MEMORANDUM

April 7, 2009

TO:       Deans, Directors, and Department Heads
          College Business Officers
          Research Faculty and Staff

FROM:    Curt M. Peterson, President
          WVU Research Corporation and
          VP for Research and Economic Development

RE:       Revised WVURC Procurement Manual

The WVU Research Corporation (WVURC) is pleased to provide a revised version of the "WVU Research Corporation Procurement Manual" effective April 15, 2009. The attached manual will serve as a guide for Deans, Directors, Department Heads, Business Officers, Research Faculty and Staff who want to procure goods and services on Research Corporation accounts.

Significant modifications and enhancements have been added to the manual to ensure flexibility and efficiency throughout the acquisition process. College based personnel possess the capability to actively seek the best value for goods and services from an on-line user friendly quote system, as opposed to the existing formal bid process. The threshold for formal sealed bidding was elevated from $25,000 to $100,000. Faculty, Researchers and Staff now have the option to run full and open competition at the department level or seek assistance from Purchasing, Contracts, and Payment Services (PC&PS) to obtain vendor quotes. The formal competitive bid process is no longer required for purchases less than $100,000. All purchases between $25,000 and $100,000 will require three vendor quotes and subsequently considered proof of due diligence and awarded to the lowest offeror. The purchase order will be issued by PC&PS upon receipt of the three quotes from the Purchaser. For purchases less than $25,000, the quote from the selected vendor can be forwarded to PC&PS with the requisition.

The "MAP-Mountaineer Virtual Purchasing" or "MVP" on-line purchasing module is now the preferred process available to the WVURC to acquire commodities. MVP is a high-tech business tool acquired by WVU to help scientists, researchers and business office staff to obtain equipment, chemicals, computers and office supplies quickly and easily. It features an e-Commerce portal that accesses an exclusive list of vendors that have contracts with WVU and/or WVURC, offers a search capability to over 300 non-
contract vendor catalogs and is the preferred source to acquire quotes for purchases less than $100,000. Orders may be placed with contract vendors without limitation; and with no bidding requirements. MVP will eliminate the need for PAPER documentation and file retention, since you can search, view, compare prices, select, requisition, obtain approval, place order, and complete receiving exclusively on-line.

Request for Proposals (RFPs) may be warranted when an award cannot be issued based on price alone, especially when a Request for Bids (RFB) would fail to take into consideration several relevant factors such as quality, performance, enhancements, implementation plans, timelines, or life cycle costs of research equipment or services. This process provides researchers an opportunity to advertise for a product based on the requirements to be fulfilled rather than a specific product’s specification and develops creative options for consideration.

The only contracts that will require legal review are contracts that do not conform to the WVURC standard terms and conditions (available in MAP under WVURC forms) or exceed $500,000. However, a legal review can be requested for any contract.

The revised threshold amounts are attached for quick reference. Users are encouraged to refer to the MAP web site for any changes, updates, revisions or additions which may occur after the printing of this manual.

We hope that users throughout the University will find the WVURC Procurement Manual a valuable source of information. Please feel free to contact PC&PS (304-293-5711) with specific questions concerning procedures outlined in the Manual.

Attached:  WVURC Procurement Manual
**WEST VIRGINIA UNIVERSITY RESEARCH CORPORATION PURCHASING THRESHOLDS**

<table>
<thead>
<tr>
<th>Purchases</th>
<th>Action Required</th>
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<tr>
<td>$0 - $5,000</td>
<td>payment via p-Card is authorized</td>
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| $0 - $24,999.99 | informal bidding  
(submit selected quote or bid only to PC&PS w/requisition)     |
| $25,000 - $99,999.99 | formal bidding  
(three bids or quotes submitted to PC&PS w/requisition) |
| $100,000 +    | full and open competition – formal advertisement                                  |
| $500,000 +    | legal review required by WVURC Legal Counsel                                      |

**MVP**

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<tr>
<td>$0 +</td>
<td>no bidding required – contract vendors</td>
</tr>
<tr>
<td>$0 - $99,999.99</td>
<td>non-contract vendors, search results substitute for bids or quotes</td>
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WEST VIRGINIA UNIVERSITY RESEARCH CORPORATION

WVURC PROCUREMENT "MANUAL"

April 15, 2009
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APPROVED BY:  

Curt M. Peterson, WVURC President

Date 4/06/09
SECTION I – GENERAL INFORMATION

A) SCOPE

This Procurement Manual has been designed to provide West Virginia University (WVU) faculty and staff, and West Virginia University Research Corporation (WVURC) employees a system-wide guide that outlines specific policies and procedures for procurement activities funded from WVURC funds and to insure the proper management and disposal of all surplus, obsolete or unusable materials and equipment. Purchasers shall follow this Procurement Manual unless more restrictive contract/grant terms or policies prevail. It is the responsibility of the principal investigators (PIs) to insure that procurement transactions are completed in accordance with all applicable contract/grant restrictions and requirements. In the case of purchases using multiple sources of funds, such as Federal Contracts, Grants or State allocations, the most restrictive procurement policies and procedures shall prevail. (For Example: Federal OMB Circular A-110 “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.)

