

<b>Request for Proposal</b>	 <b>MARSHALL UNIVERSITY</b>	<b>Marshall University Office of Purchasing One John Marshall Drive Huntington, WV 25755-4100</b> Direct all inquiries regarding this order to: (304) 696-2599	<b>Bid#</b>  <b>R2302411</b>
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<b>Vendor:</b>	<b>For information call: Purchasing Contact: Phone: (304) 696-2727 Email: michelle.wheeler@marshall.edu <a href="mailto:Purchasing@marshall.edu">Purchasing@marshall.edu</a></b>
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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.

<b>DATE</b>  Bid date 06/12/2023	<b>MANDATORY BID MEETING</b> NA	<b>DEPARTMENT REQUISITION NO.</b>  <b>R2302411</b>	<b>BIDS OPEN:</b> 07/11/2023 at 2:00 p.m., EST. Broadcast via TEAMS <a href="https://tinyurl.com/3b9suy4k">https://tinyurl.com/3b9suy4k</a>	<b>BIDDER MUST ENTER DELIVERY DATE FOR EACH ITEM BID</b>
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Item #	Quantity	Description	Unit Price	Extended Price
		<p>Marshall University, on behalf of the Board of Governors, invites sealed Bids to provide all Work, including but not limited to labor, material, equipment, supplies, and transportation for:</p> <p style="text-align: center;"><b>Marshall University West Virginia Brownfields Assistance Center WV Community and Business Resiliency Initiative</b></p> <p>All bids must be submitted in accordance with the Bidding Documents issued by the Architect and the Request for Bids issued by Marshall University's Office of Purchasing.</p> <p>Bidding Documents may be obtained from: Marshall University Office of Purchasing Old Main 125 Huntington, WV 25755 (304) 696-2727</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 \_\_\_\_\_

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

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# REQUEST FOR PROPOSAL

## R2302411 - Marshall University West Virginia Brownfields Assistance Center WV Community and Business Resiliency Initiative

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### SECTION 1: GENERAL INFORMATION

#### 1.1. Introduction:

1. 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 West Virginia Brownfields Assistance Center (hereinafter referred to as the “WVBAC”) to provide environmental and related assessments for the Community Business Resiliency Initiative.

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 the Public	June 12, 2023
Vendor’s Written Questions Submission Deadline	June 27, 2023 2:00 p.m.
Addendum Issued	June 29, 2023
Technical Bid Opening Date	July 11, 2023 2:00 p.m.
Oral Presentation	TBD
Cost Bid Opening	TBD
Contract Award Made	TBD

# **REQUEST FOR PROPOSAL**

**R2302411 - Marshall University West Virginia Brownfields Assistance Center  
WV Community and Business Resiliency Initiative**

## **SECTION 2: INSTRUCTIONS TO VENDORS SUBMITTING BIDS**

Instructions begin on the next page.

## INSTRUCTIONS TO VENDORS

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

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

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

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

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

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

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

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

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

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 email 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.

## INSTRUCTIONS TO VENDORS

Submissions should include solicitation number in the subject line.

Question Submission Deadline (date and time): June 27, 2023 2:00 pm

Submit Questions to: Kim Bailey, C.P.M.

Email: baileyk@muati.org

5. **VERBAL COMMUNICATION:** Any verbal communication between the Vendor and any State personnel is not binding. 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 below 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.

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

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: R2302411

CONTACT: Michelle Wheeler

SOLICITATION NAME: Marshall University West Virginia Brownfields Assistance Center WV Community and Business Resiliency Initiative

SOLICITATION CLOSING DATE: July 11, 2023

SOLICITATION CLOSING TIME: 2:00 pm

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

## INSTRUCTIONS TO VENDORS

Technical Bid Opening Date and Time: July 11, 2023 2:00 pm

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.
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,

## INSTRUCTIONS TO VENDORS

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>.

**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.

## INSTRUCTIONS TO VENDORS

- 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.
- 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](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.



