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|---|-----------------|--|--|---|-------------------|
| <b>Request for Qualifications</b>   |                 |  <b>Marshall University</b><br><b>Office of Purchasing</b><br><b>One John Marshall Drive</b><br><b>Huntington, WV 25755-4100</b><br>Direct all inquiries regarding this order to: (304) 696-3498  |  | <b>Bid#</b><br><b>R2501705</b>  |                   |
| <b>Vendor:</b>  |                 |  |  | <b>Purchasing Contact:</b> Missy Workman<br><b>Phone:</b> (304) 696-3498<br><b>Email:</b> <a href="mailto:Workman57@Marshall.edu">Workman57@Marshall.edu</a> & <a href="mailto:Purchasing@marshall.edu">Purchasing@marshall.edu</a> |                   |
| 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><br><b>6.24.2025</b>  |                 | <b>SUBMISSION DUE:</b><br><b>July 24, 2025</b><br><b>2:59 PM EST</b>   |  | <b>DEPARTMENT REQUISITION NO.:</b><br><b>R2501705</b>   |                   |
|   |                 |  |  | <b>BIDS OPEN:</b><br>7.24.2025 3:00 p.m. EST<br>Link in Teams: <a href="https://tinyurl.com/MU-ICS-bid-opening-R2501705">https://tinyurl.com/MU-ICS-bid-opening-R2501705</a>  |                   |
|   |                 |  |  | <b>BIDDER MUST ENTER DELIVERY DATE FOR EACH ITEM BID</b>  |                   |
| <b>Item #</b>   | <b>Quantity</b> | <b>Description</b>   |  |   | <b>Unit Price</b> |
|   |                 | <b><u>Request for Qualifications (RFQ) - Construction Manager at Risk (CMAR)</u></b><br>Marshall University, on behalf of the Board of Governors, invites sealed proposals to provide Construction Management at Risk Services and Construction Contract Administration for Project:<br><b>R2501705 Marshall University Institute for Cyber Security (ICS) - Request for Qualifications (RFQ CMAR)</b><br>Interested firms can find the requirements on these two sites:<br><a href="https://www.marshall.edu/purchasing/resources/bids-and-proposals">https://www.marshall.edu/purchasing/resources/bids-and-proposals</a> or <a href="https://marshall.bonfirehub.com/opportunities/">https://marshall.bonfirehub.com/opportunities/</a><br>All technical questions must be submitted in writing to email: <a href="mailto:bidquestions@marshall.edu">bidquestions@marshall.edu</a> by <b>9:00 a.m., EST by July 4, 2025</b><br>RFQ Submission deadline: <b>2:59 p.m., EST, by July 24, 2025</b><br>Office of Purchasing, Room 125, Old Main Building, Marshall University |  |   |                   |
|   |                 |  |  |   | <b>Total</b>      |

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 _____ | Bidder's name Vendor _____ |
| _____ within _____ days               | Signed By _____            |
| FOB _____                             | Typed Name _____           |
| Terms _____                           | Title _____                |
|                                       | Email _____                |
|                                       | Street Address _____       |
|                                       | City/State/Zip _____       |
|                                       | Date _____ Phone _____     |
|                                       | Fein _____                 |

# MARSHALL UNIVERSITY

## CRITERIA FOR SELECTION OF LOWEST RESPONSIBLE AND RESPONSIVE BIDDER

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 Office of Purchasing prior to Bid Closing. These documents will be used in the 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.

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

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

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CRITERIA FOR SELECTION OF LOWEST  
RESPONSIBLE AND RESPONSIVE BIDDER

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

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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)]

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

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

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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's Office, etc.

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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.

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10. The bonding record of the company/vendor.

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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.

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

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13. Response from company/vendor's references and recommendations of other owners for whom the company/vendor has worked.

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Additional space for responses. Please number which question/answer you are adding to.

[illegible]

MARSHALL UNIVERSITY  
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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.

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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

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Fax Number

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



**REQUEST FOR QUALIFICATION (RFQ)**  
**Construction Manager at Risk (CMAR)**  
**R2501705 Marshall University Institute for Cyber Security (ICS)**

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**SECTION ONE: GENERAL INFORMATION**

- 1. INTRODUCTION:** The Marshall University Office Purchasing (“Office of Purchasing”) is soliciting Request for Qualification (“RFQ”) for Planning and Construction, (“Department”), to provide qualified Construction Manager at Risk ("CMAR") Services ("Supplier", "Firm", or "Vendor"). West Virginia Code §5-22B-3 (2025) requires that prior to entering into a construction management at-risk (CMAR) contract, “the state and/or its subdivisions shall adopt policies for utilization of a construction management at-risk contract.” Accordingly and for purposes of compliance with West Virginia law, this policy establishes procedures and guidelines for Marshall University’s utilization of CMAR contracts and selection of CMAR contractors.
- 2. REQUEST FOR QUALIFICATIONS:** Qualified firms may submit a Statement of Qualifications ("SOQ") to provide Construction Manager at Risk Services for Project: R2501705 Marshall University Institute for Cyber Security (ICS) that will includes Services for Construction, Design, Construction Administration, and so forth where Marshall University will be using the process as required in West Virginia Code 5G-1-3. Submitting firms must follow the instructions as provided in Section IV of this document. All firms submitting proposals will be considered and those firms considered most qualified will Interviewed and/or reviewed by the selection committee to narrow down to the most qualified. The firms selected in the qualifications phase shall be referred to as the "Prequalified firms" and be invited to in the Request for Proposal (RFP) phase. Marshall University shall use a qualifications-based, competitive selection process to select a CMAR contractor. The process shall comply with West Virginia state procurement laws.
- 3. PROJECT SCOPE:** The purpose of the project Request for Qualification (“RFQ”) CMAR is being solicited is to provide necessary Construction, Delivery, Design, Management, Contracts, Administration, and other related professional services for the following project: R2501705 Institute of Cyber Security (ICS) Building Construction located at Marshall University on the Huntington, West Virginia, campus, as defined herein The scope will be inclusive of but not limited to The information received in the response to this RFPQ will assist the University's project team in finalizing the requirements for the corresponding Request for Proposal (RFP) phase intended for release at at later date.



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**4. SCHEDULE OF EVENTS:**

|                                       |                                       |
|---------------------------------------|---------------------------------------|
| <u>RFQ Released to Public:</u>        | <u>June 24, 2025</u>                  |
| <u>Vendors Written Questions Due:</u> | <u>July 4, 2025, by 9:00 a.m. EST</u> |
| <u>Addendum Issued:</u>               | <u>July 11, 2025</u>                  |
| <u>RFQ Due:</u>                       | <u>July 24, 2025 by 2:59 pm EST</u>   |
| <u>RFQ Opening:</u>                   | <u>July 24, 2025 by 3:00 pm EST</u>   |
| <u>Notify Vendors:</u>                | <u>July 31, 2025</u>                  |

This schedule is subject to modification at the sole discretion of the University. Respondents will be notified of any change to the schedule for the RFQ phase by an addendum.



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**SECTION TWO: PROJECT SPECIFICATIONS**

1. **Location:** Marshall University, One John Marshall Drive, Huntington, WV
2. **Qualifications and Experience:** Vendors must include a statement of qualifications and performance data. The statement of qualifications and performance data may be presented through things like information regarding its employees, such as staff qualifications and experience in completing similar projects; references; copies of any staff certifications or degrees applicable to this project; proposed staffing plan; descriptions of past projects completed entailing the location of the project, project manager name and contact information, type of project, and the project goals and objectives and how they were met.
3. In addition to the above, the Vendor should provide information regarding the following:
  - a. The successful firm or team should demonstrate a clear procedure for communication with the owner during all phases of the project. Specific identification of the project team and their individual project experience
  - b. The successful firm or team should demonstrate a history of projects that met the owner's budget and a clear plan to ensure this project can be constructed within the project budget. This plan should be described in detail
  - c. The successful firm or team should demonstrate experience and/or understanding local and/or West Virginia construction market capabilities and cost
  - d. The successful firm or team should demonstrate the history of the firm and location of the principal office. In such that services to the University will be readily available and convenient from the development phase through the construction contract administration phase
  - e. Experience in sustainable building design and status of LEED accredited professionals for architectural, mechanical, and electrical disciplines within the proposed project team
  - f. Demonstrate that the location of the firm is such that services to the University will be readily available and convenient from the development phase through the construction contract administration
  - g. Identification in detail of how mechanical/electrical/HVAC design will be addressed, qualifications of either in-house or outside consultants who will perform this design work, and the approach to be used in this critical design area. A proven track record of the working relationship among members of the design team must be specified
  - h. Ability to coordinate construction contract administration in general contractor approach
  - i. Specific experience in providing the potential services required in projects of a similar size and complexity
  - j. At least three (3) references from organizations at which the firm and the project team have provided similar services during the past three years
  - k. Demonstrate ability to coordinate construction contract administration in general contractor approach
  - l. Identify the lead organization and primary members of the team. Name the entity that will work directly with Marshall University, and identify if this will be a consortium, partnership, or other form of joint venture, and provide a summary of key terms of the agreement.



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**4. Management Experience and Approach:** The University will set minimum

qualification requirements for Developer's firms and their Key Personnel in the RFP and will evaluate the qualifications of the firms and Key Personnel that each Respondent proposes to include on its team. The proposed firms and their Key Personnel will be subject to the University's approval. Submissions must include the qualifications and experience of their proposed personnel on the project as follows:

- 4.1. Please provide a brief overview of your company's experience, expertise, and other capabilities of services. Include details about the scope of the services, such as the types of equipment and projects completed, available service options, and any additional features or benefits offered
- 4.2. Provide an organizational chart of each member of the Proposer's team. Describe the role and responsibilities of each team member, including the major subcontractors and consultants. Identify all team members that are Disadvantaged Business Enterprise (DBE) firms. After initial submittal, changes to team members, including subcontractors and consultants, cannot be changed without Marshall University approval
- 4.3. The team must include at a minimum the following for the response to this RFQ to be considered acceptable
  - a. Project Manager
  - b. Construction Manager (Lead Contractor)
  - c. Construction Team
  - d. Team Members
- 4.4. Describe the approach to accomplish the various items of work required by the Project as identified in the Scope
- 4.5. Risk Factors - Identify what Respondent views as the most significant risks to the University and the Developer with respect to the development, design, construction, operation, and maintenance of the Project, and how those risks can be addressed, mitigated, or allocated to provide best value to the University

**5. Experience of Key Individuals**

Key individuals and team members are to remain for the duration of the project and changes cannot be made without Marshall University approval. The University may allow shortlisted Respondents to add, delete or substitute team members and reorganize their teams during the procurement process unless the change results in actual or potential organizational conflicts of interest or renders. Respondent team, in the University's sole determination, less qualified to develop the Project



# **REQUEST FOR QUALIFICATION (RFQ)**

## **Construction Manager at Risk (CMAR)**

### **R2501705 Marshall University Institute for Cyber Security (ICS)**

#### **5.1. Project Manager**

The Project Manager will be the primary person in charge of and responsible for delivery of the Project per the contract requirements. The Project Manager must be present on-site as the Project progresses, have full authority to make the final . decisions on behalf of the Proposer and have responsibility for communicating these decisions directly to Marshall University. The individual assigned to this position must be dedicated to the duties of the Project Manager and have no additional assignments. He/she must have at least ten (10) years' experience managing projects of similar scope and size and have worked on a minimum of two (2) projects in higher education, at least one (1) of which is valued at fifty (50) million dollars or more in the past ten years. One of the projects must have spanned three (3) years or more and involved a combination of infrastructure and building development. The Project Manager must be an individual with authority to make binding decisions on behalf of the Developer through the design and construction phases of the Project and shall be responsible for managing and coordinating the entire development process, including budgeting, scheduling, planning, construction, FF&E, and such other processes related to the construction of the Project.

- a. Identify the Project Manager and the firm by which he/she is employed. Give a clear definition of the role and responsibility of the Project Manager compared to the member firms. List the Project Manager's experience leading this type and size of project
- b. Provide a list of the projects that the Project Manager has managed in the past (five 5) years. For each project listed, provide a brief description of each project managed, including the year(s) of construction and size and type of project, including any unusual features and the contact information of the owner for which the work was performed.

#### **5.2 Construction Manager**

The Construction Manager must coordinate between the design and construction teams and work to resolve problems arising between the design and construction during the Project, subject to oversight by the Project Manager. Each construction manager must have at least 10 years' experience as a construction manager and have worked on a minimum of two (2) projects, each of at least \$50 million in construction value, in the past seven (7) years. At least one of the projects must be a project identified in the Lead Contractor's qualifications. The Construction Manager must be an individual with authority to make binding decisions on behalf of the Lead Contractor. The Construction Manager must have successfully completed ground-up construction of three projects with a value of at least thirty (30) million dollars.

#### **5.3 Team Members**

All team members must hold or obtain licenses required for performing work on the Project under state and local laws. Identify any firms on the team who have previously worked together on similar projects. Demonstrate the team's ability to commit necessary resources to complete the Project.

#### **5.4 Design Team**

The Proposer's design team shall have personnel with experience and expertise in applicable areas.



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**5.4. Design Reports**

Any design reports or plans shall be signed and sealed by Registered Professional Engineer registered in the State of West Virginia

**6. Past Performance**

For each firm-included in the Proposer's team, provide information showing the firm's qualifications for performing work included in this Proposal. The information is to include a list of project experience in the past five (5) years, including year(s) of construction.

