



**REQUEST FOR PROPOSAL (RFP)**

**RFP-443**

**Comprehensive Classification and Compensation Study**

Issue Date: October 7, 2024

Due Date: November 5, 2024

**SUBMITTAL DUE DATE AND TIME:**

One (1) **original technical and cost proposal** plus one (1) convenience copy, as well as an electronic copy (submitted on a USB drive) to:

Monica J. Cochran  
Director of Procurement  
Fairmont State University  
Hardway Hall Room 305  
1201 Locust Avenue  
Fairmont, WV 26554

The outside of the envelope or package(s) for both the technical and the cost proposal should be clearly marked:

REQ/RFP #: RFP-443  
Opening Date: November 5, 2024  
Opening Time: 3:00 p.m.

Late submittals will not be accepted. Proposals will be accepted until the time and date specified.

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**LETTER OF INTENT (to submit a bid) – and attend the Mandatory Pre-bid Conference:**

My company intends to submit a bid response for RFP-.

Company Name:	
Contact Name:	
Address:	
City, State, Zip:	
Phone #:	
Fax #:	
Email Address:	

**Signature:** \_\_\_\_\_

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

RFP addendums (if any) will be sent (by email) to the contact person listed above.

**Please return by email no later than 2:00 p.m. on October 15, 2024. Please return to:**

**Monica J. Cochran, Director of Procurement**  
**Fairmont State University**  
**Email: [monica.cochran@fairmontstate.edu](mailto:monica.cochran@fairmontstate.edu)**

## SECTION 1: GENERAL INFORMATION / BACKGROUND

### 1.1 Purpose:

Fairmont State University, herein after referred to as “Fairmont State” or “University,” seeks to establish a contract for a comprehensive classification and compensation study. The University, therefore, seeks to obtain competitive proposals via this Request for Proposal (RFP) document.

This solicitation serves as notice, pursuant to West Virginia Code §5A-3-10b, of the commodity or service being sought and is to be considered the opportunity for vendors to indicate their interest in bidding on such commodity or service.

### 1.2 Location and Operating Environment:

The University’s 120-acre campus is located at 1201 Locust Avenue, Fairmont WV 26554. The University is home to an average of 3,200 undergraduate and graduate students and 646 faculty, staff, and adjuncts. Fairmont State University is a public institution committed to providing a high-quality, student-centered education. Founded in 1865, the University offers a range of undergraduate and graduate programs across various disciplines, including business, education, engineering, health sciences, social sciences, and liberal arts.

Fairmont State University is known for its dedicated faculty, supportive campus environment, and emphasis on experiential learning. The University aims to foster intellectual growth, professional development, and personal enrichment through a blend of rigorous academic programs, research opportunities, and community engagement.

Key attributes of Fairmont State University include:

- **Mission:** To prepare students for professional and personal success through a transformative educational experience grounded in academic excellence, practical application, and community involvement.
- **Values:** Commitment to student success, academic integrity, diversity and inclusion, community engagement, and continuous improvement.
- **Campus:** A vibrant campus community featuring modern facilities, state-of-the-art technology, and a range of student services and extracurricular activities designed to enhance the student experience.
- **Community Impact:** Active engagement with the local community and beyond, emphasizing partnerships, service-learning, and collaborative projects that contribute to regional and global progress.

Fairmont State University is dedicated to fostering an inclusive and dynamic learning environment that equips students with the skills, knowledge, and experience needed to thrive in an ever-changing world increasingly competitive and dynamic private, government and non-profit sectors.

### 1.3 Definitions:

The following definitions will be part of any contract awarded for order placed as result of this RFP.

**Addendum:** Written clarification or revision to this RFP issued by the Fairmont State University Procurement Office.

**Bidder:** An individual or business entity submitting a bid proposal in response to this RFP.

**Contract:** This RFP, any addendum to this RFP, and the bidder’s proposal submitted in response to this RFP, as accepted by Fairmont State University.

**Contractor:** The bidder awarded a contract resulting from the RFP.

**Equipment, Item or Product:** Refers to the purchase unit.

**Institution or Agency:** Fairmont State University

**May:** Denotes that which is permissible, not mandatory.

**Shall or Must:** Denotes that which is a mandatory requirement. Failure to meet a mandatory requirement will result in the rejection of a bid proposal as materially non-responsive.