# **REQUEST FOR PROPOSAL**

**R2302411 - Marshall University West Virginia Brownfields Assistance Center  
WV Community and Business Resiliency Initiative**

## **SECTION 3: GENERAL TERMS AND CONDITIONS**

# 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. The vendor's signature on the Contract signifies Vendor's agreement to be bound by and accept the terms and conditions contained in the Contract. Therefore, the parties agree that the following contractual terms and conditions are dominate over any competing terms made a part of the Contract. **IN THE EVENT OF ANY CONFLICT BETWEEN THE 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: 10/3/22

Marshall University General Terms and Conditions



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. The Vendor and Agency must approve renewals.

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

**Fixed Period Contract with Renewals:** The Contract becomes effective upon the 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 the 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: 10/3/22

Marshall University General Terms and Conditions

**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 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 Marshall University Office of Purchasing Office must receive the performance bond prior to the 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 before 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 before 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 before Contract award, in a form acceptable to the University.

Revised: 10/3/22

Marshall University General Terms and Conditions

**8. INSURANCE:** The Vendor shall furnish proof of the insurance identified by a checkmark below before Contract award. Subsequent to contract award and prior to the insurance expiration date, the Vendor shall provide the University with proof that the insurance mandated herein has been continued. The 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 before 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 its or the Vendors benefit are deleted.

The vendor must maintain:

**Commercial General Liability Insurance** in at least an amount of 1 (one) Million per occurrence and an aggregate of 3 (three) Million.

**Automobile Liability Insurance** in at least an amount of 1 (one) Million per occurrence and an aggregate of 1 (one) Million.

**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.

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

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

Revised: 10/3/22

Marshall University General Terms and Conditions

**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:

N/A 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:

\_\_\_\_\_  
\_\_\_\_\_

Revised: 10/3/22

**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 deleted 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

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accordance with the Marshall University Board of Governors Policy No. FA-9 Purchasing Policy, section 7.4.1 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.

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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.

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

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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.

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

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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 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.

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**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 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, which 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](mailto: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](mailto: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

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records as defined in (FERPA), Vendor agrees to abide by the limitations on re-disclosure set forth in which states that the officers, employees, and agents of a party that receives education record information from Marshall may use the information, but only for the purposes for which the disclosure was made.

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

Such reports as the University may request. Requested reports may include, but are not limited to; quantities purchased, agencies utilizing the contract, total contract expenditures by University, etc.

Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by the 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,

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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, 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 are 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 an 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 re-evaluated in accordance with this rule.

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

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(Name, Title)

---

(Printed Name and Title)

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(Address)

---

(Phone Number)

(Fax Number)

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(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.

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(Company)

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(Authorized Signature)

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(Printed Name and Title of Authorized Representative)

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(Date)

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(Phone Number)

(Fax Number)

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**ADDENDUM ACKNOWLEDGEMENT FORM**  
**SOLICITATION NO.:**  
**(If Applicable)**

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

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

Addendum Numbers Received:

*(Check the box next to each addendum received)*

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

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

\_\_\_\_\_  
Company

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

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

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# REQUEST FOR PROPOSAL

## R2302411 - Marshall University West Virginia Brownfields Assistance Center WV Community and Business Resiliency Initiative

### SECTION 4: PROJECT SPECIFICATIONS

**4.1. Background and Current Operating Environment:** The Economic Development Authority awarded grant funding to the West Virginia Community Development Hub (HUB) for a project entitled “WV Community and Business Resiliency Initiative” (CBRI), one of eight separate yet connected projects within the Appalachian Climate Technology Coalition, all under the direction of Coalfields Development Corporation. The WV Brownfields Assistance Center (WVBAC) at Marshall University is a subrecipient to the HUB on this initiative. CBRI is designed to assist local communities, businesses, and related organizations in central and southern WV in green business, entrepreneurship, community planning and equitable engagement. An estimated 16 communities will be targeted to create places where climate tech can thrive through brownfields redevelopment. Community site reuse plans, building and property inventories, and property-specific redevelopment analysis are some of the primary outputs anticipated. Specific to this Request for Proposal (RFP), environmental site assessments (Phase I, Phase II, etc.), asbestos inspections, lead-based paint inspections, mold inspections, radon inspections, corrective action plans and associated remediation cost estimates, structural analysis, site redevelopment planning and other related services will be performed on a site-by-site basis. Primary sites of interest for evaluation will include abandoned, dilapidated and/or underutilized buildings, and abandoned, vacant and/or underutilized properties, all identified through a site selection process under direction of and conducted by the WVBAC.

