



**FAIRMONT STATE
UNIVERSITY™**

Facilities Department

1201 Locust Avenue • Fairmont WV 26554

Phone: (304) 367-4110

Facilities@fairmontstate.edu • fairmontstate.edu

EXPRESSION OF INTEREST

For

ARCHITECTURAL / ENGINEERING DESIGN SERVICES

for

**BUILDING SYSTEMS UPGRADES
Various Buildings – HVAC Upgrades, Hood
Replacements, Elevator & Fire Alarm Upgrades**

At

FAIRMONT STATE UNIVERSITY

Located In

FAIRMONT, WEST VIRGINIA

Response Deadline:

2:00 PM

on

October 3, 2024

EOI – 442

Issued by:

Fairmont State University

Facilities Business Office

Lenora Montgomery – Asst VP for Facilities

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- G INTENT TO SUBMIT

Important Dates

- Advertisement:* September 5, 2024
- Inquiries/Questions Due:* September 20, 2024
- Proposals Due:* October 3, 2024
- Committee Evaluate:* October 14, 2024 (anticipated)
- Interviews:* October 23, 2024 (anticipated)
- Negotiations:* October 28, 2024 (anticipated)
- Contract Award:* November 1, 2024 (anticipated)

1. INTRODUCTION

Fairmont State University is seeking responses to an Expression of Interest from qualified Vendors capable of performing Architectural/Engineering Services. In general the services will include:

- Estimated Project Costs
- Design Services
- Bidding
- Construction Administration
- Post-Contract Services

This expression of interest (EOI) is issued to solicit competitive proposals for a professional to provide the services described herein. Fairmont State anticipates the services will commence upon acceptance of this proposal.

For more detailed information about Fairmont State University, see our website at <http://www.fairmontstate.edu>.

Additional information regarding the EOI process, response form, and terms and conditions of doing business with Fairmont State University may be found in the section titled, **VENDOR INSTRUCTIONS FOR RESPONDING TO AN EXPRESSION OF INTEREST and TERMS & CONDITIONS.** – *Attachment A&B*

2. PRE-PROPOSAL INQUIRIES

- 2.1 There is **INTENT TO SUBMIT PROPOSAL form, Attachment G**, included within this Express of Interest that must be completed and submitted as soon as possible to Lenora Montgomery by either email Lenora.Montgomery@fairmontstate.edu or fax 304-367-4656.

Only firms that have submitted Intent to Bid form will receive any addendums to this EOI.

- 2.2 During the open proposal solicitation process Proposers shall direct all questions to the Contracting Officer, Lenora Montgomery: via email at: Lenora.Montgomery@fairmontstate.edu. The cut-off date for questions will be **September 20, 2024** by 4:00 pm Eastern Time. Please note in the subject line the EOI number (EOI-442) assigned by Fairmont State University identifying this solicitation.

3. SUBMITTING YOUR PROPOSAL

- 3.1 Proposals and other required documents must be enclosed in a sealed envelope or container that is identified as an “Expression of Interest” including the supplier name, EOI number, and the EOI opening time and date. The envelope or container shall be addressed to Fairmont State University, Attn: Lenora Montgomery, Physical Plant, 1201 Locust Avenue, Fairmont WV 26554.
- 3.2 Proposal responses are due **October 3, 2024**; not later than **2:00 pm**.
- 3.3 The Proposer is fully responsible for timely delivery at the location designated for receipt of proposals. Proposals received after this date and time will not receive consideration. Oral, telephonic, facsimile, or telegraphic proposals are invalid and will not receive consideration. No exceptions are permitted.
- 3.4 Respondents must submit **one (1) original and five (5) copies** of their proposal.
- 3.5 Any and all costs incurred by the vendor in preparation of a response to this request or for presentation of credentials are the responsibility of the vendor and will not be reimbursed. All responses and documentation submitted by the vendor become the property of Fairmont State University at the time the documents are opened.

- 3.6 All proposals shall remain in effect for a minimum period of one hundred twenty (120) calendar days from the proposal opening date. Proposals may not be canceled, altered, or withdrawn, except as otherwise provided herein.
- 3.7 The **Proposal Response Certification, Attachment F**, shall be attached to the front of the proposal and shall contain the Proposers certification of the submission. Proposals must be signed by an individual or individuals who have full authority to execute a binding contract on behalf of the Proposer.
- 3.8 West Virginia Code §5A-3-10a states: 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 the debt owned is an amount greater than one thousand dollars in the aggregate.

To acknowledge you are in compliance with this regulation, you must complete, sign and return an original **Purchasing Affidavit, Attachment D**, to Fairmont State University Facilities Business Office with your proposal response.

- 3.9 Declaration of Interested Parties: West Virginia Code §6D-1-2 requires that for contracts exceeding \$100,000, the vendor must submit to Farmont State University a supplemental disclosure of interested parties during the pre-award of the contract and within 30 days following the completion or termination of the contract. A copy of that form is include with this EOI or can be obtained form the WV Ethics Commission. **Attachment E**

4. SPECIFICATIONS

4.1 SCOPE OF WORK

Professional services shall include but not limited to Design Services, Civil, Structural, Mechanical and Electrical Engineering Services, Bidding, Construction Contract Administration Services, Post-Contract Services and other professional services as necessary to meet the program requirements.

The Agreement document for any Architectural/Engineering Services will be the Standard Form of Agreement Between Owner and Architect, AIA Document B101-2017 and shall include ***State of West Virginia Supplementary Conditions to AIA B101-2017 – Attachment C***

4.1.1 HUNT HAUGHT HALL 1ST FLOOR HVAC (Heating, Ventilation, and Air Conditioning) REPLACEMENT

Hunt Haught Hall is on the main campus in Fairmont, WV. The facility houses the math and science departments. The building was originally constructed in 1969. The first floor was once utilized for Pierpont Community & Technical College's veterinary program. This program no longer resides in this facility. The air handler unit that served this space is at the end of its lifecycle and needs to be replaced. Including associated controls and components. Inspect ductwork and repair/clean as needed.

