

Expression of Interest	 <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) 696-2727</p>	Bid# R2401340
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Vendor:	For information call: Purchasing Contact: Phone: (304) 696-2727 Email: michelle.wheeler@marshall.edu purchasing@marshall.edu
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Sealed requests to bid for furnishing the supplies, equipment or services described below will be received by the Institution. TO RECEIVE CONSIDERATION FOR AWARD, UNLESS OTHERWISE NOTED, THE BID WILL BE SUBMITTED ON THIS FORM AND UPLOADED INTO THE MU BONFIRE PORTAL ON OR BEFORE THE DATE AND TIME SHOWN FOR THE BID OPENING. When applicable, prices will be based on units specified; and Bidders will enter the delivery date or time for items contained herein. The Institution reserves the right to accept or reject bids on each item separately or as a whole, to reject any or all bids, to waive informalities or irregularities and to contract as the best interests of the Institution may require. BIDS ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS AS SET FORTH HEREIN.

DATE 11/14/2023	MANDATORY BID MEETING N/A	DEPARTMENT REQUISITION NO. R2401340	BIDS OPEN: 12/08/2023 @ 3:30PM EST. Broadcast via TEAMS link below: https://tinurl.com/2ck3f5my	BIDDER MUST ENTER DELIVERY DATE FOR EACH ITEM BID
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Item #	Quantity	Description	Unit Price	Extended Price
<u>Request for Expression of Interest</u> Marshall University, on behalf of the Board of Governors, invites sealed proposals to provide design services and construction contract administration for: Architectural/Engineering Services for Roof Replacement of the High Roofs at Twin Towers East and Twin Towers West Interested firms should contact Michelle Wheeler via email at michelle.wheeler@marshall.edu to obtain a copy of the requirements of the request for Expressions of Interest. The requirements can also be accessed online at: https://www.marshall.edu/purchasing/resources/bids-and-proposals/				

Total

To the Office of Purchasing,
 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 r _____ Signed By _____ Typed Name _____ Title _____ Email _____ Street Address _____ City/State/Zip _____ Date _____ Phone _____ Fein _____
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EXPRESSION OF INTEREST R2401340

Architectural/Engineering Services for Roof Replacement of
the High Roofs at Twin Towers East and Twin Towers West

SECTION ONE: OVERVIEW

1. **PURPOSE:** The Marshall University Office of Purchasing is soliciting Expression of Interest (“EOI”) for architectural/engineering services for roof replacement of the high roofs at Twin Towers East and Twin Towers West.

2. **PROJECT LOCATION:** Twin Tower East and West, 1850-1854 5th Avenue Huntington, West Virginia 25701.

3. **SCOPE OF SERVICES:** Marshall University anticipates the design scope to be inclusive of but not limited to the roof removal and roof replacement design of both high roofs, and construction administration of the projects.

4. **SCHEDULE OF EVENTS:**

Release of the EOI.....November 14, 2023 & November 21, 2023
 Expression of Interest due to Marshall University.... December 8, 2023, at 3:30 p.m., EST
 Expressions of Interest Opening Date..... December 8, 2023, at 3:30 p.m., EST
 Complete Shortlist and Schedule Interviews..... January 12, 2024
 Interview and Select Design Firm.....February 1, 2024
 Design and Bid Documents Completed by..... May 3, 2024



**EXPRESSION OF INTEREST
R2401340**

Architectural/Engineering Services for Roof Replacement of
the High Roofs at Twin Towers East and Twin Towers West

SECTION TWO: INSTRUCTIONS TO VENDORS SUBMITTING BIDS

Instructions begin on the next page.

INSTRUCTIONS TO VENDORS

1. REVIEW DOCUMENTS THOROUGHLY: Please read these instructions and all documents attached in their entirety. These instructions provide critical information about requirements that if overlooked, could lead to disqualification of a Vendor's bid. All bids must be submitted in accordance with the provisions contained in these instructions and the Solicitation. Failure to do so may result in disqualification of a Vendor's bid.

2. MANDATORY TERMS: The Solicitation may contain mandatory provisions identified by the use of the words "must," "will," and "shall" which identify a mandatory item or requirement. Failure to comply with a mandatory term in the Solicitation will result in bid disqualification.

3. PREBID MEETING: The item identified below shall apply to this Solicitation.

A pre-bid meeting will not be held prior to bid opening.

A **NON-MANDATORY** pre-bid meeting will be held at the following place and time:

A **MANDATORY** pre-bid meeting will be held at the following place and time:

All Vendors submitting a written bid must attend the mandatory pre-bid meeting. Failure to attend the mandatory pre-bid meeting shall result in disqualification of the Vendor's bid. No person attending the pre-bid meeting may represent more than one (1) Vendor.

An attendance sheet provided at the pre-bid meeting shall serve as the official document attendance verification. The State will not accept any other form of proof or documentation to verify attendance. Any person attending the pre-bid meeting on behalf of a Vendor must list his or her name and the name of the Vendor he or she is representing.

Additionally, the person attending the pre-bid meeting should include the Vendor's e-mail address, phone number, and fax number on the attendance sheet. It is the Vendor's responsibility to locate the attendance sheet and provide the required information. **Failure to complete the attendance sheet as required may result in disqualification of Vendor's bid.**

INSTRUCTIONS TO VENDORS

All Vendors should arrive prior to the starting time for the pre-bid. Vendors who arrive after the starting time but prior to the end of the pre-bid will be permitted to sign in but are charged with knowing all matters discussed at the pre-bid meeting.

If possible, questions submitted at least five (5) business days prior to a scheduled pre-bid meeting will be discussed at the pre-bid meeting. Any discussions or answers to questions at the pre-bid meeting are preliminary in nature and are non-binding. Official and binding answers to questions will be published in a written addendum to the Solicitation prior to bid opening.

- 4. VENDOR QUESTION DEADLINE:** Vendors may submit questions relating to this Solicitation to the Marshall University Office of Purchasing as directed below. Questions must be submitted in writing. All questions must be submitted on or before the date listed below and to the address listed below to be considered. A written response will be published in a Solicitation addendum if a response is possible and appropriate. Non-written discussions, conversations, or questions and answers regarding this Solicitation are preliminary in nature and are nonbinding.

Submissions should include solicitation number in the subject line.

