


Request for Proposal	 <p style="text-align: center;">Marshall University Office of Purchasing One John Marshall Drive Huntington, WV 25755-4100 Direct all inquiries regarding this order to: (304) 696-3157</p>	Proposal#  MU19POUR
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Vendor:  Phone:  Email:  FEIN/SSN:  Fax:	For information contact:  <b>Buyer:</b> Tracey Brown-Dolinski, Director of Purchasing <b>Phone:</b> (304) 696-3157 <b>Email:</b> <a href="mailto:purchasing@marshall.edu">purchasing@marshall.edu</a>
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Sealed requests for proposals furnishing services described below will be received by the Institution. TO RECEIVE CONSIDERATION FOR AWARD, UNLESS OTHERWISE NOTED, THE PROPOSAL WILL BE SUBMITTED ON THIS FORM IN ORIGINAL, SIGNED IN FULL INK, AND NUMBER OF COPIES REQUESTED IN THE PROPOSAL, RECEIVED HAVE A DATE/TIME STAMP AFFIXED AND SUBMITTED IN BONFIRE BY BID OPENING TIME AND DATE. The Institution reserves the right to accept or reject proposals separately or as a whole, to reject any or all proposals, to waive informalities or irregularities and to contract as the best interests of the Institution may require. PROPOSALS ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS AS SET FORTH HEREIN.

DATE  2/28/2019	DELIVERY REQUIREMENTS  <b>Mandatory Pre-Proposal Conference 3/4/2019</b>	DEPARTMENT Proposal NO.	PROPOSALS OPEN:  <b>3:00 PM on March 19, 2019</b>	BIDDER MUST ENTER DELIVERY DATE FOR EACH ITEM BID
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Item #	Quantity	Description	Unit Price	Extended Price
<p><b><u>Addendum No.1</u></b></p> <p>Project Name: Pouring Rights Service Contract Project Title: MU19POUR</p> <p>The purpose of this addendum is to modify and/or clarify project requirements, specifications as per the attached information prepared by Marshall University.</p> <p>Receipt of this addendum must be acknowledged by signing this Addendum No. 1 and submit with proposal package.</p>				

Total	
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**To the Purchasing Department,**  
In compliance with the above, the undersigned offers and agrees, if this offer is accepted within \_\_\_\_\_ calendar days (30) calendar days unless a different period is inserted by the purchaser) from the bid open date, specified above, to furnish any or all items upon which prices are offered, at the price set opposite each item, delivered at the designated point(s), within the time specified.

Bidder guarantees shipment from \_\_\_\_\_  
\_\_\_\_\_ within \_\_\_\_\_ days  
FOB \_\_\_\_\_ After receipt of order at address shown  
Terms \_\_\_\_\_

Bidder's name Vendor \_\_\_\_\_  
Signed By \_\_\_\_\_  
Typed/Printed Name \_\_\_\_\_  
Title \_\_\_\_\_  
Email \_\_\_\_\_  
Fein \_\_\_\_\_  
Street Address \_\_\_\_\_  
City/State/Zip \_\_\_\_\_  
Date \_\_\_\_\_ Phone \_\_\_\_\_

## 1. Additional Information regarding section 2.8 Method of Evaluation:

<b>Technical Scores</b>	<b>Points</b>
Executive Summary	2
Company Background	5
Background in Similar Operations	4
Campus ID Card	3
Innovation & Best Practices	8
Product Overview/Brand Portfolio Strength	7
Marketing Support	7
Quality Assurance	8
Sustainability	4
Equipment Investment & Maintenance	8
Transition Plan	4
<b>Sub Total</b>	<b>60</b>
Presentation	10
<b>Grand Total</b>	<b>70</b>

2. During the mandatory pre-proposal meeting an option tour of the campus will be given to the following locations:

High Traffic Vending Machine locations  
 Student Center Food Court  
 Harless Dining Hall  
 Towers Marketplace  
 Drinko Coffee Shop  
 Football Stadium – Concession  
 Henderson Arena – Concession