4.1.2 FALCON CENTER HVAC UPGRADES

Falcon Center is on the main campus in Fairmont, WV. The facility serves as the Student Activity Center for all Fairmont State University. There are two recreational gyms, weightroom, walking track, pool & spa, Starbucks, Chick-fil-A, bookstore, dining services, conference rooms, board room, & student health. The building is about twenty years old, and the roof top units are original. The scope includes replacing all roof top units (~10) and upgrading controls. There are also known issues with placement of thermostats and sensors that need to be reviewed and relocated to provide better comfort to the building occupants.

4.1.3 FALCON CENTER HOOD REPLACEMENTS

The dining service hoods are original to the building. Despite routine maintenance and cleaning there are known issues with the equipment. The scope includes replacement or repair of all hoods (~8) in Falcon Center. Assessing the existing equipment and proposing which ones should be replaced entirely or recommended upgrades/repairs as budget allows.

4.1.4 HUNT HAUGHT HALL CHEMICAL EXHAUST HOOD REPLACEMENTS

The chemical exhaust hoods serving the science labs in Hunt Haught Hall require constant maintenance. Several were tagged out of service last inspection until our service provider could get them operating correctly. Review all chemical exhaust hoods operation and recommend full or partial replacement/repair as needed.

4.1.5 FEASTER CENTER HVAC REPLACEMENT

Feaster Center is on the main campus in Fairmont, WV. The building houses Fairmont State's Athletic department including all sports. The roof top unit that serves the main lobby areas has reached the end of its lifecycle and needs to be replaced along with associated components and control system.

4.1.6 FEASTER CENTER FIRE ALARM UPGRADE

Most of the building fire alarm is on the original Simplex 4208 panel (1975) with a building addition added in 2013 with a Simplex 4100ES panel. Johnson Controls/Simplex no longer supports nor manufactures replacement parts for the panel. Upgrade the building fire alarm system to a single panel- addressable system preferred, including associated devices throughout.

4.1.7 PARKING GARAGE ELEVATOR UPGRADES

Two existing parking garage elevators are at the end of their life cycle and both need to be replaced. Currently one elevator is out of service and not operational. Review and propose elevator replacements for both existing elevators and supporting systems, reusing the existing elevator shafts.

4.2 RESPONSE SPECIFICATION

- 4.2.1 Provide the name of your organization or company and include the date and location of incorporation, principal officers, board of directors, number of employees, size and locations of field offices, company history and organizational structure.
- 4.2.2 Is your company or firm engaged, or planning to engage in any merger, acquisition, litigation, or business reorganization that might have an impact on your relationship with Fairmont State University?
- 4.2.3 Provide the names, function, and vita of the individuals within your organization who will be assigned to this project.
- 4.2.4 Describe in detail projects of a similar size and scope that your organization has been associated with over the last two years and provide at least three current references that Fairmont State may contact to evaluate customer satisfaction. References from institutions of higher education are preferred.
- 4.2.5 Provide any pertinent information necessary to respond to other issues addressed in Section 5 – Proposal Evaluation Criteria.
- 4.2.6 All responses must be formatted to comply with the items and sequence as presented in the EOI Specifications and Evaluation Criteria. The proposal should be specific and complete in every detail prepared in a simple straightforward manner.

5. PROPOSAL EVALUATION CRITERIA

5.1 EVALUATION CRITERIA

Proposal evaluation will include but not be limited to the criteria identified below (criteria is listed in relative order of importance).

- Quality and Content of Proposal
- Firm/Team Qualifications
- Demonstrated Experience in successful completion of major building projects of similar size and scope.
- Demonstrated Experience in Program Development, Planning, Design and Construction of University Facilities of similar size and scope.
- Demonstrated accuracy in estimating and in preparing plans and specifications.

6. ADDITIONAL REQUIREMENTS

6.1 Standards of Performance

- (a) The performance of all services by the Consultant under this Agreement will be by persons appropriately licensed or registered under State, local, and Federal laws.
- (b) In performing all services under this Agreement, the Consultant will comply with all local, state and federal laws.
- (c) In performing all services under this Agreement, the Consultant will use that degree of care and skill ordinarily exercised for similar projects by professional consulting firms who possess special expertise in the types of service involved under this Agreement.
- (d) Any provisions in this Agreement pertaining to the Owner's review, approval and/or acceptance of written materials prepared by the Consultant and/or its sub-consultants in connection with this Agreement will not diminish the Consultant's responsibility for the materials.
- (e) The Consultant will perform all of its services in coordination with the Owner. The Consultant will advise the Owner of data and information the Consultant needs to perform its services and the Consultant will meet with Owner representative(s) at mutually convenient times to assemble any data and information.

6.2 Owner's Responsibility

- (a) The Owner will provide information to the Consultant regarding the Owner's requirements for the Consultant's services under this Agreement. The Owner will furnish the Consultant with copies of official Owner design standards and construction standards and other data and information in the Owner's possession needed by the Consultant, at the Consultant's request.
- (b) The Owner will designate an authorized representative to act on the Owner's behalf with respect to this Agreement. The Owner will examine documents and information submitted by the Consultant, and promptly renders responses to the Consultant on issues requiring a decision by the Owner.

6.3 Consultant's Records

- (a) All expense records of the Consultant will be kept on a recognized accounting basis acceptable to the Owner and will be available to the Owner at mutually convenient times.
- (b) The Owner, its auditors, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, copying and transcriptions.
- (c) The Consultant will furnish to the Owner at such time and in such form as the Owner may require, financial statements including audited financial statements, records, reports, data and information, as the Owner may request pertaining to the matters covered by this Agreement.

6.4 Ownership and Use of Documents

- (a) All documents prepared by the Consultant in connection with this Agreement will become the property of the Owner whether any project related to this Agreement is executed or not.
- (b) The Consultant will retain all of its records and supporting documentation relating to this Agreement, and not delivered to the Owner, for a period of three years, except that in the event the Consultant goes out of business during that period, it will turn over to the Owner all of its records relating to the Project for retention by the Owner.

