


Purchase Order	 MARSHALL UNIVERSITY Direct all inquires regarding this order to: (304) 696-2599	Marshall University Office of Purchasing One John Marshall Drive Huntington WV, 25755-4100	Purchase Order # MU21CHILLERS
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TO: Nitro Construction Services, Inc. 4300 1st Avenue Nitro, WV 25143 FEIN: 20-8844160	Vendor Code: PH: 304.204.1500	Ship to: Physical Plant 201 21st Street Huntington, WV 25703 Contact: Larry Metcalf PH: 304-696-6241	THIS ORDER IS SUBJECT TO THE GENERAL TERMS AND CONDITIONS AS SET FORTH HEREIN WVFIMS Account #:
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P.O. Date	FY	Buyer	Ship Via	F.O.B	Terms	Contract #
9/1/20	21	AWN				MU21CHILLERS

		<p><u>CONTRACT ACCEPTANCE</u></p> <p>On behalf of the Governing Board, MARSHALL UNIVERSITY hereby accepts the quotation of <u>Nitro Construction Services, Inc.</u> for <u>Comprehensive Chiller Maintenance and Repair Services</u> signed by <u>Randy Barnett</u> Title <u>HVAC Division Manager</u> on <u>September 1, 2020</u></p> <p>Approved as to form this ____ day of _____, _____ West Virginia Attorney General</p> <p>By: <u>n/a</u> Chief Counsel</p> <p>CHILLERS (P2100613)</p> <p>One (1) Year Contract</p> <p>Effective September 1, 2020 to August 31, 2021; with four (4) optional one (1) year renewals.</p> <p style="text-align: center;">THIS ORDER IS EXEMPT FROM ALL SALES TAX LIMIT EACH INVOICE TO A SINGLE PURCHASE ORDER NUMBER</p>		
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Line No.	Fund	Org.	Account	Encumber Amount		Total:	Open-End
1.	various	various	70257	Open-End			
2.							
3.							
4.							

Mail Original Invoice and 1 Copy to: Marshall University Accounts Payable One John Marshall Drive Huntington, WV 25755-4500	 Authorized Signature	9/1/2020 Date
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**MU21CHILLERS Marshall University Physical Plant
Comprehensive Chiller Maintenance and Repair Services
EXHIBIT D - PRICING PAGE**

Comprehensive Inspection, Preventive Maintenance and Corrective Maintenance:

Monthly Charge	x	12 months	=	Total Yearly Charge
\$ 2,100	x	12	=	\$ <u>25,200</u>

Semi-Annual Charge	x	twice annually	=	Total Yearly Charge
\$ 2,400	x	2	=	\$ <u>4,800</u>

Annual Charge	x	Annually	=	Total Yearly Charge
\$ <u>55,250</u>	x	1	=	\$ <u>55,250</u>

TOTAL MONTHLY/SEMI-ANNUAL AND ANNUAL COST: \$ 85,250

Description	UOM	QTY	UNIT PRICE
Smith Hall/chiller maintenance	QTR	4	\$ 3,987.00
Drinko Library/chiller maintenance	QTR	4	\$ 2,658.00
Science Hall/chiller maintenance	QTR	4	\$ 5,184.00
Biotech bldg/chiller maintenance	QTR	4	\$ 4,125.00
Applied Eng (WAEC)/chiller maintenance	QTR	4	\$ 2,858.50
Fine Arts/chiller maintenance	QTR	4	\$ 2,500.00

* Above pricing is a breakdown of each unit/location per quarter.

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.

Randy Barnett, Project Manager

(Name, Title)

Randy Barnett, Project Manager

(Printed Name and Title)

4300 First Avenue Nitro, WV 25143

(Address)

304-204-1500

304-204-1350

(Phone Number)

(Fax Number)

marnett@nitrocs.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, Vendor will properly register with the WV Purchasing Division and Marshall University.

Nitro Construction Services, Inc.

(Company)



(Authorized Signature)

Randy Barnett, Project Manger

(Printed Name and Title of Authorized Representative)

8/17/2020

(Date)

304-204-1500

304-204-1350

(Phone Number)

(Fax Number)

December 2, 2019

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The Marshall University Office of Purchasing is soliciting bids on behalf of Physical Plant to establish a contract for Chiller Maintenance and Repair Service. This is a Comprehensive Annual /Semi-Annual//Monthly service that includes predictive maintenance, preventive maintenance and systematic inspection that provides in part - adjustments, cleaning, lubrication, repairs, and parts replacements of all equipment listed in this document are the primary requirements of this contract.