B) AUTHORITY

Pursuant to WV State Code §18B-12-1 through §18B-12-10, the WVURC is a legal entity with the authority to purchase and acquire materials, equipment and services and to dispose of surplus, obsolete and unusable materials, and equipment.

C) OPERATIONS AGREEMENT

The Operations Agreement between WVU and WVURC provides that WVU will furnish administrative services to WVURC. These services include the administration of the procurement activities of the WVURC, designating the WVU Chief Procurement Officer (CPO) as the Chief Procurement Officer for the WVURC and assisting in the development and maintenance of the WVURC Procurement Manual. The WVURC Procurement Manual and any amendments or revisions thereto shall be reviewed, approved and implemented by the WVURC President.

D) DEVIATIONS FROM THE PROCUREMENT MANUAL

The WVURC President or the WVURC Chief Procurement Officer may approve a deviation from the Procurement Manual when it is clearly documented that it is in the best interest of the WVURC and the WVU research and economic development missions.
E) LEGAL SERVICES

Units that require legal services or legal guidance for any WVURC acquisition or to meet the legal requirements of this Procurement Manual should contact the WVURC General Counsel Office (304-293-0391). Individuals shall not engage the services of outside legal counsel or law firms for any reason when WVURC funds are being used as payment. Responsibility for the interpretation of this manual rests with the WVURC (WVU) CPO and users are encouraged to contact the WVU Procurement and Contract Management (304-293-5711) with questions.

F) DEFINITIONS

Addendum: amendment, note plural is addenda.

Bid: offer price for work or to indicate a willingness to buy or sell goods; to offer to do a piece of work for a specific price and within a specific timeframe.

Bid Sample: sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

Business: corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

Change Order: written document approved by a Procurement Officer and used to change a contract previously formalized by a purchase order.

Commodity: supplies, material, equipment, contractual services, and any articles or things used by or furnished to WVURC.

Contract: contractual agreement, regardless of what it may be called, for the procurement of materials, supplies, equipment, services, printing, construction, or the disposition of same.

Contract Modification: written alteration of the specification, delivery point, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of parties to the contract.

Contractor: individual having a contract with the WVURC.

Data: recorded information, regardless of form or characteristic.

Descriptive Literature: information available in the ordinary course of business which describes the characteristics, construction, or operation of an item which enables the WVURC to consider whether the item meets its needs.
Designee: duly-authorized representative of a person holding a position.

May: denotes the permissive.

Opening: date set for opening of bids or proposals.

Open-End: agreement or contract that allows a buyer to obtain a service or make purchases over a period of time without a change in the price or terms by the seller.

Person: business, individual, union, committee, club, or other organization, or group of individuals.

Pre-Award Survey: tool utilized to ensure that items purchased are “not otherwise reasonably available or accessible on the WVU Campus (required by OMB A110).

Procurement: buying, purchasing, renting, leasing, or otherwise acquiring any materials, equipment, services, or construction. It also includes all functions that pertain to the obtaining of said commodities, including description of requirements, selection, and solicitation of sources, and administration.

Procurement Officer or Buyer: individual duly authorized by the WVURC President and the WVURC Chief Procurement Officer to enter into and administer contracts, and make written determinations with respect thereto. The Procurement Officer or Buyer must act within his/her limits of authority.

Protestor: actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or the award of a contract and who files a protest.

Responsible Bidder or Offeror: individual who has the capability in all respects to perform contract requirements, and the integrity and reliability which will assure good faith performance.

Responsive Bidder: person who has submitted a bid which conforms in all material respects to the “Requests for Bid” (RFP).

Services: furnishing of labor, time, or effort by a contractor, business, or individual.

Shall: denotes the imperative.

Spending Unit: WVURC or any sponsored research agreement/contract or program under its management.

Supplies: all property, including but not limited to equipment, materials or printing.
WVU Chief Procurement Officer (WVU CPO): official having authority for all WVU procurement activities and designated by the WVURC President to plan, organize and direct the procurement operations of the WVURC.

Will: denotes the imperative.