6.5 Term: Termination of Agreement

- (a) The term of this Agreement begins upon its execution by the Owner. This Agreement may only be extended by written mutual consent of both parties.
- (b) This Agreement may be terminated by either party upon 30 days prior written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
- (c) The Owner may, at any time, terminate the Contract in whole or in part for the owner's convenience and without cause. In such an event, the Contractor shall be paid for all work performed in accordance with the Contract documents, for reasonable termination expenses and a reasonable allowance for overhead and profit on Work completed. However, such payments, exclusive of termination expenses, shall not exceed the total Contract Sum as reduced by other payments made to the Contractor and further reduced by the value of the Work as yet not completed. The Contractor shall not be entitled to overhead and profit on work which has not been performed.
- (d) In the event of termination as provided in this Section, the Consultant will be compensated for all services to the termination date which are deemed by the Owner to be in accordance with this Agreement. This amount will be paid by the Owner upon the Consultant's delivering to the Owner all information and materials developed or accumulated by the Consultant in performing the services described in this Agreement, whether completed or in progress.

6.6 Modifications to the Agreement

- (a) Modifications to the Services may be accomplished after execution of the Agreement, and without validating the Agreement, by Change Order, subject to the successful negotiation of services and cost between the Owner and Consultant; and, with the understanding all services shall remain in accordance with the terms and conditions of the original Agreement.
- (b) A Change Order shall only be valid upon written mutual consent of both parties; and, as authorized by Owner's Contracting Officer.

6.7 Indemnity and Insurance

- (a) The Consultant will hold harmless, indemnify and defend the Owner and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising from the negligent or intentional acts, errors or omissions of the Consultant, its officers, employees or agents. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the Owner arising in favor of any party, including the amount of any damages or awards resulting from claims, demands and causes of action for personal injuries, death or damages to property.

- (b) The Consultant will procure and maintain at its expense insurance with insurance companies authorized to do business in the State of West Virginia, covering all operations under this Agreement, whether performed by the Consultant or its agents, subcontractors or employees. Before executing a Contract for this Work the Owner will require the Consultant to furnish to the Owner a certificate or certificates in a form satisfactory to the Owner, showing that Consultant has complied with this paragraph. All certificates will provide that the policy will not be canceled until at least 30 days written notice has been given by the Owner, and will name the Owner, Fairmont State University, 1201 Locust Avenue; Fairmont WV 26554, as certificate holder and as an additional insured on all coverage except workers' compensation and professional liability.

(c) The kinds and amounts of insurance required are as follows:

Workers' Compensation Insurance: The Consultant shall be in compliance with all rules and regulations of the State of West Virginia Workers' Compensation Fund and have all premiums paid and reports filed currently.

Commercial General Liability Insurance

General Aggregate	\$2,000,000
Products and Complete Operations Aggregate	\$1,000,000
Personal and Advertising Injury Liability	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any One Fire)	\$ 300,000
Medical Expense (Any One Person)	\$ 5,000

Commercial Auto Liability Insurance

Combined Single Limits, Bodily Injury And Property Damage Liability	\$1,000,000
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Excess Liability

Each Occurrence, Combined Single Limit, Bodily Injury and Property Damage Liability	\$1,000,000
Aggregate Limit	\$1,000,000

Employers Liability

Each Accident	\$ 100,000
Disease – Policy Limit	\$ 500,000
Disease – Each Employee	\$ 100,000

Professional Limited Liability Coverage	\$1,000,000
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(b) The stated limits of insurance required by this Paragraph are minimum only—they do not limit the Consultant's responsibility to determine what limits is adequate. These limits may be met by basic policy limits or any combination of basic limits and umbrella limits. The Owner's acceptance of certificates of insurance that do not comply with these requirements in any respect does not release the Consultant from compliance with these requirements.

6.8 Miscellaneous Provisions

- (a) This Agreement is governed by the law of the State of West Virginia. Disputes arising out of this agreement shall be submitted to the West Virginia Court of Claims.
- (b) The Consultant may not assign, sublet or transfer any interest in this Agreement without the written consent of the Owner.
- (c) All Contracts executed by Fairmont State University are bound by the Terms and Conditions found at the end of this Expression of Interest. In the event of any conflict between these Terms and Conditions and the provisions of any exhibit or attachment to this Agreement, or any document(s) provided by the Consultant as a response to a Request for Bid or Request for Proposal and accepted by the Owner, including any electronic medium such as CD-ROM, these Terms and Conditions will govern and control.

6.9 Vendor Registration

- (a) All vendors and/or Contractors must be registered with the State of West Virginia before conducting business. All vendors must be registered prior to issuance of a purchase order and will be responsible for and must pay any registration fee (currently \$125.00). All bidders are encouraged to contact FSU Facilities Business Office at 304-367-4657 for further information.

6.10 Funding Paragraph

- (a) Services performed under the Contract are to be continued in the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this service. In the event funds are not appropriated for these services this Contract becomes of no effect and is null and void after June 30.

7 AWARD OF CONTRACT

- 7.1 Fairmont State University and Consultant shall meet and confirm the detail of services to be performed prior to award of a Contract.
- 7.2 In the event the negotiations between the selected Consultant and the Owner cannot be completed as a result of an inability to reach agreement on the fee for services, or the scope of work to be performed, then at the option of the Owner, the contract may be awarded to the second most qualified proponent.
- 7.3 Negotiations will continue in this sequence until a contract is finalized or all proposals are rejected.

INSTRUCTIONS TO VENDORS SUBMITTING BIDS

1. **REVIEW DOCUMENTS THOROUGHLY:** The attached documents contain a solicitation for bids.

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

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

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

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

A **NON-MANDATORY PRE-BID** meeting will be held at the following place and

A **MANDATORY PRE-BID** meeting will be held at the following place and time:

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

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. Fairmont State will not accept any other form of proof or documentation to verify attendance. Any person attending the pre-bid meeting on behalf of a Vendor must list on the attendance sheet his or her name and the name of the Vendor he or she is representing. Additionally, the person attending the pre-bid meeting should include the Vendor’s E-Mail address, phone number, and Fax number on the attendance sheet. It is the Vendor’s responsibility to locate the attendance sheet and provide the required

information. Failure to complete the attendance sheet as required may result in disqualification of Vendor's bid.