Submit Questions to: Michelle Wheeler
Old Main 125
One John Marshall Drive
Huntington, WV 25755
Email: michelle.wheeler@marshall.edu

- 5. VERBAL COMMUNICATION:** Any verbal communication between the Vendor and any State personnel is not binding, including verbal communication at the mandatory pre-bid conference. Only information issued in writing and added to the Solicitation by an official written addendum by the Marshall University Office of Purchasing is binding.
- 6. BID SUBMISSION:** All bids must be submitted electronically through Bonfire™ or signed and delivered by the Vendor to the Marshall University Office of Purchasing at the address listed above on or before the date and time of the bid opening. Any bid received by the Office of Purchasing staff is in the possession of the Office of Purchasing and will not be returned for any reason. The Office of Purchasing will not accept bids, modification of bids, or addendum acknowledgment forms via e-mail. Acceptable delivery methods include electronic submission via Bonfire™, hand delivery, or delivery by courier.

INSTRUCTIONS TO VENDORS

A bid that is not submitted electronically through Bonfire™ should contain the information listed below on the face of the envelope or the bid may be rejected by the University.

SEALED BID: R2401340

CONTACT: Michelle Wheeler

SOLICITATION NAME: Expression of Interest (“EOI”) for Architectural/Engineering Services for Roof Replacement of the High Roofs at Twin Towers East and Twin Towers West.

SOLICITATION CLOSING DATE: December 8, 2023

SOLICITATION CLOSING TIME: 3:30 PM EST

7. **BID OPENING:** Bids submitted in response to this Solicitation will be opened at the location identified below on the date and time listed below. Delivery of a bid after the bid opening date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when confirmation of delivery is provided by Bonfire™ (in the case of electronic submission), or when the bid is delivered via mail or courier and time stamped by the official Marshall University Office of Purchasing’s time.

Bid Opening Date and Time: December 8, 2023 3:30 PM EST

Bid Opening Location: Marshall University Office of Purchasing
Old Main 125
One John Marshall Drive
Huntington, WV 25755

8. **ADDENDUM ACKNOWLEDGEMENT:** Changes or revisions to this Solicitation will be made by an official addendum issued by the University. Vendor should acknowledge receipt of all addenda issued with this Solicitation by completing an Addendum Acknowledgment Form, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.
9. **BID FORMATTING:** Vendor should type or electronically enter the information onto its written bid to prevent errors in the evaluation. Failure to type or electronically enter the information may result in bid disqualification.

INSTRUCTIONS TO VENDORS

- 10. ALTERNATES:** Any model, brand, or specification listed in this Solicitation establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or Vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the University at its sole discretion. Any Vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.
- 11. EXCEPTIONS AND CLARIFICATIONS:** The Solicitation contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions, clarifications, or other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification.
- 12. COMMUNICATION LIMITATIONS:** In accordance with Marshall University Board of Governors Policy No. FA-9 Purchasing Policy, communication with Marshall University or any of its employees regarding this Solicitation during the solicitation, bid, evaluation or award periods, except through the Marshall University Office of Purchasing, is strictly prohibited without prior Office of Purchasing approval for such communication.
- 13. REGISTRATION:** Prior to Contract award, the apparent successful Vendor must be properly registered with the West Virginia Purchasing Division and must have paid the registration fee, if applicable.
- 14. UNIT PRICE:** Unit prices shall prevail in cases of a discrepancy in the Vendor's bid.
- 15. PREFERENCE:** Vendor Preference may be requested in purchases of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects. Any request for preference must be submitted in writing with the bid, must specifically identify the preference requested with reference to the applicable subsection of West Virginia Code § 5A-3-37, and should include with the bid any information necessary to evaluate and confirm the applicability of the requested preference. A request form to help facilitate the request can be found at: <http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf>. Please Note: Vendor Preference is not applicable to construction projects.
- 15A. RECIPROCAL PREFERENCE:** The State of West Virginia applies a reciprocal preference to all solicitations for commodities and printing in accordance with W. Va. Code § 5A-3-37(b). In effect, if reciprocal preference is requested by a West Virginia resident vendor, non-resident vendors receiving a preference in their home states, will see that same preference granted to West Virginia resident vendors bidding against them in West Virginia. A request form to help facilitate the request can be found at: <http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf>.

INSTRUCTIONS TO VENDORS

- 16. SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES:** For any solicitations publicly advertised for bid, in accordance with West Virginia Code §5A-3-37(a)(7) and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the Purchasing Division with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to contract award to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority owned business shall be applied in accordance with W. Va. CSR § 148-22-9.
- 17. WAIVER OF MINOR IRREGULARITIES:** The Chief Procurement Officer reserves the right to waive minor irregularities in bids or specifications in accordance with Marshall University Board of Governors Policy No. FA-9 Purchasing Policy.
- 18. ELECTRONIC FILE ACCESS RESTRICTIONS:** Vendor must ensure that its submission in Bonfire™ can be accessed and viewed by the University staff immediately upon bid opening. The University will consider any file that cannot be immediately access and viewed at the time of the bid opening (such as, encrypted files, password protected files, or incompatible files) to be blank or incomplete as context requires, and therefore unacceptable. A Vendor will not be permitted to unencrypt files, remove password protections, or resubmit documents after bid opening to make a file viewable if those documents are required with the bid. A Vendor may be required to provide document passwords or removed access restrictions to allow the University to print or electronically save documents provided that those documents are viewable by the University prior to obtaining the password or removing the access restriction.
- 19. NON-RESPONSIBLE:** The Chief Procurement Officer reserves the right to reject the bid of any Vendor as Non-Responsible in accordance with Marshall University Board of Governors Policy No. FA-9 Purchasing Policy, when the Chief Procurement Officer determines that the Vendor submitting the bid does not have the capability to fully perform or lacks the integrity and reliability to assure good-faith performance.
- 20. NON-RESPONSIVE:** The Chief Procurement Officer reserves the right to reject the bid of any Vendor as Non-Responsive in accordance with Marshall University Board of Governors Policy No. FA-9 Purchasing Policy, when the Chief Procurement Officer determines that the Vendor submitting the bid does not conform to the mandatory or essential requirements contained in the solicitation.
- 21. ACCEPTANCE/REJECTION:** The University may accept or reject any bid in whole, or in part in accordance with Marshall University Board of Governors Policy No. FA-9 Purchasing Policy.

INSTRUCTIONS TO VENDORS

- 22. YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of Marshall University Board of Governors Policy No. FA-9 Purchasing Policy, §5-22-1 et seq., §5G-1-1 et seq., and the West Virginia Freedom of Information Act in W. Va. Code § 29B-1-1 et seq.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET (S), OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the Marshall University Office of Purchasing constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The University may disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by W. Va. Code § 47-22-1 et seq. and subject to W. Va. Code 29B-1-4(a) (1). All submissions are subject to public disclosure without notice.

