



## **REQUEST FOR QUOTATIONS(RFQ) #19139 DRUG TESTING SERVICES**

**PURPOSE AND SCOPE:** The West Virginia Community & Technical College System (Council) is soliciting bids to establish an open-end contract for drug testing services required for individuals desiring to participate in the West Virginia Invests Grant Program (Program) as created by the WV Legislature under Enrolled 2019 Senate Bill 1 (Senate Bill).

The Senate Bill requires qualified students who wish to participate in the program to have a drug test prior to each semester of participation. The student is responsible for the cost of the test.

The successful vendor will work with the Council staff to provide drug testing services for the qualified applicants to the Program. The results of the drug screening and testing will be used by the Council to determine Program eligibility and/or continuation.

As this is a new program, there is no definitive way to estimate the number of students who will qualify for the program thereby needing drug testing. After Council review and discussion, we are estimating approximately ten thousand (10,000) drug tests will be needed annually.

It is the goal of the Council to keep the cost of the drug testing to a minimum due to the students bearing the responsibility of payment.

### **BID INFORMATION:**

Bids are to be received by the Council no later than 3:00pm EST on Wednesday May 23, 2019. Bids will be publicly opened at the time at the address shown below.

The bid delivery address is:

Mary Blashford  
Director of Procurement  
c/o WV Community & Technical College system  
1018 Kanawha Blvd., E, Suite 700  
Charleston, WV 25301

Mary Blashford is the sole point of contact for this RFQ. No other communication with Council staff is permitted. Any unauthorized communications may be reason for vendor disqualification.

Your bid response will be considered a public document. As a public document, it will be disclosed to the public following the bid opening. Submission of any bid constitutes your explicit consent to the public disclosure of your information.

This RFQ contains mandatory provisions identified by the use of “will”, “shall” or “must”. Failure to comply with a mandatory provision in the RFQ will result in bid disqualification.

Bidders should type or electronically enter the information on the Pricing Sheet provided in Exhibit A.

A Mandatory Requirements Checklist is provided in Exhibit I to assist the vendor. It is not required to be completed or submitted with the bid. Vendor may submit the Checklist as an easy verification of mandatory requirement being met.

**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.

"Contract Services" means drug screening services as more fully described in these specifications.

"DOT" means the US Department of Transportation

"Medical Review Officer" means a person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by the Commission's drug testing program and evaluating medical explanations for certain drug test results.

"NIDA" means the National Institute of Drug Administration.

"NG" means nanogram.

"Pricing Page" means the pages, attached hereto as Exhibit A, upon which Vendor should list its proposed price for the Contract Services.

"SAMHSA" means the Substance Abuse and Mental Health Services Administration, an agency of the US Department of Health and Human Services.

"Solicitation" means the official notice of an opportunity to supply the State with goods or services that is offered by the Council.

"Vendor" means the entity submitting a bid in response to this RFQ, the entity that has been selected as the lowest responsible bidder or the entity that has been awarded the Contract.

**QUALIFICATIONS:** Vendor (or Vendor's staff if requirements are inherently limited to individuals rather than corporate entities) shall have the following minimum qualifications:

1. Vendor must be certified by the Substance Abuse and Mental Health Services (SAMHSA). A Copy of the certification should be submitted with bid response. This information may be required prior to contract award.
2. Vendor must employ a full-time, board certified, toxicologist of the American Board of Forensic Toxicology. Copy of Certification should be included with bid submission. This information may be required prior to contract award.

**MANDATORY CONTRACT REQUIREMENTS AND DELIVERABLES:**

Drug Testing Services must meet or exceed the mandatory requirements listed below.