**Submittal of Qualifications**

**For each project listed, provide:**

- A brief description of the project
- Provide information regarding multi-phase, multi-product projects delivered on time and within budget, while accommodating the needs of multiple stakeholders
- Name of owner(s) for whom the work was performed
- Name and phone numbers of owner's representatives who can verify and discuss the firm's participation in these projects

Provide brief answers and explanations to the following questions:

*Within the last five (5) years, has any member of the Proposer's team:*

- Been declared delinquent and/or in default on any project?
- Been suspended, debarred, disqualified from bidding, or declared ineligible for work by any entity, or have actions pending against them?
- Submitted a claim on a project that was not resolved without litigation and if litigated, was not resolved in favor of the member of Proposer's team?
- Been assessed liquidated damages on any projects within the past five (5) years?
- Been found in violation of any local, state, or Federal laws or regulations, or is any member of the Proposer's team currently under investigation for violation of any such laws or regulations?  
This includes but is not limited to safety, environmental, and erosion/sediment control issues.
- Have active projects that are behind schedule?
- Received incentives for early project completion?
- Been involved in design and construction related litigation?

**7. Quality Control Plan**

Prtesta & Associates will be the firm to provide QC responsibilities, including sampling and testing on this project.





# **REQUEST FOR QUALIFICATION (RFQ)**

## **Construction Manager at Risk (CMAR)**

### **R2501705 Marshall University Institute for Cyber Security (ICS)**

#### **8. Financial Qualifications**

Respondents must provide a statement, not to exceed five (5) pages in total, describing their approach to financing the Project, including identification of any perceived challenges to financing the Project and proposed innovations to meet these challenges. The Respondent must include what they view as the most significant risk(s) to the University and the Developer with respect to financing the Project and how those risks can be addressed, mitigated, or allocated to provide best value to the University.

Proposers must submit the following information for each major partner:

- Contractors must provide a copy of their Prequalification Certificate and Contractor's License. In lieu of Prequalification Certificate and for RFPQ Purposes, the Contractor may supply proof of sufficient bonding capacity and adequate insurance coverage
- A letter from the Contractor's Bonding Company acknowledging the type of project and ensuring they will provide the bonding for the project's duration. The Respondent or Lead Contractor can obtain (i.) a payment bond or bonds in the aggregate amount of one hundred (100) million dollars from an Eligible Surety, and (ii.) a performance bond or bonds in the aggregate amount of one hundred (100) million dollars from an Eligible Surety
- For purposes of the RFPQ process, the consultant may provide current financial statement information
- The Respondent's demonstrated experience in successfully closing the financing of large public-private partnership projects; demonstrated experience in successfully developing large public-private partnership. Projects, with an emphasis on public-private partnerships that involved the Respondent sharing substantial risks associated with design, construction, financing, operation and maintenance; demonstrated experience in successfully managing the operation and maintenance scopes of large public-private partnership projects, with an emphasis on social infrastructure public-private partnerships
- Provide a Statement, describing the Respondent's overall approach to the design and construction of the Project.

#### **9. Letter of Interest**

Provide a letter of interest with suggestions for business model(s) that may be best suited for development innovations

#### **10. Virtual Oral Presentations:**

Respondents must make a thirty (30) minute oral presentation virtually, followed by a fifteen (15) minute question and answer session, to the University's evaluation committee. The presentations will be held July 28, 2022, virtually via Teams. Each Respondent's teams will be contacted in advance with the precise time for their oral presentation. Written materials and other visual aids supporting the oral presentations may be used, provided that any such materials or visual aids will be retained by the University following the presentation. The Respondent must make its best efforts to have its proposed Key Personnel and lead representatives of each Major Team Member attend and meaningfully participate in the oral presentation. The oral presentations will be evaluated and scored according to the criteria and weightings set forth herein.



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**SECTION THREE: VENDOR PROPOSAL, EVALUATION, & AWARD**

- 1. Economy of Preparation:** RFQ should be prepared simply and economically, providing a straight-forward, concise description of the firm's abilities to satisfy the requirements and goals and objectives of the RFQ. Emphasis should be placed on completeness and clarity of content. The response sections should be labeled for ease of evaluation.
- 2. BIDS MUST NOT CONTAIN PRICE INFORMATION:** The State shall select the best value solution according to W. Va. Code §5G-1-3. In accordance with Code requirements, no "price" or "fee" information is permitted in the Vendor's RFQ response.
- 3. Evaluation and Award Process:** RFQ for projects estimated to cost \$250,000 or more will be evaluated and awarded in accordance with W.Va. Code §50-1-3. That Code section requires the following related to evaluation and award:
  - 3.1 Required Elements/ of RFQ Response:** The director of purchasing shall encourage such firms engaged in the lawful practice of the profession to submit an RFQ which shall include a statement of qualifications, and performance data and may include anticipated concepts and proposed methods of approach to the project.
  - 3.2. Public Advertisement:** All RFQ requests shall be announced by public notice published as a Class II legal advertisement in compliance with the provisions of West Virginia Code §59-3-1 et seq.
  - 3.3. Selection Committee Evaluation and Negotiation:** A committee comprised of three to five representatives of the agency initiating the request shall:
    - 3.3.1.** Evaluate the statements of qualifications and performance data and other material submitted by the interested firms and select three firms which in their opinion are the best qualified to perform the desired service.
    - 3.3.2.** Conduct interviews with each firm selected and conduct discussions regarding anticipated concepts and the proposed methods of approach to the assignment.
    - 3.3.3.** Rank in order of preference no less than three professional firms are deemed to be the most highly qualified to provide the services required and shall and commence scope of service and price negotiations with the highest qualified professional firm.
    - 3.3.4.** Should the agency be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee determined to be fair and reasonable, price negotiations with the firm of a second choice shall commence. Failing agreement with the second most qualified professional firm, the committee shall undertake price negotiations with the third most qualified professional firm.



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**SECTION FOUR: INSTRUCTIONS TO VENDORS SUBMITTING BIDS**

- 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 RFQ or 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. INQUIRIES:** Additional information inquiries regarding this RFQ must be submitted in writing to Marshall University Office of Purchasing, except for questions regarding proposal submission, which may be oral. Non-written discussions, conversations, or questions and answers regarding this Solicitation are preliminary in nature and are non binding. The deadline for written inquiries is identified in the **Schedule of Events, Section 3**. All inquiries of specification clarification must be addressed to the designated **sole contact** for this RFQ:

Marshall University Office of Purchasing  
Michelle Wheeler  
Old Main 125  
One John Marshall Drive Huntington, WV 25755  
Include solicitation number R2501705 on envelope &/or in the subject  
line. Email: [bidquestions@marshall.edu](mailto:bidquestions@marshall.edu)

**The firm, or anyone on the firm's behalf, is not permitted to direct questions or comment on this RFQ with anyone at Marshall University except the sole contact. Violation may result in rejection of the RFQ.**

- 4. VENDOR REGISTRATION:** Vendors participating in this process should complete and file a *Vendor Registration and Disclosure Statement* (Form WV-1) and remit the registration fee. Vendor is not required to be a registered vendor in order to submit an RFQ, but the successful vendor must register and pay the fee prior to the issuance of an actual contract.
- 5. ORAL STATEMENTS AND COMMITMENTS:** Firm must clearly understand that any verbal representations made or assumed to be made during any oral discussions held between firm's representatives and any State personnel are not binding. Only the information issued in writing and added to the RFQ specifications file by an official written submission and/or addendum is binding.
- 6. ECONOMY OF PREPERATION:** RFQ should be prepared simply and economically, providing a straightforward, concise description of firm's abilities to satisfy the requirements of the RFQ. Emphasis should be placed on completeness and clarity of content.



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7. **LABELING OF THE SECTIONS:** The response sections should be labeled for ease of evaluation.
8. **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 RFQ submission deadline. Any RFQ 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 RFQ, modification of RFQ, or addendum acknowledgment forms via e-mail. Acceptable delivery methods include electronic submission via Bonfire™, hand delivery, or delivery by courier. An RFQ 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.

**The outside of the envelope or package(s) should be sent to the above address and clearly marked:**

**SEALED BID: R2501705**

**CONTACT: Michelle Wheeler**

**SOLICITATION NAME: Marshall University Institute for Cyber Security (ICS)**

**SOLICITATION CLOSING DATE: July 24, 2025**

**SOLICITATION CLOSING TIME: 3:00 pm EST**

9. **REJECTION OF Qualifications:** The University may accept or reject any RFQ as a whole, or in part in accordance with Marshall University Board of Governors Policy No. FA-9 Purchasing Policy. Marshall University may select multiple firms to fulfill the project needs. However, Marshall reserves the right to accept or reject any or all expressions and reserves the right to withdraw this RFQ at any time and for any reason. Submission of, or receipt by Marshall of Expressions confers no rights upon the firm nor obligates Marshall in any manner. A contract based on this RFQ, and the firm's response may or may not be awarded.

**Any contract resulting in an award from this RFQ and subsequent negotiations is not valid until properly approved and executed by Marshall.**

10. **INCURRING COSTS:** Marshall and any of its employees or officers shall not be held liable for any expenses incurred by any firm responding to this RFQ for expenses to prepare, deliver, or to attend oral interviews (if required).
11. **ADDENDA:** If it becomes necessary to revise any part of this RFQ, an official written addendum will be issued by Marshall to all potential firms of record.
12. **PRICE QUATOTATIONS:** No "price" or "fee" quotation is requested or permitted in response.
13. **PUBLIC RECORD:**

- a. Submissions are Public Record**



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- i. All documents submitted to Marshall related to purchase orders/contracts are considered public records. All RFQ submitted by firms shall become public information and are available for inspection during normal official business hours at Marshall after the expressions have been opened.

**b. Written Release of Information**

- i. All public information may be released with or without a Freedom of Information request.

**c. Risk of Disclosure**

- i. The only exemptions to disclosure of information are listed in West Virginia Code §29B-1-4. Primarily, only trade secrets as submitted by a firm are the only exemption to public disclosure. The submission of any information to Marshall by a firm puts the risk of disclosure on the firm. Marshall does not guarantee non-disclosure of any information to the public.

**14. PURCHASING AFFADIVT:** West Virginia State Code §SA-3-10a (3) (d) requires that all firms submit an Affidavit regarding any debt owed to the State and licensing and confidentiality certifications. The Affidavit must be signed and submitted prior to award. The Affidavit must be submitted with the RFQ.



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**SECTION FIVE: MARSHALL UNIVERSITY GENERAL TERMS AND CONDITIONS**

**By signing and submitting the RFQ, the firm agrees to be bound by all the terms contained in Section 5 of this RFQ.**

- 1. CONTRACTUAL AGREEMENT:** Issuance of an Award Document constitutes acceptance of this contract (the Contract) made by and between Marshall University (University or Marshall) and the Vendor. Vendor's signature to the Contract signifies Vendor's agreement to be bound by and accept the terms and conditions contained in the Contract. Therefore, the parties agree that the following contractual terms and conditions are dominate over any competing terms made a part of the Contract. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THESE GENERAL TERMS AND CONDITIONS, THESE GENERAL TERMS AND CONDITIONS SHALL CONTROL**
- 2. CONFLICT OF INTEREST:** The firm affirms that it, its officers or members or employees presently have no interest and shall not acquire any interest, direct or indirect which would conflict or compromise in any manner or degree with the performance or its services hereunder. The firm further covenants that in the performance of the contract, the firm shall periodically inquire of its officers, members and employees concerning such interests. Any such interests discovered shall be promptly presented in detail to Marshall University.
- 3. PROHIBITION AGAINST GRATUITIES:** The firm warrants that it has not employed any company or person other than a bona fide employee working solely for the firm or a company regularly employed as its marketing agent to solicit or secure the contract and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award of the contract. For breach or violation of this warranty, Marshall University shall have the right to annul this contract without liability at its discretion, and/or to pursue any other remedies available under this contract or by law.
- 4. CERTIFICATIONS RELATED TO LOBBYING:** The firm certifies that no federal appropriated funds have been paid or will be paid, by or on behalf of the company or an employee thereof, to any person for purposes of influencing or attempting to influence an officer or employee of any Federal entity, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the firm shall complete and submit a disclosure form to report the lobbying.





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The firm agrees that this language of certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly. This certification is a material representation of the fact upon which reliance was placed when this contract was made and entered into.

- 5. 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.
- 6. 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 wages law.
- 7. CONTRACT PROVISIONS:** After qualified firms are identified, and fee negotiations are concluded, a formal contract document will be executed between Marshall University and the firms. The order of precedence is the contract, the RFQ and the firms' response to the RFQ.
- 8. 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.



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9. **SUBCONTRACTS/JOINT VENTURES:** Marshall University will consider the firm to be the sole point of contact with regard to all contractual matters. The firm may, with the prior written consent of Marshall University, enter into written subcontracts for performance of work under this contract; however, the firm is totally responsible for payment of all subcontractors
10. **NON-APPROPRIATION OF FUNDS:** If Marshall University is not allotted funds in any succeeding fiscal year for the continued use of the service covered by this contract by the West Virginia Legislature, Marshall University may terminate the contract at the end of the affected current fiscal period without further charge or penalty. Marshall University shall give the firm a written notice of such non-allocation of funds as soon as possible after Marshall University receives notice. No penalty shall accrue to Marshall University in the event this provision is carried out.
11. **CONTRACT TERMINATION:** Marshall University (University or Marshall) may terminate any contract resulting from this RFQ immediately at any time the firm fails to carry out its responsibilities or to make substantial progress under the terms of this RFQ and resulting contract. Marshall University shall provide the firm with advance notice of performance conditions, which are endangering the contract's continuation. If after such notice the firm fails to remedy the conditions contained in the notice, within the time contained in the notice, Marshall University shall issue the firm an order to cease and resist all work immediately. Marshall shall be obligated only for services rendered and accepted prior to the date of the termination notice. The contract may also be terminated upon the mutual agreement of the parties with thirty (30) days prior notice.
12. **CHANGES:** If changes to the original contract become necessary, a formal contract change order will be required. Prior to any work being performed, the change must be negotiated and approved by Marshall University and the firm. An approved contract change order is defined as one approved by the Marshall University prior to the effective date of such amendment. **NO CHANGE SHALL BE IMPLEMENTED BY THE FIRM UNTIL THE FIRM RECEIVES AN APPROVED WRITTEN CHANGE ORDER.**
13. **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 include internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.
14. **REQUIRED DOCUMENTS:** All the items checked below must be provided to the University by the Vendor as specified below.
- ☒ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section entitled Licensing, of the General Terms and Conditions, the Vendor shall furnish proof of the following licenses, certifications, and/or permits prior to Contract award, in a form acceptable to the University.