The successful vendor will provide full-service maintenance and repair of eighteen (18) chillers located on the main campus of Marshall University in Huntington, West Virginia.

2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.

2.1 Chiller Maintenance” means Preventive Maintenance and Corrective Maintenance services provided by Vendor under this Contract and shall not include the addition of new Chiller equipment to increase the size or coverage area of the existing Chiller system.

2.2 “Preventive Maintenance” means activities that have been specifically identified on Exhibit A. Preventive maintenance is intended to include regularly scheduled activities that are known and anticipated in advance rather than one-time repairs.

2.3 “Corrective Maintenance” includes all work not identified as Preventive Maintenance on Exhibit A. Corrective Maintenance is intended to cover work performed on an as-needed basis to identify and correct a malfunction or failure in a Chiller system and testing to ensure that equipment is in proper working order after the repair.

2.4 “Pricing Pages” means the schedule of prices, estimated quantity, and totals attached hereto as Exhibit D.

2.5 “RFQ” means the official RFQ published by the Office of Purchasing and identified as **MU21CHILLERS**.

2.6 “OEM” means Original Equipment Manufacturer. An original equipment manufacturer (OEM) makes equipment or components that are then marketed by its client, another manufacturer, or a reseller, usually under that reseller's own name.

2.7 “Inspection” means pre-scheduled internal and external preventive maintenance work in accordance with (but not limited to) the equipment manufacturer's recommendation.

2.8 “Routine Overhaul and Repairs” means prescheduled services on the equipment to ensure machines are kept operational. This includes all replacement parts and materials as necessitated by wear or manufacturers' recommendations.

3. PERFORMANCE REQUIREMENTS: Vendor shall provide Department with Chiller Maintenance on a continuing basis as outlined in this Contract.

3.1 Chiller Maintenance (Preventive and Corrective)

3.1.1 Vendor shall provide Chiller Maintenance in accordance with manufacturer’s recommendations and specifications, as well as industry best practices, at all facilities listed on Exhibit C attached hereto and incorporated herein by reference.

3.1.2 Vendor shall keep abreast of all equipment changes and product improvements and will continually explore new and better methods of higher technology that will enhance the Department’s preventive maintenance service agreement capabilities and enhancements to plant operations. It shall be the vendor's duty to notify the Department of these changes, improvements, and methods as they occur, so that the Department may enhance their operations and maintenance program.

3.1.3 Vendor shall furnish and install parts as necessary to keep the Chiller systems at each facility listed on Exhibit B in proper working order.

3.1.4 Vendor shall furnish all equipment, tools, and parts necessary for the performance of the Chiller Maintenance. Equipment and tools will be provided at no cost to the Department.

3.1.5 Vendor shall provide expendable materials used in the scope of performing under this Contract at no cost to the Department. Such items may include, but are not limited to, grease, cleaning supplies, rags, etc.

3.1.6 Vendor shall be responsible for supply, reclamation, disposal, and handling of all refrigerants and oils according to EPA, Federal, and State

regulations. All refrigerants and oils will be supplied at contractors' expense.

- 3.1.7 Vendor shall be responsible for replacement of ceiling grid and tiles should they become soiled or damaged by Vendor at no cost to the Department. Department will make final determination whether to clean or replace tiles on a case-by-case basis.
- 3.1.8 Vendor may only remove equipment from service for a period of twenty-four (24) hours or more with written permission from the Department. Any request to remove equipment for twenty-four (24) hours or more must include a description of the work required and an estimate of the time the equipment will be out of service.
- 3.1.9 Vendor shall maintain a continuous twenty-four (24) hour emergency telephone service where they can be reached every day of the week, including Sundays and Holidays.
- 3.1.10 Vendor shall not perform any Chiller Maintenance under this contract without prior approval from the Department.
- 3.1.11 Vendor, upon request, will provide free of charge formal/informal training to Department so that its personnel understand the operation and diagnostic procedures necessary to keep the equipment operating in the most efficient manner.
- 3.1.12 Vendor shall schedule routine overhaul and repairs so that the equipment is ready for operation no later than March 1st annually. Department shall notify the Vendor immediately when the equipment is shut down for the heating season.
- 3.1.13 Vendor shall furnish a warranty of twelve (12) months for all labor performed under this contract.

