


Request for Proposal	 <p style="text-align: center;"> Marshall University Office of Purchasing One John Marshall Drive Huntington, WV 25755-4100 Direct all inquiries regarding this order to: (304) 696-2599 </p>	Bid Number MU23P3STADIUM-RFP
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Vendor:	For information contact: Angela White Negley, Office of Purchasing Phone: (304) 696-2599 Email: negley4@marshall.edu & purchasing@marshall.edu
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Sealed requests to bid for furnishing the supplies, equipment or services described below will be received by the Institution. TO RECEIVE CONSIDERATION FOR AWARD, UNLESS OTHERWISE NOTED, THE BID WILL BE SUBMITTED ON THIS FORM AND UPLOADED INTO THE MU BONFIRE PORTAL ON OR BEFORE THE DATE AND TIME SHOWN FOR THE BID OPENING. When applicable, prices will be based on units specified; and Bidders will enter the delivery date or time for items contained herein. The Institution reserves the right to accept or reject bids on each item separately, or as a whole, to reject any or all bids, to waive informalities or irregularities and to contract as the best interests of the Institution may require. BIDS ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS AS SET FORTH HEREIN.

DATE 8/8/22	MANDATORY PRE-BID MEETING: N/A	DEPARTMENT REQUISITION NO. MU23P3STADIUM-RFP	BIDS OPEN: 8/22/22 at 2:00 p.m. LPT Broadcast virtually at: https://tinyurl.com/MU23P3STADIUM-RFP-OPENING	BIDDER MUST ENTER DELIVERY DATE FOR EACH ITEM BID
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Item #	Quantity	Description	Unit Price	Extended Price
<p><u>REQUEST FOR PROPOSAL</u></p> <p>Marshall University, on behalf of the Board of Governors, invites proposals from qualified shortlisted firms as a result of a RFPQ MU23P3STADIUM for the following project:</p> <p>Project Name: MU23P3STADIUM-RFP</p> <p>Marshall University – Athletics Department Request for Proposal Financing, Development and Construction of a Baseball Stadium</p> <p>All technical questions must be submitted in writing to Angela White Negley via email at negley4@marshall.edu by 9:00 a.m., LPT on August 11, 2022.</p> <p>All proposals must be submitted by 3:00 p.m., LPT, on August 22, 2022.</p>				
Total				

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

Bidder guarantees shipment from _____ within _____ days

FOB _____ After receipt of order at address shown

Terms _____

BOG 43

Bidder's Name: _____

Signed By _____

Typed Name _____

Title _____

Email _____

Street Address _____

City/State/Zip _____

Date _____ Phone _____

Fein _____

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SECTION 1: GENERAL INFORMATION

1.1. Introduction:

The Marshall University Office of Purchasing (hereinafter referred to as the “Office of Purchasing”) is issuing this solicitation as a request for proposal (“RFP”), as authorized by Marshall University Board of Governors Policy No. FA-9 Purchasing Policy, for the financing, development, and construction of a baseball stadium. **Please Note: Only firms selected under MU23P3STADIUM Request for Pre-Qualifications (RFPQ) and successfully pre-qualified are eligible to submit on the RFP.**

The RFP is a procurement method in which vendors submit proposals in response to the request for proposal published by the Office of Purchasing. It requires an award to the highest scoring vendor, rather than the lowest cost vendor, based upon a technical evaluation of the vendor’s technical proposal and a cost evaluation. This is referred to as a best value procurement. Through their proposals, vendors offer a solution to the objectives, problem, or need specified in the RFP, and define how they intend to meet (or exceed) the RFP requirements.

1.2. RFP Schedule of Events:

RFP Released to Public.....	August 8, 2022
Mandatory Pre-bid Conference.....	.N/A
Vendor’s Written Questions Submission Deadline.....	August 11, 2022, by 9:00 a.m., LPT
Addendum Issued.....	TBD
Technical Bid Opening Date.....	August 22, 2022, 3:00 p.m., LPT
Virtually at: https://tinyurl.com/MU23P3STADIUM-RFP-OPENING	
Technical Evaluation Begins.....	August 23, 2022
Cost Bid Opening.....	TBD
Cost Evaluation Begins.....	TBD
Contract Award Made.....	September 2022

SECTION 2: INSTRUCTIONS TO VENDORS SUBMITTING BIDS

Instructions begin on next page.

Marshall University

INSTRUCTIONS TO VENDORS

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

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

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

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

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

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

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

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

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

Marshall University

INSTRUCTIONS TO VENDORS

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

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

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

Submissions should include solicitation number in the subject line.

Question Submission Deadline (date and time): August 11, 2022, by 9:00 a.m., LPT

Submit Questions to: Angela White Negley
 Old Main 125
 One John Marshall Drive
 Huntington, WV 25755
 Fax: (304) 696-3333 (Vendors should not use this fax number for bid submission)
 Email: negley4@marshall.edu

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

Marshall University

INSTRUCTIONS TO VENDORS

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

SEALED BID: MU23P3STADIUM-RFP

CONTACT: Angela White Negley

SOLICITATION NAME: Marshall University – Athletics Department Financing, Development and Construction of a Baseball Stadium

SOLICITATION CLOSING DATE: August 22, 2022

SOLICITATION CLOSING TIME: 3:00 p.m., LPT

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

Bid Opening Date and Time: August 22, 2022, at 3:00 p.m., LPT

The bid opening will be held virtually at: <https://tinyurl.com/MU23STADIUM-RFP-Bid-Opening>

Bid Opening Location: Marshall University Office of Purchasing

Old Main 125

One John Marshall Drive

Huntington, WV 25755

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

Marshall University

INSTRUCTIONS TO VENDORS

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

Marshall University

INSTRUCTIONS TO VENDORS

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

Marshall University

INSTRUCTIONS TO VENDORS

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

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

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

- 23. PURCHASING AFFIDAVIT:** The University is prohibited from awarding a contract to any bidder that owes a debt to the State or political subdivision of the State. Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Marshall University Office of Purchasing affirming under oath that it is not in default on any monetary obligation owed to the State or a political subdivision of the State.

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

- 24. INTERESTED PARTY DISCLOSURE:** West Virginia Code § 6D-1-4 requires that the vendor submit to the Marshall University Office of Purchasing a disclosure of interested parties to the contract for all contracts with an actual or estimated value of at least \$1 million. That disclosure must occur on the form prescribed and approved by the WV Ethics Commission prior to contract award. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

http://www.state.wv.us/admin/purchase/VRC/Ethics_DisclosureInterestedParties_2018.pdf

- 25. WITH THE BID REQUIREMENTS:** In instances where these specifications require documentation or other information with the bid, and a vendor fails to provide it with the bid, the Chief Procurement Officer reserves the right to request those items after bid opening and prior to contract award pursuant to the authority to waive minor irregularities in bids or specifications under Marshall University Board of Governors Policy No. FA-9 Purchasing Policy. This authority does not apply to instances where state law mandates receipt with the bid.

