


Purchase Change Request			 Marshall University Office of Purchasing One John Marshall Drive Huntington, WV 25755-4100			Order # MU18WTRT		
FY 21	Buyer MW	Date 08/28/2020	Account Various	P.O. Date 09/18/2017	Contract MU18WTRT			
Document <input type="checkbox"/> Requisition (Cancellation only) <input type="checkbox"/> Regular Purchase Order <input type="checkbox"/> Contract Purchase Order <input checked="" type="checkbox"/> Open End Contract Purchase <input type="checkbox"/> Agreement				Document Action <input type="checkbox"/> Cancellation <input checked="" type="checkbox"/> Increase/Decrease <input type="checkbox"/> Unused Balance <input type="checkbox"/> Freight <input checked="" type="checkbox"/> Renewal <input type="checkbox"/> Extension Error				<input type="checkbox"/> Error in Total Amount <input type="checkbox"/> Change of Account <input type="checkbox"/> Change of Vendor Name/Address <input type="checkbox"/> Other
Vendor Name, Address, Phone #, etc. SUEZ WTS USA, INC 4636 SOMERTON ROAD TREVOSE, PA 19053			Vendor Code 23-1503731		BOG Unit Name & Address Marshall University Office of Purchasing One John Marshall Drive Huntington, WV 25755-4100			
Ph#		Fax		FEIN# 231503731				
Item#	Quantity	Description of Change			Unit Price	Extended Price		
		<p style="text-align: center;">Change Order # <u>6</u></p> <p style="text-align: center;">Water Treatment Program</p> <p>To renew and append the contract according to all terms and conditions and specifications contained in the contract including all authorized change orders. Prices are contained in the following document, MU18WTRT CO_6.</p> <p>Effective Date: September 20, 2020 - September 19, 2021 Renewal: 3 of 4 Remaining Renewals: (1) one</p>						
Reason for Change: Renewal of contract.					Previous Total	\$ Open end		
					Increase	\$ _____		
					Decrease	\$ _____		
					New Total	\$ Open end		

Approved:

Authorized Signature



Date



N/A

Attorney General if required

Date

MU18WTRT

CO_6

Tower RediFeed/Liquid		REDIFEED		LIQUID	
System	Item Name	Name/Purpose	Unit Price (\$/lb)	Vendor Notes (Container)	Total Cost (\$/yr)
John Drinko Library	Gengard GN8144	Cooling Tower Scale/Corr. Inh.	\$ 2.65	30-gal drum (D1)	\$ 3,401.47
John Drinko Library	Sodium Hypochlorite	Oxidizing Biocide	\$ 1.25	15-gal drum (R7)	\$ 1,397.62
Smith Hall	Continuum AT9050	Cooling Tower Scale/Corr. Inh.	\$ 15.93	25 LB CTN	\$ 4,268.70
Smith Hall	Spectrus OX101	Oxidizing Biocide	\$ 3.46	CTN4-5LB BTL	\$ 740.44
Fine Arts	Continuum AT9050	Cooling Tower Scale/Corr. Inh.	\$ 15.93	25 LB CTN	\$ 1,401.56
Fine Arts	Spectrus OX101	Oxidizing Biocide	\$ 3.46	CTN4-5LB BTL	\$ 342.31
Science Hall	Continuum AT9050	Cooling Tower Scale/Corr. Inh.	\$ 15.93	25 LB CTN	\$ 2,051.63
Science Hall	Spectrus OX101	Oxidizing Biocide	\$ 3.46	CTN4-5LB BTL	\$ 419.04
Biotech	Gengard GN8144	Cooling Tower Scale/Corr. Inh.	\$ 2.65	30-gal drum (D1)	\$ 9,567.80
Biotech	Sodium Hypochlorite	Oxidizing Biocide	\$ 1.25	15-gal drum (R7)	\$ 2,620.86
Jenkins	Continuum AT9050	Cooling Tower Scale/Corr. Inh.	\$ 15.93	25 LB CTN	\$ 1,401.56
Jenkins	Spectrus OX101	Boiler Scale/Deposit Inh.	\$ 3.46	CTN4-5LB BTL	\$ 342.31
Applied Engineering	Gengard GN8144	BFW Oxygen Scavenger	\$ 2.65	30-gal drum (D1)	\$ 4,837.25
Applied Engineering	Sodium Hypochlorite	Boiler Scale/Deposit Inh.	\$ 1.25	15-gal drum (R7)	\$ 2,040.00
Henderson Center	OptiGuard MCA623	BFW Oxygen Scavenger	\$ 2.56	30-gal drum (D1)	\$16,477.45
Henderson Center	CorTrol IS104	Boiler Scale/Deposit Inh.	\$ 2.47	55-gal drum (D3)	\$ 5,097.41
Biotech	Solus MCA42	BFW Oxygen Scavenger	\$ 4.47	30-gal drum (D1)	\$13,536.83
Biotech	CorTrol IS104	Boiler Scale/Deposit Inh.	\$ 2.47	30-gal drum (D1)	\$ 5,294.72
Old Main	OptiGuard MCA623	BFW Oxygen Scavenger	\$ 2.56	30-gal drum (D1)	\$ 2,086.51
Old Main	CorTrol IS104		\$ 2.47	30-gal drum (D1)	\$ 654.13
Science Hall	OptiGuard MCA623		\$ 2.56	30-gal drum (D1)	\$ 8,110.71
Science Hall	CorTrol IS104		\$ 2.47	30-gal drum (D1)	\$ 2,542.45

Annual Total: \$88,632.76

Medical Buildings

System	Item Name	Name/Purpose	Unit Price (\$/lb)	Vendor Notes (Container)	
Cabell Hospital	Gengard GN8144	Cooling Tower Scale/Corr. Inh.	\$2.65	55-gal drum (D3)	\$2,318.75
Cabell Hospital	Sodium Hypochlorite	Oxidizing Biocide	\$1.25	15-gal drum (R7)	\$715.00
VA Hospital	Gengard GN8144	Cooling Tower Scale/Corr. Inh.	\$2.65	55-gal drum (D3)	\$1,741.05
VA Hospital	Sodium Hypochlorite	Oxidizing Biocide	\$1.25	15-gal drum (R7)	\$321.25
Douglas	Gengard GN8144	Cooling Tower Scale/Corr. Inh.	\$2.65	55-gal drum (D3)	\$1,030.85
Douglas	Sodium Hypochlorite	Oxidizing Biocide	\$1.25	15-gal drum (R7)	\$417.50