1. Vendor will follow all requirements as outlined in the WV State Government HIPPA Business Associate Addendum. See Exhibit B.
2. Vendor shall be responsible for collecting urine samples to test for substance abuse of substances for the clients referred to them by the Council.
3. Vendor must require that the clients referred to them by the Council have a valid Drug Test Disclosure Form provided by the Council. A sample document form is found in Exhibit C. The final form will be provided upon start of the contract.
4. Vendor shall test, record, submit for review and legally support confirmations of test specimens in conformity within the concentration cutoff levels as set forth below:

Initial Test Analyte	Initial Test Cutoff Concentration	Confirmatory Test Cutoff Concentration
Amphetamines	1000 ng	500ng
Cannabinoids/THC	50ng	15 ng
Cocaine	300ng	150 ng
Opiates	2000 ng	2000 ng
Phencyclidine (PCP)'	25 ng	25 ng
Benzodiazepines	300ng	300ng
Propoxyphene	300ng	300ng
Methadone	300ng	300ng
Barbiturates	300ng	300ng
Synthetic Narcotics	2000 ng	2000ng

**NOTE: IF THE STUDENT PROVIDES DOCUMENTATION OF A LEGALLY PRESCRIBED MEDICATION THAT IS INCLUDED IN THE DRUG TEST BUT WHICH COULD ALTER THE CONCENTRATIONS OF THE SUBSTANCE IN THEIR URINE, THE VENDOR MUST ANALYZE THE TEST RESULTS BASED ON THE PRESCRIPTION INFORMATION PROVIDED.**

5. Vendor must have the capability to change screening cutoffs within thirty (30) days of a written request from the Council should the national cutoff levels be updated by the US Department of Health and Human Services.
6. Vendor shall ensure that all test results are clearly marked as negative or positive.
7. On an initial drug test, the analysis must report a result below the cutoff concentration as **negative**. If the result is at or above the cutoff concentration, the analysis must also include a confirmation test.
8. On a confirmation test, the analysis must report a result below the cutoff concentration as **negative** and a result at or above the cutoff concentration as **confirmed positive**.
9. Vendor shall provide any and all follow-up testing or analysis required to either confirm a positive result or eliminate a false positive. Positive results must be reviewed by the Medical Review Officer.
10. Vendor will inform the participant of drug screen results via US Postal Service within forty-eight (48) hours after collection of specimen for negative tests. For positive results, the participant shall be informed within forty- eight (48) hours after review of the results by the Medical Review Officer.
11. Vendor will agree that specimens testing positive after both the screening and confirmation test shall be considered positive for the purpose of retaining the sample. Positive samples shall be retained in a frozen state by the vendor for 365 calendar days.
12. Vendor must maintain client records for six (6) years following the expiration/cancellation of any contract resulting from this request for quotation. This provision survives the termination of this contract.
13. Vendor must ensure complete integrity of each specimen tested and respective test results by fully documenting receiving, transfer, and handling of all specimens by laboratory personnel using the chain-of-custody documentation compliant with Department of Transportation & National Institute of Drug Abuse (DOT/NIDA). See Exhibit D.
14. Vendor must agree to abide within the rules of confidentiality issued by or through the United States DOT during this contract and/or after termination/cancellation of any contract award. (Exhibit E)
15. At no additional cost to the Council, the vendor shall support the Council and the State of West Virginia with respect to all legal processes or confirmations, including providing answers to interrogatories, depositions, and providing an expert witness or witnesses to testify in court and other witnesses if needed to support its chain of custody and efficacy of its product and laboratory confirmation services.

## **REPORTING REQUIREMENTS:**

Vendor must provide a batch pipe delimited CSV file that contains the results of drug tests taken statewide during the course of a week to the Council. The file will contain the client's unique identifier as provided on the Drug Test Disclosure Form, client's first name, last name, a negative/positive flag that indicates the results of the drug test, and the date the client took the drug test. The file must be provided to the Council on a weekly basis.

## **ADDITIONAL REQUIREMENTS:**

1. The vendor must have testing/collections sites within 20 miles of each institution participating in the Program. See Exhibit F for the name and address of participating institutions. Upon award of contract, vendor must provide a list of addresses of their testing/collection facilities and provide documentation of its distance to the institution(s).
2. Vendor's business hours must accommodate clients between the hours of 8 AM to 5 PM Eastern Standard Time, Monday through Friday, except for all State and Federal holidays. These holidays are listed in Exhibit G.
3. Vendor must accept walk-in clients.
4. Vendor must ensure that any subcontracted facilities or services utilized meet the mandatory requirements of this request for quotation.
5. Vendor must be able to provide services at all locations specified within this request for quotation within fifteen (15) days of issuance of award of contract.
6. Vendor must sign the Purchasing Affidavit (Exhibit H).
7. Upon award, vendor must become a registered vendor with the WV Purchasing Division and pay the required fee.
8. 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:**