- 23. PURCHASING AFFIDAVIT:** The University is prohibited from awarding a contract to any bidder that owes a debt to the State or political subdivision of the State. Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Marshall University Office of Purchasing affirming under oath that it is not in default on any monetary obligation owed to the State or a political subdivision of the State.
<http://www.state.wv.us/admin/purchase/vrc/pAffidavit.pdf>
- 24. INTERESTED PARTY DISCLOSURE:** West Virginia Code § 6D-1-4 requires that the vendor submit to the Marshall University Office of Purchasing a disclosure of interested parties to the contract for all contracts with an actual or estimated value of at least \$1 million. That disclosure must occur on the form prescribed and approved by the WV Ethics Commission prior to contract award. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.
http://www.state.wv.us/admin/purchase/VRC/Ethics_DisclosureInterestedParties_2018.pdf
- 25. WITH THE BID REQUIREMENTS:** In instances where these specifications require documentation or other information with the bid, and a vendor fails to provide it with the bid, the Chief Procurement Officer reserves the right to request those items after bid opening and prior to contract award pursuant to the authority to waive minor irregularities in bids or specifications under Marshall University Board of Governors Policy No. FA-9 Purchasing Policy. This authority does not apply to instances where state law mandates receipt with the bid.



EXPRESSION OF INTEREST R2401340

Architectural/Engineering Services for Roof Replacement of
the High Roofs at Twin Towers East and Twin Towers West

SECTION THREE: SCOPE OF SERVICES

1. **Qualifications and Experience:** Vendors shall provide information regarding its employees, such as staff qualifications and experience in completing similar projects; references; copies of any staff certifications or degrees applicable to this project; proposed staffing plan; descriptions of past projects completed entailing the location of the project, project manager name and contact information, type of project, and what the project goals and objectives where and how they were met.
 - 1.1 In addition to the above, the Vendor shall provide information regarding the following:
 - a. The successful firm or team shall demonstrate a clear procedure for communication with the owner during all phases of the project.
 - b. The successful firm or team shall demonstrate a history of projects that met the owner's budget and a clear plan to ensure this project can be constructed within the project budget. This plan shall be described in detail.
 - c. The successful firm or team shall demonstrate a history of projects that have been constructed in the time allotted in the contract documents and a clear plan to ensure this project will be constructed within the agreed construction period. This plan shall be described in detail.
 - d. The successful firm or team shall demonstrate competent and acceptable experience in all expected professional disciplines necessary for the design and completion of the project.



EXPRESSION OF INTEREST R2401340

Architectural/Engineering Services for Roof Replacement of
the High Roofs at Twin Towers East and Twin Towers West

2. Project and Goals: The project goals and objectives are:

- 2.1 Goal/Objective 1:** Review existing conditions of the high roofs to determine a replacement plan which allows the work to be completed appropriately while minimizing disruption to facility operations.
- 2.2. Goal/Objective 2:** Clear and timely communication regarding the project must be always maintained between the university and the vendor through all aspects of the project from development and design to project completion.
- 2.3. Goal/Objective 3:** As a portion of the process outlined in Objective 1, provide all necessary services to design the facilities described in this EOI in a manner that is consistent with the University's needs, objective, current law, and current code; while following the plan to design and execute the project within budget.
- 2.4 Goal/Objective 4:** Provide Construction Contract Administration Services with competent professionals that ensure the project is constructed and functions as designed.

3. Oral Presentations (Department Option): The Department has the option of requiring oral presentations of all Vendors participating in the EOI process. If this option is exercised, it would be listed in the Schedule of Events (Section 1.3) of this EOI. During oral presentations, Vendors may not alter or add to their submitted proposal, but only clarify information. A description of the materials and information to be presented is provided below:

3.1. Materials and Information Required at Oral Presentation:

The Vendor must be prepared to discuss and clarify required items submitted with the EOI as indicated in Section 1.



EXPRESSION OF INTEREST R2401340

Architectural/Engineering Services for Roof Replacement of
the High Roofs at Twin Towers East and Twin Towers West

SECTION FOUR: VENDOR PROPOSAL, EVALUATION, & AWARD

1. **Economy of Preparation:** EOI's should be prepared simply and economically, providing a straightforward, concise description of firm's abilities to satisfy the requirements and goals and objectives of the EOI. Emphasis should be placed on completeness and clarity of content. The response sections should be labeled for ease of evaluation.
2. **BIDS MUST NOT CONTAIN PRICE QUOTATIONS:** The State must select the best value solution according to §5G-1-3 of the West Virginia State Code. In accordance with the Code requirements, no "price" or "fee" information is requested or permitted in the bid response.
3. **Evaluation and Award Process:** Expressions of Interest for projects estimated to cost \$250,000 or more will be evaluated and awarded in accordance with West Virginia Code §5G-1-3. That Code section requires the following:
 - 3.1. **Required Elements of EOI Response:** The Director of the Office of Purchasing must encourage such firms engaged in the lawful practice of the profession to submit an expression of interest, which must include a statement of qualifications, and performance data and may include anticipated concepts and proposed methods of approach to the project.
 - 3.2. **Public Advertisement:** All EOI requests must be announced by public notice published as a Class II legal advertisement in compliance with the provisions of West Virginia Code §59-3-1 et seq.
 - 3.3. **Selection Committee Evaluation & Negotiation:** A committee comprised of three to five representatives of the Department initiating the request shall:
 - 3.3.1. Evaluate the statements of qualifications and performance data and other material submitted by the interested firms and select three firms which in their opinion are the best qualified to perform the desired service.
 - 3.3.2. Conduct interviews with each firm selected and the conduct discussions regarding anticipated concepts and the proposed methods of approach to the assignment.
 - 3.3.3. Rank in order of preference no less than three professional firms deemed to be the most highly qualified to provide the services required and shall commence scope of service and price negotiations with the highest qualified professional firm.



EXPRESSION OF INTEREST R2401340

Architectural/Engineering Services for Roof Replacement of
the High Roofs at Twin Towers East and Twin Towers West

3.3.4. Should the Department be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee determined to be fair and reasonable, price negotiations with the firm of second choice shall commence. Failing accord with the second most qualified professional firm, the committee shall undertake price negotiations with the third most qualified professional firm.

3.3.5. Should the Department be unable to negotiate a satisfactory contract with any of the selected professional firms, it must select additional professional firms in order of their competence and qualifications and must continue negotiations in accordance with this section until an agreement is reached.

3.4. Vendor Ranking: All evaluation criteria is defined in the Procurement Specifications section and based on a 100 points total score. Points shall be assigned based upon the Vendor's response to the evaluation criteria as follows:

- Qualifications and experience 40 Points Possible
- Approach and methodology for meeting Goals and Objectives 40 Points Possible
- Oral Interview 20 Points Possible

Total 100 Points



**EXPRESSION OF INTEREST
R2401340**

Architectural/Engineering Services for Roof Replacement of
the High Roofs at Twin Towers East and Twin Towers West

SECTION FIVE: TERMS AND CONDITIONS

Terms and conditions begin on the next page.