3. Addition of Attachment A – Marshall University RFP Supplemental Package

## Attachment A



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# MARSHALL UNIVERSITY REQUEST FOR PROPOSAL SUPPLEMENTAL PACKAGE

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REQUEST FOR PROPOSAL SUPPLEMENTAL PACKAGE

**I. RESPONSE**

Vendors must complete a response to all mandatory specifications in order to be considered and continue in the evaluation process. Each proposal must be formatted as per the outline provided in the RFP. The contractor must make no other arrangement or distribution of proposal information. Failure on the part of the vendor to respond to specific requirements detailed in the RFP may be the basis for disqualification of a proposal. The University reserves the right to waive any informality of this proposal format and minor irregularities. NOTE: Nothing in the RFP may be construed to limit the University from negotiating for a change in the Services or fees during the term of the purchase order issued pursuant to the RFP.

**A. Pre-Proposal Conference**

An RFP may have a **mandatory** pre-proposal conference. The conference may be on-site, telephonic or digital. Vendors submitting a bid must attend the mandatory pre-proposal meeting. Failure to attend the mandatory pre-proposal meeting shall result in disqualification of the Vendor's proposal. No one person attending the pre-proposal meeting may represent more than one Vendor. An attendance sheet provided at the pre-proposal meeting shall serve as the official document verifying attendance.

**B. Delivery**

The University's RFP bid process requires that the proposal be submitted as directed within the RFP specifications; either directly entered into the Bonfire portal or an original mailed by the date and time stipulated in the proposal. Any requested convenience copies must be delivered to the address as specified within the proposal. Convenience copies shall be exact copies of the original. The University uses Bonfire for digital submissions and may or may not request additional copies.

All bids will be date and time stamped to verify official time and date receipt. Vendor is solely responsible for getting its original proposal and convenience copies delivered in a readable format by the Proposal Opening Date and Time.

Vendors mailing proposals should allow sufficient time for mail delivery to ensure timely arrival. The Marshall University Office of Purchasing cannot waive or excuse late receipt of a proposal which is delayed and late for any reason according to West Virginia State Code §5A-3-11(g). Any proposal received after the bid opening date and time will be immediately disqualified in accordance with the Marshall University Purchasing Administrative Rules and Regulations.

**C. Labeling Mailed Packages**

The outside of the proposal package should be clearly marked with the RFP# and Bid Opening date and time.

**D. Separate Submission of Cost and Technical Proposals**

**Technical Proposal**

The selection procedure for RFPs requires that evaluation of the Technical Proposal be conducted before the Cost Proposal is distributed to the Committee. Consequently, each proposal must be submitted as two separately sealed enclosures. Failure to comply may constitute disqualification of Bidder's proposal. Do not include cost figures in the technical proposal. Responses should be numbered to correspond to the RFP section numbers in the Specifications section. Each section shall be tabbed for ease of reference.

**Cost/Fee/Price Proposal (separate file):**

Vendor must list ALL fees on the Cost Proposal. Vendor may only charge those fees that are listed on the Cost Proposal. The Cost Proposal must be submitted with your proposal in a separate file within Bonfire or a separately sealed envelope if mailed, and signed by a person authorized to bind the Vendor.

**II. RFP TERMS**

**A. Best and Final Offers**

The University may, but is not required, to negotiate with Bidders. If the University elects to negotiate, negotiations shall be conducted with Bidders whose proposals fall in the competitive range. The competitive range includes those proposals whose price and technical factors give them a reasonable chance of winning the award. Such Bidders shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard to the technical and price aspects of proposals so as to assure the University's full understanding of proposals. No Bidder shall be provided information about any other Bidder's proposal, and no Bidder shall be assisted in bringing its proposal up to the level of any other proposal. A common deadline shall be established for receipt of best and final offers should one be necessary.

**B. Exceptions or Restrictions**

Bidders taking exception to any requirements stated in this RFP must submit a list of exceptions referencing section and paragraph number of the exception. Include the original text as well as the proposed change. If the Bidder provides an alternate solution when taking an exception to a requirement, the benefits of this alternative solution and impact, if any, on any part of the remainder of the Bidder's solution, must be described in detail. The exception must be contained within the original Bidder's submission. If the Bidder's solution is not contained within the original submission the exceptions will not be considered.