**Should:** Denotes that which is recommended, not mandatory.

**State:** State of West Virginia

**University, The University, or FSU:** Fairmont State University

**1.4 Acknowledgement:**

By signing and submitting its proposal, the successful Vendor agrees to be bound by all the terms contained in this RFP.

A Request for Proposal (RFP) is generally used for the procurement of services in situations where price is not the sole determining factor, and the award will be based on a combination of cost and technical factors (Best Value). Through its proposal, the bidder offers a solution to the objectives, problem, or need specified in the RFP, and defines how it intends to meet (or exceed) the RFP requirements.

**1.4.1 Compliance with Laws and Regulations:** The Vendor shall procure all necessary permits and licenses to comply with all applicable Federal, State, or municipal laws, along with all regulations, and ordinances of any regulating body.

**1.4.2** The Vendor shall pay any applicable sales, use or personal property taxes arising out of this contract and the transactions contemplated thereby. Any other taxes levied upon this contract shall be borne by the Vendor. It is clearly understood that the State of West Virginia is exempt from any taxes regarding performance of the scope of work of this contract.

**1.5 Schedule of Events:**

RFP Release Date.....	October 7, 2024
Letter of Intent to Bid.....	October 15,2024
Mandatory Pre-Bid Meeting .....	October 16, 2024
Vendor Questions Due .....	October 18, 2024
Addendum Issued (to respond to vendor’s questions).....	October 24, 2024
Bid Opening Date .....	November 5, 2024
Vendor Presentations (top technical scores) .....	November 21-22, 2024
Letter of “intent to award” Issued (tentative) .....	December 6, 2024
Contract Award (tentative) .....	December 20, 2024
Contract Effective Date (tentative).....	December 20, 2024

**1.6 Letter of Intent to Submit a Bid (and attend the mandatory pre-bid conference):**

Vendors planning to submit a bid as a result of this RFP are requested to return the Letter of Intent (page 4 of bid package) by 2:00 p.m. on October 15, 2024.

**1.7 Mandatory Pre-bid Conference:**

There will be a mandatory pre-bid conference at 1:00 p.m. (EST) on October 16, 2024. The pre-bid meeting will be held via Microsoft Teams. All interested bidders are required to be present at this meeting. Failure to attend the mandatory pre-bid conference shall automatically result in disqualification. No one person can represent more than one vendor. Those attending the conference must submit the "Letter of Intent" found on page 4 of the RFP. **The Teams meeting link will be emailed to the contact person listed on the Intent of Bid form.**

**1.8 Vendor Presentations:**

All proposals, information and responses must be submitted in writing. The top vendors who receive the highest technical scores will be asked to make an oral presentation (via Microsoft Teams) to the Evaluation Committee. The oral presentations will tentatively be held on November 21 and 22, 2024.

**1.9 Inquiries:**

Inquiries regarding specifications of this RFP must be submitted in writing to the Director of Procurement. The only exception is for questions regarding the proposal submission which may be oral. The deadline for written inquiries is identified in the Schedule of Events, Section 1.5. All inquiries of specification clarification must be addressed to:

Monica J. Cochran, Director of Procurement – [monica.cochran@fairmontstate.edu](mailto:monica.cochran@fairmontstate.edu)  
Fairmont State University  
Hardway Hall Room 305  
1201 Locust Avenue  
Fairmont, WV 26554

No contact between the Vendor and the University is permitted without the express written consent of the Director of Procurement. Violation may result in rejection of the bid. The Director of Procurement named above is the sole contact for any and all inquiries after this RFP has been released.

**1.10 Response to Vendor's Questions/Inquiries:**

Any vendor questions will be answered in an RFP Addendum which will be distributed (via email notification) to vendors who submitted a Letter of Intent to Bid. The addendum will be released via email notification no later than October 24, 2024. Addendum will also be posted on the Fairmont State University Procurement webpage. Only the written response to questions will be binding.

**1.11 Verbal Communication:**

Any verbal communication between the Vendor and any University personnel is **not** binding. Only information issued in writing and added to the RFP specifications by an official written addendum by Procurement is binding.

**1.12 Addenda:**

If it becomes necessary to revise any part of this RFP, an official written addendum will be issued by the Procurement Office.

## **SECTION 2: PROJECT SCOPE AND SPECIFICATIONS**

### **2.1 General Scope and Objectives:**

The Fairmont State University seeks proposals from qualified Vendors to undertake a comprehensive classification and compensation study. This study aims to evaluate the competitiveness of the University's existing salary and compensation structure relative to peer Institutions and current market conditions. Additionally, the study will analyze internal equity to ensure fair compensation practices within the University. The University expects the selected Vendor to deliver recommendations based on the University's outlined goals and objectives, adhering to the provided guidelines.