MARSHALL UNIVERSITY

GENERAL TERMS AND CONDITIONS

1. CONTRACTUAL AGREEMENT: Issuance of an Award Document constitutes acceptance of this contract (the Contract) made by and between Marshall University (University or Marshall) and the Vendor. Vendor's signature to the Contract signifies Vendor's agreement to be bound by and accept the terms and conditions contained in the Contract. Therefore, the parties agree that the following contractual terms and conditions are dominant over any competing terms made a part of the Contract. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THESE GENERAL TERMS AND CONDITIONS, THESE GENERAL TERMS AND CONDITIONS SHALL CONTROL**

2. DEFINITIONS: As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications, if applicable, included with the Solicitation/Contract.

2.1 "Award Document" means the document that identifies the Vendor as the Contract holder when signed by the Vendor and Marshall University's Office of Purchasing and, when necessary, approved as to form by the Attorney General.

2.2 "Bid" or "Proposal" means the Vendor's verbal bid or written bid provided in response to a solicitation by the University.

2.3 "Board" means the Governing Board of Marshall University.

2.4 "Buyer" means an individual designated by a Chief Procurement Officer to perform designated purchasing and acquisition functions as authorized by the Chief Procurement Officer.

2.5 "Chief Procurement Officer" means the individual designated by the President of Marshall University to manage, oversee and direct the purchasing and acquisition of supplies, equipment, services, and printing for the University.

2.6 "Contract" means the binding agreement that is entered between the University and the Vendor to provide requested goods and/or services requested in the Solicitation.

2.7 "Governing Board" means the Marshall University Board of Governors as provided for in the West Virginia state code.

2.8 "Higher Education Institution" means an institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended.

2.9 "Office of Purchasing" means the section within Marshall University headed by the Chief Procurement Officer and its personnel.

Revised: 10/12/21

2.10 "Purchasing Card" or "P-Card" means The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.

2.11 "Responsible Bidder" and "Responsible Vendor" mean a person and/or vendor who have the capability in all respects to perform contract requirements, and the integrity and reliability which will assure good faith performance.

2.12 "Responsive Bidder" and "Responsive Vendor" mean a person and/or a vendor who has submitted a bid which conforms in all material respects to the invitation to bid.

2.13 "Solicitation" means the notice of an opportunity to supply the University with goods and services.

2.14 "State" means the State of West Virginia and/or any of its agencies, commissions, boards, departments or divisions as context requires.

2.15 "University" means Marshall University or Marshall.

2.16 "Vendor" or "Vendors" means any entity providing either a verbal or written bid in response to the solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

2.17 "Will", "Shall" and "Must" identifies a mandatory item or requirement that concludes the duty, obligation or requirement imposed is mandatory, as opposed to being directory or permissive.

3. CONTRACT TERM; RENEWAL; EXTENSION: The term of the Contract shall be determined in accordance with the category that has been identified as applicable to the Contract below:

Term Contract

Initial Contract Term: The Contract becomes effective on _____
_____ and extends for a period of _____ year(s).

Renewal Term: The Contract may be renewed upon the mutual written consent of the University and the Vendor. Any request for renewal should be submitted to the University thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Renewal of the Contract is limited to _____ successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed _____ months in total. Automatic renewal of the Contract is prohibited.

Revised: 10/12/21

Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.

Alternate Renewal Term – This contract may be renewed for _____ successive _____ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor and Agency.

Fixed Period Contract: The Contract becomes effective upon Vendor’s receipt of the notice to proceed and must be completed within _____.

Fixed Period Contract with Renewals: The Contract becomes effective upon Vendor’s receipt of the notice to proceed and part of the Contract must be completed within _____ days. Upon completion, the Vendor agrees that maintenance, monitoring, or warranty services will be provided for _____ successive one-year periods or multiple periods of less than one year provided that the multiple renewal periods do not exceed _____ months in total.

One-Time Purchase: The term of the Contract shall run from the issuance of the Award Document until all the goods contracted for have been delivered, but in no event, will the Contract extend for more than one fiscal year.

Other: See attached.

4. NOTICE TO PROCEED: Vendor shall begin performance of the Contract immediately upon receiving notice to proceed unless otherwise instructed by the University. Unless otherwise specified, the fully executed Award Document will be considered notice to proceed.

5. QUANTITIES: The quantities required under the Contract shall be determined in accordance with the category that has been identified as applicable to the Contract below.

Open End Contract: Quantities stated in the solicitation are approximations only, based on estimates supplied by the University. It is understood and agreed that the Contract shall cover the quantities ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

Service: The scope of the service to be provided will be more clearly defined in the specifications included herewith.

Revised: 10/12/21

- Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.
- One-Time Purchase:** The Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under the Contract without an appropriate change order approved by the Vendor, University, and/or when necessary, the Attorney General's office.

6. EMERGENCY PURCHASES: The Chief Procurement Officer may suspend the use of a university wide mandatory contract (the University's Office of Purchasing has created standard specifications that are establish University wide contracts for commonly used commodities and services that are needed on a repetitive basis), or the competitive bidding process to allow a Department to purchase goods or services in the open market if 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, provided that a required University emergency purchase with another vendor does not cause a breach of contract.

7. REQUIRED DOCUMENTS: All the items checked below must be provided to the University by the Vendor as specified below.

- BID BOND (Construction Only):** Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.
- PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of 100% of the contract. The performance bond must be received by the Marshall University Office of Purchasing Office prior to Contract award.
- LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be received by the Marshall University Office of Purchasing Office prior to Contract award.
- MAINTENANCE BOND:** The successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and received by the Marshall University Office of Purchasing Office prior to Contract award.
- LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section entitled Licensing, of the General Terms and Conditions, the Vendor shall furnish proof of the following licenses, certifications, and/or permits prior to Contract award, in a form acceptable to the University.

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INSERT ADDITIONAL CONDITIONS BELOW:

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications prior to Contract award regardless whether that requirement is listed above.

8. INSURANCE: The Vendor shall furnish proof of the insurance identified by a checkmark below prior to Contract award. Subsequent to contract award, and prior to the insurance expiration date, Vendor shall provide the University with proof that the insurance mandated herein has been continued. Vendor must also provide with immediate notice of any changes in its insurance policies mandated herein, including but not limited to, policy cancelation, policy reduction, or change in insurers. The insurance coverages identified below must be maintained throughout the life of the contract. The Vendor shall also furnish proof of any additional insurance requirements prior to the Contract award regardless of whether that insurance requirement is listed in this section.

Any provisions requiring the University to maintain any type of insurance for either of its or the Vendors benefit is deleted.