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☒ **INSERT ADDITIONAL CONDITIONS BELOW:**

Please include W9, Contractor's License, Certificate of Insurance (COI) with Marshall University as Certificate Holder, MURC -2, Purchasing Affidavit, Drug Free Workplace Certificate, Criteria for Selection of Lowest Qualified Bidder, all Signature pages dated & signed, Disclosure of Interested Parties to Contracts, and Subcontractors List.

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

- 15. 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.
- 16. 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.
- 17. 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.
- 18. 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.
- 19. 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.
- 20. 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.
- 21. AMENDMENTS -** The parties agree that all amendments, modifications, alterations or



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changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

- 22. 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 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.
- 23. 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.
- 24. 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.
- 25. 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.
- 26. 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



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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.

- 27. 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.

**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.
  - i. **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.
  - ii. **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



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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.

- iii. **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



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clear in the bid itself or in documentation following the request for the subcontractor list.) 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.

- b. 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



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**SECTION 6: EVALUATION AND SHORTLISTING VENDORS**

- 6.1. **Evaluation Process:** Proposals will be evaluated by a committee of three (3) or more individuals. The Respondent who demonstrates they meet the qualifications and experience identified in the specifications, attains the minimum acceptable score, and attains the highest overall point score of all Vendors will be selected
- 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 appointed below for a total of one hundred (100) points.

6.3. **Evaluation Point Allocation:**

| <b>CRITERIA</b>                    | <b>POSSIBLE POINTS</b> |
|------------------------------------|------------------------|
| Management Experience and Approach | 20                     |
| Experience of Key Individuals      | 20                     |
| Past Performance                   | 15                     |
| Financial Qualifications           | 20                     |
| Letter of Interest                 | 15                     |
| Virtual Oral Presentation          | 10                     |
| <b>TOTAL PROPOSED SCORE:</b>       | <b>100</b>             |



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## **Certification and Signature Sheet**

By signing below, I certify that I have reviewed this Expression of Interest 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 submitting firm to execute this Expression or any documents related thereto on submitting firm's behalf; that I am authorized to bind the submitting firm in a contractual relationship; and that, to the best of my knowledge, the submitting firm has properly registered with any State agency that may require registration.

\_\_\_\_\_  
(Firm)

\_\_\_\_\_  
(Representative Name, Title)

\_\_\_\_\_  
(Contact Phone/Fax Number)

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



**Subcontractor List Submission (Construction Contracts Only)**

**Bidder's Name:** \_\_\_\_\_

☐ Check this box if no subcontractors will perform more than \$25,000.00 of work to complete the project.

| Subcontractor Name | License Number if Required by<br>W. Va. Code § 30-42-14 |
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Attach additional pages if necessary

Revised: 10/12/21



**ADDENDUM ACKNOWLEDGEMENT**  
**FORM SOLICITATION NO.: R2501705 RFQ CMAR**  
Marshall University Corbly Hall Renovations & Upgrades Huntington, WV

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

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Authorized Signature

---

Date

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

**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)



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/23/2021

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

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

|  |  |  |  |
|--|--|--|--|
| <b>PRODUCER</b><br>West Virginia Board of Risk & Insurance Management<br>1124 Smith Street Suite 4300<br><br>Charleston WV 25301 |  | <b>CONTACT NAME:</b><br><b>PHONE (A/C, No, Ext):</b> 304-766-2646<br><b>FAX (A/C, No):</b> 304-558-6004<br><b>E-MAIL ADDRESS:</b> brim.underwriting@wv.gov   |  |
| <b>INSURED</b><br><br>BLANK Forms  |  | <b>INSURER(S) AFFORDING COVERAGE</b><br><b>INSURER A:</b> National Union Fire Co of Pittsburgh PA<br><b>INSURER B:</b><br><b>INSURER C:</b><br><b>INSURER D:</b><br><b>INSURER E:</b><br><b>INSURER F:</b> |  |
|  |  | <b>NAIC #</b><br>19445   |  |

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

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

| INSR LTR | TYPE OF INSURANCE   | ADDL SUBR INSD WVD                             | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS   |
|----------|---|--|---------------|-------------------------|-------------------------|--|
| A        | <input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b><br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br><input checked="" type="checkbox"/> <b>WRONGFUL ACT</b><br><input checked="" type="checkbox"/> <b>PROFESSIONAL</b><br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC<br>OTHER: |  | L             | 07/01/2021              | 07/01/2022              | EACH OCCURRENCE \$ 1,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$<br>MED EXP (Any one person) \$<br>PERSONAL & ADV INJURY \$ INCLUDED<br>GENERAL AGGREGATE \$ \$3,000,000<br>PRODUCTS - COMP/OP AGG \$ NONE |
| A        | <b>AUTOMOBILE LIABILITY</b><br><input type="checkbox"/> ANY AUTO<br><input checked="" type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS<br><input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY   |  | L             | 07/01/2021              | 07/01/2022              | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$  |
|          | <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR<br><b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE<br>DED RETENTION \$  |  |               |                         |                         | EACH OCCURRENCE \$ \$1,000,000<br>AGGREGATE \$ \$3,000,000   |
| A        | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below   | Y/N<br><input checked="" type="checkbox"/> N/A | L<br>STOP GAP | 07/01/2021              | 07/01/2022              | PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/><br>E.L. EACH ACCIDENT \$ 1,000,000<br>E.L. DISEASE - EA EMPLOYEE \$ 1,000,000<br>E.L. DISEASE - POLICY LIMIT \$ 1,000,000                         |

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

Subject to the Provisions, Conditions and Exclusions of the policies listed above, it is agreed that the Certificate Holder is an "Additional Insured" with respects to:

**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, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



# CERTIFICATE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)

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

PRODUCER

INSURANCE AGENCY'S NAME AND ADDRESS

CONTACT NAME:

PHONE (A/C, No, Ext):

FAX (A/C, No):

E-MAIL ADDRESS:

PRODUCER

CUSTOMER ID:

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURED

CONTRACTOR'S NAME AND ADDRESS

INSURER A :

INSURER'S NAME

INSURER B :

INSURER C :

INSURER D :

INSURER E :

INSURER F :

## COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

LOCATION OF PREMISES / DESCRIPTION OF PROPERTY (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

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

| INSR LTR | TYPE OF INSURANCE   |                                   | POLICY NUMBER  | POLICY EFFECTIVE DATE (MM/DD/YYYY) | POLICY EXPIRATION DATE (MM/DD/YYYY) | COVERED PROPERTY                                     | LIMITS             |
|----------|---|-----------------------------------|----------------|------------------------------------|-------------------------------------|--|--------------------|
|          | <input type="checkbox"/> PROPERTY                                 |                                   |                |                                    |                                     | <input type="checkbox"/> BUILDING                    | \$                 |
|          | CAUSES OF LOSS  | DEDUCTIBLES                       |                |                                    |                                     | <input type="checkbox"/> PERSONAL PROPERTY           | \$                 |
|          | <input type="checkbox"/> BASIC                                    | <input type="checkbox"/> BUILDING |                |                                    |                                     | <input type="checkbox"/> BUSINESS INCOME             | \$                 |
|          | <input type="checkbox"/> BROAD                                    | <input type="checkbox"/> CONTENTS |                |                                    |                                     | <input type="checkbox"/> EXTRA EXPENSE               | \$                 |
|          | <input type="checkbox"/> SPECIAL                                  |                                   |                |                                    |                                     | <input type="checkbox"/> RENTAL VALUE                | \$                 |
|          | <input type="checkbox"/> EARTHQUAKE                               |                                   |                |                                    |                                     | <input type="checkbox"/> BLANKET BUILDING            | \$                 |
|          | <input type="checkbox"/> WIND                                     |                                   |                |                                    |                                     | <input type="checkbox"/> BLANKET PERS PROP           | \$                 |
|          | <input type="checkbox"/> FLOOD                                    |                                   |                |                                    |                                     | <input type="checkbox"/> BLANKET BLDG & PP           | \$                 |
|          |   |                                   |                |                                    |                                     |  | \$                 |
|          |   |                                   |                |                                    |                                     |  | \$                 |
|          |   |                                   |                |                                    |                                     |  | \$                 |
|          | <input checked="" type="checkbox"/> INLAND MARINE                 |                                   | TYPE OF POLICY |                                    |                                     | <input checked="" type="checkbox"/> BUILDING         | \$ CONTRACT AMOUNT |
|          | CAUSES OF LOSS  |                                   |                |                                    |                                     | <input checked="" type="checkbox"/> TRANSIT          | \$ 20%             |
| A        | <input type="checkbox"/> NAMED PERILS                             |                                   | POLICY NUMBER  |                                    |                                     | <input checked="" type="checkbox"/> OFF-SITE STORAGE | \$ 20%             |
|          |   |                                   |                |                                    |                                     |  | \$                 |
|          | <input type="checkbox"/> CRIME                                    |                                   |                |                                    |                                     |  | \$                 |
|          | TYPE OF POLICY  |                                   |                |                                    |                                     |  | \$                 |
|          |   |                                   |                |                                    |                                     |  | \$                 |
|          | <input type="checkbox"/> BOILER & MACHINERY / EQUIPMENT BREAKDOWN |                                   |                |                                    |                                     |  | \$                 |
|          |   |                                   |                |                                    |                                     |  | \$                 |
|          |   |                                   |                |                                    |                                     |  | \$                 |
|          |   |                                   |                |                                    |                                     |  | \$                 |

SPECIAL CONDITIONS / OTHER COVERAGES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

PROJECT NAME AND ADDRESS

MARSHALL UNIVERSITY IS AN ADDITIONAL INSURED

## 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, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

# BID BOND PREPARATION INSTRUCTIONS

AGENCY (A) \_\_\_\_\_  
RFQ/RFP# (B) \_\_\_\_\_

## Bid Bond

- (A) WV State Agency  
(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

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 Oblige, in the penal sum of \_\_\_\_\_ (K) (\$ \_\_\_\_\_ (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 Oblige 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

(R)

\_\_\_\_\_  
(Name of Principal)

By \_\_\_\_\_ (S)  
(Must be President, Vice President, or  
Duly Authorized Agent)

\_\_\_\_\_  
Title

Surety Seal

(U)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
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 Obligee, 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.

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, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Principal Seal

\_\_\_\_\_  
(Name of Principal)

By \_\_\_\_\_  
(Must be President, Vice President, or  
Duly Authorized Agent)

\_\_\_\_\_  
(Title)

Surety Seal

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
Attorney-in-Fact

**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.**





**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)

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** \_\_\_\_\_



# 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 \$100,000 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.

*"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](mailto:ethics@wv.gov); website: [www.ethics.wv.gov](http://www.ethics.wv.gov).*

West Virginia Ethics Commission

**Disclosure of Interested Parties to Contracts**

Contracting business entity: \_\_\_\_\_

Address: \_\_\_\_\_

Contracting business entity's authorized agent: \_\_\_\_\_

Address: \_\_\_\_\_

Number or title of contract: \_\_\_\_\_

Type or description of contract: \_\_\_\_\_

Governmental agency awarding contract: \_\_\_\_\_

Names of each Interested Party to the contract known or reasonably anticipated by the contracting business entity (*attach additional pages if necessary*):

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

Signature: \_\_\_\_\_ Date Signed: \_\_\_\_\_

☐ Check here if this is a Supplemental Disclosure.

**Verification**

State of \_\_\_\_\_, County of \_\_\_\_\_:

I, \_\_\_\_\_, the authorized agent of the contracting business entity listed above, being duly sworn, acknowledges 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: \_\_\_\_\_



## FINANCE DIVISION

City of Huntington  
**Finance Division**  
P.O. Box 1659 | Huntington, WV 25717  
(304) 696-5540, option 4  
finance@huntingtonwv.gov

### **Contractor and Subcontractor Requirements**

- 1) All General Contractors and Subcontractors will need to obtain a Huntington General Business License before conducting business in the city limits.
  - a. The Business License is \$20.00 per fiscal year (July 1 to June 30).
  - b. Forms can be found on the City of Huntington website at [www.cityofhuntington.com](http://www.cityofhuntington.com).
- 2) You will need to provide the following documentation when applying for a business license:
  - a. A copy of your West Virginia Contractor's License from WV Division of Labor (if applicable).
    - i. Website: [www.wvlabor.com](http://www.wvlabor.com)
  - b. A copy of your Certificate of Liability Insurance.
    - i. Provide documentation showing the General Liability is at least \$300,000/\$600,000.
    - ii. The City needs to be listed as the Certificate Holder. Please include our mailing address: P.O. Box 1659 Huntington, WV 25717.
  - c. A copy of your WV Business Registration Certificate from the WV State Tax Department.
- 3) A copy of the official contract between the General Contractor and the person initiating the project must be provided with your building permit application.
- 4) General Contractors will need to provide a list of Subcontractors with their contact information when applying for a permit.
  - a. General Contractors are liable for Business and Occupation Taxes that have not been filed by their Subcontractors.
- 5) All Contractors will need to file a Business and Occupation (B & O) Tax Return.
  - a. Business and Occupation Tax is 2% of the gross receipts on labor and materials.
  - b. You will need to list your Project Name, Location, and Gross Income on the back of the return (Schedule C).
    - i. Completing the form will ensure the General Contractor will receive the B&O Tax Releases in a timely fashion.
    - ii. Make sure to indicate on the form if there is no reportable activity during the filing period and return by the due date to avoid unnecessary delinquent notices.
- 6) City Service Fee (CSF) will need to be withheld from employees' paychecks.
  - a. The fee is \$5.00 per week for every week worked inside city limits.
  - b. CSF is required to be collected for each employee for every week that the employee has worked inside city limits regardless of the amount of time worked each week.
- 7) General Contractors must submit a Request for Release for each Subcontractor once the project has been completed.