### **2.2 Minimum Qualification Requirements:**

Bidders should be able to demonstrate their current capability and possess a record of successful past performance in providing substantially similar products and/or services as those specified in this RFP. Accordingly, prospective Bidders should conform to the following minimum qualification standards and provide the required information in order to be considered for being awarded a contract:

- Minimum of five (5) years of experience providing the required services in this RFP.

### **2.3 Vendor Qualifications, Experience and References:**

Fairmont State desires a Vendor with the organizational experience, size, qualifications and financial stability throughout the contract duration.

### **2.4 Technical Specifications/Scope of Work:**

Provide information detailing the bidder's business and ability to provide the services described in the RFP including:

Fairmont State University seeks proposals from qualified firms to conduct a detailed compensation and pay study. This study will assess whether the University's current salary and compensation framework is competitive in today's market and ensure internal equity. The selected firm will provide recommendations based on the University's strategic goals and guidelines.

#### **2.4.1 Objectives:**

The primary aim of this study is to develop a compensation and pay structure that:

- Aligns with the University's mission, values, and strategic goals.
- Adapts to the changing needs and operational objectives of the University.
- Is competitive within relevant markets and is equitable based on job responsibilities and performance.
- Provides a clear framework for career progression.
- Is transparent and accessible to all employees.
- Ensures effective stewardship of human and fiscal resources.
- Includes guidelines for objective decision-making.



#### 2.4.2 Key Deliverables:

The study will include the following components:

- **Benchmarking Analysis:** Perform a comprehensive market analysis of compensation for all staff, faculty, adjunct, FEAP (Faculty Equivalent Academic Professional), and temporary appointment positions. Compare these categories with similar roles at public higher education institutions in the state of West Virginia, as well as relevant private- and public-sector competitors, considering job titles, duties, and responsibilities. The benchmarking analysis should provide advanced metrics of comparison that allow the university to realistically compare itself to peer institutions in the state of West Virginia while controlling for size (e.g., enrollment, revenue, core expenditures).
- **Compensation Structure:** Develop a competitive, market-based compensation framework for the University.
- **Pay Administration Policies:** Draft policy to ensure fair and consistent pay practices across the University.
- **Appeal Policies and Procedures:** Develop formal policies and procedures to establish a clear process for employees to contest decisions regarding their compensation or job classification.
- **Program Maintenance:** Establish a plan for the ongoing maintenance of the University's classification and compensation program. Provide a recommendation for the frequency of repeat market analysis.
- **Roll-out Schedule:** Provide a three (3) year phased approach to eliminate compression (When organizations adjust their pay scales to remain competitive, new hires may receive salaries that are higher than those of existing employees in similar roles) and internal salary inequities (refers to the fairness and consistency of pay and compensation practices within an organization. It ensures that employees in similar roles, with comparable skills, experience, and performance levels, receive similar compensation).
- **Project Management Reporting:** Submit an electronic monthly status report to the primary contact (to be named) providing a written report on unresolved issues and the overall project progress.
- **Project Completion Date:** Fairmont State's desired project completion date is May 15, 2025

#### 2.4.3 Tasks to be Completed:

The selected firm will:

- **Review and Update Salary Structure:** Assess and update the current salary structure based on study findings and job responsibilities.
- **Analyze Internal Equity:** Conduct an analysis of internal salary relationships and pay equity.
- **Conduct Focus Groups:** Explore and understand employees' views on various aspects of the current compensation system, including fairness, competitiveness, and alignment with organizational goals.
- **Develop Communication and Implementation Strategies:** Work with University departments to:
  1. Develop a strategy for communicating and implementing compensation recommendations.

2. Create a process and instructional materials for conducting individual salary audits and adjustments until the next formal study.
- **Update Job Descriptions:** Review current job descriptions (around 200), recommend revisions to ensure compliance with legal requirements, and document key responsibilities, skills, education, and experience. Develop a maintenance program for job analysis, new job descriptions, and the Pay Classification Plan.
  - **Review Job Types:** Categorize and define requirements (i.e., hours, limitations, etc.) for full-time, part-time, temporary appointments, faculty equivalent academic professionals and other job types
  - **Create a Performance-Based Compensation Structure:** Develop a system linking compensation increases to performance.
  - **Confirm and Present Benchmark Findings:** Verify comparable positions and present benchmark results.
  - **Conduct Financial Analysis:** Analyze the financial implications of the recommended changes.
  - **Prepare Reports and Communication Plan:** Deliver a comprehensive communication plan, including:
    1. A presentation of findings and recommendations to the project team and relevant staff.
    2. A launch plan with an employee kick-off meeting and a strategic communications plan for executive staff, managers, and employees.
    3. A detailed proposal for recommended changes.
    4. A final report with an executive summary of results and recommendations for University Leadership.

