



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: 04-20-2022

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 2672 BMS2200000002 1	Procurement Folder:	998412
Document Name:	RETROSPECTIVE DRUG UTILIZATION REVIEW SERVICES	Reason for Modification:	
Document Description:	RETROSPECTIVE DRUG UTILIZATION REVIEW SERVICES		
Procurement Type:	Central Master Agreement		
Buyer Name:			
Telephone:			
Email:			
Shipping Method:	Best Way	Effective Start Date:	2022-11-01
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2023-10-31

VENDOR	DEPARTMENT CONTACT																				
Vendor Customer Code: 000000125086 KEYSTONE PEER REVIEW ORGANIZATION INC 777 EAST PARK DR HARRISBURG PA 171112754 US Vendor Contact Phone: 717-265-7038 Extension: Discount Details: <table><thead><tr><th></th><th>Discount Allowed</th><th>Discount Percentage</th><th>Discount Days</th></tr></thead><tbody><tr><td>#1</td><td>No</td><td>0.0000</td><td>0</td></tr><tr><td>#2</td><td>No</td><td></td><td></td></tr><tr><td>#3</td><td>No</td><td></td><td></td></tr><tr><td>#4</td><td>No</td><td></td><td></td></tr></tbody></table>		Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	0	#2	No			#3	No			#4	No			Requestor Name: Kelly (Jimmy) Dowden Requestor Phone: (304) 356-4861 Requestor Email: jimmy.k.dowden@wv.gov 22 FILE LOCATION _____
	Discount Allowed	Discount Percentage	Discount Days																		
#1	No	0.0000	0																		
#2	No																				
#3	No																				
#4	No																				

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

Total Order Amount:

Open End

Purchasing Division's File Copy

ENTERED

PURCHASING DIVISION AUTHORIZATION

DATE:

ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM

DATE:

ELECTRONIC SIGNATURE ON FILE

ENCUMBRANCE CERTIFICATION

DATE:

ELECTRONIC SIGNATURE ON FILE

Extended Description:

THE VENDOR, KEYSTONE PEER REVIEW ORGANIZATION INC (KEPRO), AGREES TO ENTER WITH THE AGENCY, DEPARTMENT OF HEALTH AND HUMAN RESOURCES (DHHR), BUREAU FOR MEDICAL SERVICES (BMS), INTO AN OPEN-END CONTRACT TO PROVIDE RETROSPECTIVE DRUG UTILIZATION REVIEW SERVICES (RETRODUR), PER THE SPECIFICATIONS, TERMS AND CONDITIONS, BID REQUIREMENTS, ADDENDUM 1 ISSUED 03/16/2022, ADDENDUM 2 ISSUED 03/23/2022, AND THE VENDOR'S BID DATED 03/29/2022, INCORPORATED HEREIN BY REFERENCE, AND MADE A PART OF HEREOF.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	85111617				0.000000
	Service From	Service To			
	2022-11-01	2022-12-31			

Commodity Line Description: Start Up Costs

Extended Description:

Year 1-Start Up Costs-2 Months
Total Amount: \$47,760.00

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
2	85111617				0.000000
	Service From	Service To			
	2023-01-01	2023-10-31			

Commodity Line Description: Annual Not to Exceed Costs (All Services)-Year 1

Extended Description:

Annual Not to Exceed Costs (All Services)-Year 1 (10 Months)
Total Cost: \$201,240.00

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
3	85111617				0.000000
	Service From	Service To			
	2023-01-01	2023-10-31			

Commodity Line Description: Additional Services (All Inclusive Hourly Rate)-Year 1

Extended Description:

Additional Services (All Inclusive Hourly Rate) -Year 1 (10 Months)
Hourly Rate: \$156.00

GENERAL TERMS AND CONDITIONS:

1. CONTRACTUAL AGREEMENT: Issuance of an Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance by the State of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, 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: The Initial Contract Term will be for a period of one (1) year. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

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:** Contract Term specified in _____
Revised 02/08/2022

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/Award Document 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 in this section must be provided to the Purchasing Division by the Vendor as specified:

☐ **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.

☒ Medical Director demonstrating MD/DO

☒ Pharmacists (PharmD or RPh)

☐

☐

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 that insurance requirement is listed in this section.

Vendor must maintain:

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

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

☒ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: \$1,000,000 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: _____ per occurrence.

☒ **Cyber Liability Insurance** in an amount of: \$1,000,000 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.

☐☐☐☐

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: 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.

☒ Liquidated Damages Are Not Included in this Contract.

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: Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software maintenance, licenses, or subscriptions may be paid annually in advance.

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, included in the Contract, 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. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

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 regarding 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. 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.

39. 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.

40. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, 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. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

41. 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.
- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:

1. 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
2. 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.

42. 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.

43. 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.

44. 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.

45. VOID CONTRACT CLAUSES – This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

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.



EVP and Chief Operations Officer

(Name, Title)

Meghan Harris, EVP and Chief Operations Officer

(Printed Name and Title)

777 East Park Drive, Harrisburg, PA 17111

(Address)

717-265-7036 fax 717-564-3862

(Phone Number) / (Fax Number)

mharris@kepro.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.

By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

Keystone Peer Review Organization, Inc. (Kepro)

(Company)



(Authorized Signature) (Representative Name, Title)

Meghan Harris, EVP and Chief Operations Officer

(Printed Name and Title of Authorized Representative)

3/24/2022

(Date)

717-265-7036 fax 717-564-3862

(Phone Number) (Fax Number)

Retrospective Drug Utilization Review Services

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the Department of Health and Human Resources (DHHR), Bureau for Medical Services (BMS) to establish a contract for Retrospective Drug Utilization Review Services (RetroDUR).

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: Federal Funds Addendum

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>

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 **“Contract Services”** means implementation of a Retrospective Drug Utilization Program which includes the establishment of a RetroDUR database of Medicaid members’ medical and drug history claims, which can be used to construct a medical and pharmacy profile of each Medicaid member as more fully described in these specifications.

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

2.3 **“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:

Retrospective Drug Utilization Review Services

3.1. Vendor staffing must include at minimum the following:

3.1.1 A Medical Director (MD/DO).

3.1.2 An Account Manager assigned to coordinate all meetings and interactions between BMS and the Vendor. The Account Manager and the clinical staff pharmacist specified in 3.1.3 may be the same person.

3.1.3 A Clinical Staff Pharmacist (PharmD/RPh) assigned to the WV RetroDUR account.

3.1.4 A Database Analyst proficient in the software/system utilized by the Vendor. The analyst must be proficient in running reports requested within this contract, as outlined in Sections 4.9 and 4.11.