SECTION II – DUTIES AND RESPONSIBILITIES

A) WVURC PRESIDENT OR WVURC CHIEF PROCUREMENT OFFICER OR THEIR DESIGNEES SHALL:

1. Ensure compliance with the WVURC Procurement Manual.

2. Ensure that all procurement activities, to the maximum extent practical, are conducted in a manner that provides open and free competition.

3. Manage or supervise the procurement of all materials, equipment, services, or construction required by the WVURC.

4. Develop and implement contract provisions.

5. Waive minor irregularities in bids, bidding documents and/or specifications.

6. Listen to and render opinions on vendor complaints and protests.

7. Incorporate goals for participation by small, woman owned & minority and/or disadvantaged businesses, when required by funding agencies.

8. Maintain all WVURC procurement records.

9. Declare a vendor to be non-responsible or non-responsive and refuse to award the contract to the vendor; and proceed to award the contract to the next lowest bidder. All such instances shall be documented in the procurement file.

10. Terminate a contract and award the contract to the next lowest bidder when a vendor fails to honor any material contract terms or conditions.

B) DELEGATION OF AUTHORITY

The WVURC President or WVURC Chief Procurement Officer may delegate or revoke WVURC procurement authority at his or her discretion. When procurement authority is delegated to any individual or revoked, the WVURC President or WVURC Chief Procurement Officer shall provide written notification to the WVURC Executive Committee.
SECTION III – GENERAL REGULATIONS

A) WVU, FEDERAL AND OPEN END CONTRACTS

1. WVURC may procure materials, equipment, services, or construction through current WVU State contracts in accordance with the terms and conditions of said contracts.

2. WVURC may procure materials, equipment, services and construction from the Federal government and through Federal government contracts.

3. WVURC may also enter into contracts for materials, equipment, services and construction to supply their respective needs in the form of open-end contracts, blanket orders or price agreements. Once issued, purchases may be completed directly from these contracts.

4. When feasible, the procurement of supplies may be made using the Mountaineer Virtual Purchasing System (MAP MVP). The system automatically routes orders to vendor sites that have contracts with WVURC.

5. Equipment assets to be purchased with federal grant/contract funds will be subjected to Pre Award Survey (PAS).
   a. Equipment assets with an acquisition cost of $5,000 to $10,000 will be subjected to PAS within the requestor’s College.
   b. Equipment assets with an acquisition cost greater than $10,000 will be subjected to PAS University-Wide.
   c. Equipment assets that require screening at the federal level are as follows:
      • $25,000 or > Data Processing Equipment
      • $10,000 or > Plant Equipment
      • $ 5,000 or > NASA Equipment
   d. Procurement Services can provide additional information and guidance.

B) CONTRACT EXECUTION

Contracts shall be signed on behalf of the WVURC by the WVURC President or the WVURC Chief Procurement Officer or their designee(s). Contracts signed by the WVURC President shall be forwarded to the WVURC Chief Procurement Officer for implementation and maintenance in the procurement files.
C) APPROVAL BY WVURC GENERAL COUNSEL

1. Contracts less than $250,000 in cost which make use of the WVURC standard forms, terms and conditions previously approved by the WVURC General Counsel; and do not make substantive changes in the standard forms, terms and conditions will not require additional review and approval by the WVURC General Counsel.

2. Contracts less than $250,000 in cost which do not make use of the WVURC standard forms, terms and conditions previously approved by the WVURC General Counsel, or which materially alter or modify the standard forms, terms and conditions; shall be submitted to the WVURC General Counsel for review and approval.

3. All contracts of $250,000 and greater in cost shall be submitted to the WVURC General Counsel for review and approval.

D) EXTENSION OF TIME FOR BID OR PROPOSAL ACCEPTANCE

After a Bid or Proposal is opened, the WVURC may request to extend the time during which bids or proposals are accepted from the bidders or offerors. WVURC shall document the reason(s) for such time extensions in the procurement file.

E) ONLY ONE BID OR PROPOSAL RECEIVED

When only one responsive bid is received in response to the “Request for Bids,” an award may be made to the single bidder if the WVURC Procurement Officer finds that the price submitted is fair and reasonable. The WVURC Chief Procurement Officer shall negotiate in the best interest of the WVURC and insert a cost and price analysis memo into the file.

F) BID AND PERFORMANCE BONDS

Bid and performance bonds or other security may be required for contracts in order to protect the interest of the WVURC. Any such requirements must be set forth in the solicitation.