All proposed services must meet or exceed the specifications outlined in the RFP by the submission deadline, unless otherwise stated in the competitive solicitation documents.

**SECTION 3: TECHNICAL RESPONSE/SUBMISSION REQUIREMENTS/BID OPENING:**

**3.1 Economy of Preparation:**

Proposals should be prepared simply and economically providing a straightforward, concise description of the Bidder's abilities to satisfy the requirements of the RFP. Emphasis should be placed on the completeness and clarity of the content of the proposal.

**3.2 Incurring Cost:**

Neither the University nor any of its employees or officers shall be held liable for any expenses incurred by any Vendor responding to this RFP, including but not limited to preparation, delivery, or travel.

**3.3 Proposal Format/Content:**

While there is no intent to limit the contents of any proposal, proposals should conform to the tab format outlined below to ensure that all pertinent information necessary for evaluation is included and to facilitate review.

Tab 1. **Cover Letter, Company Description and Attachments** – Provide a cover letter and introduction, including the name of the Bidder, address, telephone number, email address and position of the person or persons authorized to represent the Bidder regarding all matters related to the proposal. The letter should provide a brief company description and address the company's willingness and commitment, if selected, to provide the required services, why the Bidder should be chosen to provide the requested services and what differentiates the Bidder's capabilities from those of its competition. The cover letter shall be signed by a person(s) authorized to bind the Bidder to all commitments made in the proposal. Include Attachment A (Purchasing Affidavit), and Attachment B (Bid Response Certification) under Tab 1.

Tab 2. **Bidder Qualifications and Related Experience** – This section of the proposal should provide a general description of the Bidder's background, nature of business activities, and verifiable past performance providing the required products and/or services. It should explain the ability of the Bidder to satisfactorily perform the required work as a result of (a) experience in performing work of a similar nature to that identified in the RFP; (b) demonstrated experience working with organizations similar to the University; (c) financial strength and stability of the Bidder; (d) current staffing capability and availability; (e) current work load; and (f) proven record of meeting schedules on similar types of work.

Bidder should include information that will address in detail the following areas:

1. Specific experience in providing classification and compensation studies for at least three (3) educational entities, similar in scope, size or discipline to the required services described in the RFP, performed or undertaken within the past five (5) years. Include the organizational names of current and recent clients and the telephone numbers and email addresses for a point of contact for each respective client.

2. Any litigation or investigation by a regulatory authority with which your organization or its officers have been involved in the last five (5) years that relates to compensation and pay studies.

Tab 3. **Project Plan and Methodology** – Identify the technical approach used by your firm to complete the classification and compensation study. This approach should include an explanation of all services that will be performed by your firm and should, at minimum, include the following:

1. **Strategic Communications Plan:** Describe your proposed communication program to ensure an up-to-date understanding by all University staff of the processes and work being conducted by the Consultant and the ultimate outcomes anticipated by the University for this project. Provide interim progress reports (IPRs) to the project point of contact (to be named) that can be shared with all employees.

Describe the tools/resources you propose to use.

Submit a consolidated project schedule/timeline incorporating all tasks of the project. The schedule should be in days or weeks commencing from date of the contract award.

2. **Job Classification System:** Describe the processes you will use to develop a comprehensive job classification system. A comprehensive system will define and develop:
  - Job title definitions
  - minimum requirements
  - minimum duties
  - salary ranges
  - reporting structure
3. **Job Type Definitions:** Describe the processes you will use to categorize and define requirements (i.e., hours, limitations, etc.) for:
  - full-time
  - part-time
  - temporary appointments
  - faculty equivalent academic professionals
  - other job types
4. **Compensation Survey:** Describe the process you will employ to work with the University to formulate and adopt a compensation philosophy.