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

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

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

Question Submission Deadline:

September 20, 2024

Submit Questions to:

Fairmont State University
Lenora Montgomery
1201 Locust Avenue
Fairmont WV 26554
Email: Lenora.Montgomery@fairmontstate.edu

- 5. VERBAL COMMUNICATION:** Any verbal communication between the Vendor and any Fairmont State personnel is not binding, including that made at the mandatory pre-bid conference. Only information issued in writing and added to the Solicitation by an official written addendum by the Facilities Business Office is binding.
- 6. BID SUBMISSION:** All bids must be signed and delivered by the Vendor to the Facilities Business Office at the address listed below on or before the date and time of the bid opening. Any bid received by the Facilities Business Office staff is considered to be in the possession of the University and will not be returned for any reason. The bid delivery address is:

Fairmont State University
Lenora Montgomery
1201 Locust Avenue
Fairmont WV 26554

The bid should contain the information listed below on the face of the envelope or the bid may not be considered:

SEALED BID

SOLICITATION NO.: EOI 443

BID OPENING DATE: 10/3/2024

BID OPENING TIME: 2:00 pm

In the event that Vendor is responding to a request for proposal, the Vendor shall submit one original technical plus 5 convenience copies of each to the Facilities Business Office at the address shown above.

7. **BID OPENING:** Bids submitted in response to this Solicitation will be opened at the location identified below on the date and time listed below. Delivery of a bid after the bid opening date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when time stamped by the Facilities Business Office Staff.

Bid Opening Date and Time:

October 3, 2024
2:00 pm

Bid Opening Location:

Fairmont State University
Physical Plant – Facilities Business Office
1201 Locust Avenue
Fairmont WV 26554

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

GENERAL TERMS AND CONDITIONS:

1. **CONTRACTUAL AGREEMENT:** Issuance of a Purchase Order signed by the Chief Financial Officer, or his designee, and approved as to form by the Attorney General’s office constitutes acceptance of this Contract made by and between the Fairmont State University and the Vendor. Vendor’s signature on its bid signifies Vendor’s agreement to be bound by and accept the terms and conditions contained in this Contract.

2. **DEFINITIONS:** As used in this Solicitation / Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation / Contract.
 - 2.1 **“Agency” or “Agencies”** means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

 - 2.2 **“Contract”** means the binding agreement that is entered into between the State and the Vendor to provide the goods and services requested in the Solicitation.

 - 2.3 **“Purchase Order”** means the document signed by the Fairmont State University and approved as to form by the Attorney General, that identifies the Vendor as the successful bidder and Contract holder.

 - 2.4 **“Solicitation”** means the official solicitation published by Fairmont State University and identified by number on the first page thereof.

 - 2.5 **“State”** means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

 - 2.6 **“Vendor” or “Vendors”** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

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

Term Contract

Initial Contract Term: This Contract becomes effective on

and extends for a period of year(s).

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Facilities Business Office and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal must be submitted to the Facilities Business Office Director thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Renewal of this Contract is limited to _____ successive one (1) year periods. Automatic renewal of this Contract is prohibited. Attorney General approval may be required for vendor terms and conditions.

Reasonable Time Extension: At the sole discretion of the Facilities Business Office, and with approval from the Attorney General's office (Attorney General approval is as to form only), this Contract may be extended for a reasonable time after the initial Contract term or after any renewal term as may be necessary to obtain a new contract or renew this Contract. Any reasonable time extension shall not exceed twelve (12) months. Vendor may avoid a reasonable time extension by providing the Facilities Business Office with written notice of Vendor's desire to terminate this Contract 30 days prior to the expiration of the then current term. During any reasonable time extension period, the Vendor may terminate this Contract for any reason upon giving the Facilities Business Office 30 days written notice. Automatic extension of this Contract is prohibited.

Fixed Period Contract: This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within _____ days.

One Time Purchase: The term of this Contract shall run for one year from the date the Purchase Order is issued or from the date the Purchase Order is issued until all of the goods contracted for have been delivered, whichever is shorter.

Other: See attached.

4. **NOTICE TO PROCEED:** Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by Fairmont State. Unless otherwise specified, the fully executed Purchase Order will be considered notice to proceed
5. **QUANTITIES:** The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.
- [] **Open End Contract:** Quantities listed in this Solicitation are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.
- [X] **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.
- [] **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.
- [] **One Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor and Fairmont State.
6. **PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from Fairmont State in the Solicitation to do so, may result in bid disqualification.
7. **EMERGENCY PURCHASES:** Fairmont State may authorize the purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market shall not constitute of breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.

8. REQUIRED DOCUMENTS: All of the items checked below must be provided to the Facilities Business Office by the Vendor as specified below.

BID BOND: All Vendors shall furnish a bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

PERFORMANCE BOND: The apparent successful Vendor shall provide a performance bond in the amount of 100% of the Contract value. The performance bond must be issued and delivered to the Facilities Business Office prior to Contract award.

LABOR/MATERIAL PAYMENT BOND: The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be issued and delivered to the Facilities Business Office prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable.

MAINTENANCE BOND: The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Facilities Business Office prior to Contract award.

WORKERS' COMPENSATION INSURANCE: The apparent successful Vendor shall have appropriate workers' compensation insurance and shall provide proof thereof upon request.

INSURANCE: The apparent successful Vendor shall furnish proof of the following insurance prior to Contract award:

Commercial General Liability Insurance:
_____ or more.

Builders Risk Insurance: builders risk – all risk insurance in an amount equal to 100% of the amount of the Contract.

The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether or not that insurance requirement is listed above.

LICENSE(S) / CERTIFICATIONS / PERMITS: In addition to anything required under the Section entitled Licensing, of the General Terms and Conditions, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits prior to Contract award, in a form acceptable to the Facilities Business Office.

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications prior to Contract award regardless of whether or not that requirement is listed above.

9. LITIGATION BOND: Fairmont State reserves the right to require any Vendor that files a protest of an award to submit a litigation bond in the amount equal to one percent of the lowest bid submitted or \$5,000, whichever is greater. The entire amount of the bond shall be forfeited if the hearing officer determines that the protest was filed for frivolous or improper purpose, including but not limited to, the purpose of harassing, causing unnecessary delay, or needless expense for the Agency. All litigation bonds shall be made payable to Fairmont State. In lieu of a bond, the protester may submit a cashier's check or certified check payable to Fairmont State. Cashier's or certified checks will be deposited with and held by the State Treasurer's office. If it is determined that the protest has not been filed for frivolous or improper purpose, the bond or deposit shall be returned in its entirety.