Annual Total: \$6,544.40

PRICE PER POUND PRODUCTS

System	Item Name	Name/ Purpose	Unit Price (\$/lb)	Vendor Notes (Container)
Closed Loop	CorrShield NT9320	Nitrite-based Closed Loop Inh.	\$10.47	25-lb Carton (CT)
Closed Loop	CorrShield NT4201	Molybdate-based Closed Loop Inh.	\$3.17	5-gal pail (P2)
Closed Loop	CorrShield MD4103	Molybdate-based Closed Loop Inh.	\$9.89	5-gal pail (P2)
Closed Loop	BetzDearborn IEC2	Resin cleaner	\$4.15	5-gal pail (P2)
Closed Loop	Spectrus NX1100	Non-oxidizing Biocide	\$5.60	5-gal pail (P2)

EQUIPMENT

Equipment	Name/Purpose	Unit Price (\$/lb)
RediFeed Dissolver	Feed RediFeed	\$590.00



Office of Purchasing

August 12, 2020

Suez WTS USA, Inc.
4636 Somerton Road
Trevose, PA 19053

Re: Contract Renewal for MU18WTRT

Hello Mr. Gollie,

The above referenced contract expires 09/20/2020. There is a provision for renewal upon written mutual agreement of the parties.

Please annotate on the bottom of this letter, with your signature and date, if you agree to extend contract **MU18WTRT**, effective September 21, 2020 through September 20, 2021 under the same terms and conditions as the original agreement

If you have any questions, please feel free to call me at 304-696-2727.

Sincerely,

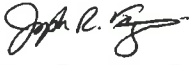
Michelle Wheeler

Associate Director of Purchasing

I agree to extend the current contract # **MU18WTRT** for an additional one (1) year period under the same terms and conditions in the original agreement.

☐ Yes ☐ No

☒ **Yes, subject to the following changes indicated below or in the attached letter.**

Signature:  Digitally signed by Joseph R. Tietjens
Date: 2020-08-19 15:12:05:00 Date: August 19, 2020

Printed Name: Joseph R. Tietjens

Title: Commercial Operations Manager

Comments:

Pricing as updated in the Addendum 1 of the Agreement.

WE ARE...MARSHALL.

One John Marshall Drive • Huntington, West Virginia 25755-4100 • Tel 304/696-2821
A State University of West Virginia • An Affirmative Action/Equal Opportunity Employer



June 5, 2020

Proposal #

Customer Name:

Company: Marshall University

Address: 1 John Marshall Dr.

City, State Zip: Huntington, WV 25755

Joe Gollie

Account Manager

(304) 989-6851

Joe.gollie@suez.com

SUEZ WTS USA, Inc, d/b/a SUEZ Water Technologies & Solutions is pleased to present the following Fixed Fee Contract Renewal. Pricing shown a 2% increase and is based on our indexed MCPE escalation clause.

SCOPE OF WORK:

SUEZ WTS USA will continue to provide water treatment chemicals and services.

EFFECTIVE DATE:	July 1, 2020
PRODUCT SUPPLY START DATE:	On-going
CONTRACT PERIOD:	One year
CONTRACT TERMINATION DATE:	June 30, 2021

ANNUAL PRICE: \$ 6,553.59

PAYMENT FREQUENCY: MONTHLY ☒ QUARTERLY ☐ ANNUALLY ☐
(check one)

PAYMENT AMOUNT: \$ 546.13

RECONCILIATION FREQUENCY: QUARTERLY ☐ ANNUALLY ☒
(check one)

HYPERINFLATION:

Notwithstanding any existing agreement, SUEZ reserves the right at any time by notice in writing to (a) increase Prices (or impose temporary price adjustments) based on increases in the cost of base components for the goods or services provided, where the increase is due to increased global demand, limited supply, temporary product shortages, allocation of supply, or such other similar inflationary pressures; and (b) impose a surcharge equal to any increase in the cost of the goods or services as a result of a modification of exchange rates, taxes or other levies imposed by public authorities. Such price changes may be reversed as the inflationary pressures change. Upon request, SUEZ will provide documentation in support of such price increases.

Proprietary Information

This document contains proprietary information about SUEZ and is the property of SUEZ. It is not to be disclosed, in whole or in part, to third parties without the express written authorization of SUEZ. It shall not be duplicated, in whole or in part, for any purpose other than to evaluate the SUEZ proposal and shall be returned upon request.

Terms and Conditions

All our sales are subject to our terms and conditions of sale printed on the final page attached.

This quotation is valid for 30 days from date listed above.

ZLS 142 10/17

**PRODUCTS AND SERVICES PROVIDED UNDER CONTRACT:****MARSHALL HOSPITALS**

System	Item Name	Name/Purpose	Unit Price (\$/lb)	Vendor Notes (Container)	Total Cost (\$/yr)
Cabell Hospital	Gengard GN8144	Cooling Tower Scale/Corr. Inh.	\$ 2.65	30-gal drum (D1)	\$2,320.50
Cabell Hospital	Sodium Hypochlorite	Oxidizing biocide	\$ 1.25	15-gal drum (R7)	\$ 717.63
VA Hospital	Gengard GN8144	Cooling Tower Scale/Corr. Inh.	\$ 2.65	30-gal drum (D1)	\$1,742.36
VA Hospital	Sodium Hypochlorite	Oxidizing biocide	\$ 1.25	15-gal drum (R7)	\$ 322.43
Douglas	Gengard GN8144	Cooling Tower Scale/Corr. Inh.	\$ 2.65	30-gal drum (D1)	\$1,031.63
Douglas	Sodium Hypochlorite	Oxidizing biocide	\$ 1.25	15-gal drum (R7)	\$ 419.04
TOTAL					\$6,553.59

SUEZ WTS USA, INC. AGREES TO DELIVER, AND BUYER AGREES TO ACCEPT THE IDENTIFIED PRODUCTS AND SERVICES UPON THE TERMS AND CONDITIONS OF THIS AGREEMENT.