- Given the list of agencies that have already been determined; describe how you will determine benchmark classifications.
  - Describe how you will compare these benchmarked classifications to the University's classifications.
  - Describe your process to develop the appropriate wage and salary structures.
  - Describe your processes to advise the University on budgetary considerations and consequences as they relate to the proposed recommendations.
5. **Implementation Plan:** Describe your processes to develop an implementation plan for the study.
- Describe actions you will take to train the University's Human Resources staff to maintain the newly implemented classification plan and compensation survey results.
6. **Appeal Process:** Recommend a process for employees to appeal determinations concerning their job classifications and compensation.
7. **Ongoing Classification and Compensation Review:** Recommend a process for regular review and update of classification specifications.

**Tab 4: Proposed Staffing and Project Organization:**

Include resumes of Bidder's key personnel to be assigned to the project with information on their roles and responsibilities and a project organizational chart. The project organizational chart should clearly delineate communication/reporting relationships among the project staff. All key staff will be named in the proposal. Bidder should include a statement that key personnel will be available to the extent proposed for the period of performance. Acknowledge that no person designated as key personnel shall be removed or replaced without the prior written concurrence of the University.

Bidder should include information that will address the following:

1. Clearly identify the person(s) who would be assigned as the Project Manager and key technical personnel. Provide resumes for each. Resumes should indicate the abilities, qualifications, licenses, certifications and experience of these individuals.

**Tab 5: Cost Proposal:**

This section of the RFP should include all cost information. Vendor shall provide information for this tab in a **sealed envelope separate from the technical proposal**.

Bidder will submit a financial proposal which will include the following:

1. A "base bid" that is the Bidder's total cost (labor, materials, equipment, travel, mileage, etc.) in providing the required services.

2. A “cost-loaded schedule” showing the proposed hours of the proposed project team aligned with the milestones and/or specific tasks required for the study.
3. A “payment schedule” for each member of the project team that will be used as reference only for any additional service that may be required by the University outside the scope of the RFP’s Statement of Work.
4. Clearly specify any work that would be considered additional services outside the scope of the RFP.
5. The financial proposal must be signed by an authorized representative of the Bidder’s organization and submitted with the Bidder’s proposal.
6. Although an important aspect of consideration, the financial cost estimate will not be the sole determining factor for award.

### 3.4 Proposal Submission:

Proposals must be received in **two distinct parts**: technical and cost.

- **Part 1: Technical proposals** (tabs 1, 2, 3, and 4) must not contain any cost information relating to the project.
- **Part 2: Cost proposal** (tab 5) shall be sealed in a separate envelope and will not be opened initially.

**3.4.1** All proposals must be submitted to the University **prior** to the date and time stipulated in the RFP as the opening date. All bids will be dated, and time stamped to verify official time and date of receipt.

**3.4.2** Vendors should allow sufficient time for delivery. In accordance with **West Virginia Code** §5A-3-11, the University cannot waive or excuse late receipt of a proposal that is delayed or late for any reason. Any proposal received after the bid opening date and time will be immediately disqualified in accordance with State law.

**3.4.3** Vendors responding to this RFP shall submit:

- One (1) original hardcopy of the technical **and** cost proposal
- One (1) convenience hardcopy of the technical and cost proposal
- One electronic copy of each of the technical and cost proposals submitted on a USB drive.

Submit all items to:

Monica J. Cochran  
Director of Procurement  
Fairmont State University  
Hardway Hall Room 305  
1201 Locust Avenue  
Fairmont, WV 26554

The outside of the envelope or package(s) for both the technical and the cost should be clearly marked:

REQ/RFP #: RFP-443  
Opening Date: November 5, 2024  
Opening Time: 3:00 p.m.

**3.5 Purchasing Affidavit:**

**West Virginia Code** §5A-3-10a requires that all bidders submit an affidavit regarding any debt owed to the State. The affidavit must be signed and submitted prior to award. It is preferred that the affidavit be submitted with the proposal. (ATTACHMENT A)

**3.6 Bid Response Certification:**

Fairmont State University requests vendors to read and sign the Bid Response Certification to declare they have read the RFP and the proposal is submitted on the basis that the vendor agrees to all specifications contained therein. (ATTACHMENT B)

**3.7 Technical Bid Opening:**

The Procurement Office will open and announce only the technical proposals received prior to the date and time specified in the Request for Proposal. The technical proposals shall then be provided to the evaluation committee.