**E-mail Address:**

**Telephone Number:**

**Fax Number:**

### **CONTRACT AWARD:**

1. **Contract Award:** The Contract is intended to provide the Council with a purchase price for the Contract Services that each student shall be required to pay. The Contract shall be awarded to the Vendor that provides the Contract Services meeting the required specifications for the lowest overall total cost.
2. **Pricing Page:** Vendor should complete the Pricing Page, Exhibit A, by providing a per test fee based on the estimated number of tests shown to be conducted. Additional fees including, but not limited to fees for the handling of rejected specimens are the responsibility of the Vendor. Failure to complete the Pricing Page in its entirety may result in Vendor's bid being disqualified.
3. **Performance:** Vendor and Agency shall agree upon a schedule for performance of Contract Services and Contract Services Deliverables.
4. **Payment:** Vendor must accept multiple payment methodologies including cash, check and credit/debit card.

### **VENDOR DEFAULT:**

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

1. Failure to perform Contract Services in accordance with the requirements contained herein.
2. Failure to comply with other specifications and requirements contained herein.
3. Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
4. Failure to remedy deficient performance upon request.

The following remedies shall be available to Agency upon default.

1. Immediate cancellation of the Contract.
2. Any other remedies available in law or equity.

### **GENERAL TERMS AND CONDITIONS:**

1. **ACCEPTANCE:** Issuance of a Purchase Order signed by the Director of Procurement and approved as to form by the Attorney General's Office constitutes acceptance of the contract by and between the WV Community and Technical College System and the

Vendor. Vendor's signature on its bid signifies the Vendor's agreement to be bound by and accept the terms contained in this contract.

2. **APPLICABLE LAW:** The laws of the State of West Virginia and the Procedural Rules of the Higher Education Policy Commission/WV Community and Technical College System shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
3. **ASSIGNMENT:** This contract may not be assigned without the express written consent of the Director of Procurement.
4. **CANCELLATION:** This contract may be canceled upon 30 days written notice to the Vendor.
5. **COMPLIANCE:** Vendor shall comply with all federal, state and local laws, regulations and ordinances, if applicable.
6. **OPEN END CONTRACT:** Quantities listed in this RFP are approximations only, based on estimates. It is understood and agreed that the Contract shall cover the actual quantities required during the Contract period.
7. **RENEWAL:** The Contract may be renewed upon mutual written agreement of the parties. The initial term of contract is one (1) year and may be renewed for an additional four (4) years.
8. **TERMINATION:** In the event of a breach by the Vendor of any of the provisions of this contract, the Institution reserves the right to cancel and terminate this contract forthwith upon giving written notice to the Vendor. The Vendor shall be liable for damages suffered by the Council resulting from the Vendor's breach of contract.
9. **INSURANCE:** The successful Vendor shall furnish proof of insurance for Professional/Malpractice/Errors and Omission Insurance in at least the amount of \$1,000,000 per occurrence.
10. **WORKERS' COMPENSATION INSURANCE:** The vendor shall comply with the laws relating to Workers' Compensation, shall maintain workers' compensation insurance when required and shall furnish proof of workers' compensation insurance upon request.
11. **PRICING:** The pricing set forth herein is firm for the life of the Contract unless a price adjustment provision is included in the Vendor's bid.
12. **INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the Council, 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.

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

## EXHIBIT A

### PRICING SHEET FOR RFQ #19139

Required Services:

Urine collection, drug testing, urine storage, postage/ mailing costs and other services as contained in the RFQ.

Fixed Price per test*	\$
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\*Please note if there are any further cost reductions available depending on volumes of tests requested:

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*(Signature)\**

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*(Name Printed)*

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*(Vendor Company Name)*

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*(Vendor Address)*

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*(Vendor Contact for this RFQ)*

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*(Phone Number/E-mail address)*

\*BY SIGNING THIS PRICING SHEET, I CERTIFY THAT I HAVE THE NECESSARY AUTHORITY TO COMMIT MY COMPANY TO THESE PRICES.