SECTION 3: GENERAL TERMS AND CONDITIONS

Terms and conditions begin on next page.

MARSHALL UNIVERSITY

GENERAL TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

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

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

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

Revised: 10/12/21

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

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

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

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

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

2.15 "University" means Marshall University or Marshall.

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

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

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

Term Contract

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

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

Revised: 10/12/21

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

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

Fixed Period Contract: The Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within fifteen (15) months.

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

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

Other: See attached.

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

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

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

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

Revised: 10/12/21

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

6. EMERGENCY PURCHASES: The Chief Procurement Officer may suspend the use of a university wide mandatory contract (the University's Office of Purchasing has created standard specifications that are establish University wide contracts for commonly used commodities and services that are needed on a repetitive basis), or the competitive bidding process to allow a Department to purchase goods or services in the open market if for immediate or expedited delivery in an emergency.

Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work, provided that a required University emergency purchase with another vendor does not cause a breach of contract.

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

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

Revised: 10/12/21

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: TBD per occurrence and an aggregate of TBD.

Automobile Liability Insurance in at least an amount of: TBD per occurrence and an aggregate of TBD.

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.
 TBD per occurrence and an aggregate of TBD.

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

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

_____ for _____

Liquidated Damages Contained in the Specifications

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34. ASSIGNMENT: Neither the Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the University and any other government or office that may be required to approve such assignments.

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

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

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

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

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

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

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

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

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

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

40. ANTITRUST: In submitting a bid to, signing a contract with, or accepting an Award Document from Marshall University, the Vendor agrees to convey, sell, assign, or transfer to the University all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by Marshall University. Such assignment shall be made and become effective at the time the University tenders the initial payment to Vendor.

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

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

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

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

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

45. INDEMNIFICATION: The Vendor agrees to indemnify, defend, and hold harmless the State and the University, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage, and hour laws.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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ADDITIONAL TERMS AND CONDITIONS (Construction Contracts Only)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. DAVIS-BACON AND RELATED ACT WAGE RATES:

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

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

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

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

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

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

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

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

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

Revised: 10/12/21

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

(Name, Title)

(Printed Name and Title)

(Address)

(Phone Number)

(Fax Number)

(Email Address)

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

(Company)

(Authorized Signature)

(Printed Name and Title of Authorized Representative)

(Date)

(Phone Number)

(Fax Number)

Revised: 7/15/21

ADDENDUM ACKNOWLEDGEMENT FORM

SOLICITATION NO.: MU23P3STADIUM-RFP

(If Applicable) Marshall University – Athletics Department
 Financing, Development and Construction of a Baseball Stadium

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

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

Addendum Numbers Received:

(Check the box next to each addendum received)

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

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

 Company

 Authorized Signature

 Date

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

Revised: 7/15/21

SECTION 4: PROJECT SPECIFICATIONS

4.1 Background and Current Operating Environment: The University desires, through a competitive Request for Proposal (RFP) process, to contract with a development firm that will be responsible for financing, designing, and constructing buildings/facilities that will ultimately revert to the university. The developer will be responsible for all aspects of the project including the architectural/design work approved by the University as of September 30, 2022, and construction of the facilities according to the specifications set by the University and for the financing of the project. The University will lease, assign, and commit revenue earned by these facilities to the developer for a specified agreed upon period of time after which these facilities will transfer to the ownership of Marshall University. The buildings will be constructed on land owned by Marshall University.

Developers must be creative, i.e., build a quality product while conserving on cost and providing the highest value for the dollar. The developer may have new or alternative construction techniques and materials that vary greatly from the University's design and construction parameters/specifications that will satisfy the quality expectations at a lower cost.

The building design of the facility must be approved by Marshall University Administration and Board of Governors prior to construction.

ECONOMIC IMPACT:

As an institution, Marshall University expends more than \$260 million annually. A 2016 commissioned study "The Economic Impact of Public Institutions of Higher Education in WV": <https://www.marshall.edu/wamnewsletter/2016/08/marshall-university-has-397-7-million-economic-impact/> has determined that Marshall University has a total annual impact on the local economy of over \$397.7 million. and approximately 3,267 workers were either directly employed by the university or supported by the economic activity generated by the University. Marshall is one of the most potent economic factors in the Tri-State region.

FACILITIES:

The University's main campus consists of approximately 90 acres in the heart of Huntington. The main campus includes 35 buildings, including Old Main, the administration building, which has sections dating back to 1870, and the \$29 million technologically sophisticated John Deaver Drinko Library. Campus recreation and residence halls that opened in the fall of 2003 and the \$56 million Arthur Weisburg Applied Engineering Building opened in 2015. The School of Pharmacy's academic building, Stephen J. Kopp Hall and graduate student housing, Fairfield Landing both opened in 2019 and the Brad D. Smith College of business which is currently under construction and will be open to students for the spring 2024 semester.

FUTURE PROSPECTS:

Because of its urban locations, the 1997 merger with West Virginia Graduate College (creating Marshall University Graduate College) and emphasis on programs to serve adult as well as the traditional college- age students, Marshall has maintained a stable enrollment during a time when many other universities have suffered significant enrollment declines. Increases in evening programs and electronic courses, development of innovative programs to meet changing needs, an excellent academic reputation, substantial physical plant improvements and a major leadership role in economic development combine to make Marshall's future promising.

LOCATION:

The University has selected the site location for the baseball stadium. The stadium will be located at 22nd Street and 2nd Avenue, Huntington, WV.

The land provided for the proposed facility will be leased to the selected developer under an unsubordinated long-term land lease, as specified contractually between both parties. Proposers should include the necessary terms of this land lease in their proposal.

DESIGN AND ENGINEERING:

In November 2019, the University solicited Request for Bid for construction of a new baseball stadium; however, the bids received exceeded the maximum budgeted amount and the project was placed on hold during the COVID-19 pandemic. As part of the initial process, the University selected AECOM as its architect of record for the stadium design. The University has maintained its relationship with AECOM on a redesign to reduce the scope of the original project. Consequently, any Developer who submits a proposal for this P3 project will be required to utilize AECOM as part of its design team. The facility will be constructed on a new site located at 2nd Avenue and 22nd Street and the Developer is required incorporate all existing design work completed by AECOM with modifications necessary for the new site into their proposed project.

Contact for AECOM will be:

Brian Pounds, AIA, NCARB, LEED AP
Associate Principal
Senior Project Manager
AECOM Sports
D +1-804-515-8491
M +1-804-539-6250
brian.pounds@aecom.com

In addition, Potesta & Associates has completed all engineering, geotechnical and surveying work

for the project and the University requires the Proposer to use this firm on the project for all additional related work. Finally, the University has an open-end contract for abatement and demolition with Astar Abatement and the Proposer must use this vendor for any associated work.