3.2 Preventive Maintenance:

- 3.2.1 Vendor shall perform Preventive Maintenance monthly in accordance with a schedule mutually agreed upon by the Vendor and the Department.

- 322** Vendor will be compensated for Preventive Maintenance activities through a monthly fee. Vendor must provide parts necessary to perform Preventive Maintenance at no additional cost to Department. Any cost for such parts must be included in the monthly Preventive Maintenance fee.
- 323** Vendor shall submit a proposed schedule of all Preventive Maintenance within five (5) days of Vendor being awarded this contract for approval by Department, at Department's discretion.

3.3 Corrective Maintenance:

Vendor shall perform Corrective Maintenance as needed to restore the Chiller Systems to working order.

- 331** Any machine that is non-operational is considered to need major repairs. This would include impellers and other internal parts. These are to be completed as soon as possible with no extra cost to the user, regardless of time.
- 332** Department may request Corrective Maintenance on an emergency basis by notifying the Vendor of the emergency.
 - 3.3.2.1** Vendor must respond to emergency calls within two (2) hours.
 - 3.3.2.2** Vendor's emergency response for service must be answered within a thirty (30) minute timeframe of the initial call.
 - 3.3.2.3** Service response time must be within the two (2) hours of the initial answered call-back.
 - 3.3.2.4** Maximum response time for an emergency/unscheduled service call will be four (4) hours. Non-emergency call response time shall be less than twenty-four (24) hours.

333 Parts:

- 3.3.3.1** Vendor is responsible for procuring all necessary parts needed to perform Chiller Maintenance under this Contract within the required time frames established herein.

3.3.3.2 Vendor must provide OEM replacement parts. Any parts not OEM must be approved by the Department before installation

3.3.3.3 Vendor shall maintain a supply or inventory of routinely used replacement parts for the Chiller equipment utilized by the Department. All replacement parts shall be equal to or better than original manufacturer's parts. All parts used for replacement for normal wear or failed parts shall be new and obtained from authorized parts suppliers of the appropriate equipment manufacturer.

3.3.3.4 Parts Warranty: The Vendor shall provide a copy of the manufacturer's warranty on parts with the invoice.

4. FACILITIES ACCESS: The facilities identified in this contract may require access cards and/or keys to gain entrance.

4.1 Vendor must identify principal service personnel which will be issued access cards and/or keys to perform service.

4.2 Vendor will be responsible for controlling cards and keys and will pay replacement fee, if the cards or keys become lost or stolen.

4.3 Vendor shall notify Department immediately of any lost, stolen, or missing card or key.

4.4 Anyone performing under this Contract will be subject to Department's security protocol and procedures.

4.5 Vendor shall inform all staff of Department's security protocol and procedures.

5. QUALIFICATIONS:

5.1 Experience: Vendor, or Vendor's employees that will be performing under this contract, must have successfully maintained Chiller equipment of the type, character and magnitude currently being utilized by Department and included on the list of Chiller equipment, attached hereto as Exhibit C, on two or more occasions in the last five (5) years. Vendor should provide information confirming its experience prior to contract award.

5.2 Training: Vendor, or Vendor's employees that will be performing under this contract, shall be trained, and/or certified to provide Chiller Maintenance on the equipment located at the Department's facilities as shown on Exhibit C. Vendor must provide Department with documentation satisfactory to verify training and certification upon request.

5.3 Factory Authorization: Vendor must be authorized by the applicable manufacturer to perform repair and warranty work on the equipment listed on Exhibit C.

5.4 Certifications: Vendor shall ensure that all Chiller Maintenance performed under this Contract is performed by an appropriately licensed individual. Required licenses may include, but are not limited to the following:

- 541** Electricians – WV Electricians License
- 542** Plumbers – WV Plumbers License
- 543** WV Contractor's License

5.5 Building Codes: At a minimum, the CHILLER Maintenance shall comply with the current editions of the following standards and codes in effect at the time of performance.

- 551** National Electric Code (NEC)
- 552** International Building Code (IBC)
- 553** International Mechanical Code (IMC)
- 554** Underwriters Laboratories: Products shall be UL-916-PAZX listed.
- 555** ANSI/ASHRAE Standard 135-2004 (BACnet)
- 556** ANSI/EIA/CEA-709.1 (LonTalk)
- 557** NFPA (National Fire Protection Association)

6. REPORTS: Vendor shall provide all of the reports as outlined below.

6.1 Preventive Maintenance Log: Vendor shall provide and update a Preventive Maintenance log in the form of a chart posted in the vicinity of chiller equipment. The Preventive Maintenance log must include a listing of all Preventive Maintenance performed, the name of the individual performing the Preventive Maintenance, the date it was performed, and the time spent performing the Preventive Maintenance. Vendor shall also maintain a duplicate maintenance log that Vendor must submit to Department monthly.