**C. Incurring Costs**

Marshall University and any of its employees or officers shall not be held liable for any expenses incurred by any bidder responding to this RFP for expenses to prepare, deliver the proposal, or to attend any mandatory pre-proposal meeting or oral presentations.

**D. Independent Price Determination**

A proposal will not be considered for award if the price in the proposal was not arrived at independently without collusion, consultation, communication or agreement as to any matter relating to prices with any competitor unless the proposal is submitted as a joint venture.

**E. Inquiries**

Questions relating to an RFP must be submitted in writing to the Office of Purchasing on or before the date outlined in the RFP. A written response will be issued by addendum when necessary. Verbal responses are non-binding.

**F. Oral Statements and Commitments**

Vendor must clearly understand that any verbal representation made or assumed to be made during any oral discussion concerning the RFP is not binding. Only the information issued in writing by an official written addendum to the Request for Proposal is binding.

**G. Cost/Fee/Price Quotations**

The price(s) quoted in the 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 for an adjustment in the original contract. Other Marshall University entities may request a quotation for services relative to this proposal. Each entity is solely responsible for

services requested. Vendors should note in the proposal package if this option is not available. Unit prices shall prevail in cases of a discrepancy in the Vendor's proposal. Unit prices shall prevail in cases of a discrepancy in the Vendor's bid.

**H. Best Price Guarantee**

The awarded vendor agrees to provide pricing to the University and its participating entities that are the lowest pricing available and the pricing shall remain so throughout the duration of the contract. The awarded vendor agrees to lower the cost of any product purchased following a reduction in the manufacturer or publisher's direct cost.

**I. Rejection of Proposals**

Marshall University shall select the best value solution according to the evaluation criteria. However, the University reserves the right to accept or reject any or all proposals, in part or in whole at its discretion. Marshall University reserves the right to withdraw an RFP at any time and for any reason. Submission of, or receipt by Marshall University of proposals confers no rights upon the bidder nor obligates Marshall University in any manner. A contract based on this RFP and the Vendor's proposal, may or may not be awarded. Any contract resulting in an award from this RFP is not valid until properly approved and executed by Marshall University, Office of Purchasing.

**J. Waiver of Minor Irregularities**

The Director reserves the right to waive minor irregularities in bids or specifications.

**K. Mandatory Requirements**

Any specification or statement containing the word "must", "shall", or "will" are mandatory. By signing and submitting a response to an RFP, the vendor agrees to all mandatory deliverables described herein. The vendor is required to meet all mandatory requirements in order to be eligible for consideration and to continue in the evaluation process. Failure to meet or agree to mandatory items shall result in disqualification of the Vendor's proposal and the evaluation process will be terminated for that vendor. Decisions regarding compliance with any mandatory requirement shall be at the sole discretion of the University.

**L. Public Record**

Submissions are Public Record.

All documents submitted to Marshall University, Office of Purchasing, related to purchase orders or contracts are considered public records. All bids, proposals or offers submitted by bidders shall become public information and are available for inspection during normal official business hours in the Office of Purchasing after the bid opening. Proposals will not be released until after the award.

**M. Written Release of Information**

All public information may be released with or without a Freedom of Information request; however, only a written request will be acted upon with duplications fees paid in advance. Fees shall apply to all requests for copies of any document. Currently the fees are based upon the "Administrative Procedure ADMIN-3 Freedom of Information Act Request Procedures" posted online at <http://www.marshall.edu/adminproc/files/ADMIN-3.pdf> ? All request maybe emailed to [FOIA@marshall.edu](mailto:FOIA@marshall.edu).

**N. Risk of Disclosure**

The only exemptions to disclosure of information are listed in West Virginia Code §29B-1-4. Primarily, only trade secrets, as submitted by a bidder, are exempt to public disclosure. The submission of any information to Marshall University, Office of Purchasing, puts the risk of disclosure on the vendor. Marshall University, Office of Purchasing, does not guarantee non-disclosure of any information to the public.



### III. DOCUMENTS

#### A. RFP Addenda

If it becomes necessary to revise any part of an RFP, an official written addendum will be issued by Marshall University, Office of Purchasing, to all bidders of record. The University reserves the right to further modify the RFP, including any Exhibits and Addenda to the RFP, as it considers appropriate.