Please note: Marshall University's contracts with AECOM and Potesta & Associates will end on September 30, 2022. The successful Developer will be required to execute new contracts with both firms effective October 1, 2022.

4.1. Project Goals and Mandatory Requirements - Vendor should describe its approach and methodology to providing the service or solving the problem described by meet the goals/objectives identified below. Vendor's response should include any information about how the proposed approach is superior or inferior to other possible approaches.

4.1.1. Goals and Objectives – The project goals and objectives are listed below.

4.2.1.1 Goal/Objective One: Construct a State-of-the Art Baseball Stadium.

4.2.1.2 Goal/Objective Two: Utilize current campus space as efficiently and effectively as possible.

4.2.1.3 Goal/Objective Three: Avoid any significant capital investment and/or assumption of financial indebtedness by Marshall University.

4.2.1.4 Goal/Objective Four: Create an immersive fan experience at the stadium.

4.1.2. Mandatory Project Requirements – The following mandatory requirements relate to the goals and objectives and must be met by the Vendor as a part of its submitted proposal. Vendor should describe how it will comply with the mandatory requirements and include any areas where its proposed solution exceeds the mandatory requirement. Failure to comply with mandatory requirements will lead to disqualification, but the approach/methodology that the vendor uses to comply, and areas where the mandatory requirements are exceeded, will be included in technical scores where appropriate. The mandatory project requirements are listed below.

4.2.2.1 Mandatory Requirement One: The developer must finance this project for a term of ten (10) years or fifteen (15) years.

4.2.2.2 Mandatory Requirement Two: Marshall University will maintain and operate the constructed facilities.

4.2.2.3 Mandatory Requirement Three: Marshall University will fund the operating costs of the facilities to include, but not limited to, maintenance,

housekeeping, utilities, etc.

4.2.2.4 Mandatory Requirement Four: All building designs must be approved by the University. Prior to the start of construction by the successful developer, the University's Office of Facilities Planning and Management, President and Board of Governors must approve the developer's design, plans and specifications of facility to be built.

4.2.2.5 Mandatory Requirement Five: All facility designs must meet the following design goals and standards:

4.2.2.5.1 The structure shall be designed to Marshall University standards including but not limited to deep foundations or spread footings depending on geotechnical requirements, slab-on-grade or slab-on-deck elevated floor with steel superstructure or masonry load-bearing walls. The building exterior must be red brick, glass and/or other types of masonry or stone units with or without metal panels. All interior walls must be of gypsum board or masonry. All interior and exterior walls must be properly insulated for thermal efficiency or for sound insulation. Sources of exterior noise or interior noise must be appropriately addressed during design.

4.2.2.5.2 Mechanical, electrical, and plumbing design must be in accordance with federal, state, and municipal code requirements. Service locations must be coordinated with American Electric Power.

4.2.2.5.3 All exhaust systems that require smoke evacuation and other ventilation systems shall be consistent with all federal, state, and municipal code requirements and approved by Marshall University.

4.2.2.5.4 All entrances, parking, seating, corridors, walks and other site conditions and building amenities must be in accordance with the Americans with Disabilities Act of 1992 as amended, as well as in accordance with state and local laws. All exterior site lighting must be designed to acceptable foot candle levels to prevent any unsafe site conditions. All pedestrian walkways must be six (6) to eight (8) feet wide for snow removal and proper flow of pedestrian traffic without obstructions. Proper care must be taken in roadways, service entrances and delivery areas to prevent conflicts with pedestrian traffic or unsafe conditions. All roadways, walks, service entrances and parking lots must be designed to withstand climate conditions, vehicular traffic and in accordance with geotechnical recommendations for types of construction. All concrete flat work must be of a design to accommodate its intended use.

4.2.2.5.5 Parking areas and facility entrances must have appropriate lighting and security perimeters with appropriate foot-candles for lighting, as well as appropriate screen walls to indicate appropriate access to areas or complexes. Emergency phones should be located at various locations in accordance with University standards and linked to Marshall University Department of Public Safety (MUPD).

4.2.2.5.6 Voice, Data, Video and Security/Access Control: All specifications must closely comply with Marshall University's move toward a converged standard. These specifications will begin to converge much of the outlying technologies for security, access control, and alarms.

These specifications will begin to converge much of the outlying technologies for security, access control, CCTV, and alarms. Three conduits that are 4-inch to 6- inches in diameter must be provided for communications leading from the Main Distribution Frame (MDR) in the building that is anticipated near the center of any building back to closest campus wiring center.

- a. **Wiring Specifications:** All Telecommunication Cable and Conduit must be in compliance with the pending Division 17 Architectural Guidelines. The Horizontal Copper Distribution should comply with ANSI/TIA/EIA 568B and harmonized with the horizontal pathway and related space requirement specified in ANSI/TIA/EIA 569-A. All horizontal copper distribution will be completed with Category 6e AdvanceNet tested to 650 MHz 4-pair cabling meeting or exceeding testing for Gigabit Ethernet speeds as tested and documented with a Hewlett Packard WireScope 350 or similar device. The anticipated Telecommunication Rooms (TR) need to be near the center of the building with no cable run from the patch panel to the wall outlet more than 90 meters and be equipped with temperature, and humidity controlled. The size of each TR should be a minimum of 10 feet X 15 feet with a door opening to an open corridor. All work must be designed, and installation overseen by a BICSI RCDD, Registered Communications Distribution Designer.
- b. **Fiber Interconnection:** The successful Developer will supply a 48-strand single mode fiber cable from these facilities to the interconnection point with the campus

network that shall meet all NEC requirements for OFNR or OFNP and comply with Bellcore, FDDI, 10-Gigabit Ethernet, EIA/TIA-568 and ICEA standards. Fiber must be placed in one of three 4-inch to 6-inch conduit banks linked to the nearest campus backbone interconnect building.

Please Be Advised: The University retains the right to inspect and verify proper number and type of cabling material at an acceptable time (to be agreed upon between the University and the successful Proposer) before the installation of all cabling. The University retains the right to inspect cabling during the installation process and verify accuracy through industry standards for testing.

- 4.2.2.5.7 Developer must establish and maintain appropriate refuse and recycle areas for such removal. These areas must be accessible by the refuse/recycler service yet be properly screened and/or constructed.
- 4.2.2.5.8 Appropriate and aesthetically pleasing exterior signage shall be provided. Offices and spaces in all facilities should each be separately numbered and labeled as to designate uses; must use University standard for interior and exterior signage.
- 4.2.2.5.9 The sites should provide ample sidewalks to link various activities together. All sidewalks should have access and slopes designed to accommodate individuals with disabilities and should be illuminated for night use.
- 4.2.2.5.10 Landscaping must provide functional outdoor living environment. Outdoor space should be designed and landscaped for pedestrian circulation, outdoor activity, general leisure, and aesthetic appeal. All plant materials proposed for the sites should be hardy, disease-resistant, and suitable for the specific zonal growing conditions of Huntington, WV to which they are subjected, i.e., soil conditions, annual rainfall, sun, shade, wind, drainage, etc.
- 4.2.2.5.11 Furniture and ballpark field equipment, branding signage, etc., will be included as a furniture, fixtures, and equipment (FFE) allowance. All furniture and equipment must be new. If wood furniture is provided, it must be of solid construction with a normal life cycle use of twelve (12) years.