- 6.2 Wiring Diagram:** Vendor shall maintain updated wiring diagrams for the Chiller equipment. Vendor must permanently mount wiring diagrams on full-size display panels near the equipment controllers. These wiring diagrams are to remain the property of the Department and will be surrendered upon termination of this contract.
- 6.3 Corrective Maintenance Log:** Vendor shall maintain a log of all Corrective Maintenance performed under this Contract. The log must include the name of the individual performing the Corrective Maintenance, a description of the work performed, a list of any parts that were repaired or replaced, the total time spent performing the Corrective Maintenance, and the date and time Corrective Maintenance was performed. Vendor shall submit a copy of this log to Department upon Department's request.
- 6.4 Quarterly and Annual Reports:** Vendor shall provide quarterly reports and annual summaries to the Department, and to the Office of Purchasing when requested, with a detailed listing of Chiller Maintenance performed under this Contract during that period. The quarterly and annual reports must include a listing of the hours worked per project, the cost of hours worked per project, the total of all hours worked and corresponding cost, a listing of parts utilized per project, the cost of parts utilized per project, the total parts used for the period, the cost of parts for the period, a grand total of all costs for the period, and any other information that the Department or Office of Purchasing may request.
- 7. TRAVEL:** Vendor shall be responsible for all mileage and travel costs, including travel time, associated with performance of this Contract. Such costs will not be paid by the Department.
- 8. CONTRACT AWARD:** This Contract will be awarded to the Vendor meeting the required specifications that provides the lowest Total Cost on the Pricing Pages.
- 8.1 Pricing Pages:** Vendor should complete the Pricing Pages by inserting the requested information in the appropriate location and performing the calculations necessary to arrive at a total cost. The requested information includes: An Annual/Semi-Annual/Monthly cost, and the total cost. Vendor

should complete the Pricing Pages in their entirety as failure to do so may result in Vendor's bid being disqualified.

9. ORDERING:

- 9.1 Preventive Maintenance Ordering:** After award of this Contract Department and Vendor shall agree upon a Preventive Maintenance schedule.
- 9.2 Corrective Maintenance Ordering:** The Department shall define the scope of each Corrective Maintenance project to be performed under this Contract.

10. BILLING / PAYMENT:

- 10.1 Preventive Maintenance and Corrective Maintenance:** All labor and parts associated with the Preventative and Corrective Maintenance activities must be included in the monthly charge. Vendor may submit monthly invoices to obtain payment for Preventive and Corrective Maintenance.

11. DEFAULT:

- 11.1** The following shall be considered a default under this Contract.

- 11.11** Failure to perform Chiller Maintenance in accordance with the requirements contained in herein.
- 11.12** Failure to comply with other specifications and requirements contained herein.
- 11.13** Failure to comply with any applicable law, rule, ordinance, or building code applicable to this Contract or Chiller Maintenance generally.
- 11.14** Failure to remedy deficient performance upon request.

- 11.2** The following remedies shall be available upon default.

- 11.21** Cancellation of the Contract.
- 11.22** Cancellation of one or more release orders issued under this Contract.

11.23 Any other remedies available in law or equity.

11.3 Department reserves the right to inspect the Chiller Maintenance to ensure that Vendor's performance is in compliance with this Contract. If Department determines that Vendor has failed to perform in accordance with this Contract, Department may demand that the Vendor immediately remedy the failure or consider the failure to be a default. Vendor's failure to remedy the deficient performance, if given the opportunity to do so, shall be considered a default.

MU21CHILLERS Marshall University Physical Plant
Comprehensive Chiller Maintenance and Repair Services
EXHIBIT A – MAINTENANCE REQUIREMENTS

Maintenance Activities Include:

1. Starter;
2. Electric wiring from the starter to motor;
3. Insulation of the refrigerant piping and equipment;
4. All pressure and temperature controls, thermometers, gauges, dampers, control devices and thermostats located at the equipment;
5. Vendor will furnish the owner with the written results or all test and analysis. Failure to furnish results may lead to termination of the contract; and
6. Vendor is responsible for the proper disposal or reclamation of all oils and or refrigerants per EPA regulations.

