



STATE OF WEST VIRGINIA
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MEMORANDUM

TO: All State Purchasing Officers

FROM: Dawn E. Warfield
Deputy Attorney General

DATE: August 14, 2009

RE: WV-96 Agreement Addendum

The attached form WV-96 Agreement Addendum (revised 10/07) should be used whenever a vendor submits alternative contractual terms and conditions for your signature. Often, these are on preprinted forms that have not been amended or reviewed by the Purchasing Division of the Department of Administration or the Attorney General. The WV-96 Addendum was developed by the Purchasing Division and the Attorney General's Office to eliminate the most common conflicts with State law that are found in contract documents submitted for our review.

A WV-96 Agreement Addendum is not needed when State Purchasing terms and conditions are the only ones being used, and it is not a substitute for any other terms and conditions. It is intended to *amend* documents submitted by a vendor, and has no significance standing alone. The WV-96 must be dated on or *after* the signature date on the vendor's quote or agreement, and must be signed by the *same persons* who signed the vendor's agreement. As a general rule, the vendor should sign first on any contract documents. If they refuse to sign the WV-96 Addendum, you should *not* sign their documents.

Most of the provisions of the WV-96 Addendum are not negotiable. This is particularly true when the WV-96 has been made a mandatory part of an RFP or RFQ – in which case *none* of its provisions are negotiable. Therefore, when a vendor objects to certain items in the WV-96, please *do not* amend, retype or otherwise alter the Addendum (or allow them to do so), and *do not* sign any Addendum that has been altered without the prior written approval of the Purchasing Division and me. Instead, you should request that the vendor submit their objections and any proposed alternative language to you in writing, and forward them to me for review, using one of the following procedures:

1. If the final contract will be awarded through the Purchasing Division, the state Buyer should send me a copy of the Purchasing file, with all relevant documents such as the RFP or RFQ, the vendor's quote, their proposed terms and conditions, and their written objections to the WV-96 with proposed alternative language, if any.

(OR)

2. If the contract will be issued under an agency's delegated purchasing authority, the agency procurement officer should send me copies of all relevant contract documents, including the vendor's quote, their proposed terms and conditions, and their written objections to the WV-96 with proposed alternative language, if any.

Due to legal requirements for the procurement of contracts over \$25,000, I cannot accept a request from an agency procurement officer to negotiate a WV-96 for a contract to be issued by the Purchasing Division. Additionally, please *do not* tell vendors to contact me directly. Without the relevant contract documents to place their issues into context, it is impossible for me to negotiate any resolution. It is also a waste of the agency's money, because I must bill for my time spent dealing with such matters. Once I have received the necessary information from you, I can usually reach a quick resolution with the vendor.

When dealing with these issues, we will normally require the name of the contact person who has the authority to negotiate and approve terms for the vendor. Usually this is a corporate attorney and not the sales person with whom you have been dealing. You should not attempt to negotiate the terms of the WV-96 Agreement Addendum with a vendor. Once an agreement has been negotiated, we will send copies of the approved terms to you or to the Purchasing Division for signature.

In some instances we have negotiated master terms and conditions with a vendor (such as IBM, Oracle or Microsoft, for example) that eliminate the need for a WV-96 Agreement Addendum. If you are told by a vendor that they have reached an agreement with the Attorney General's Office, ask to see that agreement *in writing*. You may call me to confirm such an agreement before signing any documents.

If you have any questions, I may be reached by telephone at (304) 558-2021, by fax at (304) 558-0140, or by e-mail at dawn.warfield@wvago.gov.

DEW/sc
Attachment (WV-96)