#### ***For additional information please contact:***

##### **City of Huntington:**

Business and Licensing: (304) 696-5540 opt 4  
Inspections and Permits: (304) 696-5540 opt 2  
Zoning: (304) 696-5540 opt 3

##### **State Agencies:**

WV State Tax Department: 800-982-8297  
WV Division of Labor: (304) 558-7890



## **Permitting Contract Policy**

Date of Policy / Procedure Update: January 2, 2016

*This Policy will ensure accurate and up-to-date information is being collected on projects throughout the city.*

### **Definitions:**

Contractor: a person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, structure or excavation associated with a project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of the undertaking is two thousand five hundred dollars or more.

Subcontractor: a person who performs a portion of a project undertaken by a principal or general contractor or another subcontractor.

General Building Contractor: a person whose principal business is in connection with any structures built, being build or to be built for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, requiring in the construction the use of more than two contractor classifications, or a person who supervises the whole or any part of such construction.

### **Policy:**

Effective January 2<sup>nd</sup> 2016 there will be new criteria needed for persons applying for building permits. A copy of the official contract between the General Contractor and the person initiating the project must be provided to the permitting office.

The official contract(s) between the General Contractor and the subcontractors working on the project also need to be provided. These contracts should include the total amount (including labor and materials as applicable) each individual subcontractor and General Contractor will receive for the completion of the project. The contract(s) should also contain the name, phone number, and mailing address of the subcontractor or General Contractor.

If a copies of the contracts cannot be provided at the time the permit is being issued, the permitting office may accept a copy of the "Notice to Proceed" form. These forms should reflect the information provided in the official contract and should be provided for every contractor and subcontractor. If the contractor does not have a "Notice to Proceed" form a copy can be provided to them by the permitting office. If the contractor decides to use the "Notice to Proceed" form, the permitting office will need copies of the official contracts before Building Final will be issued.

These rules also apply to any subcontractor who in turn has their own subcontractors working on the same project. They too must supply copies of all official contracts between them, acting as a General Contractor, and their subcontractors.

This policy can be waived under the discretion of the Supervisor of Inspections & Permits Division

\* Definitions can be found in West Virginia Code, Chapter Twenty-One, Article Eleven, West Virginia Contractor Licensing Act



## FINANCE DIVISION

City of Huntington  
Finance Division  
P.O. Box 1659 | Huntington, WV 25717  
(304) 696-5540, option 4  
finance@huntingtonwv.gov

### Subcontractor List

**Instructions:** Please complete and submit the subcontractor list with the building permit application. *For projects 5,000 square feet or greater submit a copy of the Subcontractor List to the Stormwater Director Sherry Wilkins at [sherry.wilkins@huntingtonswu.com](mailto:sherry.wilkins@huntingtonswu.com).*

**Please Note:** Verification of subcontractors, business name, address, phone number, and contracts must be submitted prior to receiving a permit or final inspection. Any subcontractor not on the list is subject to a STOP ORDER and/or fine of up to \$500 (*Codified ordinances of the City of Huntington 752.08, 752.10, and 752.99*).

General Contractor: \_\_\_\_\_ Site Location: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Improvement Sq. Ft.: \_\_\_\_\_  
Email: \_\_\_\_\_ Total Job Cost: \_\_\_\_\_  
Project Name: \_\_\_\_\_ Permit #: (office use only) \_\_\_\_\_

| Trade                | Business name: | Address: | Phone: | WV Contractor Number: | City of Huntington License Number: | Amount of contract: |
|----------------------|----------------|----------|--------|-----------------------|------------------------------------|---------------------|
| Alarm/Security       |                |          |        |                       |                                    | \$                  |
| Cabinetry/Doors      |                |          |        |                       |                                    | \$                  |
| Concrete/Driveway    |                |          |        |                       |                                    | \$                  |
| Drywall              |                |          |        |                       |                                    | \$                  |
| Electric             |                |          |        |                       |                                    | \$                  |
| Flooring Tile/Carpet |                |          |        |                       |                                    | \$                  |
| Foundation/Footer    |                |          |        |                       |                                    | \$                  |
| Framing              |                |          |        |                       |                                    | \$                  |





## FINANCE DIVISION

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### Subcontractor List

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| Trade                 | Business Name: | Address: | Phone: | WV Contractor Number: | City of Huntington License Number: | Amount of contract: |
|-----------------------|----------------|----------|--------|-----------------------|------------------------------------|---------------------|
| Glass Storefront      |                |          |        |                       |                                    | \$                  |
| HVAC                  |                |          |        |                       |                                    | \$                  |
| Landscaping           |                |          |        |                       |                                    | \$                  |
| Masonry/ block/brick  |                |          |        |                       |                                    | \$                  |
| Painting/ Stucco      |                |          |        |                       |                                    | \$                  |
| Paving                |                |          |        |                       |                                    | \$                  |
| Plumbing              |                |          |        |                       |                                    | \$                  |
| Roofing               |                |          |        |                       |                                    | \$                  |
| Siding                |                |          |        |                       |                                    | \$                  |
| Signage               |                |          |        |                       |                                    | \$                  |
| Site                  |                |          |        |                       |                                    | \$                  |
| Sprinkler system      |                |          |        |                       |                                    | \$                  |
| Stormwater Facilities |                |          |        |                       |                                    | \$                  |
| Windows               |                |          |        |                       |                                    | \$                  |

## **Request for Release**

### **Business and Occupation (Gross Sales) Tax**

**Instructions:** Please send Request for Release(s) to the City of Huntington Finance Division before final payment has been made to the subcontractor(s). If Business and Occupation Taxes have been paid by the subcontractor to the City of Huntington a signed copy of the Request for Release will be sent back to the General Contractor indicating the requested subcontractor can be paid their final payment.

**Date:**

\_\_\_\_\_

#### **Project Info**

**Name:**

**Address:**

**Owner (who is this being built for):**

**Project Start Date:**

**Project End Date (expected): Brief**

**Project Description:**

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

#### **General Contractor Info**

**Name:**

**Address:**

**Phone #:**

**WV State Contractor Lic Number:**

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

#### **Request Release for**

**Name of Subcontractor:**

**WV State Contractor Lic Number:**

**Federal Tax ID:**

**Address:**

**Work Start Date:**

**Work Finish Date(expected):**

**Amount of Contract:**

**Amount Paid:**

**Amount Due:**

\_\_\_\_\_  
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State of West Virginia

Supplementary Conditions to AIA Document A201-2017  
General Conditions of the Contract for Construction

The following Supplementary Conditions modify the General Conditions of the Contract for Construction, AIA Document A201, 2017 Edition. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect.

Order of Precedence: The documents contained in the contract to which this document has been attached shall be interpreted in the following order of precedence:

First Priority – Documents developed by the State or agency and utilized to provide public notice of the solicitation, along with other general terms and conditions shall be first in priority.

Second Priority – This document "Supplementary Conditions to the AIA Document A201-2017 General Conditions of the Contract for Construction" shall be second in priority.

Third Priority – all other AIA documents including, but not limited to, the AIA Document A201-2017 General Conditions of the Contract for Construction and the A101-2017 Standard Form of Agreement Between Owner and Contractor (when utilized) shall be third or lower in priority.

**ARTICLE 1**  
**GENERAL PROVISIONS**

Add the following Section to Article 1:

**§1.05 PARTY RELATIONS**

§1.05 The Owner and their consultants, the Architect and their Consultants, and the Contractor and their Subcontractors agree to proceed with the Work on the basis of mutual trust, good faith and fair dealing.

**§1.1 BASIC DEFINITIONS**

**§1.1.1 THE CONTRACT DOCUMENTS**

§1.1.1 Delete the last sentence of this Section and substitute the following:

The Contract Documents also include the Bidding Documents (Advertisement or Invitation to Bid, Request for Quotations/Bids, Instructions to Bidders, Form of Proposal, Bid Bond and Sample Forms), Performance Bond, Payment Bond, Maintenance Bond (if applicable), Certificates of Insurance, Special Provisions For Disadvantaged and Women Business Enterprise Utilization (if bound herein).

**§1.1.2 THE CONTRACT**

§1.1.2 Make the following changes to Section 1.1.2:

In the last sentence, insert "and the Contractor" after "The Architect" and delete "the Architect's" and insert "their respective".

**§1.2 Correlation and intent of Contract Documents**

§1.2.1.1 In the second sentence, remove "any law" and insert "West Virginia law or any applicable federal law". In the last sentence, remove "by law" and insert "West Virginia law or any applicable federal law".

**§1.7 Digital Data Use and Transmission**

§1.7 Delete the last sentence of this section in its entirety.

**§1.8 Building Information Models Use and Reliance**

§ 1.8 Remove this section in its entirety and replace it with the following:

"Any use of, or reliance on, all or a portion of a building information model must be approved in advance by Owner and will only be permitted if the Parties have agreed upon and executed written documents to memorialize protocols governing the use of, and reliance on, the information contained in the model."



**ARTICLE 2**  
**OWNER**

**§2.1 GENERAL**

§ 2.1.1 Add the following after the last sentence:

Notwithstanding the foregoing, the parties understand that since Owner is a government entity, change orders will often require approval by entities in addition to owner. When owner is a state agency, those entities may include, but are not limited to, the West Virginia Attorney General's Office and the West Virginia Purchasing Division. Additionally, approval may be required by agencies providing project funding, including but not limited to, West Virginia School Building Authority and agencies of the United States federal government.

§2.1.2 Delete Section 2.1.2 in its entirety.

§2.1 Add the following Section to 2.1:

§2.1.3 The Owner and the agency funding the project reserve the right to maintain a full time or part time project representative (sometimes referred to as the "Clerk of the Works") at the project site who shall keep the Owner informed of the progress and quality of the Work and responsibilities. The Contractor shall cooperate and assist the Clerk of the Works in the performance of his/her duties. The Clerk of the Works will not interfere with or be responsible for the Contractor's supervision and direction of the Work, and the Contractor's means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work. The Clerk of the Works may facilitate communications between the Owner, Architect, and Contractor but has no authority to make decisions for the Owner, approve modifications to the Contract Documents, the Contract Time, or Contract Sum. Additionally, Contractor is not permitted to rely on or consider decisions made by the Clerk of the Works on behalf of Owner

**§2.2 Evidence of the Owner's Financial Arrangements:** Delete § 2.2 and all of its subsections in its entirety.

**§2.3 Information and Services Required of Owner**

§2.3.2 Make the following changes to Section 2.3.2:

In first sentence, delete the period and add ", when required pursuant to West Virginia Code §30-12-1 et seq." Add the following sentence at the end of Section 2.3.2: "If the Owner does not retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located, the Owner will appoint an individual to assume the role and obligations of the Architect pursuant to this Agreement."

§2.3.3 Delete this section in its entirety.

§2.3.4 Delete the last sentence of Section 2.3.4 and substitute the following:

The Contractor shall confirm the locations of each utility. If the Owner has provided geotechnical and other tests to determine subsurface conditions, the Owner will provide such documents to the Contractor; the Contractor acknowledges that it will make no claims for any subsurface or any other conditions revealed by these tests.

**ARTICLE 3**  
**CONTRACTOR**

**§3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

§3.2.2 Add the following sentence to the end of Section 3.2.2:

Claims by Contractor resulting from its failure to familiarize itself with the site shall be deemed waived. Additionally, by submitting a bid or otherwise entering into this contract, Contractor acknowledges that it has reviewed and understands the contract documents and the work required by those documents. Any claims arising from Contractor's failure to review and understand the contract documents shall be deemed waived.

§3.2.3 Delete Section 3.2.3 in its entirety and substitute the following:

§3.2.3 The Contractor acknowledges its continuing duty to review and evaluate the Construction Documents during performance of its services and shall immediately notify the Owner and the Architect about any problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents; and variances it discovers between the Construction Documents and applicable laws, statutes, building codes, rules and regulations.

§ 3.2.4 Add the following clauses to Section 3.2.4:

§3.2.4.1 If the Contractor performs any Work which it knows or should have known involves a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Construction Documents; or a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations, without notifying the Owner and the Architect prior to receiving written authorization from the Architect to proceed, the Contractor shall be responsible for the consequences of such performance.

§3.2.4.2 Before ordering any materials or doing any Work, the Contractor and Subcontractors shall verify all measurements at the site and shall be responsible for the correctness of same. Discrepancies shall be reported in writing to the Architect prior to proceeding with the Work. No extra charge or compensation will be

entertained due to differences between actual measurements and dimensions indicated on the drawings, if such differences do not result in a change in the scope of Work or if the Architect failed to receive written notice before the Work was performed.