**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/agencylf.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. 111<sup>th</sup> Congress (2009).

- f. **Privacy Rule** means the Standards for Privacy of Individually Identifiable Health Information found at 45 CFR Parts 160 and 164.
- g. **Protected Health Information or PHI** shall have the meaning given to such term in 45 CFR § 160.103, limited to the information created or received by Associate from or on behalf of Agency.
- h. **Security Incident** means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.
- i. **Security Rule** means the Security Standards for the Protection of Electronic Protected Health Information found at 45 CFR Parts 160 and 164.
- j. **Subcontractor** means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.

**2. Permitted Uses and Disclosures.**

- a. **PHI Described.** This means PHI created, received, maintained or transmitted on behalf of the Agency by the Associate. This PHI is governed by this Addendum and is limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the original Agreement, and is described in Appendix A.
- b. **Purposes.** Except as otherwise limited in this Addendum, Associate may use or disclose the PHI on behalf of, or to provide services to, Agency for the purposes necessary to complete the tasks, or provide the services, associated with, and required by the terms of the original Agreement, or as required by law, if such use or disclosure of the PHI would not violate the Privacy or Security Rules or applicable state law if done by Agency or Associate, or violate the minimum necessary and related Privacy and Security policies and procedures of the Agency. The Associate is directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Agency.
- c. **Further Uses and Disclosures.** Except as otherwise limited in this Addendum, the Associate may disclose PHI to third parties for the purpose of its own proper management and administration, or as required by law, provided that (i) the disclosure is required by law, or (ii) the Associate has obtained from the third party reasonable assurances that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party by the Associate; and, (iii) an agreement to notify the Associate and Agency of any instances of which it (the third party) is aware in which the confidentiality of the information has been breached. To the extent practical, the information should be in a limited data set or the minimum necessary information pursuant to 45 CFR § 164.502, or take other measures as necessary to satisfy the Agency's obligations under 45 CFR § 164.502.

**3. Obligations of Associate.**

- a. **Stated Purposes Only.** The PHI may not be used by the Associate for any purpose other than as stated in this Addendum or as required or permitted by law.
- b. **Limited Disclosure.** The PHI is confidential and will not be disclosed by the Associate other than as stated in this Addendum or as required or permitted by law. Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI unless Agency gives written approval and the individual provides a valid authorization. Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Associate will report to Agency any use or disclosure of the PHI, including any Security Incident not provided for by this Agreement of which it becomes aware.
- c. **Safeguards.** The Associate will use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the PHI, except as provided for in this Addendum. This shall include, but not be limited to:
  - i. Limitation of the groups of its workforce and agents, to whom the PHI is disclosed to those reasonably required to accomplish the purposes stated in this Addendum, and the use and disclosure of the minimum PHI necessary or a Limited Data Set;
  - ii. Appropriate notification and training of its workforce and agents in order to protect the PHI from unauthorized use and disclosure;
  - iii. Maintenance of a comprehensive, reasonable and appropriate written PHI privacy and security program that includes administrative, technical and physical safeguards appropriate to the size, nature, scope and complexity of the Associate's operations, in compliance with the Security Rule;
  - iv. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.
- d. **Compliance With Law.** The Associate will not use or disclose the PHI in a manner in violation of existing law and specifically not in violation of laws relating to confidentiality of PHI, including but not limited to, the Privacy and Security Rules.
- e. **Mitigation.** Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of the PHI by Associate in violation of the requirements of this Addendum, and report its mitigation activity back to the Agency.