10. ALTERNATES: Any model, brand, or specification listed herein establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by Fairmont State at its sole discretion. Any Vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.

11. EXCEPTIONS AND CLARIFICATIONS: The Solicitation contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions, clarifications, or other proposed modification in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification.

12. LIQUIDATED DAMAGES: Vendor shall pay liquidated damages in the amount _____
_____ For _____

This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy.

13. ACCEPTANCE/REJECTION: Fairmont State may accept or reject any bid in whole, or in part. Vendor's signature on its bid signifies acceptance of the terms and conditions contained in the Solicitation and Vendor agrees to be bound by the terms of the Contract, as reflected in the Purchase Order, upon receipt.

14. REGISTRATION: Prior to Contract award, the apparent successful Vendor must be properly registered with the West Virginia Department of Administration and must have paid the \$125 fee if applicable.

- 15. COMMUNICATION LIMITATIONS:** In accordance with West Virginia Code of State Rules §148-1-6.6, communication with Fairmont State University or any of its employees regarding this Solicitation during the solicitation, bid, evaluation or award periods, except through the Facilities Business Office, is strictly prohibited without prior Facilities Business Office approval.
- 16. FUNDING:** This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available.
- 17. PAYMENT:** Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears, to Fairmont State at the address on the face of the purchase order labeled “Invoice To.”
- 18. UNIT PRICE:** Unit prices shall prevail in cases of a discrepancy in the Vendor’s bid.
- 19. DELIVERY:** All quotations are considered freight on board destination (“F.O.B. destination”) unless alternate shipping terms are clearly identified in the bid. Vendor’s listing of shipping terms that contradict the shipping terms expressly required by this Solicitation may result in bid disqualification.
- 20. INTEREST:** Interest attributable to late payment will only be permitted if authorized by the West Virginia Code. Presently, there is no provision in the law for interest on late payments.

- 21. PREFERENCE:** Vendor Preference may only be granted upon written request and only in accordance with the West Virginia Code § 5A-3-37 and the West Virginia Code of State Rules. A Resident Vendor Certification form has been attached hereto to allow Vendor to apply for the preference. Vendor's failure to submit the Resident Vendor Certification form with its bid will result in denial of Vendor Preference. Vendor Preference does not apply to construction projects.
- 22. SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES:** For any solicitations publicly advertised for bid on or after July 1, 2012, in accordance with West Virginia Code §5A-3-37(a)(7) and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the Facilities Business Office with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to submission of its bid to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority owned business shall be applied in accordance with W. Va. CSR § 148-22-9.
- 23. TAXES:** The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
- 24. CANCELLATION:** Fairmont State reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Chief Procurement Officer may cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-7.16.2.
- 25. WAIVER OF MINOR IRREGULARITIES:** The Director reserves the right to waive minor irregularities in bids or specifications in accordance with West Virginia Code of State Rules § 148-1-4.6.
- 26. TIME:** Time is of the essence with regard to all matters of time and performance in this Contract.
- 27. APPLICABLE LAW:** This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code or West Virginia Code of State Rules is void and of no effect.
- 28. COMPLIANCE:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendors acknowledge that they have reviewed, understand, and will comply with all applicable law.

- 29. ARBITRATION:** Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.
- 30. MODIFICATIONS:** This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary, no modification of this Contract shall be binding without mutual written consent of the Fairmont State and the Vendor. **No Change shall be implemented by the Vendor until such time as the Vendor receives an approved written change order from the Facilities Business Office.**
- 31. WAIVER:** The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.
- 32. SUBSEQUENT FORMS:** The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to Fairmont State such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.
- 33. ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of Fairmont State and the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.
- 34. WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by Fairmont State; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.
- 35. STATE EMPLOYEES:** Fairmont State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.
- 36. BANKRUPTCY:** In the event the Vendor files for bankruptcy protection, the Fairmont State may deem this Contract null and void, and terminate this Contract without notice.
- 37. HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, is available online at <http://www.state.wv.us/admin/purchase/vrc/hipaa.html> and is hereby made part of the agreement provided that the Agency meets the definition of a Covered entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the Vendor.

- 38. CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from Fairmont State, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Fairmont State’s policies, procedures, and rules.
- 39. DISCLOSURE:** Vendor’s response to the Solicitation and the resulting Contract are considered public documents and will be disclosed to the public in accordance with the laws, rules, and policies governing Fairmont State. Those laws include, but are not limited to, the Freedom of Information Act found in West Virginia Code § 29B-1-1 et seq.

If a Vendor considers any part of its bid to be exempt from public disclosure, Vendor must so indicate by specifically identifying the exempt information, identifying the exemption that applies, providing a detailed justification for the exemption, segregating the exempt information from the general bid information, and submitting the exempt information as part of its bid but in a segregated and clearly identifiable format. Failure to comply with the foregoing requirements will result in public disclosure of the Vendor’s bid without further notice. A Vendor’s act of marking all or nearly all of its bid as exempt is not sufficient to avoid disclosure and WILL NOT BE HONORED. Vendor’s act of marking a bid or any part thereof as “confidential” or “proprietary” is not sufficient to avoid disclosure and WILL NOT BE HONORED. In addition, a legend or other statement indicating that all or substantially all of the bid is exempt from disclosure is not sufficient to avoid disclosure and WILL NOT BE HONORED. Vendor will be required to defend any claimed exemption for nondisclosure in the event of an administrative or judicial challenge to the State’s nondisclosure. Vendor must indemnify the State for any costs incurred related to any exemptions claimed by Vendor. Any questions regarding the applicability of the various public records laws should be addressed to your own legal counsel prior to bid submission.

- 40. LICENSING:** In accordance with West Virginia Code of State Rules §148-1-6.1.7, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State’s Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Fairmont State to verify that the Vendor is licensed and in good standing with the above entities.

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

42. VENDOR CERTIFICATIONS: By signing its bid or entering into this Contract, Vendor certifies (1) that its bid was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid for the same material, supplies, equipment or services; (2) that its bid is in all respects fair and without collusion or fraud; (3) that this 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 this RFQ in its entirety; understands the requirements, terms and conditions, and other information contained herein. Vendor's signature on its bid 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 Fairmont State.