The grant performance period has a current start date of October 1, 2023, and a project end date of September 30, 2026. The performance period may be adjusted to begin sooner, or end later based on project advancements and/or delays. A total of up to ~\$371,000 has been made available to the WVBAC for conducting environmental assessments and related activities. The WVBAC, through its designated contracting agent (Marshall University Research Corporation), will act as the agent for subcontracting environmental assessment and related activities.

The purpose of this RFP is to select an experienced, professional environmental consulting firm (referred to herein as “the Vendor”) that will provide the highest quality service at a competitive fee. Accordingly, technical qualifications and experience will be weighed heavily in this selection process and objectively scored by an independent selection committee of staff from within Marshall University.

**4.2. Project Goals and Mandatory Requirements:** Vendor should describe its approach and methodology to providing the service or solving the problem described by meeting 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.

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

# REQUEST FOR PROPOSAL

## R2302411 - Marshall University West Virginia Brownfields Assistance Center WV Community and Business Resiliency Initiative

- 4.2.1.1 Performance and completion of Phase I Environmental Site Assessments, adhering to All Appropriate Inquiry standards;
- 4.2.1.2 Performance and completion of Phase II Environmental Site Assessments, adhering to ASTM Standard E1903-19;
- 4.2.1.3 Performance and completion of Asbestos, Lead-Based Paint, Mold and/or Radon inspections;
- 4.2.1.4 Performance of Corrective Action Plans on sites requiring remediation;
- 4.2.1.5 Performance and completion of Structural Analysis; and
- 4.2.1.6 Performance and completion of structure/site redevelopment plans.

**4.2.2. 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 for the Vendor are listed below.

- 4.2.2.1 Must provide documentation that it is properly licensed in the State of West Virginia to conduct business;
- 4.2.2.2 Must provide a certificate of insurance that verifies insurance program in place for conducting activities included in this RFP;
- 4.2.2.3 Must provide documentation that verifies one or more employees meets the definition of an “Environmental Professional”.

**4.3. Qualifications and Experience:** Vendor should provide information and documentation regarding its qualifications and experience in providing services like those requested in this RFP. Information and documentation should include, but is not limited to, copies of any staff certifications or degrees applicable to this project, proposed staffing plans, descriptions of past projects completed (descriptions should include the location of the project, project manager name and contact information, type of project, and what the project goals and objectives where and how they were met.), references for prior projects,

# REQUEST FOR PROPOSAL

## R2302411 - Marshall University West Virginia Brownfields Assistance Center WV Community and Business Resiliency Initiative

and any other information that vendor deems relevant to the items identified as desirable or mandatory below.

**4.3.1. Qualification and Experience Information:** Vendor should describe in its proposal how it meets the desirable qualification and experience requirements listed below.

**4.3.1.1** Phase I Environmental Site Assessments;

**4.3.1.2** Phase II Environmental Site Assessments;

**4.3.1.3** Performance of Asbestos, Lead-Based Paint, Mold, and Radon Inspections;

**4.3.1.4** Performance of Corrective Action Plans on sites requiring remediation;

**4.3.1.5** Performance of Structural Analysis;

**4.3.1.6** Performance of Structure / Site Redevelopment Plans.

**4.3.2. Mandatory Qualification/Experience Requirements** – The following mandatory qualification/experience requirements must be met by the Vendor as a part of its submitted proposal. Vendor should describe how it meets the mandatory requirements and include any areas where it exceeds the mandatory requirements. Failure to comply with mandatory requirements will lead to disqualification, but areas where the mandatory requirements are exceeded will be included in technical scores where appropriate. The mandatory qualifications/experience requirements are listed below.

