

INTERSYSTEMS

**InterSystems
Corporation**

One Memorial
Drive
Cambridge, MA
02142

Tel: 617-621-0600
Fax: 617-494-1631

InterSystems.com

September 23rd, 2011

Roberta Wagner
Department of Administration
Purchasing Division
2019 Washington Street, East
Charleston, WV 25311

Dear Roberta,

SUBJECT: RFQ BHS12008 – ADDENDUM NO. 1

Please find enclosed InterSystems Corporation's acknowledgement of Addendum No. 1 to Request for Quotation BHS12008 for the Support and Maintenance of InterSystems Caché.

Please note that this acknowledgement is intended to supplement InterSystems' initial response to RFQ 12008, which was submitted in time to meet the original designated opening date (9/15/2011) and that it does not change the contents of that response. If you have any questions about this, please do not hesitate to contact me.

Sincerely,



James Chadbourne
Account Manager
InterSystems Corporation
Email: james.chadbourne@intersystems.com
Office 617-551-2117

RECEIVED

23 SEP 26 A 10:14

DEPARTMENT OF ADMINISTRATION
2019 WASHINGTON ST
CHARLESTON WV



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

Request for Quotation

RFQ NUMBER
BHS12008

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF:
ROBERTA WAGNER 304-558-0067

VENDOR

*327150514 617-621-0600
 INTERSYSTEMS CORPORATION
 ONE MEMORIAL DR
 CAMBRIDGE MA 02142

SHIP TO

HEALTH AND HUMAN RESOURCES
 BBH/HF
 ROOM 350
 350 CAPITOL STREET
 CHARLESTON, WV
 25301-3702 304-558-3672

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
09/12/2011				

BID OPENING DATE: 09/28/2011 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
ADDENDUM NO. 1						
1. QUESTIONS AND ANSWERS ARE ATTACHED. 2. TO MOVE THE BID OPENING DATE FROM 9/15/2011 TO 9/28/2011. 3. ADDENDUM ACKNOWLEDGEMENT IS ATTACHED. THIS DOCUMENT SHOULD BE SIGNED AND RETURNED WITH YOUR BID. FAILURE TO SIGN AND RETURN MAY RESULT IN DISQUALIFICATION OF YOUR BID. EXHIBIT 10						
REQUISITION NO.: BHS12008						
ADDENDUM ACKNOWLEDGEMENT						
I HEREBY ACKNOWLEDGE RECEIPT OF THE FOLLOWING CHECKED ADDENDUM(S) AND HAVE MADE THE NECESSARY REVISIONS TO MY PROPOSAL, PLANS AND/OR SPECIFICATION, ETC.						
ADDENDUM NO.'S:						
NO. 1 .. ✓						
NO. 2						
NO. 3						
NO. 4						
NO. 5						
I UNDERSTAND THAT FAILURE TO CONFIRM THE RECEIPT OF THE ADDENDUM(S) MAY BE CAUSE FOR REJECTION OF BIDS.						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS						
SIGNATURE			TELEPHONE		DATE	
TITLE		FEIN		ADDRESS CHANGES TO BE NOTED ABOVE		

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'



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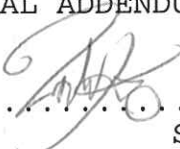
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<p>VENDOR MUST CLEARLY UNDERSTAND THAT ANY VERBAL REPRESENTATION MADE OR ASSUMED TO BE MADE DURING ANY ORAL DISCUSSION HELD BETWEEN VENDOR'S REPRESENTATIVES AND ANY STATE PERSONNEL IS NOT BINDING. ONLY THE INFORMATION ISSUED IN WRITING AND ADDED TO THE SPECIFICATIONS BY AN OFFICIAL ADDENDUM IS BINDING.</p> <p style="text-align: center;">  Todd Kruger Contract Manager SIGNATURE Intersystems Corporation COMPANY 21 Sept 2011 DATE </p> <p>NOTE: THIS ADDENDUM ACKNOWLEDGEMENT SHOULD BE SUBMITTED WITH THE BID.</p> <p>REV. 09/21/2009 END OF ADDENDUM NO. 1</p>						

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ADDENDUM #1

BHS12008

- Please confirm that the Bid Opening Date specified on this RFQ is actually the date at which the sealed bids will be opened for consideration (as opposed to the earliest date by which bids may be submitted.)

Response: Yes, the date listed as the Bid Opening Date is when the sealed bids will be opened for consideration.