A copy of the RFP and any addenda to the RFP will be placed on the University website, and sent to vendors of record. It is the Vendor's responsibility to periodically check the web site to make sure it is aware of and responds to any addenda.

#### B. Addenda Acknowledgement

Written acknowledgement of receipt of all issued amendments, addenda or changes shall be required from all Bidders responding to this RFP and in the form required by the solicitation documents. Vendor should acknowledge receipt of all addenda issued by signing the issued Addendum Form. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

#### C. Agreement Addenda

Any contract resulting from an award from this RFP and a contractor's proposal must include, but is not limited to, in its terms and conditions all mandatory sections contained herein. Failure of the successful contractor to sign Agreement Addendum (MU-96), or Software Agreement Addendum (MU96A), and if necessary, the MU Cloud Computing Contract Addendum, as part of the contract may result in disqualification. Agreement Addenda are available online at:

<http://www.marshall.edu/purchasing/files/MU-96.pdf> or

<http://www.marshall.edu/purchasing/files/MU-96A.pdf>

[http://www.marshall.edu/purchasing/files/CC\\_Addendum.pdf](http://www.marshall.edu/purchasing/files/CC_Addendum.pdf)

#### D. Drug Free Workplace

Chapter 21 - Article 1D of the West Virginia Labor Code, otherwise known as the West Virginia Alcohol and Drug-free Workplace Act, mandates that public improvement contractors should implement a drug-free workplace program requiring alcohol and drug testing. No public authority may award a public improvement contract to a contractor unless they maintain a drug-free workplace policy. The form may be accessed at:

<http://www.state.wv.us/admin/purchase/vrc/DrugFreeAff.pdf>

#### E. HIPAA Business Associate Addendum

The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, is available online at <http://www.state.wv.us/admin/purchase/vrc/hipaa.html> and is hereby made part of the agreement provided that the Agency meets the definition of a Covered entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the Vendor.

#### F. Vendor Preference:

Vendor Preference may only be granted upon written request and only in accordance with the West Virginia Code § 5A-3-37 and the West Virginia Code of State Rules.

Failure to submit the Resident Vendor Certification form with its bid will result in denial of Vendor Preference. Vendor Preference does not apply to construction projects. Vendor preference can be applied to the cost portion of the proposal only. A Resident Vendor Certification form may be found at:

<http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf>

**G. Vendor Registration:**

Prior to any award, the apparent successful Vendor must be registered with the Purchasing Division of the Department of Administration. If the successful Vendor is not currently registered, it shall complete and file the Vendor Registration and Disclosure Statement, Form WV-1, and submit the annual registration fee of \$125.00. Vendors do not have to be registered to submit a proposal. Form WV-1 may be found at: <http://www.state.wv.us/admin/purchase/vrc/wv1.pdf>

**H. Purchasing Affidavit**

In accordance with West Virginia Code §5A-3-10a, all Vendors are required to sign, notarize, and submit the Purchasing Affidavit stating that neither the Vendor nor a related party owe a debt to the State in excess of \$1,000. The affidavit must be submitted prior to award, but should be submitted with the Vendor's bid. A copy of the Purchasing Affidavit can be found at: <http://www.state.wv.us/admin/purchase/vrc/pAffidavit.pdf>

**I. Taxpayer ID Number and Certification (W9)**

Request for Taxpayer Identification Number and Certification can be found at: <http://www.irs.gov/pub/irs-pdf/fw9.pdf>

**J. Proof of Good Standing and Authorization to Do Business**

Vendors must be in good standing with all regulatory and governmental entities and be authorized to do business in West Virginia. Upon request of the University, Vendors must be able to provide proof of good standing and authorization to do business.

**K. Disclosure of Interested Parties to Contract**

In accordance with West Virginia Code §6D-1-2, vendors must sign, notarize, and submit Disclosure of Interested Parties form if a contract or a series of related contracts either actual or estimated value \$1 million or more. The form is required prior to award of the contract. The document can be found at: <https://ethics.wv.gov/SiteCollectionDocuments/Disclosure%20of%20interested%20parties%20form%206-8-18%20fillable.pdf>

**L. Insurance Requirements**

Liability insurance certificates are required prior to award but are not required at the time of bid.