MU21CHILLERS Marshall University Physical Plant
Comprehensive Chiller Maintenance and Repair Services
EXHIBIT A – SERVICE SCHEDULE AND INSPECTION REQUIREMENTS

Monthly Service and Inspections:

1. Inspect at least once a month operation of cooling equipment including semi-annual maintenance
2. Visual inspection of machines for corrosion, damaged insulation & leaks
3. Oil level and temperature and pressure
4. Refrigerant level
5. Operating hours (where metered)
6. Condenser pressure
7. Chilled water temperature controls
8. Delta temperature chilled water
9. Delta temperature condenser water
10. Delta temperature cooling water

Semi-Annual Service and Inspections:

1. To be performed at start-up and mid-season. Start-up shall be within forty-eight (48) hours of request for operation of cooling system.
2. Chilled water low temperature cutout and recycle switch
3. Refrigerant low temperature cutout switch
4. Condenser high pressure cutout switch
5. Low oil pressure cutout switch
6. Oil filter cutout switch were applicable

MU21CHILLERS Marshall University Physical Plant
Comprehensive Chiller Maintenance and Repair Services
EXHIBIT A – SERVICE SCHEDULE AND INSPECTION REQUIREMENTS

Annual Overhaul and Repairs:

1. To be performed prior to March 1st
2. Brush/clean 100% condenser tubes/exchangers (Contractor to coordinate timing with operator at least two weeks in advance, so that water treatment provider can inspect tube condition.)
3. Perform non-destructive eddy current testing on 100% of condenser tubes first year then at a minimum every other year
4. Perform non-destructive eddy current testing on 100% of evaporator tubes first year – must brush all tubes before testing
5. Replace oil
6. Oil sample analysis (acid-metal erosion-insulation)
7. Vibration analysis
8. Infra-red scan of starters and motor connection
9. Megger motor
10. Change oil filter
11. Change refrigerant filters

**MU21CHILLERS Marshall University Physical Plant
Comprehensive Chiller Maintenance and Repair Services
EXHIBIT B – CHILLER LOCATIONS/INFORMATION**

NO.	LOCATION	UNIT MANUFACTURER	MODEL NO.	SERIAL NO.
1a	Smith Hall	McQuay	PEH063KAN	5XCO1026
1b	Smith Hall	McQuay	PEH063KAN	5XCO1028
1c	Smith Hall	McQuay	PEH063KAN	5XCO1030
2a	Drinko	McQuay	PEH063	57F81063
2b	Drinko	McQuay	PEH063	57F81060
3a	Science	Clima Cool	UCW050AFASACMRS	N14868926
3b	Science	Clima Cool	UCW050AFASACMRS	N14868930
3c	Science	Clima Cool	UCW050AFASACMRS	N14868928
3d	Science	Clima Cool	UCW050AFASACMRS	N14868931
3e	Science	Clima Cool	UCW050AFASACMRS	N14868927
3f	Science	Clima Cool	UCW050AFASACMRS	N14868929
4a	WAEC	McQuay	C3612BLYY2	513K000300
4b	WAEC	McQuay	C3612BLYY2	513J009400
5a	RCBBSC	Carrier	19XR-4747384CPH64S	1605Q71076
5b	RCBBSC	Carrier	19XRV4141385CPH64S	71074
5c	RCBBSC	Carrier	19XRV4141385CPH64S	71075
6a	Fine Arts	Trane	RTWD140F2B	U11F00847
6b	Fine Arts	Trane	RTWD140F2B	U11F00848

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.

21 "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.

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

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

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

25 "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.

26 "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.

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

28 "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.

29 "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 September 1, 2020
 _____ and extends for a period of one (1) _____ 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 four (4) _____ successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed forty-eight (48) _____ 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 form term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.

- Alternate Renewal Term** – This contract may be renewed for _____ successive _____ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor and Agency.
- Fixed Period Contract:** The Contract becomes effective upon Vendor’s receipt of the notice to proceed and must be completed within _____.
- Fixed Period Contract with Renewals:** The Contract becomes effective upon Vendor’s receipt of the notice to proceed and part of the Contract must be completed within _____ days. Upon completion, the Vendor agrees that maintenance, monitoring, or warranty services will be provided for _____ successive one-year periods or multiple periods of less than one year provided that the multiple renewal periods do not exceed _____ months in total.
- One-Time Purchase:** The term of the Contract shall run from the issuance of the Award Document until all the goods contracted for have been delivered, but in no event, will the Contract extend for more than one fiscal year.
- Other:** See attached.