**3.8 Cost Bid Opening:**

After the evaluation and scoring of the technical proposals, the Procurement Office will open the cost proposals. All cost bids for qualifying proposals will be opened. Cost bids for non-qualifying proposals will not be opened. A proposal may be deemed non-qualifying for a number of reasons including, but not limited to, the Bidder's technical proposal failing to meet the minimum acceptable score and/or the bidder's technical proposal failing to meet a mandatory requirement of the contract. Certain information, such as technical scores and reasons for disqualification, will not be available until after the contract award, pursuant to **West Virginia Code** §5A-3-11(h) and **West Virginia Code of State Rules** §148-1-6.2.5.

**SECTION 4: EVALUATION AND AWARD**

**4.1 Evaluation Process:**

Proposals will be evaluated against the RFP criteria by a committee of at least three (3) individuals. The Vendor who demonstrates that they meet all the mandatory specifications required; has appropriately presented within their written response and/or during the oral demonstration (if applicable) their understanding in meeting the goals and objectives of the project; and attains the highest overall point score of all Bidders shall be awarded the contract. The selection of the successful Bidder will be made by consensus of the evaluation committee.

**4.2 Evaluation Criteria:**

All evaluation criteria are defined in the specifications section and based on a 100-point total score. Cost shall represent a minimum of 30 of the 100 total points.

**Step 1: Technical Proposal Evaluation 70 Points**

The following are the evaluation factors and maximum points possible for technical point scores:

- Bidder Qualifications and Related Experience (Tab 2)..... 25 Points
- Project Plan and Methodology (Tab 3)..... 30 Points
- Proposed Staffing and Project Organization (Tab 4)..... 15 Points

**Step 2: Financial/Revenue Proposal (Tab 5) 30 Points**

Points for cost will be determined by the following formula for all Vendors who attained the minimum acceptable score:

$$\frac{\text{Low Bid}}{\text{Bid being evaluated}} = X \ 30 = \text{Cost Score}$$

**4.2.1 Technical Evaluation:** The University evaluation committee will review the technical proposals and make a final recommendation to the Procurement Office.

**4.2.2 Minimum Acceptable Score:** Vendors must score a minimum of 70 percent of the total technical points possible. The minimum qualifying score on the technical portion is 49 points in order to be eligible for Oral Presentations. All vendors not attaining the minimum acceptable score (MAS) will be disqualified and removed from further consideration. A proposal may be deemed non-qualifying for a number of reasons including, but not limited to, the Bidder’s technical proposal failing to meet the minimum acceptable score and/or failing to meet a mandatory requirement of the contract. Certain information, such as technical scores and reasons for disqualification, will not be available until after the contract award, pursuant to *West Virginia Code* §5A-3-11(h) and *West Virginia Code of State Rules* §148-1-6.2.5.

**4.2.3 Cost Evaluation:** The Procurement Office will review the cost proposals, assign appropriate points, and make a final recommendation of award.



**4.3 Independent Price Determination:**

A proposal will not be considered for award if the price in the proposal was not arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to prices with any competitor unless the proposal is submitted as a joint venture.

**4.4 Rejection of Proposals:**

The University reserves the right to accept or reject any or all proposals, in part or in whole, at its discretion. The University further reserves the right to withdraw this RFP at any time and for any reason. Submission of or receipt of proposals by the University confers no rights upon the Bidder nor obligates the University in any manner.

**4.5 Vendor Registration:**

Prior to contract award, Vendor must be registered (and pay the applicable registration fee) with the State of West Virginia Purchasing Division. **Vendors are strongly encouraged to register with the State of West Virginia through the Vendor Self-Service portal**, which may be accessed at [wvOASIS.gov](http://wvOASIS.gov). Vendors may also register by completing a WV-1 **Vendor Registration & Disclosure Statement and Small, Women, & Minority-Owned Business Certification** form, available for download through <http://www.state.wv.us/admin/purchase/forms.html>. A completed registration can be processed for a vendor through either the electronic or paper form method.

**4.6 Registration with the WV Secretary of State's Office:**

Unless a waiver is obtained from the Secretary of State's Office, every vendor organized as a business entity must have a certificate of authority and be in good standing with the WV Secretary of State's Office. The Secretary of State requirement applies generally to businesses that operate as separate legal entities and does not apply to sole proprietors and general partnerships.  
<https://sos.wv.gov/Pages/default.aspx>

## SECTION 5: CONTRACT TERMS AND CONDITIONS

### 5.1 Contract Provisions:

The RFP and the Vendor's response will be incorporated into the contract by reference. The order of precedence shall be the contract, the RFP and any addendum, and the vendor's proposal in response to the RFP.