**M. License Requirements**

The successful vendor must produce current documentation of all applicable licensures relating to the RFP project.

**N. Purchase Order**

In the event an award is made pursuant to the RFP, a purchase order, containing any agreement signed by the parties and attachments thereto, including the original RFP and applicable Addenda, and the Vendor's proposal, will be issued. The purchase order constitutes the contract to which the parties are bound. A signed contract or agreement is not binding on the University until the purchase order has been issued.

**O. Life of Contract**

When applicable a Life of Contract page containing the effective period of the contract, renewal periods, and terms is attached to the agreement.

**IV. EVALUATION AND AWARD**

Evaluations are not based solely on price. It is the intent of the University to award a purchase order to the Vendor that will provide the best solution to meet the needs of the University. Generally evaluation information specific to the

RFP will be contained in the RFP document. During the course of the evaluation, the University has the right to contact any Vendor to clarify or elaborate on the proposal.

**A. Assignment of Points**

Points are assigned according to the specifications contained in the RFP. The points will form the basis of the evaluation.

**B. Committee**

Proposals will be reviewed by a Proposal Review Committee whose members represent various groups within the University.

**C. Cost Evaluation and Resident Vendor Preference:**

Upon approval of the technical evaluation from the Evaluation Committee, the Purchasing Office will schedule a time and date to publicly open and read aloud the cost proposals. The Vendors shall be notified of this date. In accordance with West Virginia Code §5A-3-37, the Office of Purchasing will make the determination of the Resident Vendor Preference, if applicable. Resident Vendor Preference provides an opportunity for qualifying vendors to request preference for their residency status at the time of bid. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the West Virginia Code. A certificate of application is used to request this preference.

**D. Disqualification of Bidders**

Any of the following causes, while not inclusive, may be considered sufficient for the disqualification and rejection of a proposal:

1. Submission of a proposal which is not in conformance with the requirements as stated in this solicitation.
2. Lack of bidder competency or responsibility as demonstrated by past performance.

**E. Debarment and Suspension**

Contractor will not be considered in proposal process if debarred or suspended

**F. Technical Evaluation:**

An Evaluation Committee will review the technical proposals, assign appropriate points, and make a final written consensus recommendation of the highest scoring contractor to the Office of Purchasing.

**G. Presentations**

As part of the proposal evaluation process, acceptable Vendors may be requested to make a presentation to the Proposal Review Committee regarding financial commitment, services and type of operation they are prepared to provide. The University reserves the right to conduct individual interviews with finalists and to request best and final offers from any or all finalists. Bidders may be required to provide oral presentations to discuss their proposal and/or clarify their technical submittal.

**H. Contract Approval and Award**

After the cost proposals have been opened, the contract award is based on the highest scoring vendor. Once approved by the Director of Purchasing, the contract is prepared and signed by the Office of Purchasing, encumbered and mailed to the appropriate parties.

**I. Contract Provisions**

After the successful Vendor is selected, a formal contract document will be executed between Marshall University and the Vendor. In addition, the RFP and the Vendor's response will be included as part of the contract by reference. The order of precedence is the contract, the RFP and the Vendor's proposal in response to the RFP.

**J. Contract Termination**

Marshall University may terminate any contract resulting from this RFP immediately at any time the Vendor fails to carry out its responsibilities or to make substantial progress under the terms of this RFP and resulting contract. Marshall University shall provide the Vendor with advance notice of performance conditions which are endangering the contract's continuation. If after such notice the Vendor fails to remedy the conditions contained in the notice, within the time period contained in the notice, MU shall issue the Vendor an order to cease any and all work immediately. MU shall be obligated only for services rendered and accepted prior to the date of the notice of termination.

MU shall have the right to terminate the contract upon thirty (30) days written notice to Vendor.