- On page two of the RFQ, Exhibit 3 (Life of Contract) states that the contract "becomes effective on award." Is there a target date by which you expect the contract to be awarded?

Response: No there is not a targeted date for award of the contract.

INTERSYSTEMS

**InterSystems
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Tel: 617-621-0600
Fax: 617-494-1631

InterSystems.com

September 13th, 2011

Roberta Wagner
Department of Administration
Purchasing Division
2019 Washington Street, East
Charleston, WV 25311

Dear Roberta,

SUBJECT: RFQ BHS12008

Please find enclosed the response from InterSystems Corporation to Request for Quotation BHS12008 for the Support and Maintenance of InterSystems Caché.

For clarification purposes, please note that although a quantity of '1' is specified in the 'Quantity' column on page one of the Request For Quotation, the bid amount submitted actually covers all four hundred users of West Virginia Department of Health and Human Resources' existing Caché-based application.

Thank you for your consideration of this submission. If you have any questions or if I can be of further assistance, please do not hesitate to contact me by telephone at 617-551-2117 or by email at james.chadbourne@intersystems.com.

Sincerely,



James Chadbourne
Account Manager
InterSystems Corporation
Email: james.chadbourne@intersystems.com
Office 617-551-2117

RECEIVED

SEP 15 A 8:05

DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF THE COMMISSIONER



State of West Virginia
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BID OPENING DATE: 09/15/2011 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1 <i>(400 USERS)</i>	YR		920-45	\$225.00	\$90,000.00
				SUPPORT AND MAINTENANCE FOR CACHE (OR EQUAL) TECHNICAL ASSISTANCE AND SOFTWARE SUPPORT. <i>(BILLED MONTHLY)</i>		
0002	1	YR		920-45	YEAR ONE UNIT PRICE + ANNUAL CPI-U*	YEAR ONE AMOUNT + ANNUAL CPI-U*
				YEAR TWO SUPPORT AND MAINTENANCE FOR CACHE (OR EQUAL) TECHNICAL ASSISTANCE AND SOFTWARE SUPPORT. <i>(BILLED MONTHLY)</i>		
0003	1	YR		920-45	YEAR TWO UNIT PRICE + ANNUAL CPI-U*	YEAR TWO AMOUNT + ANNUAL CPI-U*
				YEAR THREE SUPPORT AND MAINTENANCE FOR CACHE (OR EQUAL) TECHNICAL ASSISTANCE AND SOFTWARE SUPPORT. <i>(BILLED MONTHLY)</i>		
0004	1	JB		920-45	\$93.75	\$37,500.00
				REINSTATEMENT FEE FOR EXPIRED SUPPORT		

* ANNUAL CPI-U IS DEFINED AS THE INCREASE IN THE THEN MOST CURRENTLY AVAILABLE ANNUAL AGGREGATE CPI-U MEASUREMENT, AS SPECIFIED IN THE US BLS CONSUMER PRICE INDEX ALL URBAN (CONSUMER) REPORT.
 SEE REVERSE SIDE FOR TERMS AND CONDITIONS

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LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
<p>EXHIBIT 3</p> <p>LIFE OF CONTRACT: THIS CONTRACT BECOMES EFFECTIVE ON AWARD..... AND EXTENDS FOR A PERIOD OF ONE (1) YEAR OR UNTIL SUCH "REASONABLE TIME" THEREAFTER AS IS NECESSARY TO OBTAIN A NEW CONTRACT OR RENEW THE ORIGINAL CONTRACT. THE "REASONABLE TIME" PERIOD SHALL NOT EXCEED TWELVE (12) MONTHS. DURING THIS "REASONABLE TIME" THE VENDOR MAY TERMINATE THIS CONTRACT FOR ANY REASON UPON GIVING THE DIRECTOR OF PURCHASING 30 DAYS WRITTEN NOTICE.</p> <p>UNLESS SPECIFIC PROVISIONS ARE STIPULATED ELSEWHERE IN THIS CONTRACT DOCUMENT, THE TERMS, CONDITIONS AND PRICING SET HEREIN ARE FIRM FOR THE LIFE OF THE CONTRACT.</p> <p>RENEWAL: THIS CONTRACT MAY BE RENEWED UPON THE MUTUAL WRITTEN CONSENT OF THE SPENDING UNIT AND VENDOR, SUBMITTED TO THE DIRECTOR OF PURCHASING THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE. SUCH RENEWAL SHALL BE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND SHALL BE LIMITED TO TWO (2) ONE (1) YEAR PERIODS.</p> <p>CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICES SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM TO THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN.</p> <p>OPEN MARKET CLAUSE: THE DIRECTOR OF PURCHASING MAY AUTHORIZE A SPENDING UNIT TO PURCHASE ON THE OPEN MARKET, WITHOUT THE FILING OF A REQUISITION OR COST ESTIMATE, ITEMS SPECIFIED ON THIS CONTRACT FOR</p>						