### 5.2 Public Record:

All documents submitted to the University related to purchase orders or contracts are considered public records. All bids, proposals, or offers submitted by Vendors shall become public information and are available for inspection during normal official business hours in the Fairmont State University Procurement Office.

Certain information, such as technical scores and reasons for disqualification, will not be available until after the contract award, pursuant to *West Virginia Code* §5A-3-11(h) and *West Virginia Code of State Rules* §148-1-6.2.5.

5.2.1 Risk of Disclosure: The only exemptions to disclosure of information are listed in *West Virginia Code* §29B-1-4. Any information considered a trade secret must be separated from the Vendor submission and clearly labeled as such. Primarily, only trade secrets, as submitted by a Bidder, are exempt from public disclosure. The submission of any information to the State by a Vendor puts the risk of disclosure on the Vendor. The University does not guarantee non-disclosure of any information to the public.

5.2.2 Written Release of Information: All public information may be released with or without a Freedom of Information request; however, only a written request will be acted upon with duplication fees paid in advance. Duplication fees shall apply to all requests for copies of any document. The duplication fee is 30 cents per page.

### 5.3 Conflict of Interest:

Vendor affirms that neither it nor its representatives have any interest nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the University.

### 5.4 Vendor Relationship:

The relationship of the Vendor with the University 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 RFP and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the University for any purpose whatsoever.

Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, *et cetera* and the filing of all necessary documents, forms and returns pertinent to all of the foregoing.

Vendor shall hold harmless the University and shall provide the University with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

The Vendor shall not assign, convey, transfer, or delegate any of its responsibilities and obligations under this contract to any person, corporation, partnership, association, or entity without the expressed written consent of the University.

- 5.4.1** Subcontracts/Joint Ventures: The Vendor may, with the prior written consent of the University, enter into subcontracts for performance of work under this contract.
- 5.4.2** Indemnification: The Vendor agrees to indemnify, defend, and hold harmless the State and the University, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the contract in a manner not authorized by the contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage laws.
- 5.4.3** Governing Law: This contract shall be governed by the laws of the State of West Virginia. The Vendor further agrees to comply with the Civil Rights Act of 1964 and all other applicable laws and regulations as provided by Federal, State, and local governments.

**5.5 Non-Appropriation of Funds:**

If funds are not appropriated for the University in any succeeding fiscal year for the continued use of the services covered by this contract, the University may terminate the contract at the end of the affected current fiscal period without further charge or penalty. The University shall give the Vendor written notice of such non-appropriation of funds as soon as possible after the University receives notice. No penalty shall accrue to the University in the event this provision is exercised.

**5.6 Changes:**

If changes to the contract become necessary, a formal contract change order will be negotiated by the University 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 PROCUREMENT OFFICE.**

**5.7 Invoices:**

The Vendor shall submit invoices, in arrears, to the University at the address on the face of the purchase order labeled "Invoice To."

**5.8 Purchasing Card Acceptance:**

Fairmont State University currently utilizes a Purchasing Card Program, administered by the State of WV under contract by a banking institution, to process payment for goods and services. The Vendor should accept both the Purchasing Card and Purchase Orders for orders under this contract.

**5.9 Liquidated Damages: *Not applicable***

**5.10 Contract Termination:**

The contract may be terminated by Fairmont State University with thirty (30) days prior notice pursuant to **West Virginia Code of State Rules § 148-1-7.16.2**. Fairmont State University shall be obligated only for services rendered and accepted prior to the date of the notice of termination.

**5.11 Special Terms and Conditions:**

The apparent successful vendor shall furnish proof of the insurance identified below and must include the University as an additional insured on each policy prior to contract award. The insurance coverage identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, vendor shall provide the University with proof that the insurance mandated herein has been continued. Vendor must also provide the University with immediate notice of any changes in its insurance policies, including but not limited to, policy cancellation, policy reduction, or change in insurers. The apparent successful vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to the contract award.

**5.11.1 Bid and Performance Bonds:** *Not Applicable*

**5.11.2 Insurance Requirements:**

**Comprehensive General Liability Coverage** with \$1,000,000 limit of liability.

**Cyber Liability** with \$3,000,000 of liability or greater in the event the vendor has access to sensitive data, PII or PHI.