**K. Vendor Protests**

Vendors are provided the ability to protest specifications and purchase order/contract awards. Protests based on specifications must be submitted no later than five business days prior to bid opening. Protest of purchase order/contract awards must be submitted no later than five calendar days after notification of the award. The vendor is responsible for knowing the bid opening and award dates. All protests must be submitted in writing to the Marshall University Office of Purchasing and contain the following information: (a) the name and address of the protestor; (b) the RFP or contract number; (c) a statement of the grounds of protest; (d) supporting documentation (if necessary); and (e) the resolution or relief sought. Failure to submit this information must be grounds for rejection of the protest by the Purchasing Director. The matter of protest will be reviewed and a written decision issued. Continuation or delay of the contract award while the protest is considered is at the discretion of the Purchasing Director.

**V. TERMS AND CONDITIONS**

The Request for Proposal contains all the contractual terms and conditions under which Marshall University will enter into a contract. By signing and submitting its proposal, the successful Vendor agrees to be bound by all the terms contained in the RFP and RFP supplemental package.

**A. Conflict of Interest**

Vendor affirms that it, its officers, members or employees presently have no interest and shall not acquire any interest, direct or indirect, which would conflict or compromise in any manner or degree with the performance or its services hereunder. The Vendor further covenants that in the performance of the contract, the Vendor shall periodically inquire of its officers, members and employees concerning such interests. Any such interests discovered shall be promptly presented in detail to the University.

**B. Prohibition against Gratuities**

Vendor warrants that it has not employed any company or person other than a bona fide employee working solely for the vendor or a company regularly employed as its marketing agent to solicit or secure the contract and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award of the contract.

For breach or violation of this warranty, the State shall have the right to annul this contract without liability at its discretion or to pursue any other remedies available under this contract or by law.

**C. Certifications Related to Lobbying**

Vendor certifies that no federal appropriated funds have been paid or will be paid, by or on behalf of the company or an employee thereof, to any person for purposes of influencing or attempting to influence an officer or employee of any Federal entity, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of

any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Vendor shall complete and submit a disclosure form to report the lobbying. Vendor agrees that this language of certification shall be included in the award documents for all sub-awards at all tiers, including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements, and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this contract was made and entered into.

**D. Changes**

If changes to the original contract become necessary, a formal contract change order will be negotiated to address changes to the terms and conditions and costs of work included under the contract. An approved contract change order is defined as one approved by the Office of Purchasing of MU and when necessary, approved as to form by the West Virginia Attorney General's Office; encumbered and placed in the U.S. Mail or delivered via email prior to the effective date of such amendment. An approved contract change order is required whenever the change affects the payment provision or the scope of the work. Such changes may be necessitated by new and amended Federal and State regulations and requirements. The change order must be signed by the Director of Marshall University's Office of Purchasing or designee.

As soon as possible after receipt of a written change request from Marshall University, but in no event more than thirty (30) days thereafter, the Vendor shall determine if there is an impact on price with the change requested and provide Marshall University a written statement identifying any price impact on the contract or to state that there is no impact. In the event that price will be impacted by the change, the Vendor shall provide a description of the price increase or decrease involved in implementing the requested change.

NO CHANGE SHALL BE IMPLEMENTED BY THE VENDOR UNTIL SUCH TIME AS THE VENDOR RECEIVES AN APPROVED WRITTEN CHANGE ORDER.

**E. Emergency Purchases**

The Purchasing Director may authorize the purchase of goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the University from fulfilling its obligations under a One Time Purchase contract.

**F. Subsequent Forms**

The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the University such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

**G. Antitrust**

In submitting a bid to, signing a contract with, or accepting a Purchase Order from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or

services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

**H. Assignment**

Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the University and any other government agency or office that may be required to approve such assignments. Notwithstanding the foregoing, the Purchasing Office approval may or may not be required on certain agency delegated or exempt purchases.

**I. Bankruptcy**

In the event the Vendor files for bankruptcy protection, the State of West Virginia may deem this Contract null and void, and terminate this Contract without notice.

**J. Bureau of Employment Programs Regulations**

West Virginia State Code §21A-2-6(17) prohibits Marshall from contracting with any contractor not in compliance with the regulations set forth by the Bureau of Employment Programs.

**K. Compliance with Laws and Regulations**

The vendor shall procure all necessary permits and licenses to comply with all applicable laws, Federal, State or municipal, along with all regulations, and ordinances of any regulating body.