3.2 The Vendor shall staff and maintain a toll-free Help Desk for Medicaid prescribers, pharmacy providers and members to answer inquiries about the RetroDUR Program, including the lock-in program, and any communications that may have been received by them.

3.3 The Vendor must have a minimum of three (3) years' experience providing RetroDUR.

4. MANDATORY REQUIREMENTS:

4.1 Mandatory Contract Services Requirements and Deliverables: Contract Services must meet or exceed the mandatory requirements listed below.

4.1.1 The Vendor shall develop **West Virginia-specific therapeutic criteria** during the implementation period, which is defined as the first month of the contract. The West Virginia-specific criteria must meet the following requirements:

4.1.1.1 During the original contract implementation period, which is defined as the first month of the contract, the Vendor's West Virginia-specific therapeutic criteria must be available for testing on West Virginia Medicaid claims data two business days prior to the operational go-live date.

Retrospective Drug Utilization Review Services

4.1.1.2 The Vendor shall coordinate the testing dates with the BMS current Fiscal Agent West Virginia Medicaid Management Information System (MMIS).

4.1.1.3 The Vendor's therapeutic criteria shall reflect current drug policies and programs (including prior authorized products and criteria for approval) and patterns of use. The Vendor's therapeutic criteria must take into account newly marketed drugs and must be updated monthly, at a schedule to be mutually agreed upon, for this purpose at no cost to the BMS Pharmacy Services program. These policies can be found at:

4.1.1.3.1 Lock-In Policy,

<http://www.dhhr.wv.gov/bms/BMS%20Pharmacy/DUR/Pages/Retrospective-DUR-and-Lock-In.aspx>

4.1.1.3.2 Pharmacy Manual,

<http://www.dhhr.wv.gov/bms/Pages/Chapter-518-Pharmacy-Services.aspx>

4.1.1.3.3 Preferred Drug List and Prior-Authorization Criteria,

<https://dhhr.wv.gov/bms/BMS%20Pharmacy/Pages/Preferred-Drug-List.aspx>

4.1.1.4 The Vendor shall reference literature documentation and make such documentation available in print and electronic form within ten (10) business days of any request by a medical provider or BMS. Documentation shall be produced and delivered by the Vendor to the requesting entity free of charge.

4.1.1.5 The Vendor shall develop the therapeutic criteria with attention given to types of diseases, therapeutic classes of drugs, and specific problems most often associated, or implicated in, cases of inappropriate drug therapy so that clinically significant alerts will be generated. The Vendor's therapeutic criteria shall be utilized to screen for potential therapeutic problems. Targeted disease categories shall include, but not be limited to:

4.1.1.5.1 Cardiovascular

4.1.1.5.2 Endocrine

Retrospective Drug Utilization Review Services

4.1.1.5.3 Psychiatric Disorders

4.1.1.5.4 Gastrointestinal Disorders

4.1.1.5.5 Arthritis

4.1.1.5.6 Asthma

4.1.1.5.7 Chronic Obstructive Pulmonary Disease

4.1.1.5.8 Diabetes

4.1.1.5.9 Cancer

4.1.1.6 The Vendor shall develop criteria to screen for problems most often associated with inappropriate drug therapy which shall include, but not be limited to:

4.1.1.6.1 Over and underutilization;

4.1.1.6.2 Drug(s) contraindicated by diagnosis;

4.1.1.6.3 Drug interactions;

4.1.1.6.4 Duplication therapy;

4.1.1.6.5 Therapeutic appropriateness;

4.1.1.6.6 Incorrect drug dosage or duration of therapy;

4.1.1.6.7 Clinical abuse and misuse;

4.1.1.6.8 Iatrogenic complications;

4.1.1.6.9 Treatment failure

4.1.1.7 The Vendor's therapeutic criteria shall allow for ongoing adjustments to be made by the DUR Board and/or the Retrospective Drug Utilization Review Committee. The Retrospective Drug Utilization Review Committee meets once monthly, while the DUR Board meets quarterly. Meeting locations may be either in-person or virtual, as mutually agreed

Retrospective Drug Utilization Review Services

upon by Vendor and BMS. Meeting schedules are determined by member and/or room availability. The Vendor's office shall include wireless internet access provided to BMS at no charge. Video conferencing is permissible to use as a medium, moderated, and maintained by the Vendor at no additional cost to BMS. The Vendor shall implement adjustments prior to the next generation of profiles, or within ten (10) business days of notification by BMS, whichever is longer. Profiles shall be generated from current claims data no more than five (5) business days prior to the monthly RetroDUR meeting. These profiles must be accessible three (3) business days prior to the monthly RetroDUR meeting.

- 4.1.1.8** The Vendor shall maintain a complete record of current West Virginia Medicaid therapeutic criteria. The Vendor shall incorporate into their criteria all changes resulting from DUR Board meetings no more than ten (10) business days after the meeting has occurred. BMS shall notify the Vendor by e-mail of any other criteria changes, within ten (10) business days of the change, that occur outside the DUR Board. The Vendor must incorporate those changes into their system within ten (10) business days of notification.
- 4.1.1.9** The Vendor shall provide a listing of therapeutic criteria in the format requested within five (5) business days of request by the BMS Pharmacy Program.
- 4.1.1.10** The Vendor's system shall rank criteria by clinical significance to reduce the number of alerts likely to be false positives or clinically insignificant.
- 4.1.1.11** The Vendor shall provide the BMS Pharmacy Program with monthly updates and criteria recommendations, delivered by e-mail at least three (3) calendar days prior to the RetroDUR Committee meeting, to the Pharmacy Services Program and the RetroDUR Committee members for review and approval. The recommendations shall encompass new clinical edits and prior authorization criteria based on the findings in the retrospective therapeutic review of profiles. These recommendations shall take into consideration other BMS policies, which can be found at: <https://dhhr.wv.gov/bms/Pages/Chapter-518-Pharmacy-Services.aspx>

Retrospective Drug Utilization Review Services

The updates and criteria recommendations shall be active and incorporated within thirty (30) calendar days after approval by BMS.

4.1.1.12 The Vendor shall be able to read the Long-Term Care (LTC) indicator(s) to distinguish LTC members from Community-based members. The Vendor shall include LTC beneficiaries in the retrospective DUR therapeutic criteria reviews.

4.2 The Vendor shall design a **software solution** utilizing West Virginia- specific therapeutic criteria for both member profile generation and a lock-in program (**further described in section 4.5**) and begin operation within one month of contract award.