### §3.4 LABOR AND MATERIALS

§3.4.1 Vendor must review and comply with the following statutory requirements affecting public construction projects, as well as any other applicable laws that are not referenced herein:

- W. Va. Code § 5-19-1 *et seq.*, relating to domestic steel preference.
- W. Va. Code § 5A-3-56 relating to domestic steel preference, provided that the Owner is a state agency subject to Chapter 5A, Article 3 of the W. Va. Code.
- W. Va. Code § §21-1C-1 *et seq.*, relating to local hiring preference
- W. Va. Code §21-1D-1 *et seq.*, relating to drug free workplace requirements.

§3.4 Add the following Sections to 3.4:

§3.4.4 Where materials and equipment are to be provided by the Owner under the Contract Documents, the Contractor shall notify the Owner in writing as to when materials and equipment are required on the project site in sufficient time to avoid delay in the Work.

§3.4.5 The Contractor shall employ labor on the Project or in connection with the Work, capable of working harmoniously with all trade crafts and any other individuals associated with the Project. The Contractor shall also use its best efforts and implement policies and practices to minimize the likelihood of any strike, work stoppage or other labor disturbance. Except as specifically provided in this Agreement, Contractor shall not be entitled to any adjustment in the Contract sum or Contract time and shall be liable to the Owner for all damages suffered by the Owner occurring as a result of work stoppages, slowdowns, disputes, or strikes by the work force of or provided by Contractor or its Subcontractors.

### §3.5 WARRANTY

§3.5 Add the following sentence at the end of Section 3.5:

The Contractor agrees to assign to the Owner at time of Final Completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such a manner so as to preserve any and all such warranties.

### §3.8 ALLOWANCES

§3.8.3 Make the following change to Section 3.8.3:

§3.8.3 Delete "with reasonable promptness" and insert "in sufficient time to avoid delay in the Work."

Add the following Section to 3.8:

§3.8.4 The Contractor shall promptly submit to the Owner an itemized account of any expenditure by the Contractor of the Contract allowance in sufficient detail to allow the Owner to properly account for such expenditure.

### §3.9 SUPERINTENDENT/PROJECT MANAGER

§3.9.1 Add the following sentence to the end of Section 3.9.1:

The Contractor may also employ a competent project manager.

§3.9.2 Make the following changes to Section 3.9.2:

In the first sentence, add "and project manager, if applicable" after "superintendent." In the second sentence, add "or project manager, if applicable," after "superintendent."

§3.9.3 Make the following changes to Section 3.9.3:

In the first sentence, add "or project manager, if applicable," after "superintendent." In the second sentence, add "or project manager, if applicable," after "superintendent."

§3.9 Add the following Section to 3.9:

§3.9.4 The Owner shall have the right, at any time, to direct a change in the Contractor's representatives if their performance is deemed unsatisfactory.

### §3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§3.10.1 Make the following changes to Section 3.10.1:

In the first sentence, delete the word "promptly" and substitute "by the earliest reasonable date".

Add the following sentence to the end of Section 3.10.1: "The Contractor shall submit an updated construction schedule with each payment application, unless waived by the Owner."

Add the following Sections to 3.10:

§3.10.4 At any time after the first thirty (30) days of the Contract Time, if it is found that the project is two (2) weeks or more behind schedule, beyond approved time extensions, or if at any time during

the last thirty (30) days of the scheduled Contract Time the Contractor is one (1) week or more behind schedule, the Contractor shall immediately submit a plan to the Owner describing how the Work will be placed back on schedule within the remaining Contract Time.

§3.10.5 If the Owner and the Architect determine that the performance of the Work during any stage of the construction schedule last approved by the Owner has not progressed or reached the level of completion required by the Contract Documents, the Owner will have the right to order the Contractor to take corrective measures (hereinafter referred to collectively as Extraordinary Measures) necessary to expedite the progress of the Work, including, without limitation: (1) working additional shifts or overtime; (2) supplying additional manpower, equipment and facilities; and (3) other similar measures. Such Extraordinary Measures shall continue until the progress of the Work complies with the last approved construction schedule. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule after allowing for approved extensions of Contract Time as provided elsewhere in this Agreement. The Contractor is not entitled to an adjustment in the Contract Sum in connection with any Extraordinary Measures required by the Owner. The Owner may exercise its rights under this Section as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with the construction schedule.

### §3.11 DOCUMENTS AND SAMPLES AT THE SITE

§3.11 Insert the following sentence at the end of Section 3.11:

The Contractor's compliance with this Section 3.11 shall be a condition precedent to any obligation of the Owner to make Final Payment pursuant to this Agreement.

### §3.15 CLEANING UP

§3.15.2 Delete Section 3.15.2 in its entirety and substitute the following:

§3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and may withhold such reasonable costs as necessary for the fulfillment of the Contractor's obligation under this Section 3.15. If the reasonable costs of such cleaning exceed the Contract Sum then due the Contractor, the Contractor shall reimburse the Owner the difference within thirty (30) consecutive calendar days of the Owner's written request.

Any materials, tools, supplies, or other personal property left by the Contractor shall be deemed abandoned property and the Owner shall have no obligation to hold or store the property on behalf of Contractor and may dispose of the abandoned property as if it were property of the State of West Virginia. Provided however, that prior to treating property as abandoned and disposing of it, Owner must

first provide Contractor with 10 days notice of its intent to do so. If any materials, tools, supplies or other personal property belong to a subcontractor, then Contractor is obligated to communicate this notice to its subcontractor immediately.

§3.15 Add the following Section to 3.15:

§3.15.3 In order to achieve Substantial Completion, as defined by Section 9.8, for any portion of the Work, the Contractor must have the area where the Work is located fully cleaned and all materials and/or debris removed from site. The Certificate of Substantial Completion will not be issued until the Contractor has met this obligation.

## ARTICLE 4 ARCHITECT

### §4.1 GENERAL

### §4.2 ADMINISTRATION OF THE CONTRACT

§4.2 Make the following changes to Section 4.2:

§4.2.1 In the first sentence of Section 4.2.1 after the word Architect add ", unless otherwise indicated by the Owner,".

§4.2.2 In the first sentence of Section 4.2.2 strike the word "generally."

§4.2.3 In the first sentence of Section 4.2.3 strike the word "reasonably."

§4.2.5 Add the following sentence at the end of Section 4.2.5:

The Architect upon receipt of an Application for Payment from the Contractor shall either review and certify such amounts due for payment or return such Application for Payment to the Contractor for correction(s) within five (5) consecutive business days of receipt.

§4.2.7 Delete the first sentence of Section 4.2.7 and substitute the following:

The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents.

Modify the second to last sentence by removing it in its entirety and replacing it with the following: The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures, unless the Architect has established the required construction means, methods, techniques, sequences, or procedures, or the Contract Documents require such approval.

**§4.2.8 Make the following change to Section 4.2.8:**

In the first sentence, after the word Architect add ", in consultation with the Owner,".

**ARTICLE 5  
SUBCONTRACTORS**

**§5.2 Award of Subcontracts and Other Contracts for Portions of Work**

**§5.2.1 Add the following sentence to Section 5.2.1.**

This provision in no way limits the Contractor's legal obligations to report subcontractors and labor/material suppliers under W. Va. Code § 5-22-1(f) and obtain approval under W. Va. Code § 5-22-1(g) prior to any subcontractor substitution.

**§5.4 Contingent Assignment of Subcontracts:** This section is removed in its entirety and replaced with the following:

**§5.4 Emergency Contracts with Subcontractors:**

In the event that the general contractor fails to fulfill its contractual obligations and the performance bond has failed to provide an adequate remedy, Owner has the right to execute emergency contracts with subcontractors to ensure continuation of the work, provided that doing so is in compliance with the laws, rules, and procedures governing emergency contracting authority for Owner, and the emergency contract terms comply with all other applicable laws, rules, and procedures.

**ARTICLE 7  
CHANGES IN THE WORK**

**§7.1 General**

**§7.1.2.** In Section 7.1.2. remove the word "alone" and insert "with approval by the Owner."

**§7.2 CHANGE ORDERS**

**§7.2 Add the following Section to 7.2:**

**§7.2.2** A written Change Order as defined under 7.2.1 above constitutes a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to general conditions, all direct or indirect costs associated with such change and any and all adjustment to the Contract Sum and Contract Time. The parties also understand and agree that if Owner is a state agency, change orders may require approval by entities in addition to Owner. Those entities may include, but are not limited to, the West Virginia Purchasing Division, and the West Virginia Attorney General's Office. Owner

and Contractor must discuss the change order approval requirements prior to executing this agreement.

Add the following section to § 7.2

**§7.2.3. Allowance for Overhead and Profit:** Contractor's overhead and profit for a change order issued under this Article included in the total cost to the Owner shall not exceed based on the following schedule:

.1 For the Contractor, for any Work performed by the Contractor's own forces, fifteen percent (15%) of the cost.

.2 For the Contractor, for Work performed by the Contractor's Subcontractor, ten percent (10%) of the amount due the Subcontractor.

.3 For each Subcontractor or Sub-Subcontractor involved, for any Work performed by that Subcontractor's own forces, fifteen percent (15%) of the cost.

.4. For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, ten percent (10%) of the amount due the Sub-subcontractor.

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.7. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the Change Order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the allowance for Overhead and Profit. Hand tools are defined as equipment with a value of \$1,000 or less. For Contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing Change Order proposals shall be not more than the monthly rate listed in the most current publication of The AED Green Book divided by 176 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the Change Order work.

.6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, material, equipment and Subcontractors. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item or by drawing as applicable.) Where major cost items are Subcontracts, they shall also be itemized as prescribed above. In no case will a change involving over \$10,000 be approved without such an itemization.

.7 Local Business and Occupation Taxes, if applicable, shall be calculated on the cost of the Work, overhead and profit.

.8 Overhead and profit shall not be calculated on changes in the Work involving unit prices. Unit prices are to have overhead and profit included in the price quoted.

.9 Under no circumstances is Contractor permitted to charge for the passage of time (often referred to as general conditions or winter conditions) without an identified, itemized, and concretely provable cost borne by Contractor. Contractor has a duty to mitigate costs during a delay period to the fullest extent possible and Contractor will not be paid for costs that could have been mitigated. Calculating a daily delay rate without properly identifying, itemizing, and proving actual, unmitigatable costs, is prohibited. Contractor understands and accepts that it has the responsibility to prove that costs could not be mitigated prior to submitting a request for payment.

### §7.3 CONSTRUCTION CHANGE DIRECTIVES

#### §7.3.4 Make the following change in Section 7.3.4:

In the fourth line of the first sentence, delete the words "an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount" and substitute "an allowance for overhead and profit in accordance with clauses 7.3.11.1 through 7.3.11.9 below."

#### §7.3.7 Delete the word "recorded" and replace it with "processed".

#### §7.3.9 Delete Section 7.3.9 in its entirety and substitute the following:

§7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment provided these amounts have been added to the Contract by Change Order and a purchase order has been issued for the Change Order.

#### §7.3.10 Add the following sentence to the end of Section 7.3.10:

The Parties will utilize their best efforts to issue a change order within 60 days of agreement being reached, but failure to do so will not give rise to grounds for contract cancellation, penalties, or any other cause of action.

#### Add the following Section to 7.3:

§7.3.11 In Section 7.3.7, the allowance for overhead and profit for a change directive issued under this Article included in the total cost to the Owner shall not exceed the following schedule:

.1 For the Contractor, for any Work performed by the Contractor's own forces, fifteen percent (15%) of the cost.

.2 For the Contractor, for Work performed by the Contractor's Subcontractor, ten percent (10%) of the amount due the Subcontractor.

.3 For each Subcontractor or Sub-Subcontractor involved, for any Work performed by that Subcontractor's own forces, fifteen percent (15%) of the cost.

.4. For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, ten percent (10%) of the amount due the Sub-subcontractor.

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.7. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the Change Order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the allowance for Overhead and Profit. Hand tools are defined as equipment with a value of \$1,000 or less. For Contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing Change Order proposals shall be not more than the monthly rate listed in the most current publication of The AED Green Book divided by 176 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the Change Order work.

.6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, material, equipment and Subcontractors. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item or by drawing as applicable.) Where major cost items are Subcontracts, they shall also be itemized as prescribed above. In no case will a change involving over \$10,000 be approved without such an itemization.

.7 Local Business and Occupation Taxes, if applicable, shall be calculated on the cost of the Work, overhead and profit.

.8 Overhead and profit shall not be calculated on changes in the Work involving unit prices. Unit prices are to have overhead and profit included in the price quoted.

.9 Under no circumstances is Contractor permitted to charge for the passage of time (often referred to as general conditions or winter conditions) without an identified, itemized, and concretely provable cost borne by Contractor. Contractor has a duty to mitigate costs during a delay period to the fullest extent possible and Contractor will not be paid for costs that could have been mitigated. Calculating a daily delay rate

without properly identifying, itemizing, and proving actual, unmitigateable costs, is prohibited. Contractor understands and accepts that it has the responsibility to prove that costs could not be mitigated prior to submitting a request for payment.

**§7.4 Minor Changes in Work.** Insert the following sentence at the end of section 7.4:

"Contractor may request that Architect provide written confirmation that Owner has agreed to the minor change, and if requested, Architect will provide it."

## **ARTICLE 8** **TIME**

### **§8.3 DELAYS AND EXTENSIONS OF TIME**

§8.3.1 In the first sentence, delete "unusual delay in deliveries," and add "unmitigatable costs attributable to" before the words "adverse weather conditions."