G) SPECIFICATIONS

1. Specification denotes a clear and accurate description of the physical, functional, or performance characteristics or the nature of the materials, supplies, services, equipment, or construction to be procured. Specifications may include; as appropriate, requirements for inspecting, testing, or preparing the commodity for delivery. Unless the context requires otherwise, the terms “specification” and “purchase description” are used interchangeably throughout the Procurement Manual. Specifications provide the basis for obtaining commodities (products) and services suitable for the needs of the WVURC in a cost effective manner.
2. Specifications must not be restrictive and "lock-in/lock-out" a specific product, and thus, limit competition, or be so vague as to allow a vendor to provide a lower quality product or service. Specifications must be reasonable, legible, and clearly understandable to both the seller and the purchaser; concise but complete; and identifiable wherever possible with some brand or specification already on the market, or approved equal.

Specifications shall include...

- type of product or service
- quality level
- special requirements in design
- performance
- delivery
- usage

3. There are at least three types of specifications used separately and/or in combination to communicate requirements for goods and services to the vendor. These include...

   a. "Brand name or approved equivalent" specification is based on one or more of a manufacturer's commodity or product description(s), model number(s) and quality level(s). The manufacturer's commodity or product number(s) must be easily identified and available in a current publication that is available to most vendors. Commodity or product descriptions must be sufficiently detailed and specify only the required features needed for the application.

   b. "Performance" specification is based on the specific performance needs of the purchaser. A performance specification is not structured as to how the product is made, but rather as to how it performs. Life cycle cost for operating and maintaining the product should be an element of the specification.

   c. "Design" specification concentrates on the dimensional, physical and functional requirements of the item being purchased. The design specification is used when the commodity has to be specially made to meet the purchaser's unique needs.

4. Combinations of the above may be used to communicate a clear specification to vendors. Performance specification may refer to a nationally accepted testing procedure for a commodity; a design specification may indicate the physical size and dimension of the commodity; and a brand name or approved equivalent may be used to indicate a desired quality level.

5. Specifications should be prepared in a consistent format each time a procurement requisition is submitted to Procurement.
a. Format shall include:

- Quantity
- Unit of Measure (e.g. “case”, “each”, “dozen” etc.)
- Description (name of the commodity or product if using a brand name or approved equivalent)
- Manufacturer
- Model Number.

b. After the brand name, the language “or approved equivalent” shall be inserted to inform vendors that alternate, but equivalent materials or products, will be considered. The description should contain the essential requirements that clarify the quality level or indicate the features that are important to the function of the item/service being purchased.

**H) REQUISITIONS**

Requisitions are one means to initiate the procurement process.

There are four types of requisitions:

- “Requests for Quotations” (RFQ)
- “Requests for Bids” (RFB)
- “Requests for Proposals” (RFP)
- “Requests for Expressions of Interest” (RFOI)

**I) LIABILITY FOR COST OF BIDS OR PROPOSALS**

WVURC shall not be liable for any expense incurred by vendors in the preparation and/or presentation of bids or proposals.

**NOTE:** The WVURC President and his/her designee(s) are the only individuals authorized to sign and execute binding WVURC service agreements, contractual agreements or contracts (e.g. consultants, subcontractors, suppliers, vendors, etc.)

**SECTION IV—WVURC QUOTE AND BID LIMITS**

**4) PROCUREMENTS LESS THAN $25,000 (excludes consulting services—see Section V)**

1. Obtain quotes to determine the price for procurement of materials, equipment, services or construction. Competition is conducted at the department level. Support for the process of obtaining quotes or full and open competition can be provided by the WVU Procurement Office upon request.
2. Procurement file shall contain the following information at a **minimum**...
   a. Vendor’s name and address
   b. Description of product or service requested
   c. Unit and extended price for each item

3. WVURC requisition must be generated and approved in MAP by the applicable department or purchasing unit and forwarded to the Procurement Office for assignment of a WVURC Purchase Order Number.

   Quotations at a minimum shall contain...
   - Complete description of services or product
   - Vendor’s name and address
   - Name of individual providing quote
   - Shipping Instructions
   - Price

4. Items costing less than $5,000 may be purchased using the WVU Procurement card. All applicable WVURC Procurement card policies and procedures apply and appropriate documentation maintained in the department procurement files.

**B) PURCHASES $25,000 AND LESS THAN $100,000**

5. WVURC may, but is not required, to openly advertise for bids at this level.

6. Support for the process of obtaining quotes or full and open competition is provided by the WVU Procurement Office upon request.

7. Minimum of three qualified vendors shall be solicited to submit written or electronic bids/quotes for the purchase of materials, equipment or services. Each bid must be recorded and maintained in the procurement file. An award shall be made to the responsible and responsive vendor submitting the lowest acceptable quotation. All quotations received shall be forwarded to the Procurement Office.