4.2.1 The Vendor's RetroDUR solution shall be able to:

4.2.1.1 Utilize file extracts from the MMIS.

4.2.1.2 Read all available medical diagnoses codes, procedure codes and pharmacy history.

4.2.1.3 Utilize all physician specialty codes listed for specific prescribers.

4.2.1.4 Differentiate between an adjudicated claim, a voided/reversed claim, and a rejected claim when reviewing the patient's drug history.

4.2.1.5 Read and utilize demographic information for members and providers, including, but not limited to, the member's county code, county of service, county of residence, and the Medicare eligibility indicator code.

4.2.1.6 Have the ability to exclude Medicare, Dual-Eligible, and members with Third-Party insurance coverage from retrospective review.

4.2.2 The Vendor's solution shall incorporate changes, at no additional cost, within ten (10) business days from the time changes are made to the MMIS or when BMS determines additional fields must be added to the format in order to capture required data for review.

4.2.3 The Vendor shall be responsible for coordinating file layouts from the MMIS Vendor to populate the Vendor's RetroDUR system and a mutually acceptable

Retrospective Drug Utilization Review Services

method of transferring the files once weekly. BMS shall be responsible for final approval of the method of transfer. The Vendor will be responsible for any costs associated with the transfer of files.

4.2.4 The Vendor shall ensure that the operation of the RetroDUR system and the production of all member profiles and reports required herein satisfies the requirement of BMS by hosting a monthly quality-assurance meeting with the BMS as further detailed in section 4.12 (change management process).

4.2.5 The Vendor's Retrospective DUR system shall assess drug and diagnostic data against explicit predetermined standards including, but not limited, to monitoring for:

4.2.5.1 Therapeutic appropriateness

4.2.5.2 Over-utilization

4.2.5.3 Under-utilization

4.2.5.4 Incorrect drug dosage or duration of therapy

4.2.6 The Vendor shall scan Medicaid members' medical and pharmacy claims histories, applying the DUR Board approved therapeutic criteria (as specified in 4.1.1.3), to identify members whose drug use indicates a significant level of risk for drug-induced or exacerbated outcomes and report findings to the committee during scheduled monthly committee meetings.

4.2.7 The Vendor shall provide a system for profile generation that will identify and select for various demographics requested by BMS such as, but not limited to, specific criteria exceptions for specified patient populations, provider types and disease states. This system shall have the capability to read up to six (6) provider specialty codes and their corresponding effective date and end dates.

4.2.8 The Vendor's system shall suppress profile generation for previously identified criteria after the initial flagging, for a period of time specified by BMS. This feature is to prevent providers from receiving repeated alerts for the same or similar situations.

Retrospective Drug Utilization Review Services

- 4.2.9** The Vendor's system shall allow for interactive selection of population-based interventions, provider profiling options, and population and patient-specific intervention tracking reports. The Vendor shall present potential population-based educational interventions, based on the review of data and therapeutic criteria from the Vendor's RetroDUR system to the DUR Board at each quarterly Board meeting.
- 4.2.10** The Vendor shall generate Medicaid patient profiles monthly based on therapeutic criteria, high risk patient profiles, and provider profiles (prescribers and pharmacy providers). The Vendor must deliver these profiles at no additional cost in either hard or electronic format to the RetroDUR Committee for review no later than five (5) business days prior to each monthly RetroDUR Committee meeting (scheduled at a mutually agreed upon date).
- 4.2.11** The Vendor shall generate no less than seventy-five (75) member profiles per active committee member (a minimum of seven committee members) for clinical review per calendar month. The profiles shall be reviewed against the therapeutic criteria and cover all age groups, including LTC members. This total does not include profiles meant for lock-in review (see section 4.5 for Lock-in requirements).
- 4.2.12** The Vendor's system shall generate patient and provider cases monthly by weighting and ranking mechanisms, which have been approved prior to use by BMS, to sort exceptions by potential seriousness. These patient and provider cases are due within five (5) business days prior to the committee's monthly profile review.
- 4.2.12.1** The Vendor shall provide an algorithm for weighting and ranking of profile interventions to BMS within thirty (30) calendar days of contract award.
- 4.2.12.2** The Vendor shall re-evaluate weighting and ranking of profile interventions quarterly and provide and present an updated algorithm to BMS at the quarterly DUR Board meeting (Schedule will be provided to the successful Vendor upon award).
- 4.2.13** The profiles developed by the Vendor's system must contain a minimum of thirty-six (36) contiguous months of claims history, representing a summarized review of all drug information and diagnoses for which claims were reimbursed. The

Retrospective Drug Utilization Review Services

Vendor shall be able to differentiate between an adjudicated claim, a voided/reversed claim, and a rejected claim when reviewing the patient's drug history. The Vendor's RetroDUR system shall produce profiles in either hard or electronic format for RetroDUR review no fewer than three (3) business day prior to each meeting. Electronic profiles must be accessible by a secure Internet site from any location. The Vendor shall be responsible to provide any necessary electronic hardware required to access these profiles, if needed. All costs associated with hardware and access to this site will be the responsibility of the Vendor and must satisfy all applicable WV Office of Technology Policy (<https://technology.wv.gov/security/Pages/policies-issued-by-the-cto.aspx>) . The Vendor will provide Information Technology (IT) support at no additional charge to the State. The Vendor shall be responsible for all fees associated with return of hardware upon expiration of contract.

- 4.2.14** The Vendor's system shall not limit the ability of the RetroDUR committee to request an intervention letter to be sent for any number of clinical issues identified during profile review.
- 4.2.15** The Vendor's system shall maintain patient and provider confidentiality in all aspects of developing and handling patient history profiles, as well as all input claims history date. The Vendor shall handle and store claims data and patient and provider profiles in accordance with 42 Code of Federal Regulations part 431, Subpart F, which can be found at: <https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-C/part-431/subpart-F>, regarding confidentiality of information concerning applicants and beneficiaries of public assistance and 42 Code of Federal Regulations Part 2, which can be found at: <https://www.ecfr.gov/current/title-42/part-2>, confidentiality of alcohol and drug abuse patient records.
- 4.2.16** The solution from the Vendor must be accessible by all members from any location.
- 4.3** The Vendor shall communicate the results of patient profile reviews within five (5) business days by letter to prescribers and/or pharmacy providers for all members. The cost of mailing shall be included in the Vendor's quotation, currently estimated at 500-800 letters per month. All letters to Medicaid prescribers and pharmacy providers must be signed by the Vendor's medical director. The Vendor's retrospective DUR program shall provide ongoing interventions for physicians and pharmacists targeted toward

Retrospective Drug Utilization Review Services

therapy problems or individual patients identified in the course of DUR review activities.

