




STATE OF WEST VIRGINIA
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MEMORANDUM

TO: Higher Education Procurement Officers

FROM: Dawn E. Warfield
Deputy Attorney General 

DATE: September 14, 2011

RE: REVISED WV-96 Agreement Addendum, Problem Summary Form

The attached form WV-96 Agreement Addendum (revised 9/11) 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 Attorney General. The WV-96 Addendum was developed by the Attorney General's Office, in consultation with purchasing officers, 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 Higher Education 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, and do not sign any Addendum that has been altered without my prior written approval. 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, along with copies of all contract documents.

The attached Problem Summary Form contains the information needed for our negotiations. When completing the form, you will also need to provide the name and contact information for the 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, nor can your attorneys do so. I am the only person authorized to approve any modification to the WV-96. Once an agreement has been negotiated, we will send copies of the approved terms to you 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. We have also approved the attached WV-96A Agreement Addendum for Software, which contains changes to items 5 and 14 of the addendum that are most frequently requested by software vendors.

If you are told by a vendor that they have reached an agreement with the Attorney General's Office, ask to see my approval of 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 558-2021, by fax at 558-0140, or by e-mail at dawn.warfield@wvago.gov.

Attachments (WV-96, WV-96A, Problem Summary Form)