IN WITNESS WHEREOF AND AGREEMENT THERETO, the Parties sign this Agreement.

BUYERBy: Name: Michelle WheelerDate: 08/28/2020**SUEZ WTS USA, Inc.**By: Joseph R. TietjensName: Joseph R. TietjensDate: 08/28/2020

Please send signed Purchase Orders to me. To ensure document control, please include the contract number and this letter's "Proposal #" on your Purchase Order.

Please Note our Legal Entity Name and Address:

SUEZ WTS USA, Inc.
4636 Somerton Road
Trevose, PA 19053

Proprietary Information

This document contains proprietary information about SUEZ and is the property of SUEZ. It is not to be disclosed, in whole or in part, to third parties without the express written authorization of SUEZ. It shall not be duplicated, in whole or in part, for any purpose other than to evaluate the SUEZ proposal and shall be returned upon request.

Terms and Conditions

All our sales are subject to our terms and conditions of sale printed on the final page attached.

This quotation is valid for 30 days from date listed above.

ZLS 142 10/17

Terms and Conditions of Sale

1. Suez Water Technologies & Solution business ("Seller") and the legal entity purchasing the Goods and Services ("Buyer") agree to in writing, together with the last proposal in order of time issued by the Seller these Terms and Conditions of Sale form the exclusive terms ("Agreement") whereby Buyer agrees to purchase, and Seller agrees to sell products and equipment ("Goods") and provide advice, instruction and other services in connection with the sale of those Goods ("Services"). Buyer agrees that this Agreement will control the relationship by accepting Goods and Services from Seller, even if Buyer sends to Seller other terms and conditions to which Seller may not respond.
2. **Buyer Obligations.** Seller will not control the actual operation of either Buyer's systems or Goods at the site, and unless otherwise specifically agreed in writing, dosification and/or installation of Goods shall be the responsibility of Buyer. Goods and Services provided hereunder are based upon the information Buyer makes available to Seller, and Seller reserves the right to utilize the most compact and feasible design compatible with sound engineering practices, and to make changes in details of design, construction and arrangement of Goods unless precluded by limitations (including, but not limited to actual space and feedwater/substance quality specifications) specified by Buyer in writing at the time an order is placed. If no such limitations are specified, Seller shall not be held responsible for incompatibility of the Goods and Services due to changes in feedwater/substance quality specifications or site conditions nor for incompatibility with actual space or design limitations, which were not initially disclosed by Buyer and become apparent at a later date. For Services to be accurate and Goods to work as intended, Buyer must fulfill the following obligations ("Obligations"): (a) provide Seller complete and accurate information and data relevant to the scope of work to be provided, such as information related to Buyer's site conditions, systems, related equipment and processes, feedwater or other substances to be treated or measured with the Goods; (b) operate all related systems and the Goods within the agreed to control parameters or, if none, within industry customary operating conditions; (c) maintain all related systems and Goods in good operating condition and repair; and (d) maintain and handle Goods in a proper and safe manner. If Buyer fails to fulfill the foregoing Obligations, Seller shall be relieved of any obligations with respect to warranties or any other commitments made to Buyer in writing, and Seller shall have no liability for any loss, damage or injury which Buyer may sustain or for which Buyer may be liable. Buyer is solely responsible for the operation of Buyer's systems, including ensuring that the systems are operated and maintained properly and comply with all laws, rules, regulations, license conditions and orders. Seller will not operate, inspect or maintain Buyer's systems or act as a licensed operator as defined by local regulatory authorities. Goods and Services sold by Seller are not intended for use in connection with any nuclear facility or activity. Buyer shall not sell or permit the use of the Goods in connection with any nuclear installation or activity without the prior written consent of the Seller. If, in breach of this, any such use occurs, Seller (and its parent, affiliates, suppliers and subcontractors) disclaims all liability for any nuclear or other damage, injury or contamination, and, in addition to any other rights of Seller, Buyer shall indemnify and hold Seller (and its parent, affiliates, suppliers and subcontractors) harmless against all such liability. Buyer shall be responsible for using or disposing of all Goods, including the empty packaging in which Goods were contained once delivered to Buyer and where applicable such disposal should be pursuant to Section 9 herein. Buyer shall maintain all risk property and liability and machinery breakdown insurance covering the full replacement value of Buyer's site, systems and related equipment, together with business interruption coverage, which includes a waiver of subrogation in favor of Seller and its affiliates. Prior to commencement of any work under this Agreement, and not less than annually thereafter during the term of this Agreement, Buyer shall deliver to Seller a certificate(s) of insurance and copy of waiver of subrogation endorsement evidencing that the foregoing insurance is in full force and effect. Seller shall maintain types and amounts of insurance against loss or damage and such other risks as customarily insured against by businesses whose operations are comparable to those of the Seller. Seller shall not be obliged to add Buyer or any other third party as an additional insured under Seller's insurance policies.
3. **Delivery.** All delivery designations are INCOTERMS 2010. Except for the provisions relating to Consigned Goods as per additional terms and conditions to be provided by Seller, to this Agreement and section 8 of this Agreement, title and risk of loss or damage to Goods as well as containers and tanks in which Goods are contained, shall pass to Buyer upon Seller making the Goods available to Buyer for collection at Seller's premises. Delivery dates indicated by Seller are only approximate. Quotations and proposal drawings provided by Seller show only general style, arrangement and approximate dimensions and weight. If any part of the Goods cannot be delivered when ready due to any cause not attributable to Seller, Buyer shall designate an alternate storage location, and Seller shall ship such Goods to storage. Title and risk of loss shall thereupon pass to Buyer, and amounts payable to Seller upon delivery or shipment shall be paid by Buyer along with expenses incurred by Seller. Services provided herein shall be charged at the rate prevailing at the time of actual use and Buyer shall pay any increase, and Buyer shall pay directly all costs for storage and subsequent transportation. Failure by Buyer to take delivery of the Goods shall be a material breach of this Agreement.
4. **Payment and Prices.** Unless otherwise specified in writing, payment is due net thirty (30) days from the date of Seller's invoice, which shall be issued at the time of shipment. The prices quoted herein do not include taxes or duties. Buyer shall be directly responsible, and reimburse Seller, for the gross amount of any present or future bond, sales, use, excise, value-added, environmental or other similar tax or duty applicable to the price, sale of delivery of any Goods or Services furnished hereunder. Buyer shall provide to Seller, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes. Unless Buyer has furnished Seller with evidence of tax exemption or direct pay permit acceptable to taxing authorities prior to the execution of the Agreement or Seller's acceptance of Buyer's purchase order (as the case may be), Buyer shall pay all taxes as invoiced by Seller and Seller is relieved of any obligation to (i) apply any tax exemption or direct pay permit, and/or (ii) refund to the Buyer any tax paid by the Seller. Seller's invoices will only be issued without domestic VAT where Buyer either makes available to Seller their valid VAT number in the case of an intercommunity supply or provides a valid certificate or acceptable statement for VAT or duty exemption. If Buyer is to arrange the export or intercommunity shipment, upon request by Seller, Buyer agrees to provide free of charge to Seller, evidence of exportation or intercommunity shipment that makes reference to Seller's invoice number and this documentation is acceptable to the relevant tax or custom authorities. In the event that there is either a failure to meet any of the above conditions or the information or documentation provided is deemed to be defective in any way by the tax or custom authorities then the Seller will have the right to separately invoice Buyer for any taxes, VAT or duties payable together with any interest or penalties that Seller incurs as a result and Buyer shall pay this invoice in accordance with the payment terms of this Agreement. For multi-year agreements, pricing stated shall remain firm for twelve (12) months, after which Seller shall be entitled to adjust pricing upward on an annual basis according to the designated formula used by Seller in Buyer's country and which shall be notified to Buyer. Buyer will provide to Seller a new purchase order at least thirty (30) days before expiration of any purchase order issued under this Agreement. If purchase orders are not renewed or new purchase orders issued by Buyer within this time scale, Seller, without any liability and without being subject to any penalties that may be