- 4.4 The Vendor shall design a minimum of six (6) educational population-based interventions per year to be modifiable per BMS and DUR Board's requirements. These interventions are defined as letters or other materials sent to targeted providers and/or prescribers. These interventions must be approved by BMS prior to mailing. The Vendor shall make any such modifications to content or formats, as specified by BMS and DUR Board. Interventions shall be mailed within twenty-eight (28) calendar days of the request by BMS at the Vendor's expense. As of 11/15/21, there are 32,463 active prescribers and 1,002 pharmacy providers currently enrolled in the West Virginia Medicaid Program.
- 4.5 The Vendor shall establish and maintain a **Pharmacy Lock-in Program** for Medicaid beneficiaries who utilize multiple pharmacies and/or prescribers for controlled substances within one (1) month of the contract award. The Vendor's system must be compatible with all West Virginia Medicaid specific lock-in criteria (Exhibit B). Current lock-in criteria can be found at:
<https://dhhr.wv.gov/bms/BMS%20Pharmacy/DUR/Pages/default.aspx> (Click on (Retrospective DUR and Lock-In)).
- 4.5.1 The purpose of the Lock-In Program shall be to improve patient care by coordinating the activities of various health care providers, to integrate the pharmacist into the drug therapy management process, and to improve patient outcomes.
- 4.5.2 The Vendor shall generate monthly lock-in profiles for review no more than five (5) business days prior to the monthly RetroDUR meeting. These profiles must be accessible three business days prior to the monthly RetroDUR meeting. The Vendor shall generate no less than ten (10) member profiles for lock-in review per calendar month per reviewer unless fewer are identified. Currently, there are seven reviewers. Members shall be identified as potential lock-in candidates by application of the Vendors utilization algorithm and West-Virginia specific clinical criteria, included in section 4.5. The Vendor must produce these profiles in either hard or electronic format for RetroDUR review, as requested by BMS.

Retrospective Drug Utilization Review Services

- 4.5.3** The RetroDUR committee will review these profiles and direct the Vendor to process selected members for pharmacy lock-in:
- 4.5.3.1** Upon notification from the RetroDUR committee, The Vendor shall contact the eligible member, within five (5) business days, who will then be required to select one provider for Pharmacy Services. The Vendor will inform the member that Medicaid will deny claims for Pharmacy Services submitted by any other pharmacy provider.
- 4.5.3.2** The Vendor shall then call the Pharmacy Provider the member has chosen, explain the Lock-In Program and obtain their agreement to participate as the lock-in Pharmacy provider for the member.
- 4.5.3.3** If the member fails to choose a pharmacy within twenty-eight (28) calendar days of notification, the Vendor shall lock the member into the last pharmacy of record and inform the member via mail of their right to request a change. Instructions for requesting a lock-in pharmacy will be included in notification.
- 4.6** The Vendor shall maintain the member lock-in beneficiary and provider list and supply a file of this information to the BMS MMIS Vendor daily for an automated lock-in process. The Vendor shall work with the MMIS Vendor to coordinate file layouts and transfer of files through a secure FTP site. All costs associated with transfer of files will be the expense of the Vendor as DHHR/BMS will not incur these charges.
- 4.7** Within two (2) weeks of contract award, the successful Vendor shall provide a list of every office director, owner, partner, key employees, or other person with primary management or supervisory responsibilities, and any person who has a critical influence on or substantive control over a transaction with the State of West Virginia, whether or not employed by the Vendor. BMS reserves the right to reject any staff. The list shall include full names, including maiden names and first and middle names, where applicable. Additions or deletions to the list of names shall be reported to the Pharmacy Program within one (1) month of the change or addition. The Vendor shall not employ or contract with any individual or entity named on the federally excluded provider list, which can be found at <http://exclusions.oig.hhs.gov/>.

Retrospective Drug Utilization Review Services

- 4.7.1 The Vendor shall submit to BMS notification for any vacancies within one (1) business day.
 - 4.7.2 The Vendor shall submit to BMS resumes for any proposed staffing changes to clinical and management positions directly serving the BMS account within seven (7) calendar days of the change. The BMS shall have the right to review and determine whether the proposed staffing change is acceptable. If BMS finds that the proposed staffing change no longer meets the needs of the program, the Vendor must provide an acceptable alternative for BMS approval. No key position (see section 3.1) shall remain vacant for longer than thirty (30) calendar days unless extension of time is approved in advance by BMS.
- 4.8 The Vendor shall provide training and technical support for a RetroDUR Committee that will evaluate member profiles generated by the Vendor. The Committee, made up of healthcare professionals selected by BMS, shall consist of a minimum of four (4) members designated by BMS for a one (1) year term, which can be renewed. The remaining members shall consist of a minimum of three (3) BMS employees. Additionally, the Vendor shall provide financial reimbursement of not less than \$400 to each participating non-BMS Committee member per monthly meeting.
- 4.9 **REPORTS** - The Vendor shall establish a **reporting system** producing the standard periodic reports for BMS as described below:
 - 4.9.1 **Monthly reports** - The Vendor shall provide the following RetroDUR summary reports monthly, at least three (3) calendar days prior to the RetroDUR Committee meeting, to the Pharmacy Services Program for review and approval. These reports shall be transmitted electronically to BMS for inclusion in the RetroDUR Committee members' monthly meeting packets. The content fields of the Vendor's summary reports shall be mutually identified and agreed upon. Monthly reports are to include, but not be limited to:
 - 4.9.1.1 Provider response log updates;
 - 4.9.1.2 Provider profiling (physician and pharmacy provider);
 - 4.9.1.3 Profile review outcome summary;

Retrospective Drug Utilization Review Services

4.9.1.4 Case summary;

4.9.1.5 Statistical activity summary report to include but not be limited to distribution of beneficiaries, number of cases reviewed, number of letters generated, summary of distribution of cases by problem types and follow up data;

4.9.1.6 Monthly summary of new member lock-ins as well as the total number of members currently locked into a pharmacy;

4.9.1.7 Report of outlier and errant claims by pharmacy providers;

4.9.1.8 Monthly summary of new drug products and resulting impact on RetroDUR therapeutic interventions.

4.9.1.9 Minutes from the previous RetroDUR meetings, including updates.

4.9.2 Quarterly Activity Reports -The Vendor shall submit by e-mail each quarterly report within fifteen (15) calendar days following the applicable quarterly period. The quarterly reports are to include, but not be limited to:

4.9.2.1 Patient profiles review outcome reports by population

4.9.2.2 Activity statistical report

4.9.2.3 Case distribution by problem type

4.9.2.4 Trend summary of major therapeutic categories of interest, as agreed upon with Board and State.

4.9.2.5 Outcome reports (six-month post-intervention). The Vendor shall provide outcome reports of all population-based educational interventions and present them at the appropriate quarterly DUR Board meeting.