Vendor must maintain:

Commercial General Liability Insurance in at least an amount of: \$1,000,000 per occurrence and an aggregate of \$3,000,000.

Automobile Liability Insurance in at least an amount of: \$1,000,000 per occurrence and an aggregate of \$3,000,000.

Professional/Malpractice/Errors and Omission Insurance in at least an amount of: \$1,000,000 per occurrence and an aggregate of \$3,000,000.

Commercial Crime and Third-Party Fidelity Insurance in an amount of: _____ per occurrence and an aggregate of _____.

Cyber Liability Insurance in an amount of: _____ per occurrence and an aggregate of _____. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in performance of the Contract and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

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Builders Risk Insurance in an amount equal to 100% of the amount of the Contract.
_____ per occurrence and an aggregate of _____.

9. WORKERS' COMPENSATION INSURANCE: The apparent successful Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

10. LIQUIDATED DAMAGES: This clause shall in no way be considered exclusive and shall not limit the University's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

_____ for _____

Liquidated Damages Contained in the Specifications

11. ACCEPTANCE: Vendor's signature on the certification and signature page, constitutes an offer to the University that cannot be unilaterally withdrawn, signifies that the product or service proposed by Vendor meets the mandatory requirements for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions unless otherwise indicated.

12. STATUTE OF LIMITATIONS - Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.

13. PRICING/BEST PRICE GUARANTEE: The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation by the University. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the University and invoice at the lower of the contract price or the publicly advertised sale price.

14. PAYMENT IN ARREARS: Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.

15. PAYMENT METHODS: The Vendor must accept payment by electronic funds transfer or P-Card for payment of all orders under this Contract unless the box below is checked.

Vendor is not required to accept the State of West Virginia's P-Card or by electronic funds transfer as payment for all goods and services for the reason(s) stated below:

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16. ADDITIONAL FEES: Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract. Any references contained in the Contract, Vendor's bid, or in any American Institute of Architects documents obligating the University to pay to compensate Vendor, in whole or in part, for lost profit, pay a termination fee, pay liquidated damages if the Contract is terminated early, seeking to accelerate payments in the event of Contract termination, default, or non-funding, costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is hereby deleted. Any language imposing and interest or charges due to late payment is deleted.

17. FEES OR COSTS: Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.

18. RISK SHIFTING: Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.

19. LIMITING LIABILITY: Any language limiting the Vendor's liability for direct damages is deleted.

20. TAXES: The Vendor shall pay any applicable sales, use, personal property or other taxes arising out of the Contract and the transactions contemplated hereby. The University is exempt from federal and state taxes and will not pay or reimburse such taxes. The University will, upon request, provide a tax-exempt certificate to confirm its tax-exempt status.

21. FISCAL YEAR FUNDING: The Contract shall continue for the term stated herein, contingent upon funds being appropriated by the WV Legislature or otherwise being made available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the University may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

22. CANCELLATION/RIGHT TO TERMINATE: The University reserves the right to cancel/terminate the Contract immediately upon written notice to the Vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The University may also cancel any purchase or Contract upon thirty (30) days written notice to the Vendor. In the event of early cancellation, the University agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are delete that seek to require the State to (1) compensate Vendor, in whole or in part, for loss profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.

In the event that a vendor fails to honor any contractual term or condition, the Chief Procurement Officer may cancel the contract and re-award the contract to the next lowest responsible and responsive bidder in accordance with the Marshall University Board of Governors Policy No. FA-9 Purchasing Policy, section 7.4.1

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Any language seeking to accelerate payments in the event of Contract termination, default or non-funding is hereby deleted.

23. RIGHT OF FIRST REFUSAL Any language seeking to give the Vendor a Right of First Refusal is hereby deleted.

24. DISPUTES – Any language binding the University to any arbitration or to the decision of any arbitration board, commission, panel, or other entity is deleted; as is any requirement to waive a jury trial.

Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the University shall be brought in the West Virginia Legislative Claims Commission. Other causes of action must be brought in the West Virginia Court authorized by statute to exercise jurisdiction over it.

Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.

25. TIME: Time is of the essence with regard to all matters of time and performance in the Contract.

26. DELIVERY -All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.

27. APPLICABLE LAW: The Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, W. Va. Code or Marshall University Board of Governors Policy No. FA-9 Purchasing Policy is void and of no effect. Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia

28. COMPLIANCE WITH GOVERNING LAWS: Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances. Vendor shall notify all subcontractors providing commodities or services related to this Contract that, as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances.

29. ARBITRATION: Any references made to arbitration contained in the Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to the Contract are hereby deleted, void, and of no effect.

30. MODIFICATIONS: Notwithstanding anything contained in the Contract to the contrary, no modification of the Contract shall be binding without mutual written consent of the University, and the Vendor.

31. AMENDMENTS - The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

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32. NO WAIVER: The failure of either party to insist upon a strict performance of any of the terms or provision of the Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

Any provisions requiring the University to waive any rights, claims or defenses is hereby deleted.

33. SUBSEQUENT FORMS: The terms and conditions contained in the 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.

34. ASSIGNMENT: Neither the 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 or office that may be required to approve such assignments.

The Vendor agrees not to assign the Contract to any person or entity without the State's prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.

35. WARRANTY: The Vendor expressly warrants that the goods and/or services covered by the Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the University; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

36. UNIVERSITY EMPLOYEES: University employees are not permitted to utilize the Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

37. PRIVACY, SECURITY, AND CONFIDENTIALITY: The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the University, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the University's policies, procedures, and rules.

Proposals are NOT to be marked as confidential or proprietary Any Provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W.Va. Code §29B-1-1, et. seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the University's sole discretion. The University shall not be liable in any way for disclosure of any such records

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Any provisions regarding confidentiality of or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.

38. YOUR SUBMISSION IS A PUBLIC DOCUMENT: Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of W. Va. Code §18B-5-4 and the Freedom of Information Act in W.Va. Code Chapter 29B.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, CONTAINING A TRADE SECRET(S), OR IS OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the Marshall University Office of Purchasing constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document.

39. LICENSING: Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local University of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state University or political subdivision. Upon request, the Vendor must provide all necessary releases to obtain information to enable the University to verify that the Vendor is licensed and in good standing with the above entities.

40. ANTITRUST: In submitting a bid to, signing a contract with, or accepting an Award Document from Marshall University, the Vendor agrees to convey, sell, assign, or transfer to the University 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 Marshall University. Such assignment shall be made and become effective at the time the University tenders the initial payment to Vendor.

41. THIRD-PARTY SOFTWARE: If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.

42. RIGHT TO REPOSSESSION NOTICE: Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.

43. VENDOR CERTIFICATIONS: By signing its bid or entering into the Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that the Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity

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that could be considered a violation of law; and (4) that it has reviewed the Contract in its entirety; understands the requirements, terms and conditions, and other information contained herein. Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the University. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with the all State agencies as required.