The individual signing this bid on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid 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 any State agency that may require registration.

43. PURCHASING CARD ACCEPTANCE: Fairmont State currently utilizes a Purchasing Card program, administered under contract by a banking institution, to process payment for goods and services. The Vendor must accept the State of West Virginia's Purchasing Card for payment of all orders under this Contract unless the box below is checked.

Vendor is not required to accept the State of West Virginia's Purchasing Card as payment for all goods and services.

- 44. VENDOR RELATIONSHIP:** The relationship of the Vendor to Fairmont State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this 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 Fairmont State 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 Fairmont State with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.
- 45. INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and Fairmont State, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.
- 46. PURCHASING AFFIDAVIT:** In accordance with West Virginia Code § 5A-3-10a, all Vendors are required to sign, notarize, and submit the Purchasing Affidavit stating that neither the Vendor nor a related party owe a debt to the State in excess of \$1,000. The affidavit must be submitted prior to award, but should be submitted with the Vendor's bid. A copy of the Purchasing Affidavit is included herewith.
- 47. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE:** This Contract may be utilized by and extends to other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"). This Contract shall be extended to the aforementioned Other Government Entities on the same prices, terms, and conditions as those offered and agreed to in this Contract. If the Vendor does not wish to extend the prices, terms, and conditions of its bid and subsequent contract to the Other Government Entities, the Vendor must clearly indicate such refusal in its bid. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.

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

49. REPORTS: Vendor shall provide Fairmont State with the following reports identified by a checked box below:

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

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

50. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS: Except when authorized by the Director of the Facilities Business Office pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open heath, basic oxygen, electric furnace, Bessemer or other steel making process.

The Facilities Business Office may, in writing, authorize the use of foreign steel products if:

- a. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
- b. Fairmont State determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

51. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL: In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

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

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

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

ADDITIONAL TERMS AND CONDITIONS (Construction Contracts Only)

- 1. CONTRACTOR’S LICENSE:** West Virginia Code § 21-11-2 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. Applications for a contractor’s license may be made by contacting the West Virginia Division of Labor.

West Virginia Code § 21-11-11 requires any prospective Vendor to include the contractor’s license number on its bid. Failure to include a contractor’s license number on the bid shall result in Vendor’s bid being disqualified. Vendors should include a contractor’s license number in the space provided below.

Contractor’s Name: _____

Contractor’s License No. _____

The apparent successful Vendor must furnish a copy of its contractor’s license prior to the issuance of a purchase order/contract.

- 2. DRUG-FREE WORKPLACE:** 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 at the same time an affidavit that the Vendor has a written plan for a drug-free workplace policy. To comply with this law, Vendor must either complete the enclosed drug-free workplace affidavit and submit the same with its bid or complete a similar affidavit that fulfills all of the requirements of the applicable code. Failure to submit the signed and notarized drug-free workplace affidavit, or a similar affidavit that fully complies with the requirements of the applicable code, with the bid shall result in disqualification of Vendor’s bid.
- 3. AIA DOCUMENTS:** All construction contracts that will be completed in conjunction with architectural services procured under Chapter 5G of the West Virginia Code will be governed by the AIA A101-2017 and A201-2017, as amended by the Supplementary Conditions for the State of West Virginia, in addition to the terms and conditions contained herein.

- 4. SUBCONTRACTOR LIST SUBMISSION:** In accordance with W. Va. Code § 5-22-1, The apparent low bidder on a contract for the construction, alteration, decoration, painting or improvement of a new or existing building or structure valued at more than \$500,000.00 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 provision shall not apply to any other construction projects, such as highway, mine reclamation, water or sewer projects.
- c. Required Information.** The subcontractor list shall contain the following information:
 - i. Bidder's name
 - ii. Name of each subcontractor
 - iii. License numbers as required by W. Va. Code § 21-11-1 et. seq.
 - iv. Notation that no subcontractors will be used if the bidder will perform the work
 - d. Submission.** The completed subcontractor list shall be provided to the Facilities Business Office within one business day of the opening of bids for review. Failure to submit the subcontractor list within one business day after the deadline for submitting bids shall result in disqualification of the bid.
 - e. Substitution of Subcontractor.** Written approval must be obtained from the Facilities Business Office 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 bill fails, is unable, or refuses to perform his subcontract.
- 5. GREEN BUILDINGS MINIMUM ENERGY STANDARDS:** In accordance with § 22-29-4, all new building construction projects of public agencies that have not entered the schematic design phase prior to July 1, 2012, or any building construction project receiving state grant funds and appropriations, including public schools, that have not entered the schematic design phase prior to July 1, 2012, shall be designed and constructed complying with the ICC International Energy Conservation Code, adopted by the State Fire Commission, and the ANSI/ASHRAE/IESNA Standard 90.1-2007: *Provided*, That if any construction project has a commitment of federal funds to pay for a portion of such project, this provision shall only apply to the extent such standards are consistent with the federal standards.

ADDITIONAL TERMS AND CONDITIONS (Architectural and Engineering Contracts Only)

1. **PLAN AND DRAWING DISTRIBUTION:** All plans and drawings must be completed and available for distribution at least five business days prior to a scheduled pre-bid meeting for the construction or other work related to the plans and drawings.
2. **PROJECT ADDENDA REQUIREMENTS:** The Architect/Engineer and/or Fairmont State shall be required to abide by the following schedule in issuing construction project addenda:
 - a. The Architect/Engineer shall prepare any addendum materials for which it is responsible, and a list of all vendors that have obtained drawings and specifications for the project. The Architect/Engineer shall then send a copy of the addendum materials and the list of vendors to the Fairmont State Facilities Business Office to make any necessary modifications. The Facilities Business Office shall send the addendum to all interested vendors and, if necessary, extend the bid opening date. Any addendum should be received by the Facilities Business Office at least five (5) days prior to the bid opening date.
3. **PRE-BID MEETING RESPONSIBILITIES:** The Architect/Engineer shall be available to attend any pre-bid meeting for the construction or other work resulting from the plans, drawings, or specifications prepared by the Architect/Engineer.
4. **AIA DOCUMENTS:** Contracts for architectural and engineering services will be governed by the AIA document B101-2017, as amended by the Supplementary Conditions for the State of West Virginia, in addition to the terms and conditions contained herein when procured under Chapter 5G of the West Virginia Code.
5. **GREEN BUILDINGS MINIMUM ENERGY STANDARDS:** In accordance with West Virginia Code § 22-29-4, all new building construction projects of public agencies that have not entered the schematic design phase prior to July 1, 2012, or any building construction project receiving state grant funds and appropriations, including public schools, that have not entered the schematic design phase prior to July 1, 2012, shall be designed and constructed complying with the ICC International Energy Conservation Code, adopted by the State Fire Commission, and the ANSI/ASHRAE/IESNA Standard 90.1-2007: *Provided*, That if any construction project has a commitment of federal funds to pay for a portion of such project, this provision shall only apply to the extent such standards are consistent with the federal standards.