8. Requisition must be generated and approved in MAP by the applicable department or purchasing unit and forwarded to the Procurement Office for processing and assignment of a WVURC Purchase Order Number.

   Quotations at a minimum shall contain the following...
a. Complete description of each service or product
b. Vendor’s name and address
c. Name of person providing quote
d. Shipping instructions
e. Quantity, Unit Price and Total Price

9. Error(s) in quotation...

When an error occurs in a quote and it is clearly evident, the quotation can be corrected and shall not be withdrawn. An illustration of an error on a quote that may be clearly evident on the face document may be a typographical mistake, a mistake when extending the unit price, transposition of letters or number, and mathematical mistakes.

10. Procurement file shall contain the following at a minimum...

a. Vendor’s name and address
b. Description of each product or service
c. Unit and extended price for each item
d. Quotation(s) or Sole Source Justification Request (See Section IX)

C) PURCHASES $100,000 AND GREATER

1. Open (advertised) and competitive bidding is required for purchases of materials, equipment or services for WVURC purchases that total $100,000 and Greater. Exception to this rule will require the written approval of the WVURC President or WVURC Chief Procurement Officer.

2. “Request for Bids (RFB)”...

a. Shall include space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other applicable submissions such as bid samples and descriptive literature.

b. Will be considered upon receipt at the designated office in accordance with the date and time deadline established for the receipt of bids. Such bids shall contain specific reference to the “Request for Bid,” quantities, and prices for which the bid is submitted.
c. Bid samples or descriptive literature may be required

d. Bidding period will be set to provide bidders a minimum of ten (10) calendar days to prepare bids.

e. Confidential, proprietary, or trade secret information within a bid must be so designated in writing by the bidder when the bid is submitted to Procurement. This designation may not be claimed by a bidder after bids have been opened. Information or data so designated shall be clearly marked or stamped as “CONFIDENTIAL” and readily separable from the portion of the bid which is not confidential.

3. Public advertising for bids $100,000 and Greater

RFBs that total $100,000 and Greater shall be publicized at least ten (10) days prior to the posted bid opening date in at least one of the following:

- newspaper
- industry media
- government publication
- University Procurement Office website

4. Pre-bid conferences...

Pre-bid conferences may be conducted to explain the procurement requirements. Conferences should occur within a reasonable period of time after the RFB has been issued to allow bidders the opportunity to become familiar the product or service requested, but in ample time prior to bid opening, to allow consideration of the conference outcome in bid preparation. Nothing stated at the pre-bid conferences shall change the RFB unless a change order is processed by written addenda.

5. Addenda to “Request for Bids (RFB)” shall be...

a. Identified as such and shall require that the bidder acknowledge receipt of all addenda that are issued. The addenda shall reference the section of the RFB it amended.

b. Sent to all prospective bidders who received a RFB.
c. Distributed to perspective bidders within a reasonable time period in order to allow them to prepare comprehensive bids. When the date set for receipt of bids does not permit enough time for bidders to consider the addenda, the deadline date for receipt of bids shall be extended as needed. The extended date for receipt of bids shall be noted in the addenda.

d. Used to...

- Make any modifications to the RFB such as changes in quantity, purchase descriptions, delivery schedules, and bid opening dates;
- Correct defects or ambiguities; or
- Provide additional information.

6. Pre-opening modification or withdrawal of “Request for Bids (RFB)”...

a. Formal bids may be modified or withdrawn by submitting a written notification to Procurement and it must be received at the location recorded in the RFB and prior to the deadline date and time recorded for opening of the bids.

   **Note:** Fax or electronic notification is permitted.

b. If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.

c. All documents relating to the modification or withdrawal of bids shall be added to the procurement file.

7. Receipt, opening, and recording of Bids...

a. Any bid received after the time and date designated for receipt of bids will be considered late and withdrawn from the bid process. When a bid or modification is received in the Procurement Office it shall be date and time stamped but not opened. It will remain unopened until the date and time recorded for the opening of bids takes place.

b. Bids and modifications shall be opened, in the presence of one or more witnesses, at the date, time, and place as recorded in the RFB. The name of each bidder, the bidder’s bid price, and other information as deemed appropriate shall be read aloud and recorded.
8. Error(s) on Bids...

a. Bidders have the opportunity to correct any errors discovered prior to the date and time recorded for the opening of bids by withdrawing or modifying the bid as provided in Section IV.C.6. Pre-Opening Modification or Withdrawal of RFB.

b. When the WVURC Procurement Officer has reason to believe that an error has been recorded on a bid, such officer should request the bidder to confirm the bid information. Situations in which confirmation may be requested by the Procurement Office may include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted.

c. This section sets forth procedures to be applied in situations described below in which errors in bids are discovered after the bid opening, but before the award of the bid. Minor errors may include matters of form rather than substance evident from the bid documents and substantive mistakes in which the effect on price, quantity, quality, or contractual conditions is negligible. The WVURC Procurement Officer shall waive such minor errors or allow bidders to correct errors when it is in the best interest of the WVURC to do so. Examples of minor bid errors that may be waived or corrected include...