## **ARTICLE 9** **PAYMENTS AND COMPLETION**

### **§9.1 Contract Sum**

§9.1.2 Add the following sentence to the end of section 9.1.2:

"Any equitable adjustment of unit prices must be processed as a change order to the contract"

### **§9.2 SCHEDULE OF VALUES**

§9.2 Make the following changes to Section 9.2:

In the first sentence add "and the Owner" after the first reference to the Architect. In the second sentence add "or the Owner" after Architect. Remove the last sentence in its entirety and replace it with the following:

"Any changes to the schedule of values shall be submitted to the Architect and the Owner and supported by such data to substantiate its accuracy as the Architect or owner may require. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment."

### **§9.3 APPLICATIONS FOR PAYMENT**

§9.3 Make the following changes to Section 9.3:

§9.3.1 In the first sentence add "and the Owner" after the first reference to the Architect and add "and other required documents" after the words "schedule of values."

§9.3.1.1 Delete clause 9.3.1.1 in its entirety and substitute the following:

§9.3.1.1 Such applications may include requests for payment on account of changes in the Work authorized by Construction Change Directives and Change Orders only after a purchase order has been issued for the Work affected.

§9.3.1 Add the following clauses to Section 9.3.1:

§9.3.1.3 Until the Work is fifty percent (50%) complete, the Owner will withhold as retainage 10% of the amount due the Contractor on account of progress payments. At the time the Work is fifty percent (50%) complete and thereafter, if the manner of completion of the Work and its progress are and remain satisfactory to the Owner and Architect, and in the absence of other good and sufficient reasons, the Architect will, on presentation by the Contractor of Consent of Surety, authorize any remaining partial payments to be paid in full.

§9.3.1.4 The full Contract retainage may be reinstated if the manner of completion of the Work and its progress do not remain satisfactory to the Owner and Architect, if the Surety withholds its consent, or for other good and sufficient reasons.

### **§9.4 CERTIFICATES FOR PAYMENT**

§9.4.1 After the phrase "in the full amount of the Application for Payment," insert the phrase "less any retainage withheld pursuant to section 9.3.1.3,".

### **§9.6 PROGRESS PAYMENTS**

§9.6.7 Delete Section 9.6.7 in its entirety.

§9.6.8 Delete Section 9.6.8 in its entirety.

### **§9.7 FAILURE OF PAYMENT**

§9.7 Make the following changes in Section 9.7:

In line two, change "seven days" to "sixty days." In line four, delete "binding dispute resolution" and substitute "the West Virginia Claims Commission"

### **§9.8 SUBSTANTIAL COMPLETION**

§9.8.3 Add the following clause to Section 9.8.3:

If Architect is required to perform more than one inspection under this subsection, Contractor shall be responsible for paying the Owner for the cost of the additional inspection, which will be paid by Owner to Architect, at the hourly rate established in the contract between Owner and Architect.

**§9.8.5 Add the following clause to Section 9.8.5:**

§9.8.5.1 The payment of retainage shall be sufficient to increase the total payments to ninety-five percent (95%) for the Work or designated portion thereof being accepted as Substantially Complete, less any amounts as the Architect shall determine for any Work that is not complete, not in accordance with the Contract Documents, or for unsettled claims.

**§9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§9.10.1 Add the following to the end of Section 9.10.1:**

If Architect is required to perform more than one inspection under this subsection, Contractor shall be responsible for paying the Owner for the cost of the additional inspection, which will be paid by Owner to Architect, at the hourly rate established in the contract between Owner and Architect.

**§9.10.2 Make the following changes in Section 9.10.2:**

In the first sentence, delete "for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner)."

Add the following clause to Section 9.10.2:

§9.10.2.1 Before final payment is due the Contractor, all applicable State and local taxes must be paid. If requested by the Owner, the Contractor shall present evidence that payment or satisfaction of all such tax obligations has been made.

**§9.10.3 Add the following clause to Section 9.10.3:**

9.10.3.1 Unless and to the extent final completion is delayed through no fault of the Contractor as provided in Section 9.10.3, the Owner shall be under no obligation to increase payments above ninety-five percent (95%) until final completion of the Work is Certified by the Architect.

**§9.10.4 Make the following changes in Section 9.10.4:**

In the first sentence, delete the word "the" and replace it with "Unless and until the Contractor makes a subsequent Claim against the Owner, the".

Add the following as the last sentence. "Neither the Owner's offer of a final payment nor its acceptance by the Contractor shall legally prevent or limit the Owner's right to assert any and all counterclaims in litigation filed by the Contractor as allowed in section 15.1.8."

**Add the following Sections to Article 9:**

**§9.11 LIQUIDATED DAMAGES**

§9.11.1 The Owner will suffer financial loss if the Work is not Substantially Complete within the Contract Time as defined in Article 8, and if final completion is not achieved within the specified time frame following Substantial Completion. As liquidated damages, and not as a penalty, the Contractor and the Contractor's surety shall be liable for and shall pay the Owner the sum(s) stated in this Agreement and/or purchase order.

§9.11.2 Allowances may be made for delays due to shortages of materials and/or energy resources, subject to proof by documentation, and also for delays due to strikes or other delays beyond the control of the Contractor. All delays and any claim for extension of Contract Time must be properly documented in accordance with Section 15.1.5 by the Contractor and must be made within the time limits stated in Section 15.1.2.

**ARTICLE 10**

**PROTECTION OF PERSONS AND PROPERTY**

**§10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

**§10.2.8 Make the following changes to Section 10.2.8:**

In the first sentence, delete "within a reasonable time not exceeding 21 days" and substitute "immediately".

**§10.3 HAZARDOUS MATERIALS**

**§10.3.3 Delete Section 10.3.3 in its entirety.**

**ARTICLE 11**

**INSURANCE AND BONDS**

**§11.1 CONTRACTOR'S LIABILITY INSURANCE**

**§11.1.2 Add the following to the end of §11.1.2.**

At a minimum the Contract shall provide, at the Contractor's Expense:

§11.1.2.1. a Performance Bond and a Labor and Material Payment Bond for 100% of the Contract Sum and, if applicable, a two-year roofing Maintenance Bond for the full value of the roofing system.

§11.1.2.2 An attorney-in-fact who executes the bonds on behalf of the surety shall affix thereto a certified and current copy of power of attorney.



§11.1.2.3 The bonds shall be issued on State of West Virginia forms. The Contractor shall deliver the required bonds and all other contract documents to the Owner not later than 15 days following receipt of the Owner's notice of intent to award a Contract.

§11.2 Owner's Insurance Delete section 11.2 in its entirety.

§11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

§11.4 Section 11.4 is deleted in its entirety.

§11.5.1 Make the following changes in Section 11.5.1:

In the first sentence, substitute "Contractor" for "Owner" each time the latter word appears.

§11.5.2 Delete Section 11.5.2 in its entirety and substitute the following:

§11.5.2 Prior to settlement of insured loss, the Contractor shall notify the parties of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The parties shall have 14 days from the receipt of notice to object. If no objection is made, the Contractor shall proceed as proposed and allocate the settlement accordingly. If such objection is made, the dispute shall be resolved as provided in Section 15.4. The Contractor, in that case, shall make settlement with insurers in accordance with directions of the Court. If distribution of the insurance proceeds as directed by the Court is required, the Court will direct such distribution. Any work to repair the damage will be incorporated into the contract as a change order.

### **ARTICLE 13 MISCELLANEOUS PROVISIONS**

#### **§13.4 TESTS AND INSPECTIONS**

§13.4.1 Remove the phrase "so require" and insert in its place "prohibit delegation of the test to Contractor"

#### **§13.6 INTEREST**

§13.6 Delete Section 13.5 in its entirety and substitute the following:

Notwithstanding any other provision in the Contract Documents, West Virginia Code does not authorize the payment of interest on late payments. Accordingly, interest charges for late payment are prohibited.

Add the following Sections to Article 13:

#### **§13.6 WORKERS COMPENSATION**

The Contractor shall provide proof of compliance with West Virginia Worker's Compensation laws and regulations.

#### **§13.7 CONTRACTOR'S LICENSE**

§13.7.1 West Virginia Code §21-11-2 requires that all persons desiring to perform contractual work in West Virginia shall be duly licensed. The West Virginia Contractor's Licensing Board is empowered to issue a contractor's license.

§13.7.2 West Virginia Code §21-11-11 requires any prospective Bidder to include the Bidder's contractor's license number on its Bid. The successful Bidder will be required to furnish a copy of its contractor's license in a classification appropriate to the Work prior to issuance of a purchase order/contract.

### **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

#### **§14.1 TERMINATION BY THE CONTRACTOR**

§14.1.1 Make the following changes in Section 14.1.1:

At the end of clause 14.1.1.3 delete "; or" and insert a period.

Delete clause 14.1.1.4 in its entirety.

§14.1.3 Delete Section 14.1.3 in its entirety and substitute the following:

§14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exist, the Contractor may, upon seven days written notice to the Owner and Architect, terminate the Contract. In such event, the Contractor shall be paid for all Work performed in accordance with the Contract Documents, for reasonable and proven termination expenses and a reasonable allowance for overhead and profit. However, such payment, exclusive of termination expenses, shall not exceed the Contract Sum as reduced by other payments made to the Contractor and further reduced by the value of Work as yet not completed. The Contractor shall be entitled to reasonable overhead, but not profit, on Work not performed.

#### **§14.2 TERMINATION BY THE OWNER FOR CAUSE**

§14.2.4 Delete Section 14.2.4 in its entirety and substitute the following:

§14.2.4 If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other



damages incurred by the Owner and not expressly waived, such excess shall not be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Owner shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### **§14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

§14.4.1 Delete Section 14.4.1 in its entirety and substitute the following:

§14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause upon thirty days written notice.

§14.4.3 Delete Section 14.4.3 in its entirety and substitute the following:

§14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment from the Owner on the same basis provided in Section 14.1.3 above.

Add the following Section to Article 14:

#### **§14.5 FISCAL YEAR FUNDING**

§14.5 Work performed under this Contract is to continue in the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this Work. In the event funds are not appropriated for this Work, this Contract becomes of no effect and is null and void after June 30.

### **ARTICLE 15 CLAIMS AND DISPUTES**

#### **§15.1 Claims**

##### **§15.1.2 TIME LIMITS ON CLAIMS**

§15.1.2 Delete Section 15.1.2 in its entirety and substitute the following:

Any applicable statute of limitations shall be in accordance with West Virginia Code.

§15.1.3 **NOTICE OF CLAIMS** Add the following to § 15.1.3:

§15.1.3.3 All claims, and notice of claims that require an increase in contract time, contract scope, or contract sum must be made in writing.

§ 15.1.8 is added to the Contract as follows:

§ 15.1.8 Counterclaims – In the event that Contractor makes a claim, Owner reserves the right to make a counterclaim and will not be barred from doing so even if final payment has been made.

#### **§15.2 INITIAL DECISION**

§15.2.1 In the third sentence of Section 15.2.1, insert "or litigation" following the word "mediation" and remove the phrase "binding dispute resolution" and replace it with "or litigation".

§15.2.5 Delete the last sentence in Section 15.2.5 and substitute the following:

Approval or rejection of a claim by the Initial Decision Maker shall be final and binding on the parties unless it is pursued further by either party in accordance with Section 15.2.6.

§15.2.6 Make the following change to clause 15.2.6.1:

In the last sentence, delete "or pursue binding dispute resolution proceedings."

§15.2.8 Delete Section 15.2.8 in its entirety.

#### **§15.3 MEDIATION**

§15.3.1 Delete "binding dispute resolution" and substitute "litigation in a court of competent jurisdiction."

§15.3.2 Delete Section 15.3.2 in its entirety and substitute the following:

§15.3.2 The parties shall endeavor to resolve their Claims by non-binding mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement.

§ 15.3.3 Remove section 15.3.3 in its entirety

#### **§15.4 ARBITRATION**

§15.4 Delete Section 15.4 in its entirety and substitute the following:

#### **§15.4 SETTLEMENT OF CLAIMS**

§15.4.1 The Constitution of West Virginia grants the State sovereign immunity from any and all Claims against the public treasury. This immunity applies and is extended to all agencies of the State, including the Owner. It shall be in full force and effect as it relates to this Contract. The West Virginia Legislature, recognizing that certain Claims against the State may constitute a moral obligation of the State and should be heard, has established the West Virginia Claims Commission for this purpose. The Parties understand that this sovereign immunity and the Constitution of the

State of West Virginia prohibit the State and Owner, from entering into binding arbitration. Notwithstanding any provision to the contrary in the Contract Documents, all references to arbitration, regardless of whether they are included in the AIA Document A201-2017 or another related document are hereby deleted and all Claims of the Contractor for monetary relief, and only of the Contractor, arising out of or related to this Contract shall be decided by the West Virginia Claims Commission. The following Sections have been rewritten to bring them into conformance with the foregoing.

§15.4.2 Claims by the Owner may be brought against the Contractor in the Circuit Court of Kanawha County, West Virginia, or in any other court that has jurisdiction, as the Owner may elect.

§15.4.3 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 15.1.6, 9.10.4 and 9.10.5, shall, within 30 days after submission of the decision by the Initial Decision Maker, be settled for the Contractor by the West Virginia Claims Commission or, for the Owner, by the Circuit Court of Kanawha County or any other court of jurisdiction as the Owner may elect.

§15.4.4 Notice of such action shall be filed in writing with the other party to the Contract, and a copy of such notice shall be filed with the Initial Decision Maker and the Architect, if applicable.

§15.4.5 During court proceedings, the Owner and the Contractor shall comply with Section 15.1.3.