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<p>IMMEDIATE DELIVERY IN EMERGENCIES DUE TO UNFORESEEN CAUSES (INCLUDING BUT NOT LIMITED TO DELAYS IN TRANSPORTATION OR AN UNANTICIPATED INCREASE IN THE VOLUME OF WORK.)</p> <p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THE STATE MAY DEEM THE CONTRACT NULL AND VOID, AND TERMINATE SUCH CONTRACT WITHOUT FURTHER ORDER.</p> <p>THE TERMS AND CONDITIONS CONTAINED IN THIS CONTRACT SHALL SUPERSEDE ANY AND ALL SUBSEQUENT TERMS AND CONDITIONS WHICH MAY APPEAR ON ANY ATTACHED PRINTED DOCUMENTS SUCH AS PRICE LISTS, ORDER FORMS, SALES AGREEMENTS OR MAINTENANCE AGREEMENTS, INCLUDING ANY ELECTRONIC MEDIUM SUCH AS CD-ROM.</p> <p>REV. 05/26/2009</p> <p>INQUIRIES: WRITTEN QUESTIONS SHALL BE ACCEPTED THROUGH CLOSE OF BUSINESS ON 8/30/2011. QUESTIONS MAY BE SENT VIA USPS, FAX, COURIER OR E-MAIL. IN ORDER TO ASSURE NO VENDOR RECEIVES AN UNFAIR ADVANTAGE, NO SUBSTANTIVE QUESTIONS WILL BE ANSWERED ORALLY. IF POSSIBLE, E-MAIL QUESTIONS ARE PREFERRED.</p> <p>ADDRESS INQUIRIES TO: ROBERTA WAGNER DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25311</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

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LINE	QUANTITY	UOP	CAT NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
<p>FAX: 304-558-4115 E-MAIL: ROBERTA.A.WAGNER@WV.GOV</p> <p>THE MODEL/BRAND/SPECIFICATIONS NAMED HEREIN ESTABLISH THE ACCEPTABLE LEVEL OF QUALITY ONLY AND ARE NOT INTENDED TO REFLECT A PREFERENCE OR FAVOR ANY PARTICULAR BRAND OR VENDOR. VENDORS WHO ARE BIDDING ALTERNATES SHOULD SO STATE AND INCLUDE PERTINENT LITERATURE AND SPECIFICATIONS. FAILURE TO PROVIDE INFORMATION FOR ANY ALTERNATES MAY BE GROUNDS FOR REJECTION OF THE BID. THE STATE RESERVES THE RIGHT TO WAIVE MINOR IRREGULARITIES IN BIDS OR SPECIFICATIONS IN ACCORDANCE WITH SECTION 148-1-4(F) OF THE WEST VIRGINIA LEGISLATIVE RULES AND REGULATIONS.</p> <p>VENDOR PREFERENCE CERTIFICATE</p> <p>THIS TEAM EXHIBIT HAS BEEN REPLACED BY THE ONLINE VERSION WHICH IS AVAILABLE HERE: HTTP://WWW.STATE.WV.US/ADMIN/PURCHASE/VRC/VENPREF.PDF</p> <p>NOTICE</p> <p>A SIGNED BID MUST BE SUBMITTED TO:</p> <p>DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION BUILDING 15 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25305-0130</p>						

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LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
PLEASE NOTE: A CONVENIENCE COPY WOULD BE APPRECIATED.						
THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:						
SEALED BID						
BUYER: -----RW/FILE 22-----						
RFQ. NO.: -----BHS12008-----						
BID OPENING DATE: -----9/15/2011-----						
BID OPENING TIME: -----1:30 PM-----						
PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:						

CONTACT PERSON (PLEASE PRINT CLEARLY):						

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PAGE
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BID OPENING DATE: 09/15/2011 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
***** THIS IS THE END OF RFQ BHS12008 ***** TOTAL:						_____

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BHS12008-Specifications

Vendor will be responsible for Software Updates and Technical Assistance (SUTA) for Cache Enterprise Platform, Specific Multiserver GSA Part Number ISC-C04-115 "or equal". Must be able to work in a windows platform.