applicable as negotiated with Buyer, may either: (a) decline to make deliveries of Goods or provide Services; or (b) if requested in writing by Buyer, continue to deliver Goods and Services subject to new prices that may be applicable and the Terms and Conditions of Seller (or any deviation agreed to in writing by the Parties) and invoice Buyer for these under the expired purchase order at prices in effect as of that date. However, where the Agreement contains a designated price adjustment formula the Goods and Services so delivered as per this Section 4 will be invoiced at the new rate defined by said price adjustment formula. Buyer agrees to be bound to pay such invoices in accordance with the payment terms of the Agreement. Unless otherwise specified, all prices are Incoterms 2010 FCA Seller's premises as of where Goods will be shipped to Buyer. Buyer agrees to reimburse Seller for collection costs, including two percent (2%) interest per month, not to exceed the maximum amount permitted by applicable law, should Buyer fail to timely pay. Buyer shall have no rights to any setoffs of any nature relating to any payments due under the Agreement. Notwithstanding the terms set forth herein or of any agreement or acceptance of Seller's quotation, Seller reserves the right at any time and from time to time by notice in writing to the Buyer to (a) increase Prices (or impose temporary price adjustments) based on increases in the cost of base components for the Goods or Services provided, where the increase is due to increased global demand, limited supply, temporary product shortages, allocation of supply, or such other similar inflationary pressures; and (b) impose a surcharge equal to any increase in the cost of the Goods or Services as a result of a modification of exchange rates, taxes or other levies imposed by public authorities.
5. **Payment for Excessive Usage; Lost and Damaged Goods.** If payment for Goods is based on some factor other than the actual amount of Goods delivered (e.g., payment is for a fixed amount, or based on usage or production), then Buyer agrees to pay for all Goods (a) consumed as a result of Buyer's failure to comply with Obligations as set forth in Section 2; or (b) lost or damaged after delivery to Buyer. Buyer shall provide Seller all information necessary to calculate amounts due and enable Seller to audit those records.
6. **Consigned Goods.** If Goods are being made available to Seller under a consignment arrangement, Additional terms and conditions shall be applicable and shall be provided by Seller.
7. **Limited Warranties.** Seller warrants that the Goods shall conform to Seller's specifications and shall be free from defects in material and workmanship when at all times operated in accordance with Seller's written instructions; and that the Services will be performed with the degree of skill which can reasonably be expected from a seller engaged in a comparable business and providing comparable services under comparable circumstances. Under no circumstances do Services include the operation, inspection or maintenance of Buyer's systems or acting as a licensed operator as defined by local regulatory authorities. Unless otherwise provided in any Warranty Schedule that may be attached hereto, the foregoing warranties are valid: (a) for Chemicals, the earlier of, the shelf-life of the product, or six (6) months from their date of delivery or the provision of Services; (b) for Consumables, including Filters and Membranes, twelve (12) months from their date of delivery; (c) for Goods other than Chemicals and Consumables, the earlier of, fifteen (15) months from receipt, or twelve (12) months from start-up/first use; d) for Software, nine (9) months from the date of receipt. Unless expressly agreed in a "Performance Warranty Document" signed between the parties on a separate basis, there is no performance warranty on Goods and Services or warranty on process results. For Goods not manufactured by Seller, the warranty shall be the manufacturer's transferable warranty only. Any claim for breach of these warranties must be promptly notified in writing or the claim will be void. Seller's sole responsibility and Buyer's exclusive remedy arising out of or relating to the Goods or Services or any breach of these warranties is limited to, at Seller's option: (a) replacement of non-conforming Goods or refund of purchase price of the non-conforming Goods; and (b) re-performance of the Services at issue, or a refund of the amount paid for the Services at issue. No allowance will be made for repairs or alterations made by Buyer without Seller's written consent or approval. Goods may not be returned to Seller without Seller's written permission. Seller will provide Buyer with a "Return Material Order" number to use for returned goods. Buyer, as the original purchaser, is not entitled to extend or transfer this warranty to any other party. The foregoing warranties are in lieu of and exclude all other warranties, statutory, express or implied, including any warranty of merchantability or of fitness for a particular purpose.
8. **Use of Equipment, Tanks, and Containers.** Semi-bulk containers (SBCs) owned by Seller shall be used only for the storage of Goods approved by Seller and Buyer shall return to Seller all SBCs owned by the Seller in an "empty" condition, as defined by appropriate transport or environmental regulations. Title to, and risk of loss or damage of, all equipment, product containers (e.g., pails, drums, recyclable intermediate bulk containers "IBC"), and tanks supplied to Buyer shall pass to Buyer as provided for in Section 3 of this Agreement, except that returnable SBCs shall remain property of Seller, unless otherwise stated in Seller's documentation.
9. **Compliance with Laws; Permits.** Buyer is responsible for compliance with all laws and regulations applicable to the operation of its systems and to the storage, use, handling, installation, maintenance, removal, registration and labeling of all Goods from and after Buyer's receipt of the Goods, as well as for the proper management and disposal of all wastes and residues associated with the Goods (including but not limited to containers, excess or off-spec product, testing wastes (e.g., spent or expired lab reagents and test kits) and signing manifests for waste transport and disposal. Buyer agrees to ensure that all Goods and Services provided to Buyer for export are exported only in compliance with applicable export control laws and regulations. Permits and licenses which are required to operate apparatus or equipment or to use the Goods, shall be procured by Buyer at Buyer's sole expense. Buyer shall be responsible for and procure all permits, licenses, exemptions, authorizations and approvals necessary to the operation of its systems, including but not limited to permits related to liquid and solid waste handling and discharge, air and water emissions, sound, safety, etc. Seller shall not be liable if any such permit, license, exemption, authorization or approval is delayed, denied, revoked, restricted, violated or not renewed and Buyer shall not be relieved thereby of its obligations to pay Seller in accordance with this Agreement. Seller's obligations are conditioned upon Buyer's compliance with all applicable trade control laws and regulations. Buyer shall not trans-ship, re-export, divert or direct Goods (including related equipment, software and technical data) other than in and to the ultimate country of destination declared by Buyer and specified as the country of ultimate destination on Seller's invoice. The obligations of the parties to comply with all applicable trade control laws and regulations shall survive any termination or discharge of any other contract obligations.
10. **Excusable Delays.** Seller shall not be liable nor in breach or default of its obligations under this Agreement to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond the reasonable control of Seller, including, but not limited to: acts of God, natural disasters, unusually severe weather, fire, terrorism, war (declared or undeclared) epidemics, material shortages, insurrection, act (or omissions) of Buyer or Buyer's contractors/suppliers or agents, any act (or omission) by any governmental authority, strikes, labor disputes, transportation shortages, or vendor non-performance. The delivery or performance date shall be extended for a period equal to the time lost by reason of delay or non-performance, plus such additional time as may be necessary to overcome the effect of the delay or non-performance. If delivery or performance is delayed for a period exceeding 180 (one hundred and eighty) days, either Party may terminate this Agreement without further liability provided that Seller shall be paid an amount equal to that which would be payable to Seller under the Section entitled "Termination and Suspension". If Seller is delayed by any acts (or omissions) of Buyer, or by the prerequisite work of Buyer's other contractors or suppliers, Seller shall be entitled to an equitable adjustment in schedule, price and/or performance, as applicable.
11. **Confidentiality and Intellectual Property.** Both parties agree to keep confidential the other party's proprietary non-public information, if any, which may be acquired in connection with this Agreement. Buyer will not, without Seller's advance written consent, subject Goods to testing, analysis, or any type of reverse engineering or provide the Goods to any third party which may subject the Goods to testing, analysis, or any type of reverse engineering. Seller retains all intellectual property rights including copyright which it has in all drawings and data or other deliverables supplied or developed under this Agreement, subject to Buyer's right to use such drawings and data for its own use without additional cost. Buyer acknowledges