44. VENDOR RELATIONSHIP: The relationship of the Vendor to the University shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by the Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the University for any purpose 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, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing. Vendor shall hold harmless the State, and shall provide the State and 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.

45. INDEMNIFICATION: The Vendor agrees to indemnify, defend, and hold harmless the State and the University, 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.

46. PURCHASING AFFIDAVIT: In accordance with West Virginia Code §18B-5-5 and §5A-3-18 the University is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Marshall University Office of Purchasing affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

47. WEST VIRGINIA DRUG-FREE WORKPLACE CONFORMANCE AFFIDAVIT West Virginia Alcohol and Drug-Free Workplace Act requires public improvement contractors to have and implement a drug-free workplace policy that requires drug and alcohol testing. This act is applicable to any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract for which the value of contract is over \$100,000. No public authority may award a public improvement contract which is to be let to bid to a contractor unless the terms of the contract require the

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contractor and its subcontractors to implement and maintain a written drug-free workplace policy and the contractor and its subcontractors provide a sworn statement in writing, under the penalties of perjury, that they maintain a valid drug-free workplace policy.

48. DISCLOSURE OF INTERESTED PARTIES A state agency may not enter into a contract, or a series of related contracts, that has/have an actual or estimated value of \$1,000,000 or more until the business entity submits to the contracting state agency a Disclosure of Interested Parties to the applicable contract.

49. CONFLICT OF INTEREST: Vendor, its officers, members, or employees shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the University.

50. MARSHALL UNIVERSITY'S INFORMATION TECHNOLOGY SERVICES AND SUPPORT DEPARTMENT (IT) FEES: If a vendor requires services through the Marshall University's IT Department, they must reimburse the University at the IT Rate Schedule which is located at: <https://www.marshall.edu/it/rates/>.

51. PUBLICITY: Vendor shall not, in any way or in any form, publicize or advertise the fact that Vendor is supplying goods or services to the University without the express written consent of the Marshall University Communications Department. Requests should be sent to ucomm@marshall.edu.

52. UNIVERSITY MARKS: Vendor shall not, in any way or in any form use the University's trademarks or other intellectual property without the express written consent of the Marshall University Communications Department. Requests should be sent to ucomm@marshall.edu.

53. INTELLECTUAL PROPERTY: The University will own all rights, title and interest in any and all intellectual property rights created in the performance or otherwise arising out of the agreement, and Vendor will execute any assignments of other documents necessary for the University to perfect such rights, provided that, for research collaboration pursuant to subcontracts under sponsored research agreements, intellectual property rights will be governed by the terms of the grant or contract to the University to the extent such intellectual property terms to apply to subcontractors.

54. FERPA: Vendor agrees to abide by the Family Education Rights and Privacy Act of 1974 ("FERPA). To the extent that Vendor receives personally identifiable information from education records as defined in (FERPA), Vendor agrees to abide by the limitations on re-disclosure set forth in which states that the officers, employees and agents of a party that receives education record information from Marshall may use the information, but only for the purposes for which the disclosure was made.

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55. REPORTS: Vendor shall provide the University with the following reports identified by a checked box below:

- Such reports as the University may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by University, etc.
- Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by University.

56. PREFERENCE FOR THE USE OF DOMESTIC STEEL PRODUCTS IN STATE CONTRACT PROJECTS: Pursuant to W.Va. Code §5A-3-56, (a)(1) Except when authorized pursuant to the provisions of subsection (b) of this section, no contractor may use or supply steel products for a state contract project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W.Va. Code §5A-3-56. As used in this section (2):

(A) "State contract project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of any materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after the effective date of this section on or after June 6, 2001.

(B) "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made by the open hearth, basic oxygen, electric furnace, bessemer or other steel making process.

(b) Notwithstanding any provision of subsection (a) of this section to the contrary, the Director of the West Virginia Department of Administration, Purchasing Division ("Director of the Purchasing Division") may, in writing, authorize the use of foreign steel products if:

(1) The cost for each contract item used does not exceed one tenth of one percent of the total contract cost or \$2,500, whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or

(2) The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

57. PREFERENCE FOR DOMESTIC ALUMINUM, GLASS AND STEEL PRODUCTS:

In Accordance with W. Va. Code § 5-19-1 et seq.,

(a) Every state spending unit, as defined in chapter five-a, shall require that every contract or subcontract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works contain a provision that, if any aluminum, glass or steel products are to be supplied in the performance of the contract, or subcontract, only domestic aluminum, glass or steel products shall be supplied unless the spending officer, as defined in chapter five-a, determines, in writing, after the receipt of offers or bids, that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest or that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements: Provided,

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That this article applies to any public works contract awarded in an amount more than \$50,000, and with regard to steel only, this article applies to any public works contract awarded in an amount more than \$50,000 or requiring more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a “substantial labor surplus area”, as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products.

This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

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ADDITIONAL TERMS AND CONDITIONS (Construction Contracts Only)

1. CONTRACTOR'S LICENSE: W. Va. Code § 30-42-2, requires that all persons desiring to perform contracting work in this state be licensed. The West Virginia Contractors Licensing Board is empowered to issue the contractor's license. Application for a contractor's license may be made by contacting the West Virginia Contractor Licensing Board.

The apparent successful Vendor must furnish a copy of its contractor's license prior to the issuance of a contract award document.

2. DRUG-FREE WORKPLACE AFFIDAVIT: W. Va. Code § 21-1D-5 provides that any solicitation for a public improvement contract requires each Vendor that submits a bid for the work to submit an affidavit that the Vendor has a written plan for a drug-free workplace policy. If the affidavit is not submitted with the bid submission, the Marshall University Office of Purchasing shall promptly request by telephone and electronic mail that the low bidder and second low bidder provide the affidavit within one business day of the request. Failure to submit the affidavit within one business day of receiving the request shall result in disqualification of the bid. To comply with this law, Vendor should complete the enclosed drug-free workplace affidavit and submit the same with its bid. Failure to submit the signed and notarized drugfree workplace affidavit or a similar affidavit that fully complies with the requirements of the applicable code, within one business day of being requested to do so shall result in disqualification of Vendor's bid. Pursuant to W. Va. Code § 21-1D-2(b) and (k), this provision does not apply to public improvement contracts the value of which is \$100,000 or less or temporary or emergency repairs.

2.1. DRUG-FREE WORKPLACE POLICY: Pursuant to W. Va. Code § 21-1D-4, Vendor and its subcontractors must implement and maintain a written drug-free workplace policy that complies with said article. The awarding public authority shall cancel this contract if: (1) Vendor fails to implement and maintain a written drug-free workplace policy described in the preceding paragraph, (2) Vendor fails to provide information regarding implementation of its drug-free workplace policy at the request of the public authority; or (3) Vendor provides to the public authority false information regarding the contractor's drug-free workplace policy.