**Auto Coverage** with \$1,000,000 limit of liability in the event the vendor's operation involves the use of a vehicle in conjunction with the proposed contract and the vehicle would be used on state property. If the vendor is sending goods via postal delivery or other delivery carrier, Auto coverage is not needed;

**Workers' Compensation Coverage** as required by law, with Employers Liability Coverage included should the vendor's employees be performing services in WV.

**5.11.3 License Requirement:** *Not Applicable*

**5.11.4 Protest Bond:** *Not Applicable*

**5.12 Record Retention (Access and Confidentiality):**

Vendor shall comply with all applicable Federal and State rules, regulations, and requirements governing the maintenance of documentation to verify any cost of services or commodities rendered under this contract by the Vendor. The Vendor shall maintain such records a minimum of five (5) years and make such records available to university personnel at the Vendor's location during normal business hours upon written request by the University within ten (10) days after receipt of the request.

Vendor shall have access to private and confidential data maintained by the University to the extent required for the Vendor to carry out the duties and responsibilities defined in this contract. The Vendor agrees to maintain confidentiality and security of the data made available and shall indemnify and hold harmless the State and the University against any and all claims brought by any party attributed to actions of breach of confidentiality by the Vendor, subcontractors, or individuals permitted access by the Vendor.

**5.13 Agreement Addendum Form WV-96:**

If it is the intent of the apparent successful vendor to require the State to execute the vendor's contract, such contract must be attached for consideration with the proposal. **It will also be a requirement of the successful vendor to sign the "Agreement Addendum" form (WV-96),** which is attached for your review (ATTACHMENT C).

**SECTION 6: Cost Proposals/Financial Consideration:**

The Vendor must identify all costs, fees or charges for which Fairmont State University will be billed. Costs not indicated in your proposal will not be paid.

- 6.1 The cost proposal should be labeled Tab 5 and submitted in a sealed envelope **separate from the technical proposal.**

Bidder will submit a financial proposal which will include the following:

1. A “base bid” which is the Bidder’s total cost (labor, materials, equipment, travel, mileage, etc.) in providing the required services.
2. A “cost loaded schedule” showing the proposed hours of the proposed project team aligned with the milestones and/or specific tasks required for the study.
3. A “payment schedule” for each member of the project team that will be used as reference only for any additional service that may be required by the University outside the scope of the RFP’s Statement of Work.
4. Based on the RFP scope, clearly specify any work that would be considered additional services.
5. The financial proposal must be signed by an authorized representative of the Bidder’s organization and submitted with the Bidder’s proposal.
6. Although an important aspect of consideration, the financial cost estimate will not be the sole determining factor for contract award.

# ATTACHMENT A: PURCHASING AFFIDAVIT

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

STATE OF WEST VIRGINIA  
Purchasing Division

## PURCHASING AFFIDAVIT

**CONSTRUCTION CONTRACTS:** Under W. Va. Code § 5-22-1(j), 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** \_\_\_\_\_

*Purchasing Affidavit (Revised 01/10/2018)*

## ATTACHMENT B: BID RESPONSE CERTIFICATION

\_\_\_\_\_  
DATE

The undersigned, as bidder, declares that he/she has read the Request for Bids and the following bid is submitted on the basis that the undersigned, the company and its employees or agents, shall meet, or agree to, all specifications contained therein. It is further acknowledged addenda numbers \_\_\_\_\_ to \_\_\_\_\_ have been received and were examined as part of the RFP document.

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Signature of Bidder

\_\_\_\_\_  
Title

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
FEIN

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Email



## ATTACHMENT C: ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS (WV96)

<http://www.state.wv.us/admin/purchase/vrc/wv96.pdf>

WV-96  
1/1/2019

### STATE OF WEST VIRGINIA ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS

State Agency, Board, or Commission (the "State"):

Vendor:

Contract/Lease Number ("Contract"):

Commodity/Service:

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

- ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**
- PAYMENT** – Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.  
Any language imposing any interest or charges due to late payment is deleted.
- FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.
- RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.  
Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.
- DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.  
Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.  
Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.
- FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.
- GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.
- RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
- LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.
- TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
- NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

WV-96  
1/1/2019

- 12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
- 13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State’s prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
- 14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
- 15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor’s benefit is deleted.
- 16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
- 17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
- 18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act (“FOIA”) (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State’s sole discretion.  
  
Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.
- 19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software’s terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
- 20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~striethrough~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General’s authorized representative expressly agree to and knowingly approve those alterations.

State: \_\_\_\_\_  
 By: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

Vendor: \_\_\_\_\_  
 By: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_