that Seller is in the business of selling the Goods subject to this Agreement and agrees that it will not file patent applications on the Goods, or processes and methods of using the Goods, without Seller's express written permission. Buyer further agrees that in any event any such patents will not be asserted against Seller or its customers based upon purchase and use of such Goods. Any software Seller owns and provides pursuant to this Agreement shall remain Seller's property. Seller provides to Buyer a limited, non-exclusive and terminable license to use the object code of such software for the term of this Agreement. Buyer agrees not to export, copy (except that Buyer may make one copy for backup purposes), sub-license, translate, transfer, reverse engineer, or decode the software. Single user versions of software may be used on one CPU. LAN/WAN versions may be used on a single server with only the number of concurrent users as agreed to by the parties. Unless otherwise expressly agreed by Seller, this license shall terminate and the software shall be returned to Seller upon termination of this Agreement, or the material breach of the terms in this section. Seller shall indemnify and hold harmless Buyer from any rightful claim of any third party that any Good or Service infringes a patent in effect in the jurisdiction where such Good or Service was provided by Seller to Buyer. The Buyer shall notify the Seller promptly of the receipt of any such claim, shall not take any position adverse to the Seller regarding such claim and give the Seller information, assistance and exclusive authority to settle and defend the claim. The Seller shall, at its own expense and choice, either (i) settle or defend the claim and pay all damages and costs awarded in it against the Buyer, or (ii) procure for the Buyer the right to continue using the Good or Service, or (iii) modify or replace the Good or Service so that it becomes non-infringing, or (iv) remove the infringing Good or cease performance of the Service, and refund the price. The foregoing list of sub-sections (i), (ii), (iii), and (iv) and related terms state the entire liability of the Seller for intellectual property infringement of any Good or Service. Buyer shall be fully liable for any infringement of intellectual property rights, including patent rights, of third parties arising out of the products or services supplied hereunder where the construction or other characteristics of such products or services such as design, or specifications, or requirements, or modification of the Goods or Services, are prescribed to the Seller, or completed independently, by the Buyer or agent(s). Buyer shall fully defend and indemnify the Seller in case of such claim(s). Buyer shall indemnify Seller and hold Seller harmless for any patent infringement by a Good or Service in the event that the Buyer modifies the Good or Service provided by Seller, or that the Buyer uses the Good or Service in combination with other goods, services, and/or other features which were not explicitly authorized by Seller.