- 4.2.2.5.12** Marshall University will contract directly with the utility companies. The Developer is responsible for installation of utilities to ballpark from utility provider. Costs related to providing utilities to the facility will be developer responsibility. Marshall will pay for the services.
- 4.2.2.5.13** The Developer must employ a professional services firm to address sound and/or noise issues to ensure that all spaces constructed are within acceptable tolerances for industry standards. These services include, but are not limited to Architectural, Mechanical, Electrical and Acoustical Engineering as required. These disciplines shall address, but not be limited to the following: outside noise transmission, inside noise transmission, vibration both external and internal, mechanical equipment isolation, air flow noise levels, electrical fixtures, ballasts, and transformer noise, as well as room acoustics for audio transmission where needed. Any specific area requiring special acoustical treatment shall be included as part of design and construction.
- 4.2.2.5.14** Marshall University will provide site survey, to provide location (but not limited to property lines) and relocation of all utilities necessary for construction. This shall include the addition of any infrastructure necessary to accommodate the appropriate facility to be constructed at the proposed site. All geotechnical and/or site surveys and borings shall be the responsibility of Marshall University and Potesta and Associates as part of their scope of work prior to beginning construction to determine any necessary remedial work necessary to construct any of the facilities at any proposed location. A copy of any survey, geotechnical report, site condition, along with recommendation to address any site issues shall be submitted.
- 4.2.2.5.15** All design and construction services must be in accordance with the latest approved version of the International Building Codes and the West Virginia Building and Fire Codes. All final drawings and specifications must be submitted to the West Virginia State Fire Marshal's Office for review and approval. This approval will not exempt the Proposer from adhering to the above referenced codes. All or any elevators must pass final inspection by a West Virginia certified elevator inspector prior to acceptance.

SECTION 5: VENDOR PROPOSAL

- 5.1. Economy of Preparation:** Proposals should be prepared simply and economically providing a concise description of the items requested in Section 4. Emphasis should be placed on completeness and clarity of the content.
- 5.2. Incurring Cost:** Neither the State nor any of its employees or officers shall be held liable for any expenses incurred by any Vendor responding to this RFP, including but not limited to preparation, delivery, or travel.
- 5.3. Proposal Format:** Vendors should provide responses in the format listed below:
 - 5.3.1. Two-Part Submission:** Vendors must submit proposals in two distinct parts: technical and cost. Technical proposals must not contain any cost information relating to the project. Cost proposal must contain all cost information and must be sealed in a separate envelope from the technical proposal to facilitate a secondary cost proposal opening.
 - 5.3.2. Title Page:** State the RFP subject, number, Vendor's name, business address, telephone number, fax number, name of contact person, e-mail address, and Vendor signature and date.
 - 5.3.3. Table of Contents:** Clearly identify the material by section and page number.
 - 5.3.4. Response Reference:** Vendor's response should clearly reference how the information provided applies to the RFP request. For example, listing the RFP number and restating the RFP request as a header in the proposal would be considered a clear reference.
 - 5.3.5. Proposal Submission:** All proposals must be submitted to the Office of Purchasing **prior** to the date and time stipulated in the RFP as the opening date. All submissions must be in accordance with the provisions listed in Section 2: Instructions to Bidders Submitting Bids.

SECTION 6: EVALUATION AND AWARD

- 6.1. Evaluation Process:** Proposals will be evaluated in two parts by a committee of three (3) or more individuals. The first evaluation will be of the technical proposal and the second is an evaluation of the cost proposal. The Vendor who demonstrates that it meets all the mandatory specifications required, attains the minimum acceptable score, and attains the highest overall point score of all Vendors shall be awarded the contract.
- 6.2. Evaluation Criteria:** Proposals will be evaluated based on criteria set forth in the solicitation and information contained in the proposals submitted in response to the solicitation. The technical evaluation will be based upon the point allocations designated below for a total of (seventy) 70 of the one hundred (100) points. Cost represents thirty (30) of the one hundred (100) total points.

Evaluation Point Allocation:

Project Goals and Proposed Approach (§ 4.2)

- Approach & Methodology to Goals/Objectives (§ 4.2.1) 35 Points Possible
- Approach & Methodology to Compliance with
Mandatory Project Requirements (§ 4.2.2) 35 Points Possible

Total Technical Score: 70 Points Possible

Total Cost Score: 30 Points Possible

Total Proposal Score: 100 Points Possible

- 6.3. Technical Bid Opening:** At the technical bid opening, the Office of Purchasing will open and announce the technical proposals received prior to the bid opening deadline. Once opened, the technical proposals will be provided to the Department evaluation committee for technical evaluation.
- 6.4. Technical Evaluation:** The Department evaluation committee will review the technical proposals, assign points where appropriate, and make a final written recommendation to the Office of Purchasing.
- 6.5. Proposal Disqualification:**
- 6.5.1. Minimum Acceptable Score (“MAS”):** Vendors must score a minimum of seventy (70) percent (forty-nine (49) points) of the total technical points possible to move past the technical evaluation and have their cost proposal evaluated. All vendor proposals not attaining the MAS will be disqualified.

6.5.2. Failure to Meet Mandatory Requirement: Vendors must meet or exceed all mandatory requirements to move past the technical evaluation and have their cost proposals evaluated. Proposals failing to meet one or more mandatory requirements of the RFP will be disqualified.

6.6. Cost Bid Opening: The Office of Purchasing will schedule a date and time to publicly open and announce cost proposals after technical evaluation has been completed and the Office of Purchasing has approved the technical recommendation of the evaluation committee. All cost bids received will be opened. Cost bids for disqualified proposals will be opened for record keeping purposes only and will not be evaluated or considered. Once opened, the cost proposals will be provided to the Department evaluation committee for cost evaluation.

The Office of Purchasing reserves the right to disqualify a proposal based upon deficiencies in the technical proposal even after the cost evaluation.

6.7. Cost Evaluation: The Department evaluation committee will review the cost proposals, assign points in accordance with the cost evaluation formula contained herein and make a final recommendation to the Office of Purchasing.

Cost Evaluation Formula: Each cost proposal will have points assigned using the following formula for all Vendors not disqualified during the technical evaluation. The lowest cost of all proposals is divided by the cost of the proposal being evaluated to generate a cost score percentage. That percentage is then multiplied by the points attributable to the cost proposal to determine the number of points allocated to the cost proposal being evaluated.