**4.3.2.1** Vendor must identify the Environmental Professional(s) that will be responsible for the supervision of all activities identified in Section 4.2.1.1 through Section 4.2.1.4 of this document and provide documentation supporting the individual(s) meets the Environmental Protection Agency’s definition of “Environmental Professional”, as defined in EPA’s “All Appropriate Inquiries Rule: Definition of Environmental Professional” (available at [https://www.epa.gov/sites/default/files/2015-09/documents/ep\\_deffactsheet.pdf](https://www.epa.gov/sites/default/files/2015-09/documents/ep_deffactsheet.pdf));

**4.3.2.2** Vendor must identify the individual or individuals that will be responsible for the supervision of all activities identified in Section 4.2.1.5 and 4.2.1.6 of this document and provide associated qualifications;

# REQUEST FOR PROPOSAL

## R2302411 - Marshall University West Virginia Brownfields Assistance Center WV Community and Business Resiliency Initiative

**4.3.2.3** Vendor must provide documentation that all laboratory analyses conducted in accordance with Section 4.2.1.2 and 4.2.1.3 are completed by a West Virginia licensed laboratory; and

**4.3.2.4** Vendor must provide (if applicable) names and contact information of all subcontractors to be used, their specific roles, and associated qualifications.

### 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 WVBAC nor Marshall University, 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 documents: technical and cost. Technical proposals must not contain any cost information relating to the project. The cost proposal must contain all cost information and must be in a separate document from the technical proposal to facilitate a secondary cost proposal opening/ review.

**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.

**5.3.6. Oral Presentations:** The Center will require an oral presentation of the top Vendor that score the highest on the technical evaluation. During oral presentations, a Vendor may not alter or add to their submitted proposal but only clarify information. An outline of the oral presentation proceedings is provided as follows:

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**5.3.7.** Oral Presentation Agenda;

**5.3.8.** Introductions of Participants;

**5.3.9.** Presentation outlining proposal, conducted by official Vendor representative(s), 30 minutes maximum time allocated for presentation;

**5.3.10.** Question and answer period to conclude Oral Presentation;

**5.3.11.** Oral Presentation will be scored after the conclusion of Oral Presentation by the Review Committee. Scoring based on the following criteria:

1. How closely did the Oral Presentation match the technical information provided by the Vendor? (5 points maximum)
2. Based on the Oral Presentation, does the Vendor have the experience and capabilities to meet project specification? (5 points maximum)
3. Based on the Oral Presentation, does the Vendor have the experience and capabilities to exceed project specifications? (5 points maximum)
4. Are there any major concerns from any review committee members regarding this Vendor performing the project specification requirements? (5 points maximum; no concerns = 5 points, major concerns = 0 points)

Vendor must attain a minimum averaged combined score of 15 points to be considered.

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### SECTION 6: EVALUATION AND AWARD

**6.1. Evaluation Process:** Proposals will be evaluated in two parts by a review 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 technical point score of all Vendors shall be contacted to provide an oral presentation and interview. If no problems or concerns arise from the oral presentation and interview, the review committee will proceed to cost evaluation review. If the Vendor that scored the highest on the technical proposal meets or exceeds the oral presentation review, and has the highest total points scored after the cost evaluation, then that Vendor will be awarded the contract. In the event problems or concerns arise from the oral presentation and interview, and/or the Vendor does not have the highest total points scored after the cost evaluations are conducted, then the WVBAC retains the right to not award the contract and schedule an oral presentation and interview with the Vendor(s) with a lower technical point score yet have attained a higher total points scored. The WVBAC retains the right to not award 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) (5) Points Possible
- Approach & Methodology to Compliance with Mandatory Project Requirements (§ 4.2.2) (10) Points Possible

##### **Qualifications and experience (§ 4.3)**

- General Qualifications and Experience (§ 4.3.1) (40) Points Possible
- Exceeding Mandatory Qualification/Experience Requirements (§ 4.3.2) (15) Points Possible

Total Technical Score: 70 Points Possible

Total Cost Score: 30 Points Possible

**Total Proposal Score: 100 Points Possible**

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**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 WVBAC evaluation committee for technical evaluation.

**6.4. Technical Evaluation:** The WVBAC evaluation committee will review the technical proposals, assign points where appropriate, and make a written recommendation to the Office of Purchasing.

**6.5. Proposal Disqualification:**

**6.5.1. Minimum Acceptable Score (“MAS”):** Vendors must score a minimum of fifty-five (55) points of the 70 total technical points possible in order 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 in order 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 WVBAC 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 WVBAC 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:**  $\text{Cost Score Percentage} \times \text{Points Allocated to Cost Proposal} = \text{Total Cost Score}$



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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 –  $\$1,000,000 / \$1,000,000 = \text{Cost Score Percentage of } 1 (100\%)$   
Step 2 –  $1 \times 30 = \text{Total Cost Score of } 30$

Proposal 2: Step 1 –  $\$1,000,000 / \$1,100,000 = \text{Cost Score Percentage of } 0.909091 (90.9091\%)$   
Step 2 –  $0.909091 \times 30 = \text{Total Cost Score of } 27.272727$

- 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.