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.:

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 specification, 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 state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

Company

Authorized Signature

Date

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

**FAIRMONT STATE UNIVERSITY
VENDOR INSTRUCTIONS
FOR RESPONDING TO A
REQUEST FOR PROPOSAL / EXPRESSION OF INTEREST**

Introduction

Fairmont State University publishes this document as an aid to vendors who may wish to respond to Request for Proposals / Expression of Interest (RFP/EOI). Generally, the purpose of an RFP/EOI is to identify and ultimately contract with a qualified vendor or vendors for commodities or services required by FSU. The RFP/EOI process and legal requirements are outlined in detail.

The Request for Proposal (RFP/EOI) Process

By publication of a Request for Proposal / Expression of Interest, Fairmont State University begins an administrative process that may or may not lead to the award of a contract(s). FSU may stop the process at any time, with or without cause, and nothing in a RFP/EOI document may be interpreted as an offer to purchase, procure, or otherwise acquire any product or service from any proposer or vendor.

Typically, the RFP/EOI process employs the following steps:

RFP/EOI Publication and Distribution to Interested Parties
Receipt of Proposals
Initial Proposal Evaluation
Vendor Discussions and Fact Finding (If Required)
Selection of Most Advantageous Proposal(s)
Contract / Fee Negotiations
Contract(s) Award
Contract Implementation

Except as specifically noted in the RFP/EOI, there is no limit either expressed or implied on the completion of each step in the process.

Definitions

Fairmont State University may be referred to as FSU, Owner, or Buyer.

A Request for Proposal (RFP/EOI) refers specifically to an officially published and numbered document and all the attachments, amendments, and addenda that are a part or may become a part of the document. Applicable paragraphs from this instruction document are often included and made a part of a final agreement should a contract be awarded.

A Proposer is any bona fide business entity, individual, partnership, or corporation who submits a response to this RFP/EOI in accordance with the terms and conditions specified herein.

A Contractor and/or Seller is any bona fide business entity, individual, partnership, or corporation who, a) having submitted a proposal in compliance with the terms and conditions of a RFP/EOI; and b) being duly authorized to conduct business in the State of West Virginia; and c) whose proposal having been selected as “most advantageous”, is issued a Contract/Purchase Order by FSU to provide goods or services as specified.

Contract/Purchase Order is the final document of agreement between Fairmont State University and the successful Proposer, and may be referred to as Order. It will include the RFP/EOI, the Proposers response, and any other documentation that may be required to clearly state the agreement between FSU and the Seller.

The Evaluation Committee is the group of individuals selected by FSU to evaluate responses to the RFP/EOI. The committee may include, at FSU’s sole discretion, any employee, agent, consultant, or expert as required by FSU. The findings and recommendations of the committee are not binding on FSU.

Proposer List and Qualification Evaluation

After the established date for receipt of proposals, a list of parties who submitted proposals will be prepared and made available for public inspection. Proposals will not be opened and read publicly. Qualifications and proposals submitted by interested parties will be reviewed and evaluated based on the evaluation criteria set forth in the RFP/EOI.

Proposal Classification and Discussions

Proposals will initially be classified as either a) Acceptable; b) Potentially Acceptable; or c) Unacceptable. Discussions and fact-finding may be conducted, if required, with any or all of the Proposers whose proposals are found acceptable or potentially acceptable. Parties whose proposals classified as unacceptable will be notified promptly. Procurement Services will establish procedures and schedules for conducting oral and/or written discussions.

Proper Investigation

FSU will make such investigations as it considers necessary to obtain full information on the proposer(s) selected for negotiations.

Final Offers and Award of Contract

Following any discussions with Proposers the Evaluation Committee will evaluate the final proposals/discussion session, giving due consideration to the established evaluation criteria. The Evaluation Committee will report its findings to Procurement Services who may or may not issue a Purchase Order/Contract based on which proposals are found to be the most advantageous to FSU.

Submitting Your Proposal

Specific instruction for submitting a proposal response can be found in Section 3 – Submitting Your Proposal.

Proposers are expected to examine the entire RFP/EOI, including all specifications, standard provisions, and instructions. Failure to do so will be at the Proposers risk. Each proposer shall furnish the information required by the RFP/EOI. Proposals must be typewritten. Time periods, stated in number of days, in a RFP/EOI, or in the Proposers response, shall be in calendar days. By making a proposal, the Proposer warrants that: a) the Proposer has read and understands the RFP/EOI documents, instructions, terms and conditions; b) that the proposal is made in accordance therewith; c) the proposal is based upon materials, equipment, systems, printing and/or services specified.

Inquiries, Information, Notice, and Correspondence

All inquiries, requests for information, notices, and correspondence concerning any RFP/EOI shall be submitted in writing to:

Lenora Montgomery
Asst VP for Facilities
Fairmont State University
1201 Locust Avenue
Fairmont, WV 26554
Phone: 304-367-4657

Email: Lenora.Montgomery@fairmontstate.edu

The Facilities Business Office is the only point of contact on all matters related to this RFP/EOI. Proposers should make any request for additional information or clarification in writing only to the Facilities Business Office.

Proposers are strictly prohibited from contacting any member of the evaluation committee. Failure to comply with this request will be cause for disqualification of the proposal.