12. **Limitation on Liability.** Except where expressly communicated to Seller, Seller shall have no liability for incompleteness of Goods with Buyer's actual space or design limitations. To the extent permitted by law, the total liability of the Seller for all claims arising out of or relating to the performance or breach of this Agreement or use of any Goods or Services shall not exceed the total price paid by Buyer under this Agreement or for multi-annual agreements, the annual price paid by Buyer under this Agreement. Seller shall not be liable for any advice, instruction, assistance or any services that are not required under this Agreement or for which Seller does not charge Buyer. In no event will either party be liable to the other for lost profits or revenues, cost of capital or replacement water or power, downtime costs or increased operating costs, lost or decreased production, claims of Buyer's customers for such damages or any similar or comparable damages, or for any incidental, special, consequential or indirect damages of any type or kind, irrespective of whether arising from actual or alleged breach of warranty, indemnification, product liability or strict liability, or any other legal theory. If Buyer is supplying, or otherwise making available, Seller's Goods or Services to a third party, Buyer agrees to protect, defend, indemnify and hold Seller, its corporate subsidiaries and affiliates, and their respective officers, directors, employees and agents, free and harmless from and against any and all losses, expenses, liabilities, claims, demands, causes of action, suits or other litigation, arising out of or related to Seller's Goods or Services provided by the Buyer to a third party, including but not limited to products or services that may be related to Seller's Goods or Services. Seller's liability shall end upon expiration of the applicable warranty period, provided that Buyer may continue to enforce a claim for which it has given notice prior to that date by commencing an action or arbitration, as applicable under this Agreement, before expiration of any statute of limitations or other legal time limitation but in no event later than five (5) months after expiration of such warranty period. For purposes of this section "Seller" shall include Seller, its affiliates, subcontractors and suppliers of any tier, and their respective agents and employees, individually or collectively.
13. **General Indemnity.** Seller shall indemnify and hold harmless Buyer from claims for physical damage to third party property or injury to persons, including death, to the extent caused by the negligence of Seller or its officers, agents, employees, and/or assigns while engaged in activities under this Agreement. Buyer shall likewise indemnify and hold harmless Seller from claims for physical damage to third party property or injury to persons, including death, to the extent caused by the negligence of Buyer, its officers, agents, employees, and/or assigns. In the event such damage or injury is caused by the joint or concurrent negligence of Seller and Buyer, the loss shall be borne by each Party in proportion to its negligence. For the purpose of this Section: (i) "Third party" shall not include Buyer or any subsequent owner of the Goods or Services, their subsidiaries, parents, affiliates, agents, successors or assigns including any operation or maintenance contractor, or their insurer; and (ii) no portion of the Goods is "third party property". Buyer expressly acknowledges that the limited or excluded warranties or liabilities stipulated herein and waivers of actions against Seller deriving from the same, are also stipulated in favor of Seller's insurers.
14. **Conflicts; No Third Party Beneficiary Rights.** If there is any conflict between this Agreement and any written proposal or quotation provided by Seller, then the terms and conditions set forth in the proposal or quotation shall prevail. If any term or condition of this Agreement or any accompanying terms and conditions are held invalid or illegal, then such terms and conditions shall be reformed to be made legal or valid, or deleted, but the remaining terms and conditions shall remain in full force and effect, and the Agreement shall be interpreted and implemented in a manner which best fulfills our intended agreement. Except as specifically set forth above in Sections 2 entitled "Buyer Obligations", 11 entitled "Confidentiality and Intellectual Property" and 12 entitled "Limitation on Liability", this Agreement and all of the provisions hereof shall be binding upon and inure only to the benefit of the parties hereto and their respective successors and permitted assigns; and no other party, including any employee or creditor of any party hereto or any affiliate thereof, shall have any rights or obligations hereunder.
15. **Assignment and Subcontracting.** To the extent permitted by applicable law, Seller may assign or novate its rights and obligations under this Agreement, in whole or in part, to any of its affiliates and/or may assign any of its accounts receivable under this Agreement to any party without Buyer's consent. Buyer agrees to execute any documents that may be necessary to complete Seller's assignment or novation. This Agreement shall not otherwise be assigned by either Party without the other Party's prior written consent, and any assignment without said consent shall be void. Nothing herein shall prevent the Seller from placing or permitting the placing of subcontracts or orders on others for the supply of materials, manpower or services within the Seller's scope of supply provided that the placing of such subcontracts or orders shall not in any way relieve the Seller from any of its obligations under this Agreement, and provided that Seller will procure that its subcontractors (to the extent engaged for Seller's scope hereunder) comply with all known and reasonable instructions related to accessing Buyer's facility.
16. **Emergencies.** If the safety of Seller's personnel is threatened or likely to be threatened by circumstances outside the reasonable control of Seller, including but not limited to war, armed conflict, civil unrest, riots, terrorism, kidnapping, presence of or exposure to hazardous materials, unsafe working conditions, or by the threat of such circumstances or a lack of adequate protections against such circumstances, Seller shall, with no liability as per the terms of the Agreement, be entitled to take all necessary steps to ensure the security and safety of its personnel including the evacuation of personnel until such circumstances no longer apply and suspension of its obligations under the Agreement until said circumstances, at Seller's sole opinion, have ceased. Any such occurrence shall be considered an excusable delay event. Buyer shall reasonably assist in the event of any such evacuation.
17. **Termination and Suspension.** This Agreement and any performance pursuant to it may be terminated or suspended by either party if the other party (a) is the subject of bankruptcy or insolvency proceedings; or (b) defaults in its material obligations under this Agreement, and such default is not cured within thirty (30) days; (b) If Seller shall have any doubt at any time as to Buyer's ability to pay, Seller, without any liability and without being subject to any penalties that may be applicable as negotiated with Buyer, may decline to make deliveries of Goods or provide Services except on receipt of satisfactory security. Upon the termination of this Agreement: (a) Buyer agrees to pay for all Goods in Buyer's possession or for which title has passed to Buyer, at current prices or at such other prices as have been agreed to in writing; and (b) all amounts owing, if any, for the equipment or tanks relating to those Goods shall immediately become due

and shall be paid within thirty (30) days of receipt of an invoice. In the event of cancellation of an order by Buyer, a cancellation charge will be made against the Buyer, in proportion to the work completed by Seller, or obligated against the order, plus any cancellation charges assessed against Seller by Seller's suppliers. In addition, unless Buyer has been invoiced by Seller specifically for all Goods delivered (including any leveled billing agreements that have already reconciled based on shipments), Seller will invoice Buyer and Buyer shall pay Seller for all Goods on Buyer's site at the time of termination, including any fixed fees, consignment and production based agreements.