- Failure of a bidder to acknowledge receipt of an amendment, but only if:
- Evidence on the face of the bid document indicated that the bidder received the addendum and intended to be bound by its terms; or
- Addendum in question had a negligible impact on price, quantity, quality, or delivery.

9. Bid Evaluation and Award...

a. The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the RFB. The RFB shall set forth the requirements and criteria which will be used to determine the lowest responsive bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the RFB.

b. In determining the lowest responsible and responsive vendor, consideration will be given to such factors as quality (meeting specifications), price, time of delivery, cost of delivery, and other terms and conditions considered prudent. Unit prices shall prevail in all cases when there is a conflict between the unit price and the extended price. No bid shall be evaluated for any requirements or criteria that are not disclosed in the RFB.

c. Multiple and/or split awards may be made when it is determined to be in the best interest of the WVURC.
10. Low tie Bids...

a. Low tie bids are low responsive bids from responsible bidders that are identical in price and meet all the requirements and criteria set forth in the RFB.

b. When tie bids occur, the tie will be broken and an award made by allowing the tie bidders to make a “best and final offer,” or any other impartial method deemed prudent by the WVURC Procurement Officer.

11. Procurement File Requirement...

File shall include:

a. Successful bidder’s name, title, address and signature

b. Manufacturer and model number or description of the item(s) offered

c. Unit and extended price for each item

d. Copies of all bids and Sole Source Justifications (See Section VIII)

e. Certification of Pre Award Survey, (required on Federal Grant awards only), signed by the Principal Investigator to attest that the purchased materials are necessary and not redundant.

NOTE: Use of the pre-priced catalogs hosted in the Mountaineer Virtual Purchasing (MAP MVP) system and HUB Zone vendors eliminates the competitive bidding requirements for the acquisition of equipment, chemicals, computers and office supplies. Web site address: http://mapmvp.wvu.edu.

SECTION V – CONSULTING SERVICES

1. “Consultant Service Agreements” are utilized to acquire services for highly specialized advice or professional expertise, which cannot be performed adequately from within WVU or WVURC. The agreement binds both the consultant and the WVURC; and like any contract, any changes thereto require the signature of both parties.

2. “Consultants” are independent contractors and cannot be current employees of WVU or WVURC. Consultants can be compensated for services and reimbursed for travel (including meals and lodging). The basic distinction between employment and consulting relationships on which the Internal Revenue Service bases its enforcement of employer’s withholding and reporting obligations is the degree to which a proposed service arrangement will allow control of the work effort, enter terms of exactly what will be accomplished, when, and how.
3. Consultants that do not meet the criteria of an independent contractor must be treated as WVURC employees and paid through the WVURC Payroll System.

4. The Internal Revenue Service strictly enforces the tax requirements for failure to properly distinguish consultants from employees. Contact the Payroll and Tax Accounting Office for further guidance concerning the proper designation of services.

5. It is the responsibility of the unit engaging the services of consultants to ensure that the proper WVURC procedures are followed. Prior to contracting for consultant services:
   a. Determine if the service should be competitively selected.
      - A competitive proposal process is required for the selection of a consultant when the cost of the entire service to be performed is $25,000 and greater. Exemptions may be granted by the WVURC President or WVURC CPO.
   b. Determine if the consultant should be treated as an employee or independent contractor.
      - Provide the consultant with the required IRS W-9 Form “Request for Taxpayer Identification Number and Certification” which establishes the appropriate tax status.
      - Contact Payroll and Tax Accounting Office for guidance on the tax requirements for hiring consultants who are non-resident aliens.
   c. Complete the “WVURC Consultant Service Agreement” (template is available on the WVURC website).
   d. Ensure the WVURC consultant service agreement is fully executed prior to obtaining services.

SECTION VI – REQUEST FOR PROPOSAL (RFP)

A) THE RFP SHALL CONTAIN AT LEAST THE FOLLOWING INFORMATION (WHEN APPLICABLE)...

1. Nature of services required.

2. Description of the work involved.

3. Estimate of when and the period of time the services will be required.

4. Deadline date and location for submission of proposals.
5. Statement that the offeror may designate those portions which contain trade secrets or other proprietary data that will remain confidential.