**f. Support of Individual Rights.**

- i. **Access to PHI.** Associate shall make the PHI maintained by Associate or its agents or subcontractors in Designated Record Sets available to Agency for inspection and copying, and in electronic format, if requested, within ten (10) days of a request by Agency to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524 and consistent with Section 13405 of the HITECH Act.
- ii. **Amendment of PHI.** Within ten (10) days of receipt of a request from Agency for an amendment of the PHI or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such PHI available to Agency for amendment and incorporate any such amendment to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.526.
- iii. **Accounting Rights.** Within ten (10) days of notice of a request for an accounting of disclosures of the PHI, Associate and its agents or subcontractors shall make available to Agency the documentation required to provide an accounting of disclosures to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.528 and consistent with Section 13405 of the HITECH Act. Associate agrees to document disclosures of the PHI and information related to such disclosures as would be required for Agency to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. This should include a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years from the date of disclosure, or longer if required by state law. At a minimum, such documentation shall include:
  - the date of disclosure;
  - the name of the entity or person who received the PHI, and if known, the address of the entity or person;
  - a brief description of the PHI disclosed; and
  - a brief statement of purposes of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
- iv. **Request for Restriction.** Under the direction of the Agency, abide by any individual's request to restrict the disclosure of PHI, consistent with the requirements of Section 13405 of the HITECH Act and 45 CFR § 164.522, when the Agency determines to do so (except as required by law) and if the disclosure is to a health plan for payment or health care operations and it pertains to a health care item or service for which the health care provider was paid in full "out-of-pocket."
- v. **Immediate Discontinuance of Use or Disclosure.** The Associate will immediately discontinue use or disclosure of Agency PHI pertaining to any individual when so requested by Agency. This includes, but is not limited to, cases in which an individual has withdrawn or modified an authorization to use or disclose PHI.

- g. **Retention of PHI.** Notwithstanding section 4.a. of this Addendum, Associate and its subcontractors or agents shall retain all PHI pursuant to state and federal law and shall continue to maintain the PHI required under Section 3.f. of this Addendum for a period of six (6) years after termination of the Agreement, or longer if required under state law.
- h. **Agent's, Subcontractor's Compliance.** The Associate shall notify the Agency of all subcontracts and agreements relating to the Agreement, where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum. Such notification shall occur within 30 (thirty) calendar days of the execution of the subcontract and shall be delivered to the Agency Procurement Officer. The Associate will ensure that any of its subcontractors, to whom it provides any of the PHI it receives hereunder, or to whom it provides any PHI which the Associate creates or receives on behalf of the Agency, agree to the restrictions and conditions which apply to the Associate hereunder. The Agency may request copies of downstream subcontracts and agreements to determine whether all restrictions, terms and conditions have been flowed down. Failure to ensure that downstream contracts, subcontracts and agreements contain the required restrictions, terms and conditions may result in termination of the Agreement.
- j. **Federal and Agency Access.** The Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI, as well as the PHI, received from, or created or received by the Associate on behalf of the Agency available to the U.S. Secretary of Health and Human Services consistent with 45 CFR § 164.504. The Associate shall also make these records available to Agency, or Agency's contractor, for periodic audit of Associate's compliance with the Privacy and Security Rules. Upon Agency's request, the Associate shall provide proof of compliance with HIPAA and HITECH data privacy/protection guidelines, certification of a secure network and other assurance relative to compliance with the Privacy and Security Rules. This section shall also apply to Associate's subcontractors, if any.
- k. **Security.** The Associate shall take all steps necessary to ensure the continuous security of all PHI and data systems containing PHI. In addition, compliance with 74 FR 19006 Guidance Specifying the Technologies and Methodologies That Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements under Section 13402 of Title XIII is required, to the extent practicable. If Associate chooses not to adopt such methodologies as defined in 74 FR 19006 to secure the PHI governed by this Addendum, it must submit such written rationale, including its Security Risk Analysis, to the Agency Procurement Officer for review prior to the execution of the Addendum. This review may take up to ten (10) days.
- l. **Notification of Breach.** During the term of this Addendum, the Associate shall notify the Agency and, unless otherwise directed by the Agency in writing, the WV Office of Technology immediately by e-mail or web form upon the discovery of any Breach of unsecured PHI; or within 24 hours by e-mail or web form of any suspected Security Incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the Agency Procurement Officer at [www.state.wv.us/admin/purchase/vrc/agencyli.htm](http://www.state.wv.us/admin/purchase/vrc/agencyli.htm) and,

unless otherwise directed by the Agency in writing, the Office of Technology at [incident@wv.gov](mailto: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: \_\_\_\_\_