Pursuant to W. Va. Code §21-1D-2(b) and (k), this provision does not apply to public improvement contracts the value of which is \$100,000 or less or temporary or emergency repairs.

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3. DRUG FREE WORKPLACE REPORT: Pursuant to W. Va. Code § 21-1D-7b, no less than once per year, or upon completion of the project, every contractor shall provide a certified report to the public authority which let the contract. For contracts over \$25,000, the public authority shall be the Marshall University Office of Purchasing. For contracts of \$25,000 or less, the public authority shall be the Department issuing the contract. The report shall include:

- (1) Information to show that the education and training service to the requirements of W. Va. Code § 21-1D-5 was provided;
- (2) The name of the laboratory certified by the United States Department of Health and Human Services or its successor that performs the drug tests;
- (3) The average number of employees in connection with the construction on the public improvement;
- (4) Drug test results for the following categories including the number of positive tests and the number of negative tests: (A) Pre-employment and new hires; (B) Reasonable suspicion; (C) Post-accident; and (D) Random.

Vendor should utilize the attached Certified Drug Free Workplace Report Coversheet when submitting the report required hereunder. Pursuant to W. Va. Code §21-1D-2(b) and (k), this provision does not apply to public improvement contracts the value of which is \$100,000 or less or temporary or emergency repairs.

4. AIA DOCUMENTS: All construction contracts that will be completed in conjunction with architectural services procured under Chapter 5G of the West Virginia Code will be governed by the attached AIA documents, as amended by the Supplementary Conditions for the State of West Virginia, in addition to the terms and conditions contained herein.

4A. PROHIBITION AGAINST GENERAL CONDITIONS: Notwithstanding anything contained in the AIA Documents or the Supplementary Conditions, the State of West Virginia will not pay for general conditions, or winter conditions, or any other condition representing a delay in the contracts. The Vendor is expected to mitigate delay costs to the greatest extent possible and any costs associated with delays must be specifically and concretely identified. The state will not consider an average daily rate multiplied by the number of days extended to be an acceptable charge.

5. GREEN BUILDINGS MINIMUM ENERGY STANDARDS: In accordance with W. Va. Code § 22- 29-4, all new building construction projects of public agencies shall be designed and constructed complying with the ICC International Energy Conservation Code, adopted by the State Fire Commission, and the ANSI/ASHRAE/IESNA Standard 90.1-2007: Provided, That if any construction project has a commitment of federal funds to pay for a portion of such project, this provision shall only apply to the extent such standards are consistent with the federal standards.

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6. LOCAL LABOR MARKET HIRING REQUIREMENT: Pursuant to W.Va. Code §21-1C-1 et seq., Employers shall hire at least seventy-five percent of employees for public improvement construction projects from the local labor market, to be rounded off, with at least two employees from outside the local labor market permissible for each employer per project.

Any employer unable to employ the minimum number of employees from the local labor market shall inform the nearest office of Workforce West Virginia of the number of qualified employees needed and provide a job description of the positions to be filled.

If, within three business days following the placing of a job order, Workforce West Virginia is unable to refer any qualified job applicants to the employer or refers less qualified job applicants than the number requested, then Workforce West Virginia shall issue a waiver to the employer stating the unavailability of applicant and shall permit the employer to fill any positions covered by the waiver from outside the local labor market. The waiver shall be in writing and shall be issued within the prescribed three days. A waiver certificate shall be sent to both the employer for its permanent project records and to the public authority.

Any employer who violates this requirement is subject to a civil penalty of \$250 per each employee less than the required threshold of seventy-five percent per day of violation after receipt of a notice of violation.

Any employer that continues to violate any provision of this article more than fourteen calendar days after receipt of a notice of violation is subject to a civil penalty of \$500 per each employee less than the required threshold of seventy-five percent per day of violation.

The following terms used in this section have the meaning shown below.

(1) The term “construction project” means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract in an amount equal to or greater than \$500,000. The term “construction project” does not include temporary or emergency repairs;

(2) The term “employee” means any person hired or permitted to perform hourly work for wages by a person, firm or corporation in the construction industry; The term “employee” does not include:(i) Bona fide employees of a public authority or individuals engaged in making temporary or emergency repairs;(ii) Bona fide independent contractors; or(iii) Salaried supervisory personnel necessary to assure efficient execution of the employee's work;

(3) The term “employer” means any person, firm or corporation employing one or more employees on any public improvement and includes all contractors and subcontractors;

(4) The term “local labor market” means every county in West Virginia and any county outside of West Virginia if any portion of that county is within fifty miles of the border of West Virginia;

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(5) The term “public improvement” includes the construction of all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures that may be let to contract by a public authority, excluding improvements funded, in whole or in part, by federal funds.

7. DAVIS-BACON AND RELATED ACT WAGE RATES:

The work performed under this contract is federally funded in whole, or in part. Pursuant to _____, Vendors are required to pay applicable Davis-Bacon wage rates.

The work performed under this contract is not subject to Davis-Bacon wage rates.

8. SUBCONTRACTOR LIST SUBMISSION: In accordance with W. Va. Code § 5-22-1, the apparent low bidder on a contract valued at more than \$250,000.00 for the construction, alteration, decoration, painting or improvement of a new or existing building or structure shall submit a list of all subcontractors who will perform more than \$25,000.00 of work on the project including labor and materials. (This section does not apply to any other construction projects, such as highway, mine reclamation, water or sewer projects.) The subcontractor list shall be provided to the Marshall University Office of Purchasing within one business day of the opening of bids for review. If the apparent low bidder fails to submit the subcontractor list, the Marshall University Office of Purchasing shall promptly request by telephone and electronic mail that the low bidder and second low bidder provide the subcontractor list within one business day of the request. Failure to submit the subcontractor list within one business day of receiving the request shall result in disqualification of the bid.

If no subcontractors who will perform more than \$25,000.00 of work are to be used to complete the project, the apparent low bidder must make this clear on the subcontractor list, in the bid itself, or in response to the Marshall University Office of Purchasing’s request for the subcontractor list.

- a. Required Information. The subcontractor list must contain the following information:
 - i. Bidder's name
 - ii. Name of each subcontractor performing more than \$25,000 of work on the project.
 - iii. The license number of each subcontractor, as required by W. Va. Code § 21-11- 1 et. seq.
 - iv. If applicable, a notation that no subcontractor will be used to perform more than \$25,000.00 of work. (This item iv. is not required if the vendor makes this clear in the bid itself or in documentation following the request for the subcontractor list.)