6. The RFP may also request other information as deemed relevant by the WVURC Procurement Officer or the purchaser. May include...
   
   a. Name of the offeror, location of the offeror's principal place of business and, when different, the place of performance of the proposed contract.
   
   b. Number of years the vendor was in business and average number of employees.
   
   c. Qualifications, education, prior training and experience of all individuals who will be providing services under the contract.
   
   d. Listing of other contracts under which similar services were performed by the vendor.

7. Standard WVURC Terms and Conditions.
   
   a. Proposals shall be evaluated utilizing the evaluation factors stated in the RFP. The following factors are considered appropriate when conducting the evaluation. The relative importance of these and other factors will vary according to the type of services being procured. Factors may include... Detailed plan and pricing options explaining how the execution the requested service will be performed.
   
   b. Ability to execute the service as reflected by technical training and education, prior experience, and qualifications of personnel to perform the services as outlined in the RFP.
   
   c. Personnel, equipment, and facilities to perform the service currently available or demonstrated to be made available at the time of contracting.
   
   d. Record of similar work previously performed.

8. Pre-proposal conferences may be conducted. Such conferences may be held prior to the deadline date recorded for submission of proposals.

B) RECEIPT AND PROCESSING OF PROPOSALS

Proposals and modifications shall be date and time-stamped upon receipt and held unopened until the recorded deadline date. A summary of all proposals shall be prepared and maintained in the Procurement Office. The file shall include the name of each offeror and the date and time each proposal was received.
C) EVALUATIONS

Proposals shall be evaluated in accordance with the factors described in the RFP.

D) DISCUSSIONS

1. Discussions may be held with any offeror. The purposes of such discussions shall be to:
   a. Determine in greater detail each offeror’s qualifications; and
   b. Explore with the offeror the scope and nature of the required services, the offeror’s proposed method of performance, and the relative utility of alternative methods of approach.

2. Discussions shall not disclose any information derived from proposals submitted by other offerors, and WVURC shall not disclose any information contained in any proposals until after the award of the proposed contract has been issued.

3. Requests for Non-Disclosure of Data: When an offeror requests in writing the nondisclosure of trade secrets and other proprietary data such information shall be clearly marked or stamped “CONFIDENTIAL” and be readily separable from the proposal. If the offer is selected then a non-disclosure plan will be developed and a reasonable non-disclosure agreement shall be executed.

E) BEST AND FINAL OFFERS

Proposals may be modified or withdrawn prior to the conclusion of negotiations. “Best and Final Offers” may be requested from one or more offerors.

F) SELECTION OF THE BEST QUALIFIED OFFERORS

Subsequent to validation of qualifications, evaluations and discussion, the WVURC Procurement Officer and the purchaser in consultation shall select, in the order of their respective qualification ranking, no fewer than three acceptable proposals (or such lesser number if less than three acceptable proposals were received) deemed to be the best qualified to provide the requested service.

G) NEGOTIATION AND AWARD OF CONTRACT

1. Elements of Negotiation: Contract negotiations shall be directed to…
a. Make certain that the offeror, the requester and the WVURC Procurement Officer have a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;

b. Determine whether the offeror will make available the required personnel, equipment and facilities to perform the services within the required period of time; and

c. Agree upon compensation which is fair and reasonable, taking into account the estimated value of the required services, the scope, complexity, and nature of such services.

2. **Successful Negotiation of Contract with Best Qualified Offeror:**

When compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror.

3. **Failure to Negotiate Contract with Best Qualified Offeror:**

   a. When compensation, contract requirements, or contract documents cannot be agreed upon with the best qualified offeror, a written record must be generated that outlines the basis for failure to reach an agreement. The written record must be added to the procurement file and the WVURC Procurement Officer shall advise such offeror of the termination of negotiations and shall be confirmed by written notice.

   b. Upon failure to negotiate a contract with the best qualified offeror, the requester and the WVURC Procurement Officer may enter into negotiations with the next most qualified offeror. When compensation, contract requirements, and contract documents are agreed upon, then the contract shall be awarded to that offeror. When negotiations again fail, negotiations shall be terminated and commenced with the next most qualified offeror.

   c. Alternatively, concurrent negotiations may take place with several offerors simultaneously, leading to a request for Best and Final Offers.

**H) NOTICE OF AWARD**

Formal written notice of award shall be maintained in the Procurement file.
SECTION VII – PROCUREMENT – CONSTRUCTION SERVICES

There are many rules, regulations and laws that have a direct bearing on construction projects. Construction services shall be purchased in accordance with applicable laws and regulations; including the use of AIA forms recognized as industry standard.