Name of Associate: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

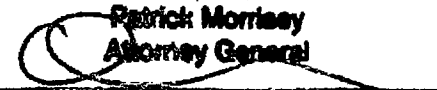
Title: \_\_\_\_\_

Title: \_\_\_\_\_


Date: \_\_\_\_\_

Date: \_\_\_\_\_

Form - WVBA-012004  
Amended 08.28.2013

APPROVED AS TO FORM THIS 26<sup>th</sup>  
DAY OF Jan 20 13  
  
BY Patrick Morrissey  
Attorney General



TO BE COMPLETED BY RECIPIENT	PART I Please Print	<p align="center"><b>Drug Test Authorization Form</b></p> <p>Take this form to an eligible drug testing facility. You may find an eligible drug testing facility near you at <a href="http://www.WVInvests.org">www.WVInvests.org</a>. Applicant for the WV Invests Grant Program is responsible for the cost of the drug screen.</p> <p align="center"><b>A GOVERNMENT ISSUED PHOTO ID MUST BE PRESENTED WITH THIS FORM AT THE DRUG SCREENING FACILITY</b></p> <p>You must receive a negative result from the drug test to be eligible to participate in the WV Invests Grant Program. The drug test must be taken within 60 days prior to the start of each term. Drug test results outside of the 60 day window will not be accepted. Your term start date is _____.</p> <p><b>The drug test must be completed between _____ and _____.</b>          Not valid outside of these dates.</p>			
		<p>_____          Last Name First Name MI</p> <p>_____          WV Invests Grant ID</p> <p>_____          Address City State Zip</p> <p><b>By signing this form I authorize the drug testing company to release my drug test results to the WV Invests Grant Program to be used only for determining eligibility for the WV Invests Grant.</b></p> <p>_____          Recipient Signature Date</p> <p><b>Authorized by: to be completed by drug testing facility staff.</b></p>			
Drug Testing Facility Staff	PART II	<p>_____          Printed Name Date</p> <p>_____          Signature</p>			
		<div>  <div> <p><b>West Virginia Community and Technical College System</b></p> <p><b>WV Invests Grant Program</b></p> <p><b>1018 Kanawha Boulevard East, Suite 700</b></p> <p><b>Charleston, West Virginia 25301</b></p> <p><b>Phone: (304) 558-4618 E-mail: <a href="mailto:WVInvests@wvctcs.org">WVInvests@wvctcs.org</a></b></p> </div> </div>			

# EXHIBIT D

## FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. 0000001

### STEP 1: COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

ACCESSION NO.

A. Employer Name, Address, I.D. No.

B. MRO Name, Address, Phone No. and Fax No.

C. Donor SSN or Employee I.D. No.

D. Specify Testing Authority: ☐ HHS ☐ NRC ☐ DOT - Specify DOT Agency: ☐ FMCSA ☐ FAA ☐ FRA ☐ FTA ☐ PHMSA ☐ USCG

E. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify) \_\_\_\_\_

F. Drug Tests to be Performed: ☐ THC, COC, PCP, OPI, AMP ☐ THC & COC Only ☐ Other (specify) \_\_\_\_\_

G. Collection Site Address:

Collector Phone No. \_\_\_\_\_

Collector Fax No. \_\_\_\_\_

### STEP 2: COMPLETED BY COLLECTOR (make remarks when appropriate) Collector reads specimen temperature within 4 minutes.

Temperature between 90° and 100° F? ☐ Yes ☐ No, Enter Remark \_\_\_\_\_ Collection: ☐ Split ☐ Single ☐ None Provided, Enter Remark \_\_\_\_\_ ☐ Observed, Enter Remark \_\_\_\_\_

REMARKS

### STEP 3: Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s). Donor completes STEP 5 on Copy 2 (MRO Copy)

STEP 4: CHAIN OF CUSTODY - INITIATED BY COLLECTOR AND COMPLETED BY TEST FACILITY  
I certify that the specimen given to me by the donor identified in the certification section on Copy 2 of this form was collected, labeled, sealed and released to the Delivery Service noted in accordance with applicable Federal requirements.