4.9.2.6 Quarterly estimated savings reports with methodology

Retrospective Drug Utilization Review Services

4.9.3 Annual Reports - The Vendor shall electronically submit to BMS the following data by May 1 of each calendar year for CMS annual reports, including, but not limited to:

4.9.3.1 Outcomes and utilization summary reports

4.9.3.2 Population-based intervention outcomes

4.9.3.3 Annual savings generated by the RetroDUR Program (methodology must be described).

4.9.3.4 All requirements specified by the Centers for Medicare and Medicaid (CMS) Annual Report no later than May 1 of each year to comply with Section 1927 (g)(3)(d) of the Social Security Act, included in https://www.ssa.gov/OP_Home/ssact/title19/1927.htm, that requires each State to submit an annual report to CMS on the operation of its Medicaid DUR Program. Per subsection (D) Annual report, each State shall require the DUR Board to prepare a report on an annual basis. The State shall submit a report on an annual basis to the Secretary which shall include a description of the activities of the Board, including the nature and scope of the prospective and retrospective drug use review programs, a summary of the interventions used, an assessment of the impact of these educational interventions on quality of care, and an estimate of the cost savings generated as a result of such program. The Secretary shall utilize such report in evaluating the effectiveness of each State's drug use review program. The Vendor shall include all necessary data for the descriptions of the nature and scope of the RetroDUR program, a summary of the interventions used and an assessment of the education programs, and an assessment of the RetroDUR program's impact on quality of care, as well as any cost savings generated in the program. Additionally, the Vendor shall assist BMS in a description of DUR Board activities as it pertains to RetroDUR activities. The report format must be such that BMS will be able to add other sections to the electronic report in order to complete the document according to CMS specifications at no additional cost to BMS.

Retrospective Drug Utilization Review Services

- 4.10** The Vendor shall produce a quarterly newsletter detailing BMS Pharmacy Services policy updates, Drug Utilization Review Board action, and any other pertinent drug information to prescribers and pharmacy providers. This newsletter must be available for posting electronically on the BMS website at <https://dhhr.wv.gov/bms/BMS%20Pharmacy/DUR/Pages/DUR-Newsletters.aspx> within thirty (30) calendar days following the end of the quarter. The Vendor must provide support for quarterly DUR Board meetings including, but not limited to: Meeting attendance by a clinical representative;
- 4.11.2** Presentations regarding completed population-based educational interventions;
- 4.11.3** Quarterly pharmacy profile review outcome reports;
- 4.11.4** Estimated savings reports;
- 4.11.5** Recommendations for potential population-based educational interventions based on BMS therapeutic criteria exceptions and other relevant data;
- 4.11.6** The Vendor shall also provide DUR Board meeting minutes, by e-mail, within ten (10) calendar days of each quarterly meeting.
- 4.12 Change Management Process** - The Vendor shall design and maintain a formal change management process involving (at minimum) a once-monthly quality-assurance meeting conducted with BMS by teleconference. The Vendor shall document and keep record of all requested changes, anticipated date of completion, and provide regular status updates at least monthly and as requested by BMS. Meetings shall occur monthly by BMS during normal business hours 9:00 am to 5:00 pm ET, Monday through Friday. The Vendor shall prepare and submit a draft agenda for monthly meeting to the State no less than one (1) business day prior to meeting. These meetings shall serve the purpose of assessing operational status and as an opportunity for BMS to request changes or adjustments to the system. The Vendor shall have seven (7) calendar days to review the request and present an implementation plan to BMS. If actionable, the Vendor has by default thirty (30) calendar days to complete the change. Implementation time may be extended by BMS on request. Critical changes required for full system functionality must be completed within seventy-two hours or risk Vendor default.
- 4.13** The Vendor shall have the capacity to provide a virtual meeting space that all participants can log in to and participate.

Retrospective Drug Utilization Review Services

- 4.14 Staffing Changes:** The Vendor must submit for review and approval any proposed staffing changes to key positions within ten (10) calendar days of the change. BMS reserves the right to request a change to current or proposed staff in these positions: Medical Director, Account Manager, Clinical Staff Pharmacist, and Database Analyst.
- 4.15** The Vendor must agree to be bound by all Service Level Agreements (SLAs) found in Exhibit C.
- 4.16** The Vendor shall provide additional services to comply with externally driven changes to programs and requirements, including but not limited to, any State or Federal laws, rules, and regulations. Additional services shall be bid as an all-inclusive hourly rate and shall require Agency approval of a Statement of Work (SOW) and submission of a related Cost Estimate. For bid evaluation purposes, this is estimated at one hundred (100) hours per year, though actual utilization may be more or less.
- 4.17** The Medical Director (MD/DO) shall be available for consultation by e-mail and telephone.
- 4.18** The Clinical Staff Pharmacist shall attend each quarterly Drug Utilization Review (DUR) Board meeting in person where they will make presentations regarding RetroDUR activity and proposals for population based educational interventions for Medicaid prescribers. Schedules and agendas are published via:
<http://www.dhhr.wv.gov/bms/BMS%20Pharmacy/DUR/Pages/DUR-Board-Meetings.aspx>
- 4.19** The Help Desk must be staffed a minimum of eight hours during standard business hours (i.e. 8:00 am to 4:00 pm, 8:30 am to 4:30 pm, or 9:00 am to 5:00 pm ET), Monday through Friday excluding State holidays. A list of holidays may be found at the following address: <http://personnel.wv.gov/employees/benefits/Pages/Holidays.aspx>

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.
- 5.2 Pricing Page:** Vendor should type or electronically enter the information into the Pricing Pages through wvOASIS, if available, or as an electronic document. Instructions for completing the pricing page can be found in Exhibit A.

Retrospective Drug Utilization Review Services

Notwithstanding the foregoing, the Purchasing Division may correct errors as it deems appropriate. Vendor should type or electronically enter the information into the Pricing Page to prevent errors in the evaluation.

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 flat fee 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.
 - 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.

