

# Purchase Order



WV Department of Health and  
Human Resources  
Office of Purchasing  
One Davis Square, Suite 100  
Post Office Box 50130  
Charleston, WV 25301

PURCHASE ORDER NO.
MED13001

PAGE
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I N V O I C E T O	Bureau For Medical Services 350 Capitol Street, Room 251 Charleston, WV 25301
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BLANKET RELEASE
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CORRECT PURCHASE ORDER NUMBER MUST  
APPEAR ON ALL PACKAGES, INVOICES, AND  
SHIPPING PAPERS. QUESTIONS CONCERNING THIS  
PURCHASE ORDER SHOULD BE DIRECTED TO THE  
BUYER AS NOTED BELOW.

CHANGE ORDER

**SEE REVERSE SIDE FOR  
TERMS AND CONDITIONS**

V E N D O R	Health Management Systems Inc. 401 Park Avenue South New York, NY 10016
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S H I P T O	Bureau For Medical Services 350 Capitol Street, Room 251 Charleston, WV 25301
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DATE PRINTED	TERMS OF SALE	FEIN/SSN	FUND		
10/03/2012	Net 30	132770433			
SHIP VIA	F.O.B.	FREIGHT TERM	ACCOUNT NUMBER		
Best Way	Destination, Prepaid		Multiple		
LINE	QUANTITY	UOP	VENDOR ITEM NO.	UNIT PRICE	AMOUNT
	DELIVERY DATE	CAT. NO.	ITEM NUMBER		
					OPEN END

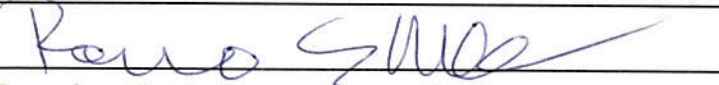
Contract Date: from 10/01/2012 to 09/30/2013

Contract for Recovery Audit Contract - Medical / Dental / Durable Medical Equipment for the Bureau for Medical Services located at 350 Capitol Street - Room 251, Charleston, WV 25301.

This award per the following:

1. Request for Proposal dated 05/18/2012.
2. Addendum No. 1 dated 07/13/2012.
3. Vendor's Proposal dated 07/27/2012.

Life of Contract: This contract becomes effective October 1, 2012 and shall extend for a period of one (1) year at which time the

By   
Bureau for Medical Services authorized signature

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contract may, upon mutual consent be renewed. Such renewals are for a period of up to one (1) year, with a maximum of two (2) one (1) year renewals, or until such time thereafter as is necessary to obtain a new contract. The "reasonable time" period shall not exceed twelve (12) months. During the "reasonable time" period, Vendor may terminate the contract for any reason upon giving the Bureau ninety (90) days written notice. Notice by Vendor of intent to terminate will not relieve Vendor of obligation to continue providing services pursuant to the terms on this contract.

The price(s) quoted in the Vendor's proposal will not be subject to any increase and will be considered firm for the life of the contract unless specific provisions have been provided in the original specifications.

Renewal: This contract may be renewed upon written mutual consent of the spending unit and the Vendor. Such renewals shall be in accordance with the terms and conditions of the original contract and shall be limited to two (2) one (1) year periods.

Renewals Remaining: Two (2).

The order of precedence is as follows:

1. Contract.
2. Request for Proposal dated 05/18/2012.
3. Addendum No. 1 dated 07/13/2012.
4. Vendor's Proposal dated 07/27/2012.



## Attachment C: Cost Sheet

Cost information below as detailed in the Request for Proposal and submitted in a separate sealed envelope. Cost should be clearly marked. **Vendor shall not alter Cost Sheet.**

Vendors are to use their business expertise in pricing the work described in this RFP, taking into consideration any intervening steps or activities that must be performed in order to complete the work and offer their rates accordingly, even if BMS does not explicitly identify those intervening costs in this RFP. The selected Vendor will be compensated as described in Attachment D: Special Terms and Conditions of the RFP and their proposed and accepted percentage rate which shall not exceed the following:

1. The highest Medicare RAC as specified by CMS in the Federal Register.
2. The highest Medicare RAC as specified by CMS for the recovery of improper payments made for "medical supplies, equipment and appliances suitable for use in the home" found within the home health services benefit authorized by section 1905(a)(7) of the Social Security Act.

Contingency Fee Percentage Rate: Vendor's Proposed Percentage: (for the contract term and any potential renewals)

<b>A.) Overpayment – Medical/Dental</b>			
<b>Contract Year</b>	<b>Estimated Recovery</b>	<b>Contingency %</b>	<b>Contract Cost<sup>1</sup></b>
Year 1	\$ 5,000,000	11.45%	\$572,500.00
Optional Year 1	\$ 5,000,000	11.45%	\$572,500.00
Optional Year 2	\$ 5,000,000	11.45%	\$572,500.00
<b>Subtotal – Medical/Dental</b>	<b>\$ 1,717,500.00</b>		
<b>B.) Overpayments – DME</b>			
<b>Contract Year</b>	<b>Estimated Recovery</b>	<b>Contingency %</b>	<b>Contract Cost<sup>1</sup></b>
Year 1	\$ 1,000,000	11.45%	\$114,500.00
Optional Year 1	\$ 1,000,000	11.45%	\$114,500.00
Optional Year 2	\$ 1,000,000	11.45%	\$114,500.00
<b>Subtotal – DME</b>	<b>\$ 343,500.00</b>		