SPECIMEN BOTTLE(S) RELEASED TO:

X

Signature of Collector

AM

PM

(PRINT) Collector's Name (First, MI, Last)

Date (Mo/Day/Yr)

Time of Collection

Name of Delivery Service

### STEP 5: COMPLETED BY DONOR

I certify that I provided my urine specimen to the collector; that I have not adulterated it in any manner; each specimen bottle used was sealed with a tamper-evident seal in my presence; and that the information provided on this form and on the label affixed to each specimen bottle is correct.

X

Signature of Donor

(PRINT) Donor's Name (First, MI, Last)

Date (Mo/Day/Yr)

Daytime Phone No. ( )

Evening Phone No. ( )

Date of Birth

(Mo/Day/Yr)

After the Medical Review Officer receives the test results for the specimen identified by this form, he/she may contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications for your own records. THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 5). - DO NOT PROVIDE THIS INFORMATION ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE COPY 5 WITH YOU.

### STEP 6: COMPLETED BY MEDICAL REVIEW OFFICER - PRIMARY SPECIMEN

In accordance with applicable Federal requirements, my verification is:

☐ NEGATIVE ☐ POSITIVE for: \_\_\_\_\_

☐ DILUTE

☐ REFUSAL TO TEST because - check reason(s) below:

☐ TEST CANCELLED

☐ ADULTERATED (adulterant/reason): \_\_\_\_\_

☐ SUBSTITUTED

☐ OTHER: \_\_\_\_\_

REMARKS:

X

Signature of Medical Review Officer

(PRINT) Medical Review Officer's Name (First, MI, Last)

Date (Mo/Day/Yr)

### STEP 7: COMPLETED BY MEDICAL REVIEW OFFICER - SPLIT SPECIMEN

In accordance with applicable Federal requirements, my verification for the split specimen (if tested) is:

☐ RECONFIRMED for: \_\_\_\_\_ ☐ TEST CANCELLED

☐ FAILED TO RECONFIRM for: \_\_\_\_\_

REMARKS:

X

Signature of Medical Review Officer

(PRINT) Medical Review Officer's Name (First, MI, Last)

Date (Mo/Day/Yr)

COPY 2 - MEDICAL REVIEW OFFICER COPY

## DOT Rule 49 CFR Part 40 Section 40.321

### Subpart P - Confidentiality and Release of Information

#### § 40.321 What is the general confidentiality rule for drug and alcohol test information?

Except as otherwise provided in this subpart, as a service agent or employer participating in the DOT drug or alcohol testing process, you are prohibited from releasing individual test results or medical information about an employee to third parties without the employee's specific written consent.

(a) A "third party" is any person or organization to whom other subparts of this regulation do not explicitly authorize or require the transmission of information in the course of the drug or alcohol testing process.

(b) "Specific written consent" means a statement signed by the employee that he or she agrees to the release of a particular piece of information to a particular, explicitly identified, person or organization at a particular time. "Blanket releases," in which an employee agrees to a release of a category of information (e.g., all test results) or to release information to a category of parties (e.g., other employers who are members of a C/TPA, companies to which the employee may apply for employment), are prohibited under this part.

Updated: Thursday, April 7, 2016

#### *Contact Us*

##### **Office of Drug & Alcohol Policy & Compliance**

1200 New Jersey Ave, SE

Washington, DC 20590

United States

[ODAPCWebMail@dot.gov](mailto:ODAPCWebMail@dot.gov)

## **EXHIBIT F**

### **Institution Listing:**

**Blue Ridge Community & Technical College**

Main Campus: Martinsburg, WV

**BridgeValley Community & Technical College**

Main Campus: South Charleston, WV

**Eastern WV Community & Technical College**

Main Campus: Moorefield, WV

**Mountwest Community & Technical College**

Main Campus: Huntington, WV

**New River Community & Technical College**

Main Campus: Beaver, WV

**Pierpont Community & Technical College**

Main Campus: Fairmont, WV

**Potomac State College**

Main Campus: Keyser, WV

**Southern WV Community & Technical College**

Main Campus: Mount Gay

**WV Northern Community College**

Main Campus: Wheeling, WV

**WVU Parkersburg**

Main Campus: Parkersburg, WV

## **EXHIBIT G**

### **WV State Holidays:**

The State of WV observes twelve (12) state holidays each year and closes early on two other days. In addition, employees do not work during statewide primary and general elections.