CACHE is the data base manager and compiler for the VistA software utilized by the State run hospitals. In order to migrate to a supported version of CACHE, BHHF must first re-instate CACHE SUTA. It must be compatible with both MS Windows platform and Open VistA.

BHS12008 – BID/COST SHEET

QUANTITY	ITEM	COST	TOTAL
400	One (1) year support and maintenance – Cache (or equal) Technical Assistance and Software Support Per User	\$ 225,000	\$ 90,000.00
400	*Second year support and maintenance – Cache (or equal) Technical Assistance and Software Support Per User	FIRST YEAR UNIT COST + CPI-U (ANNUAL) *	FIRST YEAR TOTAL + CPI-U (ANNUAL) *
400	*Third year support and maintenance – Cache (or equal) Technical Assistance and Software Support Per User	SECOND YEAR UNIT COST + CPI-U (ANNUAL) *	SECOND YEAR TOTAL + CPI-U (ANNUAL) *
	Reinstatement fee for SUTA	\$ 93.75	\$ 37,500.00
	Grand Total	(SEE NOTE)	(SEE NOTE)

*Optional upon mutual agreement of renewal.

The award of this contract (BHS12008) will be based upon the initial cost of the one (1) year of support and maintenance (Cache “or equal” technical assistance and software support) plus the optional second and third years of support and maintenance and the reinstatement fee for SUTA (if applicable) for a grand total amount.

Vendor Name: INTERSYSTEMS CORPORATION Date: 8/24/2011

* NOTE: ANNUAL CPI-U IS DEFINED AS THE INCREASE IN THE THEN MOST CURRENTLY AVAILABLE ANNUAL AGGREGATE CPI-U MEASUREMENT, AS SPECIFIED IN THE US BLS (CONSUMER PRICE INDEX ALL URBAN CONSUMERS) REPORT.

RFQ No. BHS12008

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

West Virginia Code §5A-3-10a states: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate.

DEFINITIONS:

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

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

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

Under penalty of law for false swearing (*West Virginia Code §61-5-3*), it is hereby certified that the vendor affirms and acknowledges the information in this affidavit and is in compliance with the requirements as stated.

WITNESS THE FOLLOWING SIGNATURE

Vendor's Name: INTER SYSTEMS CORPORATION

Authorized Signature: [Signature] Date: 8/29/11

State of MASSACHUSETTS

County of MIDDLESEX, to-wit:

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

My Commission expires _____, 20__.

AFFIX SEAL HERE

NOTARY PUBLIC _____

State of West Virginia VENDOR PREFERENCE CERTIFICATE

Certification and application* is hereby made for Preference in accordance with *West Virginia Code*, §5A-3-37. (Does not apply to construction contracts). *West Virginia Code*, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the *West Virginia Code*. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.

1. **Application is made for 2.5% resident vendor preference for the reason checked:**
 Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; or,
 Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or 80% of the ownership interest of Bidder is held by another individual, partnership, association or corporation resident vendor who has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or,
 Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; or,
2. **Application is made for 2.5% resident vendor preference for the reason checked:**
 Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,
3. **Application is made for 2.5% resident vendor preference for the reason checked:**
 Bidder is a nonresident vendor employing a minimum of one hundred state residents or is a nonresident vendor with an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia employing a minimum of one hundred state residents who certifies that, during the life of the contract, on average at least 75% of the employees or Bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,
4. **Application is made for 5% resident vendor preference for the reason checked:**
 Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; or,
5. **Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:**
 Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; or,
6. **Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:**
 Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.

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

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

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

Bidder: _____ Signed: _____

Date: _____ Title: _____

*Check any combination of preference consideration(s) indicated above, which you are entitled to receive.

ATTACHMENT
P.O.# BHS 12008

THIS QUOTE SHALL BE BINDING FOR UP TO THIRTY DAYS AFTER THE
"OPENING DATE" LISTED IN THE FIRST PAGE OF THE REQUEST FOR QUOTATION: BHS12008

This agreement constitutes the entire agreement between the parties, and there
are no other terms and conditions applicable to the licenses granted hereunder.

Agreed

[Signature] 8/24/11
Signature Date

Contractor
Title

Intersystems Corporation
Company Name

Signature Date

Title

Agency/Division

WV-96
Rev. 10/07

AGREEMENT ADDENDUM

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

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

ACCEPTED BY:

STATE OF WEST VIRGINIA

Spending Unit: _____

Signed: _____

Title: _____

Date: _____

VENDOR

Company Name: Intersystems Corporation

Signed: [Signature]

Title: Contract Manager

Date: 8/29/11