



JIM JUSTICE  
GOVERNOR

STATE OF WEST VIRGINIA  
DEPARTMENT OF ADMINISTRATION  
PURCHASING DIVISION  
2019 WASHINGTON STREET, EAST  
CHARLESTON, WEST VIRGINIA 25305-0130

JOHN A. MYERS  
CABINET SECRETARY

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DIRECTOR

## MEMORANDUM

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TO: State Procurement Officers (Subject to Purchasing Division Oversight)

FROM: James Meadows  
WV Purchasing Division General Counsel *Jm*

DATE: January 1, 2018

RE: WV-96 and WV-96A Agreement Addenda

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The *WV-96 Agreement Addendum* and the *WV-96A Agreement Addendum* (the "Addenda") are documents that were developed as an expeditious way to eliminate the most common conflicts with State law that are found in a vendor's contract documents submitted for the State's review. In legal terms, the Addenda serve as the last form to override all other terms and conditions. Accordingly, a determination of whether the Addenda will be needed cannot be made prior to reviewing the vendor's documents. For example, assume that a vendor's forms require that the State agree to the laws of Delaware. This is a violation of the State's sovereign immunity and cannot be allowed. The State would submit the *WV-96 Agreement Addendum* to the vendor, and if it is signed after the vendor's form is received, the WV-96 will take priority over the vendor's form and West Virginia law will prevail.

The Addenda must only be used when a vendor submits alternative contractual terms and conditions for the State's signature. The Addenda are not to be used when the vendor proposes no alternate terms and must never be included in the original outgoing solicitation. As noted above, the Addenda are intended to amend documents submitted by a vendor and have no significance standing alone. To ensure that the Addenda have top priority in contract term interpretation, the Addenda must be signed on or after the signature date on the vendor's quote or agreement.

The Purchasing Division will submit the Addenda to the vendor for central procurements, or in some cases may expressly authorize the agency to do so. The agency will be responsible for submitting the Addenda for delegated procurements. If the vendor refuses to sign the

Addenda when presented, the agency should contact the Purchasing Division for further instructions.

Please note that the Addenda do not provide a cure for every potential term conflict that may arise. If you believe that an additional term conflict needs to be addressed, please contact your agency's legal counsel and the Purchasing Division.