18. **Governing Law and Dispute Resolution.** This Agreement shall be governed by the substantive laws of the State of New York. If the Agreement includes the sale of Goods and the Buyer is outside the Seller's country, the United Nations Convention on Contracts for the International Sale of Goods shall apply. In the event of a dispute concerning this Agreement, the complaining party shall notify the other party in writing thereof. Management level representatives of both parties shall meet at an agreed location to attempt to resolve the dispute in good faith. Should the dispute not be resolved within thirty (30) days after such notice, the complaining party shall seek remedies exclusively through arbitration. The seat of arbitration shall be the federal district court in Philadelphia, PA, and the rules of the arbitration will be the Commercial Arbitration Rules of the American Arbitration Association, which are incorporated by reference into this Section.
19. **U.S. Government Contracts.** This Section 18 applies only if the Agreement is for the direct or indirect sale to any agency of the U.S. Government and/or is funded in whole or in part by any agency of the U.S. Government. Buyer agrees that all Goods and Services provided by Seller meet the definition of "commercial-off-the-shelf" ("COTS") or "commercial item" as those terms are defined in Federal Acquisition Regulation ("FAR") 2.101. To the extent the Buy American Act, Trade Agreements Act, or other domestic preference requirements are applicable to this Agreement, the country of origin of Goods is unknown unless otherwise specifically stated by Seller in this Agreement. Buyer agrees that any Services offered by Seller are exempt from the Service Contract Act of 1965 (FAR 52.222-41). Buyer represents and agrees that this Agreement is not funded in whole or in part by American Recovery Reinvestment Act funds unless otherwise specifically stated in the Agreement. The version of any applicable FAR clause listed in this Section 18 shall be the one in effect on the effective date of this Agreement. If Buyer is an agency of the U.S. Government, then as permitted by FAR 12.302, Buyer agrees that all paragraphs of FAR 52.212-4 (except those listed in 12.302(b)) are replaced with these Terms and Conditions. Buyer further agrees the subparagraphs of FAR 52.212-5 apply only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the prices under this Agreement. If Buyer is procuring the Goods or Services as a contractor, or subcontractor at any tier, on behalf of any agency of the U.S. Government, then Buyer agrees that FAR 52.212-5(e) or 52.244-6 (whichever is applicable) applies only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the prices under this Agreement.
20. **Miscellaneous.** No modification, amendment, revision, waiver, or other change shall be binding on either Party unless agreed in writing by the Party's authorized representative. Any oral or written representation, warranty, course of dealing, or trade usage not specified herein shall not be binding on either Party. Each Party agrees that it has not relied on, or been induced by, any representations of the other Party not contained in this Agreement.

Appendix - Contract Billing

1. **Additional Terms and Conditions.** These additional terms and conditions ("Additional Terms") shall apply in addition to the Terms and Conditions of the Agreement and collectively shall form the exclusive terms under which Seller shall provide the Goods and/or perform the Services described herein and in the Agreement. To the extent that these Additional Terms conflict with those of the Agreement, the Additional Terms shall take priority and control the corresponding sale of Good and Services.
2. **Contract Billing.** Seller will invoice Buyer periodically at the prices specified in the Agreement. Invoices will be issued, in advance, at the beginning of each working month.
3. **Contract Reconciliation.** The amounts billed will be subjected to a reconciliation process on a quarterly / annual basis. The reconciliation process will compare the projected quantities of Goods and Services defined in the scope of supply agreed previously by the Parties with the actual quantities of Service provided and Goods shipped by Seller, and for which title has transferred to Buyer. Variances will be identified and either: (i) Seller will invoice Buyer for the variance at current prices or at such other prices as have been agreed to by the Parties in writing; or (ii) Seller will issue credit note to Buyer for the variance at current prices or at such other prices as have been agreed to by the Parties in writing; and/or (iii) the ongoing billing rate will be adjusted in cases where the variance is expected to recur.
4. **Termination and Cancellation.** Upon the termination of this Agreement: (a) Buyer agrees to pay for all Goods made available to Buyer and for which title has passed to Buyer at current prices or at such other prices as have been agreed to in writing by the Parties; and (b) all amounts owing, if any, for the equipment or tanks relating to those Goods shall immediately become due and shall be paid within thirty (30) days of receipt of the corresponding invoice. In addition, unless Buyer has been invoiced by Seller specifically for all Goods delivered (including any leveled billing Agreements that have already been reconciled based on shipments), Seller will invoice Buyer and Buyer shall pay Seller for all Goods on Buyer's site at the time of termination, including any fixed fees, consignment and production based agreements.
5. **Defined Terms.** Unless otherwise defined herein, all capitalized terms used in this Appendix shall have the same meaning given to them in the Agreement.