§15.4.6 Claims shall be made within the time limits specified in Section 15.2.6.1.

§15.4.7 The party filing a Claim must assert in the demand all Claims then known to that party on which action is permitted.

Add the following Article:

## **ARTICLE 16 EQUAL OPPORTUNITY**

### **§16.1 COMPLIANCE WITH REGULATIONS UNDER TITLE VI OF THE FEDERAL CIVIL RIGHTS ACT OF 1964 AND EXECUTIVE ORDER 65-2 BY THE GOVERNOR OF WEST VIRGINIA DATED DECEMBER 15, 1965**

§16.1.1 The Contractor agrees that it will comply with Title VI of the Federal Civil Rights Act of 1964 (P.L. 88352) and the regulations of the State of West Virginia, to the end that no person in the State, or in the United States, shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under any program or activity for which the Contractor receives any recompense or other consideration of value, either directly or indirectly from the State; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this Agreement.

§16.1.2 If any real property or structure thereon is provided or improved, this assurance shall obligate the Contractor, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which any State payment is extended or for another purpose involving the provision of similar services or benefits. If any other goods or services are so provided, this assurance shall obligate the Contractor for the period during which it supplies such goods or services.

§16.1.3 The Contractor recognizes and agrees that such right to provide property, goods or services to the State will be extended in reliance on the representations and agreements made in assurance, and that the State shall have the right to seek judicial enforcement of this assurance. This is binding on the Contractor, its successors, transferee, and assignee, or any authorized person on behalf of the Contractor.

END OF SUPPLEMENTARY CONDITIONS TO AIA DOCUMENT A201-2017

Any provisions of the Contract Documents that conflict with these Supplementary Conditions shall be null and void unless they have been approved in writing by the applicable State purchasing officer and the Attorney General, and are clearly identified as such in the bid documents.

The Owner and Contractor hereby agree to the full performance of the covenants contained herein.

IN WITNESS WHEREOF, the Owner and Contractor have entered into this Agreement as of the effective date as stated in the A101-2017 (when utilized) or other Contract Documents.

Owner:

Contractor:

By:

By:

Title:

Title:

Date:

Date:

This Supplementary Conditions to AIA Document A201-2017, General Conditions of the Contract for Construction, has been approved as to form on this 20th day of February, 2019, by the West Virginia Attorney General's office as indicated in the signature line below. Any modification of this document is void unless expressly approved in writing by the West Virginia Attorney General's Office.

PATRICK MORRISEY, ATTORNEY GENERAL

BY:

  
DEPUTY ATTORNEY GENERAL

State of West Virginia

Supplementary Conditions to AIA Document B101-2017  
Standard Form of Agreement Between Owner and Architect

The following Supplementary Conditions modify the Standard Form of Agreement Between Owner and Architect, AIA Document B101-2017 Edition. Where a portion of the Agreement is modified or deleted by these Supplementary Conditions, the unaltered portions of the Agreement shall remain in effect.

Order of Precedence: The documents contained in the contract to which this document has been attached shall be interpreted in the following order of precedence:

First Priority – Documents developed by the State or agency and utilized to provide public notice of the solicitation, along with other general terms and conditions shall be first in priority.

Second Priority – This document “Supplementary Conditions to the AIA Document B101-2017 Standard Form of Agreement Between Owner and Architect” shall be second in priority.

Third Priority – all other AIA documents including the AIA Document A201-2017 General Conditions of the Contract for Construction shall be third or lower in priority.

**ARTICLE 1**  
**INITIAL INFORMATION**

§1.1.3 Section 1.1.3 is removed in its entirety.

§1.1.6.1 Section 1.1.6.1 is removed in its entirety.

§1.2 Make the following changes to Section 1.2:

In the second and third sentences, delete “shall” and substitute “may” and delete the period at the end of each sentence and add “, if applicable.”

§1.3 Remove the last sentence from Section 1.3

§1.3.1 Make the following change to Section 1.3.1:

Remove the phrase “in AIA Document E203TM-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202TM-2013, Project Building Information Modeling Protocol Form” and replace it with “in this Agreement”

**ARTICLE 2**  
**ARCHITECT’S RESPONSIBILITIES**

§2.1 Add the following sentences to the end of Section 2.1. Notwithstanding the foregoing, Architect is not authorized to hire

other design professionals unless doing so was expressly included in the scope of this agreement, or this agreement is appropriately modified by Change Order to include the hiring of other expressly identified design professionals. The Architect shall also satisfy the requirements for the lawful practice of architecture in the State of West Virginia.

§ 2.5 Make the following changes to Section 2.5:

Delete the section in its entirety and replace it with the following: “The Architect shall maintain the insurance specified in this Agreement either below or in other documentation included herewith.

§ 2.5.7 Make the following change to Section 2.5.7

Remove § 2.5.7 in its entirety and replace it with the following: “The Owner must be listed as an additional insured on all insurance mandated by this Agreement, excluding professional liability insurance.”

Add the following Sections to Article 2:

§2.6 The format and minimum standard of quality to be used by the Architect in preparing specifications for the Project shall be AIA MASTERSPEC or equal, and the Architect shall use the CSI

Masterformat numbering system, unless a different standard is approved in writing by the owner

§2.7 The Architect shall review laws, codes and regulations applicable to the Architect's services and shall comply in the design of the Project with applicable provisions and standards of the West Virginia Building Code, the West Virginia Fire Code and the Americans with Disabilities Act (ADA). The most stringent application of these codes and standards shall apply. In the design of the Project, the Architect shall comply with the requirements imposed by governmental authorities having jurisdiction.

### **ARTICLE 3**

#### **SCOPE OF ARCHITECT'S BASIC SERVICES**

§3.1.1 Add the phrase "consult with Owner," after the word "services" in the first sentence.

§3.1.2 Make the following change to Section 3.1.2:

In the third sentence, after "shall" add "thoroughly review the services and information for completeness and sufficiency and".

§3.1.6 Delete Section 3.1.6 in its entirety and substitute the following:

§3.1.6 The Architect shall furnish and submit substantially completed construction documents to all governmental agencies having jurisdiction over the Project, shall assist the Owner in securing their approval, and shall incorporate changes in the Construction Documents as may be required by such authorities.

Add the following Section to Article 3:

§3.1.7 The Architect is responsible for the coordination of all drawings and design documents relating to Architect's design used on the Project, regardless of whether such drawings and documents are prepared or provided by Architect, by Architect's consultants, or by others. If preliminary or design development Work has been performed by others, Architect is nevertheless fully responsible for and accepts full responsibility for such earlier Work when Architect performs subsequent phases of the basic services called for under this Agreement, as fully as if the preliminary, schematic, and design development Work had been performed by the Architect itself. Architect is responsible for coordination and internal checking of all drawings and for the accuracy of all dimensional and layout information contained therein, as fully as if each drawing were prepared by Architect. Architect is responsible for the completeness and accuracy of all drawings and specifications submitted by or through Architect and for their compliance with all applicable codes, ordinances, regulations, laws, and statutes.

#### **§3.2 SCHEMATIC DESIGN PHASE SERVICES**

§3.2.2 Make the following change to Section 3.2.2:

In the second sentence, after the word "Architect" add "shall review such information to ascertain that it is consistent with the requirements of the Project and".

#### **§3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES**

§ 3.4.2 Delete Section 3.4.2 in its entirety and substitute the following:

§3.4.2 Construction drawings, specifications, or other Construction Documents submitted by Architect must be complete and unambiguous and in compliance with all applicable codes, ordinances, statutes, regulations, and laws. By submitting the same, Architect certifies that Architect has informed the Owner of any tests, studies, analyses, or reports that are necessary or advisable to be performed by or for the Owner at that point in time. Architect shall confirm these facts in writing to the Owner.

#### **§3.5 BIDDING OR NEGOTIATION PHASE SERVICES**

§ 3.5.1 Make the following change to Section 3.5.1:

In the first sentence, delete the period at the end of the sentence and add "which may include the development and implementation of a prequalification process."

§3.5.2 Make the following changes to § 3.5.2.

§3.5.2.2.1 Remove section 3.5.2.2.1 in its entirety and replace it with the following:

"§ 3.5.2.2.1 facilitating the distribution of plans and specifications (and in cases where Owner expressly authorizes it, distribution of bid documents) to prospective bidders per the Owner's instructions;"

§3.5.2.2.2 Remove section 3.5.2.2.2 in its entirety and replace it with

"§ 3.5.2.2.2 attending and assisting Owner in conducting a pre-bid conference for prospective bidders (and in cases where Owner expressly authorizes it, conduct the pre-bid conference);"

§3.5.2.2.3 Remove section 3.5.2.2.3 in its entirety and replace it with the following:

preparing responses to technical questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents that will be released to the prospective bidders in the form of addenda by the Owner (and in cases where Owner expressly authorizes it, releasing the addenda on Owner's behalf).

§3.5.2.2.4 Remove Section 3.5.2.4 in its entirety and replace it with the following:

if expressly authorized by Owner, and permitted by applicable procedure and law, organizing and conducting the opening of bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§3.5.2.3. Remove the phrase "and distribute" and include the phrase "for distribution by Owner (and in cases where Owner expressly authorizes it, distributing the addenda on Owner's behalf)" at the end of the sentence.

§3.5.3 Negotiated Proposals. Remove Section 3.5.3 in its entirety.

### **§3.6 CONSTRUCTION PHASE SERVICES**

#### **§ 3.6.1 GENERAL**

§ 3.6.1.1 Delete the last sentence in its entirety and substitute the following:

The State of West Virginia's Supplementary Conditions to the General Conditions of the Contract for Construction shall be adopted as part of the Contract Documents and shall be enforceable under this Agreement.

Add the following Section to 3.6.1:

§3.6.1.4 The Architect shall be responsible for conducting progress meetings as needed and for the preparation, distribution, and accuracy of minutes pertaining thereto to all parties as directed by the Owner.

#### **§3.6.2 EVALUATIONS OF THE WORK**

§3.6.2.1 Delete the second sentence in its entirety and substitute the following:

Although the Architect is not required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work, the Architect shall carefully review the quality and quantity of the Work at appropriate intervals necessary for Architect to remain aware and knowledgeable of issues or problems that have developed, or could reasonably be foreseen, during construction as part of the Architect's design and contract administration services, shall issue written reports of such reviews to the Owner, Owner representatives, and the Contractor, and further shall conduct any additional reviews at any other time as reasonably requested by the Owner. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents

§ 3.6.2.2 Delete the first sentence of 3.6.2.2 in its entirety and substitute the following:

The Architect shall have the authority and obligation to reject Work that does not conform to the Contract Documents.

§3.6.2.4 Delete Section 3.6.2.4 in its entirety and substitute the following:

§3.6.2.4 The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. Architect shall also make initial decisions on matters relating to consistency with intent of contract documents, including aesthetic effect, however, the Owner, reserves the right make final decisions on issues of consistency with intent and aesthetic effect.

#### **§3.6.4 SUBMITTALS**

§3.6.4.2 Make the following changes to Section 3.6.4.2:

Delete the first sentence in its entirety and substitute the following:

The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples. The Architect's review of Contractor's submittals must determine the following: (1) if such submittals are in compliance with applicable laws, statutes, ordinances, codes, orders, rules, regulations; and (2) if the Work affected by and represented by such submittals is in compliance with the requirements of the Contract Documents. Architect shall promptly notify the Owner and Contractor of any submittals that do not comply with applicable laws, statutes, ordinances, codes, orders, rules, regulations, or requirements of the Contract Documents. Architect is responsible for determining what aspects of the Work will be the subject of shop drawings or submittals. Architect shall not knowingly permit such aspects of the Work to proceed in the absence of approved shop drawings and submittals. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review.

In the second sentence, delete the words "or performance".

§3.6.4.5 Make the following change to Section 3.6.4.5:

Add ", including a submittal log," after "The Architect shall maintain a record of submittals".

#### **§3.6.5 CHANGES IN THE WORK**

§3.6.5.2 Make the following changes to Section 3.6.5.2:



Section 3.6.5.2 shall now be Section 3.6.5.3. Section 3.6.5.2 shall read as follows:

§3.6.5.2 If the Architect and the Owner determine that the implementation of the requested change would result in a change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner who may authorize further investigation of such change.

§ 3.6.5.3 Add the following to the end of Section 3.6.5.3:

Additionally, the Architect shall review and, upon request by Owner, provide written documentation of the same of all change order requests and proposals with respect to the following criteria:

- .1 confirm proposed change is a material change to the Contract;
- .2 confirm appropriate credits are included for Work not completed;
- .3 verify that the proposed additional cost or credit is reasonable with respect to industry standards. Cost verifications may, as authorized by Owner, include independent estimates and/or consultations with contractors and vendors; and
- .4 confirm that the appropriate back up documentation is included and mathematically correct including mark ups and taxes pursuant to the requirements of the Contract Documents.

#### **ARTICLE 4 ADDITIONAL SERVICES**

§4.2 Architect's Additional Services

§4.2.1 Make the following changes to Section 4.2.1:

- .6 Before the semicolon insert ", provided such alternate bids or proposals are not being used for budget control"
- .9 Delete this provision in its entirety and replace it with "assist owner with owner's evaluation of the qualifications of entities providing bids or proposals."