Step 1: $\text{Lowest Cost of All Proposals} / \text{Cost of Proposal Being Evaluated} = \text{Cost Score Percentage}$

Step 2: $\text{Cost Score Percentage} \times \text{Points Allocated to Cost Proposal} = \text{Total Cost Score}$

Example:

Proposal 1 Cost is \$1,000,000

Proposal 2 Cost is \$1,100,000

Points Allocated to Cost Proposal is 30

Proposal 1: Step 1 – $\$1,000,000 / \$1,000,000 = \text{Cost Score Percentage of } 1 \text{ (100\%)}$

Step 2 – $1 \times 30 = \text{Total Cost Score of } 30$

Proposal 2: Step 1– $\$1,000,000 / \$1,100,000 = \text{Cost Score Percentage of } 0.909091 \text{ (90.9091\%)}$

Step 2 – $0.909091 \times 30 = \text{Total Cost Score of } 27.27273$

6.8. Availability of Information: Proposal submissions become public and are available for review immediately after opening pursuant to West Virginia Code §5A-3-11(h). All other information associated with the RFP, including but not limited to, technical scores and reasons for disqualification, will not be available until after the contract has been awarded pursuant to West Virginia Code of State Rules §148-1-6.3.d.

By signing below, I certify that I have reviewed this Request for Proposal in its entirety; understand the requirements, terms and conditions, and other information contained herein; that I am submitting this proposal for review and consideration; that I am authorized by the bidder to execute this bid or any documents related thereto on bidder's behalf; that I am authorized to bind the bidder in a contractual relationship; and that, to the best of my knowledge, the bidder has properly registered with any State Department that may require registration.

(Company)

(Representative Name, Title)

(Contact Phone/Fax Number)

(Date)

Attachment A: Cost Sheet

MU23P3STADIUM
 Marshall University - Athletics
 Request for Pre-Qualifications
 Financing, Development and Construction of a Baseball Stadium

COST SHEET

ITEM	QUANTITY	UNIT PRICE	TOTAL COST
BASIC PROJECT ASSUMPTIONS			
Baseball Stadium Construction Cost	1		
FINANCING ASSUMPTIONS			
First Mortgage - Mortgage/Financed Principal Amount	1		
Fixed Rate	1		
Payment Amount for 15 Year Term	180		
Annual Debt Service	15		
ESTIMATED OPERATING EXPENSES			
Estimated Operating Expenses per Fiscal Year (this does not include facility operations and maintenance)	15		
			TOTAL:

ITEM	QUANTITY	UNIT PRICE	TOTAL COST
BASIC PROJECT ASSUMPTIONS			
Baseball Stadium Construction Cost	1		
FINANCING ASSUMPTIONS			
First Mortgage - Mortgage/Financed Principal Amount	1		
Fixed Rate	1		
Payment Amount for 10 Year Term	120		
Annual Debt Service	10		
ESTIMATED OPERATING EXPENSES			
Estimated Operating Expenses per Fiscal Year (this does not include facility operations and maintenance)	10		
			TOTAL:

MARSHALL UNIVERSITY
 CRITERIA FOR SELECTION OF LOWEST
 RESPONSIBLE AND RESPONSIVE BIDDER FOR CONSTRUCTION PROJECTS

Pursuant to the laws of the State of West Virginia and Marshall University’s Board of Governors Policy FA-9, Purchasing Policy, construction projects over \$100,000.00 must award bids only to the lowest responsible and responsive vendor. Therefore, Marshall University must consider the following factors, and the information from the Contractor’s Qualification Statement (AIA Document A305-1986), when making a determination as to whether a contractor’s bid is not only the lowest, but is also responsible and responsive. Therefore, the apparent low vendor with the lowest bid must respond in writing to the following thirteen (13) items and provide a completed AIA Document A305-1986 (Contractors Qualification Statement) to the Facilities Planning & Management, and the Office of Purchasing within twenty-four (24) hours after the bid opening. These documents will be used in the bid evaluation process to determine if the Vendor is both responsible and responsive. For all responses, please include any other company/vendor names that you have operated under that are included in the responses provided. Also include the years of experience the company/vendor has in the construction, renovation, or building repair business.

1. The company/vendor’s participation in a drug program that meets the objectives, applicable laws and regulations for a drug free workplace including the use of tobacco and alcohol on school properties.

2. The continuity, experience, and skill of the company/vendor’s work force and that of the company/vendor’s designated subcontractors.

3. The company/vendor’s performance on similar construction projects. Please list the three (3) most current similar projects.

- 4. The company/vendor's ability to successfully complete projects within the proposed schedules and deadlines.

- 5. The company/vendor's participation in a *bona fide* joint apprenticeship program that is approved by the US Department of Labor, US Bureau of Apprenticeship Training and is administered in compliance with the rules and regulations of the WV Department of Labor. [See DOL 42-7-3.1(i)]

- 6. The company/vendor's history of compliance with Worker's Compensation and Unemployment Compensation laws.

- 7. The company/vendor's history of compliance with OSHA requirements.

- 8. The company/vendor's subcontractor's compliance with state regulatory agencies i.e. WV Department of Labor, the WV Insurance Commission, Workforce WV, WV Secretary of State' Office, etc.

Criteria for Selection of Lowest Responsible and Responsive Vendor

- 9. The company/vendor's local hiring plan and history of compliance with the WV Jobs Act, (W. Va. Code, Chapter 21, Article 1C) regarding use of the local labor market.

- 10. The bonding record of the company/vendor.

- 11. The company/vendor's participation as a party in any legal action where an awarded liability could negatively impact the ability of the company/vendor to complete this project.

- 12. The company/vendor's financial stability and its impact on the company's ability to complete the project.

All of the factors, as outlined above as supported by the accompanying Contractors Qualification Statement, will be considered by Marshall University in determining the “best” responsible and responsive Vendor.

Company

Authorized Signature

Printed Name and Title of Authorized Representative

Date

Phone Number

Fax Number

Note: Your responses should be submitted with the bid to expedite document processing.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

PRODUCER INSURANCE AGENCY'S NAME AND ADDRESS	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED CONTRACTOR'S NAME AND ADDRESS	INSURERS AFFORDING COVERAGE INSURER A: INSURER'S NAME INSURER B: INSURER'S NAME INSURER C: INSURER'S NAME INSURER D: INSURER E:	NAIC #

COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
B	EXCESS / UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below Y/N <input type="checkbox"/>				<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Employers liability includes coverage for W. Va. Code §23-4-2 (Mandolidis). Owner, Architect and Architect's Consultants are to be named as additional insureds. (Insert project's name and address)

CERTIFICATE HOLDER

CANCELLATION

MARSHALL UNIVERSITY ONE JOHN MARSHALL DRIVE HUNTINGTON, WV 25755	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
--	---

ACORD™ CERTIFICATE OF PROPERTY INSURANCE		DATE
PRODUCER INSURANCE AGENCY'S NAME AND ADDRESS	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED CONTRACTOR'S NAME AND ADDRESS	COMPANIES AFFORDING COVERAGE	
	COMPANY A	INSURER'S NAME
	COMPANY B	
	COMPANY C	
	COMPANY D	

COVERAGES

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.