### SECTION 7: CERTIFICATION AND SIGNATURE

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)

\_\_\_\_\_  
(Date)

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### Attachment A: Cost Sheet

Provide a detailed cost estimate for the following two example projects:

#### Example Project Number 1:

- Site is located in Princeton, Mercer County WV. The property includes a single-story accessible building (roof accessible) with a full basement totaling 30,000 sq. feet, brick exterior. The property is 1.5 acres in size. Assume the building will be renovated for new use. One corner of the building has what appears to be minimal water damage from a roof leak (which has been repaired), limited only to one corner of the building; cracks in the exterior bricks are present, and interior wall plaster has been damaged. No other water damage or cracks are known to exist in the rest of the building
- 20 locations analyzed for asbestos including the roof system (1% or greater asbestos detection requirements)
- 20 locations analyzed for lead-based paint (in-field screening using X-ray fluorescence [XRF] portable analyzing equipment)
- 8 locations within the building analyzed for Radon (state analysis method to be used)
- Structural Analysis opinion related to referenced building corner cracks and water damaged area.
- Reports include:
  1. Phase I Environmental Site Assessment (ESA) Report following All Appropriate Inquiry standard
  2. Structural Analysis opinion
  3. Asbestos Inspection Report
  4. Lead-based Paint Inspection Report
  5. Radon Inspection Report(Asbestos, lead-based paint inspection and radon inspections can be combined into one document)

#### Example Project Number 2:

- Site is located near Huntington, in Cabell County WV. The property is a vacant lot (primarily covered in grass, no concrete or asphalt) in a mixed residential and commercial business area. The property is 2.5 acres in size. Future plans for the site include a community park with a children's play area, picnic tables and a small parking area.
- Four soil borings to a depth of 20 feet below ground surface, including one surface sample and additional samples collected at 2.5-foot intervals to 10 feet below existing grade, followed by sampling at 5.0-foot intervals to a maximum depth of 20 feet below existing grade (last sample collected at 20 feet below ground surface) and field screened using Flame Ionization Detector or comparable field screening method.
- Four groundwater "grab" samples (one from each boring) collected (assume no groundwater well installations)

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- Four soil samples analyzed for Total RCRA 8 metals by EPA Method 6020B/7471B, VOC's by EPA Method 8260C, and PAH by EPA Method 8270E
- Four groundwater samples analyzed for Dissolved RCRA 8 metals by EPA Method 6020B/7470A, VOC's by EPA Method 8260C, and PAH by EPA Method 8270E/SIM30 samples collected within the building (including the roof) to be analyzed for asbestos (EPA Method 600/R-93/116 and Method 600/M4-82-020 (polarized light microscopy coupled with dispersion staining)
- Reports include:
  1. Phase I Environmental Site Assessment Report following All Appropriate Inquiry standard
  2. Phase II Environmental Site Assessment Report following ASTM Standard E1903-19
  3. Conceptual site plan for a community park

Detailed costs on each Example project should include all applicable costs including labor rates and projected time for each person, personnel travel costs (mileage, per diem, etc.), drilling/sampling cost breakdown including mobilization and demobilization costs, analytical costs, and any related costs normally associated with a project like these two examples. Each Example project must include a total cost. If detailed costs are not sufficiently stated, the WVBAC review committee retains the right to allocate no points for the Cost Evaluation.



# Submission Instructions for Suppliers

Please follow these instructions to submit via our Public Portal.

## 1. Prepare your submission materials:

### Requested Information

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

### Requested Documents:

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

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

## 2. Upload your submission at:

<https://marshall.bonfirehub.com/opportunities/97869>

Your submission must be uploaded, submitted, and finalized prior to the Closing Time of **Jul 11, 2023 2:00 PM EDT**. We strongly recommend that you give yourself sufficient time and **at least ONE (1) day** before Closing Time to begin the uploading process and to finalize your submission.

### Important Notes:

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

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

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

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

### Need Help?

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