New Year's Day

Martin Luther King Jr. Day

Presidents' Day

Memorial Day

West Virginia Day (June 20<sup>th</sup>)

Independence Day

Labor Day

Columbus Day

Veteran's Day

Thanksgiving Day and the day after

Christmas Eve (1/2 day)

Christmas Day

New Year's Eve (1/2 day)

STATE OF WEST VIRGINIA  
Purchasing Division**PURCHASING AFFIDAVIT**

**CONSTRUCTION CONTRACTS:** Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

**ALL CONTRACTS:** Under W. Va. Code §5A-3-10a, 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: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

**EXCEPTION:** The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. 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.

**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.

**"Employer default"** means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

**"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.

**AFFIRMATION:** By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that: (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

**WITNESS THE FOLLOWING SIGNATURE:**

Vendor's Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_, to-wit:

Taken, subscribed, and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission expires \_\_\_\_\_, 20\_\_.

**AFFIX SEAL HERE****NOTARY PUBLIC** \_\_\_\_\_

# EXHIBIT I

## RFQ 19139 MANDATORY REQUIREMENTS CHECKLIST

This checklist is provided as an aid to vendors when preparing bids. It is not required to be completed and returned but may be included with the bid if the vendor desires.

**Note: Requirements have been abbreviated for use in this checklist. Full language of the requirements is contained in the RFQ document.**

### QUALIFICATIONS

REQUIREMENT	MET	NOT MET
Vendor must be certified by the Substance Abuse and Mental Health Services.		
Vendor must employ a full-time, board certified, toxicologist of the American Board of Forensic Toxicology.		

### MANDATORY CONTRACT REQUIREMENTS AND DELIVERABLES

REQUIREMENT	MET	NOT MET
Vendor to follow HIPPA.		
Vendor shall be responsible for collecting urine samples to test for substance abuse of substances for the clients referred to them by the Council.		
Vendor must require that the clients referred to them by the Council have a valid Drug Test Disclosure Form provided by the Council.		
Vendor shall test, record, submit for review and legally support confirmations of test specimens in conformity within the concentration cutoff levels.		
Vendor must have the capability to change screening cutoffs within thirty (30) days of a written request from the Council.		
Vendor shall ensure that all test results are clearly marked as Pass or Fail.		
On an initial drug test, the analysis must report a result below the cutoff concentration as <b>negative</b> .		
On a confirmation test, the analysis must report a result below the cutoff concentration as <b>negative</b> and a result at or above the cutoff concentration as <b>confirmed positive</b> .		
Vendor shall provide any follow-up testing or analysis required to confirm results. Positive tests must be reviewed by the Medical Review Officer.		
Vendor will inform the participant of drug screen results via US Postal Service as described in bid document.		
Positive samples shall be retained in a frozen state by the vendor for 365 calendar days.		
Vendor must maintain client records for six (6) years.		
Vendor must ensure complete integrity of each specimen tested and lab personnel as per DOT/NIDA		
Vendor must agree to abide within the rules of confidentiality issued by or through the United States DOT.		
At no additional cost to the Council, the vendor shall support the Council and the State of West Virginia with respect to all legal processes or confirmations.		

## EXHIBIT I CONT.

### REPORTING REQUIREMENTS

	MET	NOT MET
Vendor must provide a batch pipe delimited CSV file that contains the results of drug tests taken statewide during the course of a week to the Council.		

### ADDITIONAL REQUIREMENTS:

	MET	NOT MET
Testing sites w/in 20 miles of each institution.		
Vendor must accommodate clients between the hours of 8 AM to 5 PM.		
Vendor must accept walk-in clients.		
Vendor must ensure that any subcontracted facilities or services meet the mandatory requirements.		
Vendor must be able to provide services at all locations specified within fifteen (15) days of issuance of contract.		
Vendor must sign the Purchasing Affidavit		
Vendor must register with the Purchasing Division upon award of the contract.		
Vendor must ID a contract manager.		
Vendor must accept multiple payment methods.		