CD LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	COVERED PROPERTY	LIMITS
	<input type="checkbox"/> PROPERTY CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input type="checkbox"/> SPECIAL <input type="checkbox"/> EARTHQUAKE <input type="checkbox"/> FLOOD				<input type="checkbox"/> BUILDING <input type="checkbox"/> PERSONAL PROPERTY <input type="checkbox"/> BUSINESS INCOME <input type="checkbox"/> EXTRA EXPENSE <input type="checkbox"/> BLANKET BUILDING <input type="checkbox"/> BLANKET PERS PROP <input type="checkbox"/> BLANKET BLDG & PP	\$ \$ \$ \$ \$ \$ \$ \$
	<input checked="" type="checkbox"/> INLAND MARINE TYPE OF POLICY A Inst/Builder's Risk (if applicable) CAUSES OF LOSS <input type="checkbox"/> NAMED PERILS <input type="checkbox"/> OTHER	(if applicable)			<input checked="" type="checkbox"/> BUILDING <input checked="" type="checkbox"/> TRANSIT <input checked="" type="checkbox"/> OFF-SITE STORAGE	CONTRACT AMT \$ 20% \$ 20% \$ \$ \$
	<input type="checkbox"/> CRIME TYPE OF POLICY					\$ \$ \$
	<input type="checkbox"/> BOILER & MACHINERY					\$ \$
	<input type="checkbox"/> OTHER					

LOCATION OF PREMISES/DESCRIPTION OF PROPERTY

 PROJECT NAME AND ADDRESS

SPECIAL CONDITIONS/OTHER COVERAGES
 MARSHALL UNIVERSITY IS AN ADDITIONAL INSURED.

CERTIFICATE HOLDER MARSHALL UNIVERSITY ONE JOHN MARSHALL DRIVE HUNTINGTON, WV 25755	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
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BID BOND PREPARATION INSTRUCTIONS

AGENCY (A) _____
RFQ/RFP# (B) _____

- (A) WV State Agency (Stated on Page 1 "Spending Unit")
- (B) Request for Quotation Number (upper right corner of page #1)
- (C) Your Business Entity Name (or Individual Name if Sole Proprietor)
- (D) City, Location of your Company
- (E) State, Location of your Company
- (F) Surety Corporate Name
- (G) City, Location of Surety
- (H) State, Location of Surety
- (I) State of Surety Incorporation
- (J) City of Surety's Principal Office
- (K) Minimum amount of acceptable bid bond is 5% of total bid. You may state "5% of bid" or a specific amount on this line in words
- (L) Amount of bond in numbers
- (M) Brief Description of scope of work
- (N) Day of the month
- (O) Month
- (P) Year
- (Q) Name of Business Entity (or Individual Name if Sole Proprietor)
- (R) Seal of Principal
- (S) Signature of President, Vice President, or Authorized Agent
- (T) Title of Person Signing for Principal
- (U) Seal of Surety
- (V) Name of Surety
- (W) Signature of Attorney in Fact of the Surety

Bid Bond

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned, _____ (C) _____ of _____ (D) _____ (E) _____ as Principal, and _____ (F) _____ of _____ (G) _____ (H) _____, a corporation organized and existing under the laws of the State of _____ (I) _____ with its principal office in the City of _____ (J) _____, as Surety, are held and firmly bound unto The State of West Virginia, as Obligees, in the penal sum of _____ (K) _____ is _____ (L) _____ for the payment of which, well and truly to be made, we jointly and severally bind ourselves, our heirs, administrators, executors, successors and assigns

The Condition of the above obligation is such that whereas the Principal has submitted to the Purchasing Section of the Department of Administration a certain bid or proposal, attached hereto and made a part hereof to enter into a contract in writing for _____ (M) _____

NOW THEREFORE

(a) If said bid shall be rejected, or
(b) If said bid shall be accepted and the Principal shall enter into a contract in accordance with the bid or proposal attached hereto and shall furnish any other bonds and insurance required by the bid or proposal, and shall in all other respects perform the agreement created by the acceptance of said bid then this obligation shall be null and void, otherwise this obligation shall remain in full force and effect. It is expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event, exceed the penal amount of this obligation as herein stated

The Surety for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of time within which the Obligees may accept such bid; and said Surety does hereby waive notice of any such extension.

WITNESS, the following signatures and seals of Principal and Surety, executed and sealed by a proper officer of Principal and Surety, or by Principal individually if Principal is an individual, the _____ (N) _____ day of _____ (O) _____, 20____ (P) _____.

Principal Seal _____ (Q) _____
(Name of Principal)
(R) By _____ (S) _____
(Must be President, Vice President, or Duly Authorized Agent)

(T) _____
Title
Surety Seal _____ (U) _____
(Name of Surety)

(W) _____
Attorney-in-Fact

NOTE 1: **Dated Power of Attorney with Surety Seal must accompany this bid bond.**

IMPORTANT – Surety executing bonds must be licensed in West Virginia to transact surety insurance, must affix its seal, and must attach a power of attorney with its seal affixed.

Agency _____
 REQ.P.O# _____

BID BOND

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned, _____
 of _____, _____, as Principal, and _____
 of _____, _____, a corporation organized and existing under the laws of the State of _____
 with its principal office in the City of _____, as Surety, are held and firmly bound unto the State
 of West Virginia, as Obligée, in the penal sum of _____ (\$ _____) for the payment of which,
 well and truly to be made, we jointly and severally bind ourselves, our heirs, administrators, executors, successors and assigns

The Condition of the above obligation is such that whereas the Principal has submitted to the Purchasing Section of the
 Department of Administration a certain bid or proposal, attached hereto and made a part hereof, to enter into a contract in writing for

NOW THEREFORE,

(a) If said bid shall be rejected, or

(b) If said bid shall be accepted and the Principal shall enter into a contract in accordance with the bid or proposal attached
 hereto and shall furnish any other bonds and insurance required by the bid or proposal, and shall in all other respects perform the
 agreement created by the acceptance of said bid, then this obligation shall be null and void, otherwise this obligation shall remain in full
 force and effect. It is expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event,
 exceed the penal amount of this obligation as herein stated.

The Surety, for the value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no
 way impaired or affected by any extension of the time within which the Obligee may accept such bid, and said Surety does hereby
 waive notice of any such extension.