The Vendor shall pay any applicable sales, use or personal property taxes arising out of this contract and the transactions contemplated thereby. Any other taxes levied upon this contract, the transaction, or the equipment, or services delivered pursuant here to shall be borne by the contractor. The State of West Virginia and the University are exempt from any taxes regarding the goods and/or services and under no circumstances shall either be held liable for any obligation of the same.

**L. Governing Law**

This contract shall be governed by the laws of the State of West Virginia. The Vendor further agrees to comply with the Civil Rights Act of 1964 and all other applicable laws and regulations, Federal, State and Local Government.

**M. Indemnification**

The Vendor agrees to indemnify, defend and hold harmless, Marshall University and its 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 laws.

**N. Policy Advisements**

Vendor shall advise its employees that the State of West Virginia and the University require a smoke free and drug free work place and prohibit any discrimination on the basis of race, color, national origin, ancestry, sex, religion, age, physical condition, disability or political affiliation.

**O. Record Retention (Access & Confidentiality)**

Vendor shall comply with all applicable Federal and State of West Virginia rules and regulations, and requirements

Governing the maintenance of documentation to verify any cost of services or commodities rendered under this contract by Vendor. The Vendor shall maintain such records a minimum of five (5) years and make available all records to MU personnel at Vendor's location during normal business hours upon written request by MU within 10 days after receipt of the request.

Vendor may have access to private and confidential data maintained by Marshall University to the extent required for Vendor to carry out the duties and responsibilities defined in this contract. Vendor agrees to maintain confidentiality and security of the data made available and shall indemnify and hold harmless Marshall University against any and all claims brought by any party attributed to actions of breach of confidentiality by the Vendor, subcontractors or individuals permitted access by Vendor.

**P. Subcontracts/Joint Ventures**

The Vendor is solely responsible for all work performed under the contract and shall assume prime contractor responsibility for all services offered and products to be delivered under the terms of this contract. Marshall University will consider the Vendor to be the sole point of contact with regard to all contractual matters. The Vendor may, with the prior written consent of Marshall University, enter into written subcontracts for performance of work under this contract; however, the vendor is totally responsible for payment of all subcontractors.

**Q. Vendor Relationship**

The relationship of the Vendor to MU shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by the parties to this contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees, representatives and agents. Vendor shall be responsible for selecting, supervising and compensating any and all individuals employed pursuant to the terms of this RFP and resulting contract. Neither the Vendor, nor any employees or contractors of the vendor, shall be deemed to be employees of the State for any purposes whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, and licensing fees, etc. and the filing of all necessary documents, forms and returns pertinent to all of the foregoing. Vendor shall hold harmless Marshall University and shall provide Marshall University with a defense against any and all claims including but not limited to the foregoing payments, withholdings, contributions, taxes, social security taxes and employer income tax returns.

The Vendor shall not assign, convey, transfer or delegate any of its responsibilities and obligations under this contract to any person, corporation, partnership, association or entity without expressed written consent of the Agency.

**VI. PAYMENT INFORMATION**

**A. Funding**

This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available.

**B. Invoices**

The Vendor shall submit invoices, in arrears, to Marshall University at the address on the face of the purchase order labeled "Invoice To" pursuant to the terms of the contract.

**C. Interest**

Interest attributable to late payment will only be permitted if authorized by West Virginia Code.

**D. Progress Payments**

If progress payments are permitted, Vendor is required to identify points in the work plan at which compensation would be appropriate. Progress reports must be submitted to Marshall University with the invoice detailing progress completed or any deliverables identified. Payment will be made only upon approval of acceptable progress or deliverables as documented in the Vendor's report. Invoices may not be submitted more than once monthly and State law forbids payment of invoices prior to receipt of services.

**E. Credit Card Acceptance**

Marshall University currently utilizes a Purchasing Card (P-card) program, administered under contract by a banking institution, to process payment for goods and services. The Vendor must accept the Purchasing Card for payment unless otherwise noted in the contract. Vendors may charge a flat rate for credit card payments. If the vendor cannot accept payment by credit card, it must be so noted in the proposal package.

**F. Purchase Order Procedure**

Departments will issue a purchase order for payments against the contract. Authorized spending unit may use the Purchasing card for purchases within the P-card limits.