Other Terms and Conditions

All Contracts executed by Fairmont State University are bound by the Terms and Conditions found as part of this document. In the event of any conflict between these Terms and Conditions and the provisions of any exhibit or attachment to this Agreement, or any document(s) provided by the Consultant as a response to a Request for Bid or Request for Proposal ad accepted by the Owner, including any electronic medium such as CD-ROM, these Terms and Conditions will govern and control.

Warranties

The Seller expressly warrants that the goods and/or services covered by this (Order/RFP/Contract) will (a) conform to the performance capabilities, specifications, functions, drawings, samples or descriptions (furnished or specified by the Buyer) (applicable thereto as set forth in the Appendix); (b) conform to the standards generally observed in the industry for similar goods and/or services; (c) be merchantable and fit for the purpose intended; (d) be free and clear of all liens, claims and encumbrances of any kind; (e) be free from errors or defects in material or workmanship; and (f) comply with all applicable laws, rules, and regulations.

Interpretation, Corrections or Changes in RFP/EOI

Any interpretation, correction, or change in an RFP/EOI will be made by formal addendum by FSU. Interpretation, corrections, or changes to a RFP/EOI made in any other manner will not be binding, and no proposer may rely upon any such interpretation, correction, or change.

Modification or Withdrawal of Proposal

Proposers may modify or withdraw their proposal before the time and date specified for receipt of proposals by giving notice in writing to the Facilities Business Office. Notice shall include the signature of the proposer and shall be received before the designated time and date for receipt of proposals. Modifications must be worded so as not to reveal the amount of the original proposal.

Erasures and Interlineations

Erasures, interlineations or other changes in the proposal must be initialed by the authorized individual(s) signing the proposal.

Acknowledgment of Amendments to a RFP/EOI

Proposers must acknowledge the receipt of any addenda or amendments to this RFP/EOI on the Proposal Response Certification (Attachment E)

Quality Standards

Brand names, when identified, include the standard of quality, performance, and use desired. Unless otherwise noted, proposals for equivalents may be considered, provided the proposer furnishes descriptive literature and other proof required by FSU. Samples, when required, must be furnished free of charge, including freight. In the event FSU elects to contract for a brand alleged to be an equivalent by the proposer, acceptance of the item will be conditional to FSU's inspection and testing after receipt. If, in the sole opinion of FSU, the item is determined not to be equivalent, the item will be returned at the vendor's expense and the contract terminated.

Rejection of Proposals

FSU shall have the right to reject any and all proposals, in whole or part, to reject a proposal not accompanied by a required security or other data required by the RFP/EOI documents; reject a proposal which is in any way incomplete or irregular, or to reissue a Request for Proposals.

Award of Contract

FSU may elect to award a contract(s) to a vendor(s) whose proposal is determined to be most advantageous to FSU with respect to conformance to the specifications, quality, and other factors as evaluated by FSU.

FSU may award a contract based on initial offers received, without discussion; therefore, each initial offer should contain the Vendor's best terms from technical standpoint.

Proposal Confidentiality

Ownership of all data, materials, and documentation originated and prepared for FSU pursuant to the RFP/EOI shall be exclusively to FSU and be subject to public inspection in accordance with the West Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by a Proposer shall not be subject to public disclosure under the West Virginia Freedom of Information Act; however, the Proposer must invoke the protections of Article 1, Chapter 29B of the Code of West Virginia in writing, either before or at the time the data or material is submitted. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secrets or proprietary information.

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 of 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

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 allow a vendor to perform work on a contract, or a series of related contracts, that has/have an actual or estimated value of \$1 million or more until the business entity submits to the state agency a Disclosure of Interested Parties to the applicable contract. In addition, the business entity awarded a contract is obligated to submit a supplemental Disclosure of Interested Parties reflecting any new or differing interested parties to the contract within 30 days following the completion or termination of the applicable contract.

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

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

"Interested party" or "Interested parties" means:

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

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

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

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

West Virginia Ethics Commission
Disclosure of Interested Parties to Contracts

(Required by W. Va. Code § 6D-1-2)

Name of Contracting Business Entity: _____

Address: _____

Name of Authorized Agent: _____ Address: _____

Contract Number: _____ Contract Description: _____

Governmental agency awarding contract: _____

Check here if this is a Supplemental Disclosure

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

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

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

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

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

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

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

Signature: _____ Date Signed: _____

Notary Verification

State of _____, County of _____:

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

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

Notary Public's Signature

To be completed by State Agency:

Date Received by state agency: _____

Date submitted to Ethics Commission: _____

Governmental agency submitting Disclosure: _____

ATTACHMENT F

**PROPOSAL RESPONSE CERTIFICATION
FAIRMONT STATE UNIVERSITY**

EOI – 442

ARCHITECTURAL / ENGINEERING DESIGN SERVICES
for
BUILDING SYSTEM UPGRADES
**Various Buildings, HVAC Upgrades, Hood Replacements, Elevator Upgrades &
Fire Alarm System Upgrade**

The undersigned, as proposer, declares that they have read the Expression of Interest and the following proposal is submitted on the basis that the undersigned, the company and its employees or agents, shall meet, or agree to all specifications contained herein.

It is further acknowledged addenda numbers _____ to _____ have been received and examined as part of the EOI document.

DATE

Name of Proposer

Signature of Proposer

Title

Company Name

Street Address

City, State, Zip

Telephone

Email Address

FEIN Number

Attachment G

RFP INTENT – TO – SUBMIT PROPOSAL FORM

If you intend to proposal to the Expression of Interest, we ask that you complete this form as soon as possible and fax or email it to:

Lenora Montgomery, Interim Asst VP for Facilities
Fairmont State University
Lenora.Montgomery@fairmontstate.edu

If you identify yourself as a potential bidder, Fairmont State will be able to notify you of any EOI changes or revisions, and forward you our responses to questions submitted by other bidders.

Please note:

- Filing an Intent-to-Bid form is voluntary: it is NOT required by Fairmont State in order for you to submit a proposal.
- Filing an Intent-to-Submit Proposal form does not commit you to bidding.
- Filing an Intent-to-Submit Proposal is required if you wish to submit specific questions concerning an RFP.

----- **INTENT-TO-SUBMIT PROPOSAL** -----

RFP Name: _____

Name of Organization: _____

Address: _____

Name of Contact Person: _____

Title: _____

Email: _____

Phone: _____

FEIN: _____