IN WITNESS WHEREOF, Principal and Surety have hereunto set their hands and seals, and such of them as are corporations
 have caused their corporate seals to be affixed hereunto and these presents to be signed by their proper officers, this

_____ day of _____, 20_____.

Principal Corporate Seal

 (Name of Principal)

By _____
 (Must be President or
 Vice President)

 (Title)

Surety Corporate Seal

 (Name of Surety)

 Attorney-in-Fact

**IMPORTANT – Surety executing bonds must be licensed in West Virginia to transact surety insurance. Raised corporate seals
 must be affixed, a power of attorney must be attached.**

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____
(Name, address or legal title of the Contractor)

as Principal, hereinafter called Contractor, and _____
 _____ a corporation organized and existing under
 the laws of the State of _____, with its principal office in the City of _____

as Surety, hereinafter called Surety, are held firmly bound unto: _____
(Name, address or legal title of Owner)

as Oblige, hereinafter called Owner, in the amount of _____
 Dollars (\$ _____), for the payment whereof Contractor and Surety bind themselves, their heirs, executors,
 administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____
 _____ entered into a contract with Owner for _____

in accordance with drawings and specifications prepared by _____

which contract is by reference made a part hereof, and is hereinafter referred to as the CONTRACT

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Contractor shall, promptly and faithfully
 Perform and CONTRACT, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the CONTRACT, the Owner having performed
 Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

1. Complete the CONTRACT in accordance with its terms and conditions, and
2. Shall save the Owner harmless from any claims, judgments, or liens arising from the Surety's failure to either remedy
 the default or to complete the CONTRACT in accordance with its terms and conditions in a timely manner

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein
 or the successors of Owner

Signed and sealed this * _____ day of _____

Principal Raised Corporate Seal _____ (Seal)
(Contractor Name)

Surety Raised Corporate Seal By _____ (Seal)
(Must be President or Vice President)

(Title)

(Surety)

By _____ (Seal)

NOTE: Raised Corporate Seals are mandatory.
 Please attach Power of Attorney

NOTE: Applicable Section of attached acknowledge-
 ment must be completed and returned as part of
 the bond.

* Power of Attorney must be certified on this date or later.

APPROVED AG 10-30-95

ACKNOWLEDGEMENT PREPARATION INSTRUCTIONS

1. IF PRINCIPAL IS AN INDIVIDUAL OR PARTNERSHIP, HAVE NOTARY COMPLETE LINES (1) through (8)
2. IF PRINCIPAL IS A CORPORATION, HAVE NOTARY COMPLETE LINES (9) through (18).
3. SURETY MUST HAVE NOTARY COMPLETE LINES (19) through (28).
4. **Notaries must:**

ACKNOWLEDGEMENT BY PRINCIPAL IF INDIVIDUAL OR PARTNERSHIP

1. Enter name of State.
2. Enter name of County.
3. Enter name of Notary Public witnessing transactions.
4. Enter name of principal covered by bond if individual or partnership. Notary enters date bond was witnessed
5. Must be the same as or later than signature date.
6. Affix Notary Seal.
7. Notary affixes his/her signature.
8. Notary enters commission date

ACKNOWLEDGEMENT BY PRINCIPAL IF CORPORATION

9. Enter name of State
10. Enter name of County.
11. Enter name of Notary Public witnessing transactions.
12. Enter name of Corporate Officer signing bond. (Must be President or Vice President)
13. Enter Title of Corporate Officer signing bond.
14. Enter name of Company or Corporation.
15. Notary enters date bond was witnessed. Must be the same as or later than signature date.
16. Affix Notary Seal.
17. Notary affixes his/her signature.
18. Notary enters commission date.

ACKNOWLEDGEMENT BY SURETY

19. Enter name of State.
20. Enter name of County.
21. Enter name of Notary Public witnessing transactions.
22. Enter name of person having power of attorney to bind Surety Company.
23. Enter Title of person binding Surety Company.
24. Enter name of Insurance Company (Surety).
25. Notary enters date bond was witnessed. Must be the same as or later than signature date.
26. Affix Notary Seal.
27. Notary affixes his/her signature.
28. Notary enters commission date.

POWER OF ATTORNEY INSTRUCTIONS

Power of attorney for surety must be attached showing that it was in full force and effect on signature date indicated on the face of the bond. A raised corporate seal must also be affixed to the Power of Attorney form

- a. Name of attorney in fact must be listed (if attorney is a non-resident, bond must be countersigned by West Virginia resident agent).
- b. Power of Attorney may not exceed imposed limitations.
- c. Certificate date, the signature date of bond must be entered.
- d. Signature of authorizing official must be affixed. (Signature may be facsimile).
- e. **Raised seal must be affixed.**

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____
(Name, address or legal title of the Contractor)

as Principal, hereinafter called Contractor, and _____
 _____ a corporation organized and existing under
 the laws of the State of _____, with its principal office in the City of _____

as Surety, hereinafter called Surety, are held firmly bound unto _____
(Name, address or legal title of Owner)

as Obligee, hereinafter called Owner, for the use and benefit of claimants as herein below defined in the amount of _____ Dollars (\$ _____),
 for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents

WHEREAS, Contractor has by written agreement dated _____

_____ entered into a contract with Owner for

in accordance with drawings and specifications prepared by _____

which contract is by reference made a part hereof, and is hereinafter referred to as the CONTRACT

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Contractor shall, well and truly perform the contract, and shall pay off, satisfy and discharge all claims of subcontractors, labors, materialmen and all persons furnishing material or doing work pursuant to the CONTRACT and shall save Owner and its property harmless from any and all liability over and above the contract price thereof, between the owner and the Contractor, for all of such labor and material, and shall fully pay off and discharge and secure the release of any and all mechanics liens which may be placed upon said property by any such subcontractor, laborer or materialmen, then this obligation shall be null and void. Otherwise, it shall remain in full force and effect

Signed and sealed this * _____ day of _____

Principal Raised Corporate Seal _____ (Seal)
(Contractor Name)

Surety Raised Corporate Seal By _____ (Seal)
(Must be President or Vice President)

(Title)

(Surety)

By _____ (Seal)

NOTE: Reised Corporate Seals are mandatory.
 Please attach Power of Attorney

NOTE: Applicable Section of attached acknowledge-
 ment must be completed and returned as part of
 the bond.

* Power of Attorney must be certified on this date or later.