§4.2.2 Make the following changes to Section 4.2.2:

- .3 After the last sentence in the first paragraph, insert the following:

This provision only applies to the extent that such services required or requested from the Architect represent a material

change in the services that are already required of the Architect for completion of the Project"

- .4 Before the semicolon insert ", provided such claims are not the result of the Architect's action, inaction, errors, or omissions"

#### **ARTICLE 5 OWNER'S RESPONSIBILITIES**

§5.2 Make the following change to Section 5.2:

In the first sentence, after "The Owner" add ", with Architect's assistance,"

Add the following Section to Article 5:

§5.3.1 The Owner has the right to reject any portion of the Architect's Work on the Project, including but not limited to Schematic Design Documents, Design Development Documents, Construction Documents, or the Architect's provision of services during the construction of the Project, or any other design Work or documents on any reasonable basis, including, but not limited to aesthetics or because in the Owner's opinion, the construction cost of such design is likely to exceed the budget for Cost of the Work. If at any time the Architect's Work is rejected by the Owner, the Architect must proceed when requested by the Owner, to revise the design Work or documents prepared for that phase to the Owner's satisfaction. These revisions shall be made without adjustment to the compensation provided hereunder, unless revisions are made to Work previously approved by the Owner under previous phases, in which case such revision services will be paid as a Change in Services. Should there be substantial revisions to the original program after the approval of the Schematic Design Documents, which changes substantially increase the scope of design services to be furnished hereunder, such revision services will be paid as a Change in Services. The Architect must so notify the Owner of all Changes in Services in writing and receive approval from Owner before proceeding with revisions necessitated by such changes. No payment, of any nature whatsoever, will be made to the Architect for additional Work or Changes in Services without such written approval by Owner.

§5.5 Make the following changes to Section 5.5:

In the first sentence, delete "shall" and substitute "may".

Add the following sentence at the end of Section 5.5:

The Owner may, in its sole discretion, request that the Architect secure these services by contracting with a third party.

§5.8 Make the following change to Section 5.8:

In the third sentence, delete "shall" and substitute "may".

§5.9 Make the following change to Section 5.9:

At the beginning of this sentence, insert "Unless otherwise provided in this Agreement,"

§5.11 Add the following sentence to the beginning of Section 5.11:

The Owner shall be entitled to rely on the accuracy and completeness of services and information provided by the Architect.

§ 5.15 Remove § 5.15 in its entirety.

#### **ARTICLE 6 COST OF WORK**

§ 6.1 Delete the phrase "and shall include contractors' general conditions costs, overhead and profit" from Section 6.1. Delete the second sentence of Section 6.1 in its entirety and replace it with the following:

"In the event that Owner plans to utilize its own resources (labor, machinery, or materials) for part of the project, Owner and Architect must discuss the impact of that choice on the design and Cost of the Work prior to executing this Agreement. If Owner and Architect agree that such amounts will be included in the Cost of the Work, then that cost will be determined in advance and incorporated into this Agreement. Failure to do so will result in such costs being excluded from the Cost of the Work."

§6.3 Delete Section 6.3 in its entirety and substitute the following:

§6.3 In preparing estimates for the cost of the Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation, and in consultation with the Owner, to determine what materials, equipment, component systems and types of construction to be included in the Construction Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimate of Cost of the Work to meet the Owner's adjusted budget. If an increase in the Contract Sum occurring after execution of the Contract for Construction caused the Project budget to be exceeded, the Project budget shall be increased accordingly.

§ 6.5 Remove the phrase "shall cooperate with the Architect in making such adjustments" and replace with "may cooperate with Architect in making such adjustments, at its sole discretion."

§6.6.2 After the word "renegotiating" insert "(renegotiation being limited to instances where Owner is legally authorized to renegotiate)"

§6.7 Delete Section 6.7 in its entirety and substitute the following:

§6.7 If the Owner chooses to proceed under Section 6.6.2, the Architect, without additional compensation, shall assist the Owner in rebidding or renegotiating the Project within a reasonable time. If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the documents which the Architect is responsible for preparing under this Agreement as necessary to comply with the Owner's budget for the Cost of the Work, and shall assist the Owner in rebidding or renegotiating the Project within a reasonable time. The modification of such documents and the rebidding or renegotiating of the Project shall be the limit of the Architect's responsibility under Section 6.6.

#### **ARTICLE 7 COPYRIGHTS AND LICENSES**

§7.3 Make the following changes to Section 7.3:

In the first sentence, insert "irrevocable, royalty-free, right and" after the word "nonexclusive" and delete the words "solely and exclusively".

Delete the last sentence of Section 7.3 and substitute the following:

Upon completion of the Project, or upon termination of this Agreement for any reason prior to the completion of the Project, Owner shall be entitled to retain copies of all Instruments of Service and shall have an irrevocable, royalty-free, right and license to use all of the Instruments of Service for any and all purposes related to the Project in any manner the Owner deems fit, including the following:

- a. Electronics Filing and Archiving for the purpose of record keeping at Owner designated areas;
- b. Any future renovation, addition, or alteration to the Project; and
- c. Any future maintenance or operations issue as it pertains to the Project.

Architect or Architect's Consultants shall not be responsible for any modifications to the Work made by Owner or Owner's representatives using the Architect's Instruments of Service.

§7.3.1 Delete the second sentence of Section 7.3.1.

#### **ARTICLE 8 CLAIMS AND DISPUTES**

§8.1 GENERAL

§8.1.1 Delete Section 8.1.1 in its entirety and substitute the following:

§8.1.1 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued



and the applicable statutes of limitations shall commence to run pursuant to applicable provisions of the West Virginia Code.

**§8.1.3** Make the following change to Section 8.1.3:

At the beginning of the first sentence, insert "Unless otherwise agreed by the Parties,"

Add the following Section to Article 8.1:

§8.1.4 The Owner may suffer financial loss if the Architect's services are not completed within the schedule approved by the Owner in accordance with Section 3.1.3. If so provided, the Architect shall be liable for and shall pay the Owner, as liquidated damages and not as a penalty, any sum(s) stated in this Agreement.

Allowances may be made for delays beyond the control of the Architect. All delays and adjustments to the Architect's schedule must be properly documented and approved by the Owner in accordance with Section 3.1.3.

**§8.2 MEDIATION**

**§8.2** Make the following changes to Section 8.2:

§8.2.1 In both instances where it appears, delete "binding dispute resolution" and substitute "litigation in a court of competent jurisdiction."

**§8.2.2** Delete this Section in its entirety and substitute the following:

The parties shall endeavor to resolve their Claims by non-binding mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement.

**§ 8.2.3** Add to the end of the first sentence in Section 8.2.3. the phrase

"unless fee sharing is prohibited due to a lack of a specific Legislative appropriation for the expenses. In the event that Owner determines that fee sharing is prohibited, the Architect may choose to mediate and pay the entire fee, or the parties will forgo mediation and pursue other available remedies."

**§8.2.4** Delete this Section in its entirety and substitute the following:

If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of litigation shall be in accordance with Section 8.3.

**§8.3 ARBITRATION**

**§8.3** Delete Section 8.3 in its entirety and substitute the following:

**§8.3 SETTLEMENT OF CLAIMS**

§8.3.1 The Parties understand that this sovereign immunity and the Constitution of the State of West Virginia prohibit the State and Owner, from entering into binding arbitration. Notwithstanding any provision to the contrary in the Contract Documents, all references to arbitration, regardless of whether they are included in the AIA Document B101-2017 or another related document are hereby deleted

§8.3.2 Any claim, dispute or other matter in question arising out of this Agreement which cannot be settled between the parties shall, in the case of the Architect, be submitted to the West Virginia Claims Commission, and in the case of the Owner, to the Circuit Court of Kanawha County or any other court of competent jurisdiction as the Owner may elect.

**ARTICLE 9  
TERMINATION OR SUSPENSION**

**§9.1** Make the following changes to Section 9.1:

In the first sentence, after "If the Owner fails to make payments to the Architect" add "of undisputed amounts". In the third sentence, after "In the event of a suspension of services," add "in accordance herewith". In the fourth sentence, after "Before resuming services, the Architect shall be paid all sums due prior to suspension and" add "shall negotiate with the Owner for".

**§9.2** Make the following changes to Section 9.2:

In the first sentence, after "If the Owner suspends the Project" add "for more than 30 consecutive days".

Delete the last two sentences in Section 9.2 and substitute the following:

When the Project is resumed, the Owner and the Architect shall negotiate the amount of any compensation the Owner will pay the Architect for expenses incurred in the interruption and resumption of the Architect's services. The Owner and the Architect shall negotiate any adjustments to the Architect's fees for the remaining services and the time schedules for completion.

**§9.6** Make the following changes to Section 9.6:

Delete "costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements".

**§9.7** Delete Section 9.7 in its entirety and substitute the following:

§9.7 Service performed under this Agreement may be continued in succeeding fiscal years for the term of the Agreement contingent upon funds being appropriated by the Legislature for this service. In the event funds are not appropriated or otherwise available for this service, the Agreement shall terminate without penalty on June 30. After such date the Agreement becomes null and void.

Add the following Section to Article 9:

§9.10 In the event of any termination under this Article, the Architect consents to the Owner's selection of another architect of the Owner's choice to assist the Owner in any way in completing the Project. Architect further agrees to cooperate and provide any information requested by Owner in connection with the completion of the Project and consents to the making of any reasonable changes to the design of the Project by Owner and such other architect as Owner may desire in accordance with applicable practice laws contained in Chapter 30, Article 12 of the West Virginia Code, or elsewhere. Any services provided by Architect that are requested by Owner after termination will be fairly compensated by Owner in accordance with Article 11.

#### **ARTICLE 10** **MISCELLANEOUS PROVISIONS**

§ 10.1 Make the following changes to Section 10.1:

Remove the last sentence referencing arbitration in its entirety.

§10.2 Make the following changes to Section 10.2:

At the end of the sentence, delete the period and add ", as modified by the State of West Virginia Supplementary Conditions to the AIA Document A201-2017, General Conditions of the Contract for Construction."

§10.3 Add the following sentence to the end of Section 10.3:

The Architect shall execute all consents reasonably required to facilitate such assignment.

§10.6 Add the following sentence to the end of Section 10.6:

The Architect shall immediately report to the Owner's project manager the presence, handling, removal or disposal of, or exposure of persons to and location of any hazardous material which it discovers.

§10.8.1 Remove the phrases "after 7 days' notice to the other party," and "arbitrator's order" from Section 10.8.1.

#### **ARTICLE 11**

#### **COMPENSATION**

§11.4 Make the following changes to Section 11.4:

After the word "shall", insert "not exceed a multiple of 1.15 times the amount billed to the Architect for such Additional Services" and delete the rest of that sentence.

§11.6.1 Delete the last sentence of Section 11.6.1 in its entirety.

§11.7 Delete Section 11.7 in its entirety and substitute the following:

§11.7 The Architect's rates and multiples for service as set forth in this Agreement shall remain in effect for the life of this Agreement unless unforeseen events which are not the fault of the Architect delay the Project completion. In such event, an equitable adjustment in the Architect's rates may be negotiated with the Owner.

#### **§11.8 COMPENSATION FOR REIMBURSABLE EXPENSES**

§11.8.1 Delete Sections 11.8.1.4 and 11.8.1.5 in their entirety and substitute the following:

§11.8.1.4 The expense of reproductions, postage and handling of bidding documents shall be a Reimbursable Expense, however, the expense of reproductions, plots, standard form documents, postage, handling, and delivery of Instruments of Service for the Owner's use and for review of governmental agencies having jurisdiction over the Project shall not be a Reimbursable Expense but shall be covered in the Architect's Compensation under §11.1.

§11.8.2 Delete Section 11.8.2 in its entirety and substitute the following:

§11.8.2 For Reimbursable Expenses described in Section 11.8.1.1, compensation to the Architect shall be at actual cost and shall be made pursuant to the Owner's travel regulations. For those expenses described in Sections 11.8.1.2 through 11.8.1.11, the compensation shall be computed as a multiple of 1.15 times the expenses incurred by the Architect, the Architect's employees and consultants.

#### **§11.9 Architect's Insurance**

§11.9 Delete Section 11.9 in its entirety.

#### **§11.10 PAYMENTS TO THE ARCHITECT**

§11.10.1 Delete Section 11.10.1 in its entirety.

§11.10.2 Delete Section 11.10.2 in its entirety and substitute the following:

§11.10.2 Payments are due and payable thirty (30) days from the date of receipt of the Architect's invoice by the Owner.

§11.10.2.2 Delete Section 11.10.2.2 in its entirety.

**ARTICLE 13**  
**SCOPE OF THE AGREEMENT**

Add the following Section to 13.2:

§13.2.4 State of West Virginia Supplementary Conditions to AIA Document B101-2017, Standard Form of Agreement Between Owner and Architect; Other documents included by the Owner in the solicitation requesting expressions of interest, and the contract award to Architect.

END OF SUPPLEMENTARY CONDITIONS TO AIA  
DOCUMENT B101-2017

The Owner and Architect hereby agree to the full performance of the covenants contained herein.

IN WITNESS WHEREOF, the Owner and Architect have entered into this Agreement as of the date and year as written below.

Owner:

Architect:

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

This Supplementary Conditions to AIA Document B101-2017, Standard Form of Agreement Between Owner and Architect, has been approved as to form on this 10th day of October, 2018, by the West Virginia Attorney General's office as indicated in the signature line below. Any modification of this document is void unless expressly approved in writing by the West Virginia Attorney General's Office.

PATRICK MORRISEY, ATTORNEY GENERAL

BY: \_\_\_\_\_

  
DEPUTY ATTORNEY GENERAL

## Submission Instructions for Suppliers

### R2501705 Marshall University Institute for Cyber Security (ICS) - Request for Qualifications (RFQ CMAR)

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>

Your submission must be uploaded, submitted, and finalized prior to the Closing Time of **July 24, 2025 2:59:00 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>