an official record prepared. Within ten (10) working days of the conclusion of the hearing, the Director will issue and serve on the vendor, a written decision either confirming or reversing the suspension.

5.4.c. A vendor may appeal a decision of the Director to the Secretary of Administration. The appeal must be in writing and served on the Secretary no later than five (5) working days of receipt of the Director's decision.

5.4.d. The Secretary, or his or her designee, will schedule an appeal hearing and serve on the vendor, a notice of hearing that includes the date, time and place of the hearing. The appeal hearing will be recorded and an official record prepared. Within ten (10) working days of the conclusion of the appeal hearing, the Secretary will issue and serve on the vendor a written decision either confirming or reversing the suspension.

5.4.e. Any notice or service related to suspension actions or proceedings must be provided by certified mail, return receipt requested.

5.5. Vendor Debarment. The Director may debar a vendor on the basis of one or more of the grounds for debarment contained in West Virginia Code § 5A-3-33d or if the vendor has been declared ineligible to participate in procurement related activities under federal laws and regulation.

5.5.a. Debarment proceedings shall be conducted in accordance with West Virginia Code § 5A-3-33e and these rules. A vendor that has received notice of the proposed debarment by certified mail, return receipt requested, must respond to the proposed debarment within 30 working days after receipt of notice or the debarment will be instituted without further notice. A vendor is deemed to have received notice, notwithstanding the vendor's failure to accept the certified mail, if the letter is addressed to the vendor at its last known address. After considering the matter and reaching a decision, the Director shall notify the vendor of his or her decision by certified mail, return receipt requested.

5.5.b. Any vendor, other than a vendor prohibited from participating in federal procurement, undergoing debarment proceedings is permitted to continue participating in the state's procurement process until a final debarment decision has been reached. Any contract that a debarred vendor obtains prior to a final debarment decision shall remain in effect for the current term, but may not be extended or renewed. Notwithstanding the foregoing, the Director may cancel a contract held by a debarred vendor if the Director determines, in his or her sole discretion, that doing so is in the best interest of the State. A vendor prohibited from participating in federal procurement will not be permitted to participate in the state's procurement process during debarment proceedings.

5.5.c. If the Director's final debarment decision is that debarment is warranted and notice of the final debarment decision is mailed, the Purchasing Division shall reject any bid submitted by the debarred vendor,

including any bid submitted prior to the final debarment decision if that bid has not yet been accepted and a contract consummated. 5.5.d.

Pursuant to West Virginia Code section 5A-3-33e(e), the length of the debarment period will be specified in the debarment decision and will be for a period of time that the Director finds necessary and proper to protect the public from an irresponsible vendor.

5.5.e. List of Debarred Vendors. The Director shall maintain and publicly post a list of debarred vendors on the Purchasing Division's website.

5.6. Damages.

5.6.a. A vendor who fails to perform as required under a contract shall be liable for actual damages and costs incurred by the state.

5.6.b. If any commodities delivered under a contract have been used or consumed by a spending unit and on testing the commodities are found not to comply with specifications, no payment may be approved by the Spending Unit for the merchandise until the amount of actual damages incurred has been determined.

5.6.c. The Spending Unit shall seek to collect damages by following the procedures established by the Office of the Attorney General for the collection of delinquent obligations.

(B) At a minimum, the termination for cause and for convenience provisions contained in W. Va. CSR § 148-1-5.2 and the applicable definitions contained in W. Va. CSR § 148-1-2 apply to any contract in excess of \$10,000 resulting from this solicitation.

West Virginia Code of State Rules § 148-1-5.2 states:

5.2. Contract Cancellation.

5.2.a. Cancellation. The Director may cancel a purchase or contract immediately under any one of the following conditions including, but not limited to:

5.2.a.1. The vendor agrees to the cancellation;

5.2.a.2. The vendor has obtained the contract by fraud, collusion, conspiracy, or is in conflict with any statutory or constitutional provision of the State of West Virginia;

5.2.a.3. Failure to honor any contractual term or condition or to honor standard commercial practices;

5.2.a.4. The existence of an organizational conflict of interest is identified;

5.2.a.5. Funds are not appropriated or an appropriation is discontinued by the legislature for the acquisition.

5.2.a.6. Violation of any federal, state, or local law, regulation, or ordinance.

5.2.b. The Director may cancel a purchase or contract for any reason or no reason, upon providing the vendor with 30 days' notice of the cancellation.

5.2.c. Opportunity to Cure. In the event that a vendor fails to honor any contractual term or condition, or violates any provision of federal, state, or local law, regulation, or ordinance, the Director may request that the vendor remedy the contract breach or legal violation within a time frame the Director determines to be appropriate. If the vendor fails to remedy the contract breach or legal violation or the Director determines, at his or her sole discretion, that such a request is unlikely to yield a satisfactory result, then he or she may cancel immediately without providing the vendor an opportunity to perform a remedy.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of **"federally assisted construction contract"** in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

41 CFR § 60-1.3 defines "Federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

Accordingly, to the extent that this contract meets the definition of a "federally assisted construction contract" under 41 CFR Part 60-1.3, the following clause is included:

41 CFR 60-1.4 - Equal opportunity clause. (b) *Federally assisted construction contracts.*

In accordance with the requirements of described above, and except as otherwise provided in the applicable regulations, the following language is hereby incorporated into any contract resulting from this solicitation involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may

request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(D) Davis-Bacon Act, as amended (40 U.S.C.3141–3148). Any construction contract resulting from this solicitation hereby requires compliance with the Davis-Bacon Act (40 U.S.C.3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor

Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors are required to pay wages not less than once a week.

Any construction contract resulting from this solicitation hereby requires compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708).** Where applicable, any contract resulting from this solicitation in excess of \$100,000 that involve the employment of mechanics or laborers hereby requires compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- (F) Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended— Any contract resulting from this solicitation in excess of \$150,000 hereby requires compliance with all applicable standards, orders or regulations issued pursuant to the **Clean Air Act (42 U.S.C. 7401–7671q.)** and the Federal Water Pollution Control Act as amended (**33 U.S.C.1251–1387**).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)— Any contract resulting from this solicitation will not be awarded to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension."

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)— Any contract resulting from this solicitation requires compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.