Retrospective Drug Utilization Review Services

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: _____

Telephone Number: _____

Fax Number: _____

Email Address: _____

Retrospective Drug Utilization Review Services

EXHIBIT B

West Virginia Medicaid Lock-In Criteria

STATE OF WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES BUREAU FOR MEDICAL SERVICES

West Virginia Medicaid Lock-In Criteria

The West Virginia Medicaid Pharmacy Program requires that members with prescription drug utilization meeting the criteria listed, obtain their prescriptions for controlled substances from one pharmacy. On a monthly basis, the Retrospective Drug Utilization Review (DUR) Committee reviews member profiles that have been selected because of therapeutic criteria exceptions, including potential overutilization of controlled substances. Members who meet the criteria listed below **may be restricted or “locked-in” to one pharmacy for twelve months at the discretion of the reviewer**. At the end of the twelve-month period, the Retrospective DUR Committee reviews the member’s prescription profile to determine if the lock-in should be continued for another twelve month period. The goal of the lock-in program is to provide enhanced coordination of care for members who may be at risk for adverse effects due to the potential overutilization of controlled substances. Members should call 1-855-356-1008 if they would like to request a change to their lock-in pharmacy.

The Retrospective DUR Committee is a sub-committee of the West Virginia Drug Utilization Review (DUR) Board. Criteria for Lock-in are reviewed and approved by the DUR Board and Retrospective DUR Committee.

CRITERIA:

1. **High Average Daily Dose:** ≥ 50 morphine milligram equivalents per day over the past 90 calendar days
2. **Overutilization:** Filling of ≥ 5 claims for all controlled substances in the past 60 calendar days
3. **Doctor/Pharmacy Shopping:** ≥ 3 prescribers OR ≥ 3 pharmacies writing/filling claims for any controlled substance in the past 60 calendar days
4. **Use with a History of Dependence/Overdose:** Any use of a controlled substance in the past 60 days with at least 1 occurrence of a medical claim for Substance Abuse, Dependence, or Overdose in the past 720 calendar days
5. **“Frequent Flyer”:** ≥ 3 Emergency department visits in the last 60 calendar days

Retrospective Drug Utilization Review Services

6. **Cash Payments:** Review of the Controlled Substance Automated Prescription Program (CSAAP) report indicates cash purchases of controlled substances covered by Medicaid
7. **Positive Drug Screen:** Report by medical provider of abnormal or unexpected drug screen result

Patients with a current diagnosis of cancer may be excluded on a case-by-case basis.
Exhibit C

Service Level Agreements (SLAs)

Because performance failures by the Vendor may cause BMS to incur additional administrative costs, BMS may assess financial penalties against the Vendor pursuant to this section and deduct the amount of the damages from any payments due the Vendor. Unless specified otherwise, BMS may give written notice to the Vendor of the failure that might result in the assessment of damages and the proposed amount of the damages. The Vendor shall have thirty calendar days from the date of the notice in which to dispute BMS's determination.

Prior to commencement of operations, BMS and the Vendor are to review all SLAs to determine if revisions are needed. Thereafter, similar reviews are to be held annually, upon the implementation of a change that impacts existing SLAs, and/or at the request of BMS.

Service Level Agreement Description	
1. Operation Start Date (4) The Vendor shall be ready to provide full services as described in the above contract by the operational start date, as indicated on the contract award. BMS may assess damages for each business day the complete and fully functional system is not active.	Penalty per day late = Total value of the of Startup ÷ by the length of the startup period in calendar days.
2. Mailing of Pharmacy/Prescriber Letters (4.3) Vendor must communicate the results of patient profile reviews by letter to prescribers and/or pharmacies within twenty-eight calendar days of completion of the review. BMS may assess damages for each business day the letters have not been mailed past the expected mail date.	Penalty per day late = Total value of the contract ÷ by the length of the contract in calendar days.

Retrospective Drug Utilization Review Services

Service Description	Penalty
3. Educational Population Based Interventions (4.4) The Vendor shall design a minimum of six, educational population-based interventions or other targeted provider interventions, though more may be requested, to be modifiable per BMS and DUR Board's requirements per year. The Vendor shall make any such modifications to wording or formats, specified by BMS and DUR Board, within twenty-eight (28) calendar days of the request by BMS at the Vendor's expense. Each population-based intervention must be completed by a mutually agreed upon date.	Penalty per day late = Total value of the contract ÷ by the length of the contract in calendar days.
4. Change Management Process (4.12) The Vendor shall have seven calendar days to review system change requests and present an implementation plan to BMS. If actionable, the Vendor has by default thirty calendar days to complete the change. Implementation time may be extended by BMS on request. Critical changes required for full system functionality must be completed within seventy-two hours or risk Vendor default.	Penalty per day past agreed upon implementation date = Total value of the contract ÷ by the length of the contract in calendar days.
5. Key Position Vacancies (4.7.2) No Key position shall remain vacant for longer than thirty (30) calendar days.	Penalty per day past agreed upon implementation date = Total value of the contract ÷ by the length of the contract in calendar days.
6. Monthly Reports (4.9.1) The Vendor shall provide RetroDUR summary reports monthly, at least three calendar days prior to the RetroDUR Committee meeting, to the Pharmacy Services Program for review and approval.	Penalty per day past agreed upon implementation date = Total value of the contract ÷ by the length of the contract in calendar days.
7. Quarterly Activity Reports (4.9.2) The Vendor shall submit, by email, each quarterly report within fifteen calendar days following the applicable quarterly period.	Penalty per day past agreed upon implementation date = Total value of the contract ÷ by the length of the contract in calendar days.

Retrospective Drug Utilization Review Services

Service Level Agreement Description	Penalty
8. Annual Reports (4.9.3) The Vendor shall electronically submit data identified (but not limited) to 4.9.3.1 to 4.9.3.4 to BMS by May 1 of each calendar year for CMS annual reports.	Penalty per day past agreed upon implementation date = Total value of the contract ÷ by the length of the contract in calendar days.
9. DUR Board Meeting Minutes (4.11.6) The Vendor shall also provide DUR Board meeting minutes, by e-mail, within ten (10) calendar days of each quarterly meeting.	Penalty per day past agreed upon implementation date = Total value of the contract ÷ by the length of the contract in calendar days.