ACKNOWLEDGEMENTS

Acknowledgement by Principal if individual or Partnership

1 STATE OF _____
 2 County of _____ to-wit:
 3 I, _____, a Notary Public in and for the
 4 county and state aforesaid, do hereby certify that _____
 whose name is signed to the foregoing writing, has this day acknowledged the same before me in my said county
 5 Given under my hand this _____ day of _____ 20_____
 6 Notary Seal 7. _____
 (Notary Public)
 8 My commission expires on the _____ day of _____ 20_____

Acknowledgement by Principal if Corporation

9 STATE OF _____
 10 County of _____ to-wit:
 11 I, _____, a Notary Public in and for the
 12 county and state aforesaid, do hereby certify that _____
 13 who as, _____ signed the foregoing writing for
 14 _____ a corporation,
 has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.
 15 Given under my hand this _____ day of _____ 20_____
 16 Notary Seal 17. _____
 (Notary Public)
 18 My commission expires on the _____ day of _____ 20_____

Acknowledgement by Surety

19 STATE OF _____
 20 County of _____ to-wit:
 21 I, _____, a Notary Public in and for the
 22 county and state aforesaid, do hereby certify that _____
 23 who as, _____ signed the foregoing writing for
 24 _____ a corporation,
 has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.
 25 Given under my hand this _____ day of _____ 20_____
 26 Notary Seal 27 _____
 (Notary Public)
 28 My commission expires on the _____ day of _____ 20_____

**Sufficiency in Form and Manner
 Of Execution Approved**

Attorney General

This _____ day of _____ 20_____

By _____
 (Assistant Attorney General)

ACKNOWLEDGEMENT PREPARATION INSTRUCTIONS

1. IF PRINCIPAL IS AN INDIVIDUAL OR PARTNERSHIP, HAVE NOTARY COMPLETE LINES (1) through (8)
2. IF PRINCIPAL IS A CORPORATION, HAVE NOTARY COMPLETE LINES (9) through (18).
3. SURETY MUST HAVE NOTARY COMPLETE LINES (19) through (28)
4. **Notaries must:**

ACKNOWLEDGEMENT BY PRINCIPAL IF INDIVIDUAL OR PARTNERSHIP

1. Enter name of State
2. Enter name of County
3. Enter name of Notary Public witnessing transactions
4. Enter name of principal covered by bond if individual or partnership. Notary enters date bond was witnessed
5. Must be the same as or later than signature date.
6. Affix Notary Seal.
7. Notary affixes his/her signature.
8. Notary enters commission date.

ACKNOWLEDGEMENT BY PRINCIPAL IF CORPORATION

9. Enter name of State.
10. Enter name of County.
11. Enter name of Notary Public witnessing transactions
12. Enter name of Corporate Officer signing bond (Must be President or Vice President)
13. Enter Title of Corporate Officer signing bond.
14. Enter name of Company or Corporation
15. Notary enters date bond was witnessed. Must be the same as or later than signature date.
16. Affix Notary Seal.
17. Notary affixes his/her signature.
18. Notary enters commission date.

ACKNOWLEDGEMENT BY SURETY

19. Enter name of State.
20. Enter name of County.
21. Enter name of Notary Public witnessing transactions.
22. Enter name of person having power of attorney to bind Surety Company
23. Enter Title of person binding Surety Company
24. Enter name of Insurance Company (Surety).
25. Notary enters date bond was witnessed. Must be the same as or later than signature date.
26. Affix Notary Seal.
27. Notary affixes his/her signature
28. Notary enters commission date.

POWER OF ATTORNEY INSTRUCTIONS

Power of attorney for surety must be attached showing that it was in full force and effect on signature date indicated on the face of the bond. A raised corporate seal must also be affixed to the Power of Attorney form

- a. Name of attorney in fact must be listed (if attorney is a non-resident, bond must be countersigned by West Virginia resident agent).
- b. Power of Attorney may not exceed imposed limitations.
- c. Certificate date, the signature date of bond must be entered.
- d. Signature of authorizing official must be affixed (Signature may be facsimile)
- e. **Raised seal must be affixed.**

WV-73
Approved / April 30, 2020



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

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

1. I am an employee of _____; and,
(Company Name)

2. I do hereby attest that _____
(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: _____

Signature: _____

Title: _____

Company Name: _____

Date: _____

STATE OF WEST VIRGINIA,

COUNTY OF _____, TO-WIT:

Taken, subscribed and sworn to before me this _____ day of _____, _____.

By Commission expires _____

(Seal)

(Notary Public)

West Virginia Ethics Commission



Disclosure of Interested Parties to Contracts

Pursuant to W. Va. Code § 6D-1-2, 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 million or more until the business entity submits to the contracting state agency a Disclosure of Interested Parties to the applicable contract. In addition, the business entity awarded a contract is obligated to submit a supplemental Disclosure of Interested Parties reflecting any new or differing interested parties to the contract within 30 days following the completion or termination of the applicable contract.

For purposes of complying with these requirements, the following definitions apply:

"Business entity" means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership or corporation, but does not include publicly traded companies listed on a national or international stock exchange.

"Interested party" or *"Interested parties"* means:

- (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-contractors;
- (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract. (This subdivision does not apply to a publicly traded company); and
- (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency. (This subdivision does not apply to persons or business entities performing legal services related to the negotiation or drafting of the applicable contract.)

"State agency" means a board, commission, office, department or other agency in the executive, judicial or legislative branch of state government, including publicly funded institutions of higher education: Provided, that for purposes of W. Va. Code § 6D-1-2, the West Virginia Investment Management Board shall not be deemed a state agency nor subject to the requirements of that provision.

The contracting business entity must complete this form and submit it to the contracting state agency prior to contract award and to complete another form within 30 days of contract completion or termination.

This form was created by the State of West Virginia Ethics Commission, 210 Brooks Street, Suite 300, Charleston, WV 25301-1804. Telephone: (304)558-0664; fax: (304)558-2169; e-mail: ethics@wv.gov; website: ethics.wv.gov.

West Virginia Ethics Commission Disclosure of Interested Parties to Contracts

(Required by *W. Va. Code* § 6D-1-2)

Name of Contracting Business Entity: _____ Address: _____

Name of Authorized Agent: _____ Address: _____

Contract Number: _____ Contract Description: _____

Governmental agency awarding contract: _____

Check here if this is a Supplemental Disclosure

List the Names of Interested Parties to the contract which are known or reasonably anticipated by the contracting business entity for each category below (*attach additional pages if necessary*):

1. Subcontractors or other entities performing work or service under the Contract

Check here if none, otherwise list entity/individual names below.

2. Any person or entity who owns 25% or more of contracting entity (not applicable to publicly traded entities)

Check here if none, otherwise list entity/individual names below.

3. Any person or entity that facilitated, or negotiated the terms of, the applicable contract (excluding legal services related to the negotiation or drafting of the applicable contract)

Check here if none, otherwise list entity/individual names below.

Signature: _____ Date Signed: _____

Notary Verification

State of _____, County of _____:

I, _____, the authorized agent of the contracting business entity listed above, being duly sworn, acknowledge that the Disclosure herein is being made under oath and under the penalty of perjury.

Taken, sworn to and subscribed before me this _____ day of _____, _____.

Notary Public's Signature

To be completed by State Agency:

Date Received by State Agency: _____

Date submitted to Ethics Commission: _____

Governmental agency submitting Disclosure: _____

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: _____

Authorized Signature: _____ Date: _____

State of _____

County of _____, to-wit:

Taken, subscribed, and sworn to before me this ____ day of _____, 20__.

My Commission expires _____, 20__.

AFFIX SEAL HERE

NOTARY PUBLIC _____