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

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

- Open End Contract:** Quantities stated in the solicitation are approximations only, based on estimates supplied by the University. It is understood and agreed that the Contract shall cover the quantities ordered for delivery during the term of the Contract, whether more or less than the quantities shown.
- Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

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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.

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INSERT ADDITIONAL CONDITIONS BELOW:

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

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

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

Vendor must maintain:

Commercial General Liability Insurance in at least an amount of: \$1,000,000.00 per occurrence.

Automobile Liability Insurance in at least an amount of: \$1,000,000.00 per occurrence.

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:

_____ for _____

Liquidated Damages Contained in the Specifications

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26. DELIVERY -All deliveries under the Contract will be FOBdestination 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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ADDITIONAL TERMS AND CONDITIONS (Construction Contracts Only)

1. CONTRACTOR'S LICENSE: W. Va. Code § 21-11-2 requires that all persons desiring to perform contracting work in the State of West Virginia be licensed. The West Virginia Contractors Licensing Board is empowered to issue the contractor's license. Applications for a contractor's license may be made by contacting the West Virginia Division of Labor. W. Va. Code § 21-11-11 requires any prospective Vendor to include the contractor's license number on its bid. If an apparent low bidder fails to submit a license number in accordance with this section, the Marshall University Office of Purchasing will promptly request by telephone and electronic mail that the low bidder and the second low bidder provide the license number within one business day of the request. Failure of the bidder to provide the license number within one business day of receiving the request shall result in disqualification of the bid. Vendors should include a contractor's license number in the space provided below.

Contractor's Name: _____
 Contractor's License No.: WV-_____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

December 2, 2019

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

7. DAVIS-BACON AND RELATED ACT WAGE RATES:

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

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

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

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

a. Required Information. The subcontractor list must contain the following information:

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

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

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

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

December 2, 2019

WV-73
Approved / April 30, 2020



**State of West Virginia
DRUG FREE WORKPLACE CONFORMANCE AFFIDAVIT
West Virginia Code §21-1D-5**

I, Carey Marra, after being first duly sworn, depose and state as follows:

- 1. I am an employee of Nitro Construction Services, Inc.; and,
(Company Name)
- 2. I do hereby attest that Nitro Construction Services, Inc.
(Company Name)

maintains a written plan for a drug-free workplace policy and that such plan and policy are in compliance with **West Virginia Code §21-1D**.

The above statements are sworn to under the penalty of perjury.

Printed Name: Carey Marra
 Signature: Carey Marra
 Title: Corporate Safety Director
 Company Name: Nitro Construction Services, Inc.
 Date: 8/17/20

STATE OF WEST VIRGINIA,

COUNTY OF Putnam, TO-WIT:

Taken, subscribed and sworn to before me this 17 day of August, 2020.

By Commission expires August 5, 2023

(Seal)

Fatima Withrow
 (Notary Public)





**WEST VIRGINIA
CONTRACTOR
LICENSING
BOARD**

CONTRACTOR LICENSE

Authorized by the
West Virginia Contractor Licensing Board

Number: WV042601

Classification:
ELECTRICAL
GENERAL BUILDING
HEATING, VENTILATING & COOLING
PIPING
LOW VOLTAGE SYSTEMS
SPRINKLER AND FIRE PROTECTION

NITRO CONSTRUCTION SERVICES INC
DBA NITRO MECHANICAL SERVICES
4300 1ST AVE #2
NITRO, WV 25143-1001

Date Issued

Expiration Date

JUNE 18, 2020

JUNE 13, 2021

[Handwritten Signature]
Authorized Company Signature

[Handwritten Signature]
Chair, West Virginia Contractor
Licensing Board

This license, or a copy thereof, must be posted in a conspicuous place at every construction site where work is being performed. This license number must appear in all advertisements, on all bid submissions and on all fully executed and binding contracts. This license cannot be assigned or transferred by licensee. Issued under provisions of West Virginia Code, Chapter 21, Article 11.

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

CONSTRUCTION CONTRACTS: Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

ALL CONTRACTS: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that: (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: Nitro Construction Services, Inc.

Authorized Signature: [Signature] Date: 8/17/20

State of WV

County of Putnam, to-wit:

Taken, subscribed, and sworn to before me this 17 day of August, 2020

My Commission expires August 5, 2023

AFFIX SEAL HERE



NOTARY PUBLIC [Signature]