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b. Subcontractor List Submission Form: The subcontractor list may be submitted in any form, including the attached form, as long as the required information noted above is included. If any information is missing from the bidder's subcontractor list submission, it may be obtained from other documents such as bids, emails, letters, etc. that accompany the subcontractor list submission.

c. Substitution of Subcontractor. Written approval must be obtained from the State Spending Unit before any subcontractor substitution is permitted. Substitutions are not permitted unless:

- i. The subcontractor listed in the original bid has filed for bankruptcy;
- ii. The subcontractor in the original bid has been debarred or suspended; or
- iii. The contractor certifies in writing that the subcontractor listed in the original bid fails, is unable, or refuses to perform his subcontract.

**ADDITIONAL TERMS AND CONDITIONS
(Architectural and Engineering Contracts Only)**

1. PLAN AND DRAWING DISTRIBUTION: All plans and drawings must be completed and available for distribution at least five business days prior to a scheduled pre-bid meeting for the construction or other work related to the plans and drawings.

2. PROJECT ADDENDA REQUIREMENTS: The Architect/Engineer and/or Agency shall be required to abide by the following schedule in issuing construction project addenda. The Architect/Engineer shall prepare any addendum materials for which it is responsible, and a list of all vendors that have obtained drawings and specifications for the project. The Architect/Engineer shall then send a copy of the addendum materials and the list of vendors to the State Agency for which the contract is issued to allow the Agency to make any necessary modifications. The addendum and list shall then be forwarded to the Marshall University Office of Purchasing buyer by the Agency. The Marshall University Office of Purchasing buyer shall send the addendum to all interested vendors and, if necessary, extend the bid opening date. Any addendum should be received by the Marshall University Office of Purchasing at least fourteen (14) days prior to the bid opening date.

3. PRE-BID MEETING RESPONSIBILITIES: The Architect/Engineer shall be available to attend any pre-bid meeting for the construction or other work resulting from the plans, drawings, or specifications prepared by the Architect/Engineer.

4. AIA DOCUMENTS: All construction contracts that will be completed in conjunction with architectural services procured under Chapter 5G of the West Virginia Code will be governed by the attached AIA documents, as amended by the Supplementary Conditions for the State of West Virginia, in addition to the terms and conditions contained herein. The terms and conditions of this document shall prevail over anything contained in the AIA Documents or the Supplementary Conditions.

GREEN BUILDINGS MINIMUM ENERGY STANDARDS: In accordance with W. Va. Code § 22-29-4, all new building construction projects of public agencies that have not entered the schematic design phase prior to July 1, 2012, or any building construction project receiving state grant funds and appropriations, including public schools, that have not entered the schematic design phase prior to July 1, 2012, shall be designed and constructed complying with the ICC International Energy Conservation Code, adopted by the State Fire Commission, and the ANSI/ASHRAE/IESNA Standard 90.1-2007: Provided, That if any construction project has a commitment of federal funds to pay for a portion of such project, this provision shall only apply to the extent such standards are consistent with

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DESIGNATED CONTACT: Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to the Contract.

(Name, Title)

(Printed Name and Title)

(Address)

(Phone Number)

(Fax Number)

(Email Address)

CERTIFICATION AND SIGNATURE: By signing below, I certify that I have reviewed this Contract in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that the product or service proposed meets the mandatory requirements contained in the Contract for that product or service, unless otherwise stated herein; that the Vendor expressly accepts the terms and conditions contained in the Contract; **that Vendor understands and acknowledges that the terms and conditions contained in this contract take precedence over and any terms and conditions that Vendor seeks to be made a part of this contract (regardless of when the terms and conditions become effective) to the extent there is a conflict;** that I am authorized by the Vendor to execute and submit this Contract or any documents related thereto on Vendor's behalf; that I am authorized to bind the Vendor in a contractual relationship; and that to the best of my knowledge, the Vendor has/will properly register with the WV Purchasing Division and Marshall University.

(Company)

(Authorized Signature)

(Printed Name and Title of Authorized Representative)

(Date)

(Phone Number)

(Fax Number)

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ADDENDUM ACKNOWLEDGEMENT FORM

SOLICITATION NO.: R2401340

(If Applicable) Expression of Interest (“EOI”) for Architectural /Engineering Services for Roof Replacement of the High Roofs at Twin Towers East and Twin Towers West.

Instructions: Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

Acknowledgment: I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specifications, etc.

Addendum Numbers Received:

(Check the box next to each addendum received)

- | | |
|---|--|
| <input type="checkbox"/> Addendum No. 1 | <input type="checkbox"/> Addendum No. 6 |
| <input type="checkbox"/> Addendum No. 2 | <input type="checkbox"/> Addendum No. 7 |
| <input type="checkbox"/> Addendum No. 3 | <input type="checkbox"/> Addendum No. 8 |
| <input type="checkbox"/> Addendum No. 4 | <input type="checkbox"/> Addendum No. 9 |
| <input type="checkbox"/> Addendum No. 5 | <input type="checkbox"/> Addendum No. 10 |

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that any verbal representation made or assumed to be made during any oral discussion held between Vendor’s representatives and any University personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

Company

Authorized Signature

Date

NOTE: This addendum acknowledgement should be submitted with the bid to expedite document processing.

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Submission Instructions for Suppliers

Please follow these instructions to submit via our Public Portal.

1. Prepare your submission materials:

Requested Information

Name	Type	# Files	Requirement
Proposal	File Type: PDF (.pdf)	Multiple	Required

Requested Documents:

Please note the type and number of files allowed. The maximum upload file size is 1000 MB.

Please do not embed any documents within your uploaded files, as they will not be accessible or evaluated.

2. Upload your submission at:

<https://marshall.bonfirehub.com/opportunities/private/16adb72a46eac70d931ca1f2aef7beb6>

Your submission must be uploaded, submitted, and finalized prior to the Closing Time of **Dec 08, 2023 3:30 PM EST**. We strongly recommend that you give yourself sufficient time and **at least ONE (1) day** before Closing Time to begin the uploading process and to finalize your submission.

Important Notes:

Each item of Requested Information will only be visible after the Closing Time.

Uploading large documents may take significant time, depending on the size of the file(s) and your Internet connection speed.

You will receive an email confirmation receipt with a unique confirmation number once you finalize your submission.

Minimum system requirements: Microsoft Edge, Google Chrome, or Mozilla Firefox. Javascript must be enabled. Browser cookies must be enabled.

Need Help?

Marshall University uses a Bonfire portal for accepting and evaluating proposals digitally. Please contact Bonfire at Support@GoBonfire.com for technical questions related to your submission. You can also visit their help forum at <https://vendorsupport.gobonfire.com/hc/en-us>