ADDITIONAL INFORMATION

THE STATE OF WEST VIRGINIA PURCHASING DIVISION FOR THE AGENCY, WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES (DHHR), BUREAU FOR MEDICAL SERVICES (BMS), IS SOLICITING BIDS TO ESTABLISH A CONTRACT FOR RETROSPECTIVE DRUG UTILIZATION REVIEW SERVICES (RETRODUR) 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
US

SHIP TO

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

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Start Up Costs				\$47,760

Comm Code	Manufacturer	Specification	Model #
85111617			

Extended Description:

Year 1-Start Up Costs-2 Months

INVOICE TO

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

SHIP TO

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

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
2	Annual Not to Exceed Costs (All Services)-Year 1				\$201,240

Comm Code	Manufacturer	Specification	Model #
85111617			

Extended Description:

Annual Not to Exceed Costs (All Services)-Year 1 (10 Months)

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

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
3	Additional Services (All Inclusive Hourly Rate)- Year 1				\$15,600

Comm Code	Manufacturer	Specification	Model #
85111617			

Extended Description:

Additional Services (All Inclusive Hourly Rate) X 100 Hours (Estimated)-Year 1 (10 Months)

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

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
4	Annual Not to Exceed Costs (All Services)-Opt Ren Year 1				\$252,370

Comm Code	Manufacturer	Specification	Model #
85111617			

Extended Description:

Annual Not to Exceed Costs (All Services)-Optional Renewal Year 1

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

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
5	Additional Services (All Inclusive Hourly Rate)- Opt Ren Yr 1				\$15,834

Comm Code	Manufacturer	Specification	Model #
85111617			

Extended Description:

Additional Services (All Inclusive Hourly Rate) X 100 Hours (Estimated)-Optional Renewal Year 1

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

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
6	Annual Not to Exceed Costs (All Services)-Opt Ren Year 2				\$256,156

Comm Code	Manufacturer	Specification	Model #
85111617			

Extended Description:

Annual Not to Exceed Costs (All Services)-Optional Renewal Year 2

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

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
7	Additional Services (All Inclusive Hourly Rate)- Opt Ren Yr 2				\$16,072

Comm Code	Manufacturer	Specification	Model #
85111617			

Extended Description:

Additional Services (All Inclusive Hourly Rate) X 100 Hours (Estimated)-Optional Renewal Year 2

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

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
8	Annual Not to Exceed Costs (All Services)-Opt Ren Year 3				\$259,998

Comm Code	Manufacturer	Specification	Model #
85111617			

Extended Description:

Annual Not to Exceed Costs (All Services)-Optional Renewal Year 3

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

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
9	Additional Services (All Inclusive Hourly Rate)- Opt Ren Yr 3				\$16,313

Comm Code	Manufacturer	Specification	Model #
85111617			

Extended Description:

Additional Services (All Inclusive Hourly Rate) X 100 Hours (Estimated)-Optional Renewal Year 3

SCHEDULE OF EVENTS

<u>Line</u>	<u>Event</u>	<u>Event Date</u>
1	VENDOR QUESTION DEADLINE	2022-03-11

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/agency/ll.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: DN+R/BMS

Signature: [Signature]

Title: Commissioner

Date: 4-14-2022

Name of Associate: Keystone Peer Review Organization, Inc.

Signature: [Signature]

Title: EVP and Chief Operations Officer

Date: 3/24/2022

Form - WVBAA-012004
Amended 06.28.2013

APPROVED AS TO FORM THIS 26th
DAY OF May 20 22
BY [Signature]
Patrick Morrisey
Attorney General

Appendix A

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

Name of Associate: Keystone Peer Review Organization, Inc.

Name of Agency: WV DHHR/BMS

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

Including but not limited to:

Member Name

Date of Birth

Medicaid Identification Number

Prescription Claims

Medical Claims (Outpatient Services and Hospitalizations)

Emergency Room Visits, Procedures, and Diagnosis Codes

FEDERAL FUNDS ADDENDUM
2 C.F.R. §§ 200.317 – 200.327

Purpose: This addendum is intended to modify the solicitation in an attempt to make the contract compliant with the requirements of 2 C.F.R. §§ 200.317 through 200.327 relating to the expenditure of certain federal funds. This solicitation will allow the State to obtain one or more contracts that satisfy standard state procurement, state federal funds procurement, and county/local federal funds procurement requirements.

Instructions: Vendors who are willing to extend their contract to procurements with federal funds and the requirements that go along with doing so, should sign the attached document identified as: “REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317)”

Should the awarded vendor be unwilling to extend the contract to federal funds procurement, the State reserves the right to award additional contracts to vendors that can and are willing to meet federal funds procurement requirements.

Changes to Specifications: Vendors should consider this solicitation as containing two separate solicitations, one for state level procurement and one for county/local procurement.

State Level: In the first solicitation, bid responses will be evaluated with applicable preferences identified in sections 15, 15A, and 16 of the “Instructions to Vendors Submitting Bids” to establish a contract for both standard state procurements and state federal funds procurements.

County Level: In the second solicitation, bid responses will be evaluated with applicable preferences identified in Sections 15, 15A, and 16 of the “Instructions to Vendors Submitting Bids” omitted to establish a contract for County/Local federal funds procurement.

Award: If the two evaluations result in the same vendor being identified as the winning bidder, the two solicitations will be combined into a single contract award. If the evaluations result in a different bidder being identified as the winning bidder, multiple contracts may be awarded. The State reserves the right to award to multiple different entities should it be required to satisfy standard state procurement, state federal funds procurement, and county/local federal funds procurement requirements.

State Government Use Caution: State agencies planning to utilize this contract for procurements subject to the above identified federal regulations should first consult with the federal agency providing the applicable funding to ensure the contract is compliant.

County/Local Government Use Caution: County and Local government entities planning to utilize this contract for procurements subject to the above identified federal regulation should first consult with the federal agency providing the applicable funding to ensure the contract is compliant. For purposes of County/Local government use, the solicitation resulting in this contract was conducted in accordance with the procurement laws, rules, and procedures governing the West Virginia Department of Administration, Purchasing Division, except that vendor preference has been omitted for County/Local use purposes and the contract terms contained in the document entitled “REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317)” have been added.

FEDERAL FUNDS ADDENDUM

REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317):

The State of West Virginia Department of Administration, Purchasing Division, and the Vendor awarded this Contract intend that this Contract be compliant with the requirements of the Procurement Standards contained in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements found in 2 C.F.R. § 200.317, et seq. for procurements conducted by a Non-Federal Entity. Accordingly, the Parties agree that the following provisions are included in the Contract.

**1. MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS:
(2 C.F.R. § 200.321)**

- a. The State confirms that it has taken all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Those affirmative steps include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) above.
- b. Vendor confirms that if it utilizes subcontractors, it will take the same affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

**2. DOMESTIC PREFERENCES:
(2 C.F.R. § 200.322)**

- a. The State confirms that as appropriate and to the extent consistent with law, it has, to the greatest extent practicable under a Federal award, provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United

States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

b. Vendor confirms that will include the requirements of this Section 2. Domestic Preference in all subawards including all contracts and purchase orders for work or products under this award.

c. Definitions: For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

3. BREACH OF CONTRACT REMEDIES AND PENALTIES:

(2 C.F.R. § 200.327 and Appendix II)

(a) The provisions of West Virginia Code of State Rules § 148-1-5 provide for breach of contract remedies, and penalties. A copy of that rule is attached hereto as Exhibit A and expressly incorporated herein by reference.