<sup>1</sup> Estimated Recovery Amount x Contingency % = Estimated Contract Cost



<b>C.) Underpayments – Medical/Dental</b>			
<b>Contract Year</b>	<b>Estimated Recovery</b>	<b>Contingency %</b>	<b>Contract Cost<sup>1</sup></b>
Year 1	\$ 500,000	9.95%	\$49,750.00
Optional Year 1	\$ 500,000	9.95%	\$49,750.00
Optional Year 2	\$ 500,000	9.95%	\$49,750.00
<b>Subtotal – Underpayments Medical/Dental</b>	<b>\$ <u>149,250.00</u></b>		
<b>D.) Underpayments - DME</b>			
<b>Contract Year</b>	<b>Estimated Recovery</b>	<b>Contingency %</b>	<b>Contract Cost<sup>21</sup></b>
Year 1	\$ 1,000,000	9.95%	\$99,500.00
Optional Year 1	\$ 1,000,000	9.95%	\$99,500.00
Optional Year 2	\$ 1,000,000	9.95%	\$99,500.00
<b>Subtotal – Underpayments DME</b>	<b>\$ <u>298,500.00</u></b>		
<b>TOTAL NOT TO EXCEED COST for MEDICAL/DENTAL/DME RECOVERY ACTIVITIES</b> <i>(Sum of A+B+C +D)</i>	<b>\$ <u>2,508,750.00</u></b>		

- 1) The Vendors all-inclusive not to exceed contingency percentage bid will include all general and administrative staffing (secretarial, clerical, etc.), travel, supplies and other resource costs necessary to perform all services within the scope of this procurement.
- 2) The estimated recovery amounts are to be used for cost bid evaluation purposes only.
- 3) The cost bid proposal will be evaluated based on the Total Not to Exceed Cost of Contract.

If applicable, sign and submit the attached Resident Vendor Preference Certificate with the proposal.

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<sup>1</sup> Estimated Recovery Amount x Contingency % = Estimated Contract Cost



**BUREAU FOR MEDICAL SERVICES**

**MED 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 owned 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: Health Management Systems, Inc.

Authorized Signature:  Date: 6/19/12

State of Texas

County of Dallas, to-wit:

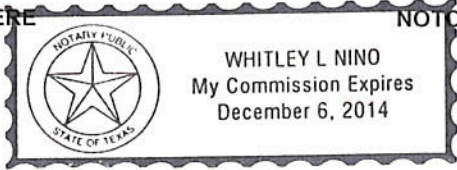
Taken, subscribed, and sworn to before me this 19 day of June, 2012.

My Commission expires December 6, 2014.



AFFIX SEAL HERE

NOTARY PUBLIC



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 DHHR OFFICE OF PURCHASING:

Spending Unit: WV DHHR Office of Purchasing  
 Signed: Robert Price  
 Title: Buyer  
 Date: 10-9-12

VENDOR

Company Name: Health Management Systems, Inc.  
 Signed: [Signature]  
 Title: Vice President - Government Services South  
 Date: 7/27/2012



**GENERAL TERMS & CONDITIONS  
PURCHASE ORDER/CONTRACT**

1. **ACCEPTANCE:** Seller shall be bound by this order and its terms and conditions upon receipt of this order.
2. **APPLICABLE LAW:** The laws of the State of West Virginia and the BMS Purchasing Manual shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
3. **NON-FUNDING:** All services performed or goods delivered under BMS Purchas Orders/Contracts are to be continued for the terms of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, the Purchase Order/Contract becomes void and of no effect after June 30.
4. **COMPLIANCE:** Seller shall comply with all federal, state and local laws, regulations and ordinance including, but not limited to, the prevailing wage rates of the WV Division of Labor.
5. **MODIFICATIONS:** This writing is the parties' final expression of intent. No modification of this order shall be binding unless agreed to in writing by the Buyer.
6. **ASSIGNMENT:** Neither this Order or any monies due, or to become due hereunder may be assigned by the Seller without the Buyer's consent.
7. **WARRANTY:** The Seller expressly warrants that the goods and/or services covered by this order will: {a} conform to the specifications, drawings, samples or other description furnished or specified by the BUYER; {b} be merchantable and fit for the purpose intended; and/or {c} be free from defect in material and workmanship.
8. **CANCELLATION:** The director of the DHHR Office of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
9. **SHIPPING, BILLING & PRICES:** Prices are those stated in this order. No price increase will be accepted without written authority from the Buyer. All goods or services shall be shipped on or before the date specified in the Order.
10. **LATE PAYMENTS:** Payment may only be made after the delivery of goods or services. Interest may be paid on late payments in accordance with the West Virginia Code.
11. **TAXES:** The State of West Virginia is exempt from the federal and state taxes and will not pay or reimburse such taxes.
12. **RENEWAL:** Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon the mutual written agreement of both parties.
13. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, the State may deem this contract null and void, and terminate such contract without further order.
14. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, is available online at [www.state.wv.us/admin/purchase/vrc/hipaa.htm](http://www.state.wv.us/admin/purchase/vrc/hipaa.htm) and is hereby made part of the agreement provided that the Agency meets the definition of a Cover Entity (45 CFR § 160.103) and will be disclosing Protected Health Information (45 CFR § 160.103) to the vendor.
15. **CONFIDENTIALITY:** The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedure, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admiin/purchase/privacy/noticeConfidentiality.pdf>.
16. **LICENSING:** Vendors much be licensed and in good standing in accordance with any and all state and local laws and requirement by any state or local agency of West Virginia, including but not limited to, the West Virginia Secretary of State's Office, the West Virginia Insurance Commission, or any other state agency or political subdivision. Furthermore, the vendor must provide all necessary releases to obtain information to enable the Director or spending unit to verify that the vendor is licensed and in good standing with the above entities.