TrueSense for Cooling Additional Terms and Conditions

1. **Additional Terms and Conditions.** These Additional Terms and Conditions contained herein shall apply in addition to Terms and Conditions of Sale and collectively shall form the exclusive terms whereby Buyer agrees to purchase and Seller agrees to provide these Services. To the extent that these Additional Terms and Conditions conflict with the Terms of Conditions of Sale, these Additional Terms and Conditions shall control.
2. **Description of Services.** The Services constitute and include the provision of TrueSense Online Chemistry Monitor(s), the startup and commission of such equipment, ongoing equipment maintenance and services as further described in Seller's Proposal.
3. **Equipment, Start up and Commission, Title.** The equipment to be provided in connection with the Services shall include (i) a TrueSense monitor(s) and (ii) related peripheral equipment as described in Seller's Proposal. Seller shall be responsible for startup and commission the equipment as outlined in the Proposal and subject to Buyer's fulfillment of Buyer's Responsibilities as set forth herein. Unless otherwise agreed upon by the Seller and Buyer, Seller shall be responsible for all routine, preventative maintenance on the equipment. Seller shall possess the right to change, exchange, upgrade, or replace the equipment (or any part thereof or peripheral thereof) at its sole discretion. Seller shall retain beneficial ownership and title to the equipment and any other Seller supplied parts, inventory, and other assets utilized by Seller or made available to Buyer in connection with the Services. Buyer shall be obligated to keep equipment free from any liens, claims, or encumbrances and shall not make or cause any changes or alterations in or to the equipment or remove any parts, accessories, attachments, or other equipment therefrom. Buyer agrees to any provide assistance as may be reasonably necessary to enable Seller to perfect a security interest in the equipment and Buyer, upon Seller's request, shall provide Seller a guarantee for such equipment. Upon expiration or termination of this Agreement or failure by Buyer to fulfill any of Buyer's Responsibilities described herein, Seller shall have the right to disconnect and remove the equipment, including any peripheral related thereto, installed by Seller and Buyer shall provide to Seller, or cause to be provided to Seller, access to the equipment for such purpose.
4. **Buyer's Responsibilities.** As a condition precedent to Seller's start up and commission of the equipment, Buyer shall, without cost to Seller, hereby agree to (i) provide a location at the Buyer's facility suitable for the startup and commission of the equipment; (ii) provide all fixtures, fittings, electricity and other specified items required for startup and commission; (iii) provide influent water of the quality and type described in this Proposal, or an attached exhibit, at the pressure and at the flow rate required by Seller; (iv) provide reasonable access to and security for the equipment; (v) provide all necessary utilities to operate the equipment; (vi) provide/possess all necessary licenses and permits required for the startup and commission and operation of the equipment required for this service. Should Buyer fail to fulfill any of the conditions set forth above, Seller shall be under no obligation to either install the equipment or allow its continued use by Buyer.



Water Technologies & Solutions

5. **Intellectual Property.** Buyer shall not allow any third party to reverse engineer the equipment nor permit or otherwise grant any third party access to the equipment for such purpose.
6. **Use.** Buyer agrees to use the equipment only in accordance with Seller's instructions and shall only use Seller approved products in connection with the equipment. To the extent that Buyer fails to do so, Buyer hereby agrees that any and all applicable warranties for the Services, including, but not limited to, any accuracy or performance guarantees as may be provided for in Seller's Proposal if applicable, shall be waived.

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 dominate 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.

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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.

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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. See Addendum 1

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.

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- ☒ **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.
- ☒ No bond or licenses required
- ☐

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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: 5,000,000 per occurrence and an aggregate of 5,000,000.

☒ **Automobile Liability Insurance** in at least an amount of: _____ per occurrence and an aggregate of _____.

☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: _____ per occurrence and an aggregate of _____.

☐ **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:

☐ Not applicable _____ 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:

☒ Net 30 days from the date of the invoice to University _____

☐ _____

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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.

December 2, 2019

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.

Joe Gollie - SUEZ Representative

(Name, Title)

Joe Gollie - SUEZ Representative

(Printed Name and Title)

4636 Somerton Road, Trevoise, PA 19053

(Address)

304-989-6851

N/A

(Phone Number)

(Fax Number)

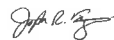
joe.gollie@suez.com

(Email Address)

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through BONFIRE, I certify that I have reviewed this Solicitation in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to Marshall University that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the Vendor to execute and submit this bid, offer, or proposal, 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 will properly register with the WV Purchasing Division and Marshall University. Signed subject to inclusion of Addendum 1 in its entirety.

SUEZ WTS USA, Inc.

(Company)



Digitally signed by Joseph R. Tietjens
Date: 2020-07-20 10:08-05:00

(Authorized Signature)

Joseph R. Tietjens - Commercial Operations Manager

(Printed Name and Title of Authorized Representative)

July 20, 2020

(Date)

574-320-1760

(Phone Number)

(Fax Number)

December 2, 2019



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
07/22/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
MARSH USA, INC.
445 SOUTH STREET
MORRISTOWN, NJ 07962-1966
Attn: Morristown.CertRequest@marsh.com Fax: 212-948-0979

CN102425067-MAIN-GAW-20-21

INSURED
Suez WTS USA, Inc.
4636 Somerton Rd.
Trevose, PA 19053-6742

CONTACT

NAME:

PHONE

(A/C, No, Ext):

E-MAIL

ADDRESS:

FAX
(A/C, No):

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A : Everest National Insurance Company

10120

INSURER B : Everest Premier Insurance Company

16045

INSURER C :

INSURER D :

INSURER E :

INSURER F :

COVERAGES

CERTIFICATE NUMBER:

NYC-010929900-01

REVISION NUMBER: 4

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:		RM5GL00017-201	01/01/2020	01/01/2021	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 5,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY		RM5CA00013-201 (AOS) FM5CA00025-201 (MA)	01/01/2020 01/01/2020	01/01/2021 01/01/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
B	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	RM5WC00021-201 (AOS) RM5WC00022-201 (MA, WI) RM5WC00047-201 (FL, ME, NJ)	01/01/2020 01/01/2020 01/01/2020	01/01/2021 01/01/2021 01/01/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 5,000,000 E.L. DISEASE - EA EMPLOYEE \$ 5,000,000 E.L. DISEASE - POLICY LIMIT \$ 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate Holder is included as additional insured (except Workers' Compensation) but only to the extent required by the underlying written contract with the Named Insured that is place prior to an occurrence giving rise to a loss.

CERTIFICATE HOLDER

Marshall University
1 John Marshal Drive
Huntington, WV 25755

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.

Manashi Mukherjee

Manashi Mukherjee

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