4. TERMINATION FOR CAUSE AND CONVENIENCE:

(2 C.F.R. § 200.327 and Appendix II)

(a) The provisions of West Virginia Code of State Rules § 148-1-5 govern Contract termination. A copy of that rule is attached hereto as Exhibit A and expressly incorporated herein by reference.

5. EQUAL EMPLOYMENT OPPORTUNITY:

(2 C.F.R. § 200.327 and Appendix II)

Except as otherwise provided under 41 CFR Part 60, and if this contract meets the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3, this contract includes 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."

6. DAVIS-BACON WAGE RATES:

(2 C.F.R. § 200.327 and Appendix II)

Vendor agrees that if this Contract includes construction, all construction work in excess of \$2,000 will be completed and paid for in 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 must:

- (a) 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.
- (b) pay wages not less than once a week.

A copy of the current prevailing wage determination issued by the Department of Labor is attached hereto as Exhibit B. The decision to award a contract or subcontract is conditioned upon the acceptance of the wage determination. The State will report all suspected or reported violations to the Federal awarding agency.

7. ANTI-KICKBACK ACT:
(2 C.F.R. § 200.327 and Appendix II)

Vendor agrees that it will comply 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”). Accordingly, Vendor, Subcontractors, and anyone performing under this contract 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. The State must report all suspected or reported violations to the Federal awarding agency.

8. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
(2 C.F.R. § 200.327 and Appendix II)

Where applicable, and only for contracts awarded by the State in excess of \$100,000 that involve the employment of mechanics or laborers, Vendor agrees to comply 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, Vendor 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.

9. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.
(2 C.F.R. § 200.327 and Appendix II)

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.

10. CLEAN AIR ACT
(2 C.F.R. § 200.327 and Appendix II)

Vendor agrees that if this contract exceeds \$150,000, Vendor is to comply 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). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

11. DEBARMENT AND SUSPENSION
(2 C.F.R. § 200.327 and Appendix II)

The State will not award to any vendor that is listed on the governmentwide exclusions 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." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

12. BYRD ANTI-LOBBYING AMENDMENT
(2 C.F.R. § 200.327 and Appendix II)

Vendors that apply or bid for an award exceeding \$100,000 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.

13. PROCUREMENT OF RECOVERED MATERIALS
(2 C.F.R. § 200.327 and Appendix II; 2 C.F.R. § 200.323)

Vendor agrees that it and the State 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.

14. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

(2 C.F.R. § 200.327 and Appendix II; 2 CFR § 200.216)

Vendor and State agree that both are prohibited from obligating or expending funds under this Contract to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

State of West Virginia

By: Robert Price

Printed Name: Robert Price

Title: Administrative Services Manager II

Date: 04/15/2022

Vendor Name: Keystone Peer Review Organization, Inc.

By: 

Printed Name: Meghan Harris

Title: EVP and Chief Operations Officer

Date: 3/24/2022

**EXHIBIT A To:
REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY
CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317):**

W. Va. CSR § 148-1-5

West Virginia Code of State Rules
Title 148. Department of Administration
Legislative Rule (Ser. 1)
Series 1. Purchasing

W. Va. Code St. R. § 148-1-5
§ 148-1-5. Remedies.

Currentness

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.

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

5.2.1.a. The vendor agrees to the cancellation;

5.2.1.b. 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;

5.2.1.c. Failure to honor any contractual term or condition or to honor standard commercial practices;

5.2.1.d. The existence of an organizational conflict of interest is identified;

5.2.1.e. Funds are not appropriated or an appropriation is discontinued by the legislature for the acquisition;

5.2.1.f. Violation of any federal, state, or local law, regulation, or ordinance, and

5.2.1.g. The contract was awarded in error.

5.2.2. 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.

5.2.3. 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.

5.2.4. 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:

5.2.4.a. 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

5.2.4.b. 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.

5.4.1. The Director may suspend, for a period not to exceed 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:

5.4.1.a. The vendor has submitted a bid and then requested that its bid be withdrawn after bids have been publicly opened.

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

5.4.1.c. 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.

5.4.1.d. The vendor's actions have given rise to one or more of the grounds for debarment listed in W. Va. Code § 5A-3-33d.

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

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

5.4.2.b. A notice of suspension must inform the vendor:

5.4.2.b.1. Of the grounds for the suspension;

5.4.2.b.2. Of the duration of the suspension;

5.4.2.b.3. Of the right to request a hearing contesting the suspension;

5.4.2.b.4. That a request for a hearing must be served on the Director no later than 5 working days of the vendor's receipt of the notice of suspension;

5.4.2.b.5. That the vendor's failure to request a hearing no later than 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

5.4.2.b.6. 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.

5.4.2.c. A vendor's failure to serve a request for hearing on the Director no later than 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.

5.4.2.d. 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.

5.4.2.e. Within 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.

5.4.2.f. The hearing will be recorded and an official record prepared. Within 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.

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

5.4.4. 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 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.

5.4.5. 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 W. Va. Code § 5A-3-33d or if the vendor has been declared ineligible to participate in procurement related activities under federal laws and regulation.

5.5.1. Debarment proceedings shall be conducted in accordance with W. Va. 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.

5.5.2. 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.

5.5.3. 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.

5.5.4. Pursuant to W.Va. Code § 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.

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

5.5.6. Related Party Debarment. The Director may pursue debarment of a related party at the

1

same time that debarment of the original vendor is proceeding or at any time thereafter that the Director determines a related party debarment is warranted. Any entity that fails to provide the Director with full, complete, and accurate information requested by the Director to determine related party status will be presumed to be a related party subject to debarment.

5.6. Damages.

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

5.6.2. 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.

5.6.3. 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.

Credits

History: Filed 4-1-19, eff. 4-1-19; Filed 4-16-21, eff. 5-1-21.

Current through register dated May 7, 2021. Some sections may be more current. See credits for details.

W. Va. C.S.R. § 148-1-5, WV ADC § 148-1-5

End of Document

© 2021 Thomson Reuters. No claim to original U.S.
Government Works.

EXHIBIT B To:
REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY
CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317):

Prevailing Wage Determination

☐ – Not Applicable Because Contract Not for Construction

☐ – Federal Prevailing Wage Determination on Next Page