A) CONSTRUCTION PROJECTS $25,000 AND GREATER BUT LESS THAN $500,000

1. WVURC may advertise for bids at this level.

2. Alternatively, bids can be obtained from the qualified, “open end” contractors currently under contract with the WVURC through the use of the “Open End Task Force System.”

3. WVURC shall award the construction contract to the prequalified and responsive contractor submitting the lowest bid.

B) CONSTRUCTION PROJECTS $500,000 AND GREATER

WVURC construction projects estimated to cost $500,000 and greater shall be advertised and competitively bid.

C) BONDS

1. Bid Bond: A Bid Bond shall be required when competitively bidding construction. The bond shall be written for five percent (5%) of the base bid amount. The surety company must be licensed to transact surety insurance business in West Virginia, must provide a valid power-of-attorney showing that the person executing the bond has the authority to do so, and must affix raised corporate seals to the bond and power of attorney. A West Virginia resident agent must countersign the bond.

2. Performance Bond: A Performance Bond may be required for construction projects. A Performance Bond is a type of contract bond that is purchased by the successful bidder for 100% of the contract amount to guarantee faithful performance of the contract. It must be provided prior to issuance of a contract/purchase order. The surety company must be licensed to transact surety insurance business in West Virginia, must provide a valid power-of-attorney showing that the person executing the bond has the authority to do so, and must affix raised corporate seals to the bond and power of attorney. A West Virginia resident agent must countersign the bond.

3. Labor and Material Payment Bond: A Labor and Material Payment Bond may be required for construction projects. A Labor and Material Payment Bond are purchased by the successful bidder for 100% of the contract amount to guarantee payment for labor and materials. It must be provided prior to issuance of a contract/purchase order. The surety company must be licensed to transact surety insurance business in West Virginia, must
provide a valid power-of-attorney showing that the person executing the bond has the authority to do so, and must affix raised corporate seals to the bond and power of attorney. A West Virginia resident agent must countersign the bond.

4. Maintenance Bond: For roofing projects or projects where a roof will be installed as a component part of the project, a two-year Roof Maintenance Bond must be provided by the successful bidder to guarantee against defects in workmanship and materials for a two-year period following completion of the work. This Bond must be provided prior to issuance of a contract/purchase order for 100% of the amount of the entire roofing system (all roofing labor and material, including insulation, coping, flashing, parapet repair, etc.). The surety company must be licensed to transact surety insurance business in West Virginia, must provide a valid power-of-attorney showing that the person executing the bond has the authority to do so, and must affix raised corporate seals to the bond and power of attorney. A West Virginia resident agent must countersign the bond.

D) INSURANCE

Certificates of Insurance: The Contractor shall purchase and maintain for the duration of the work insurance coverage for not less than the minimum limits identified in the request for bids (or greater if required by law). All such insurance policies shall provide for at least thirty (30) days prior written notice of cancellation to the WVURC. The Certificate of Coverage shall be signed by an authorized agent and indicate WVURC Procurement Services; PO Box 6024; Morgantown WV 26506-6024, as Certificate Holder. Proof of coverage must be provided before a contract/purchase order can be issued.

E) WAGE RATES

Prevailing Wage Rates: For Construction projects there shall be a provision that requires the contractor and all subcontractors pay the West Virginia Department of Labor minimum wage rates for the county in which the project is to be constructed. The West Virginia Department of Labor files updates of the prevailing wage rates each January with the Secretary of State.

SECTION VIII – GENERAL CONDITIONS

A) CANCELLATION OF SOLICITATIONS; REJECTION OF ALL BIDS OR PROPOSALS

1. Each solicitation issued by the WVURC shall state that the solicitation may be cancelled as provided in accordance with the WVURC Procurement Manual.

2. Pre-Bid Opening

a. WVURC Procurement Officer may cancel a solicitation in whole or in part when such action is in the best interest of the WVURC. A written record for this action
must be maintained in the bid file. Reasons for cancellations may include, but not limited to…

- WVURC no longer requires the materials, equipment, services, or construction;
- WVURC no longer can reasonably expect to fund the procurement; or
- Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

b. When a solicitation is cancelled, prior to opening, notice of cancellation shall be submitted to all businesses solicited.

c. Notice of cancellation shall…

- Identify the solicitation; and
- Briefly justify the basis for cancellation

3. **Subsequent to Opening**

Subsequent to opening, but prior to award, all bids or proposals may be rejected in whole or in part when the WVURC Procurement Officer determines that such action is in the best interest of the WVURC. Reasons for rejection may include, but are not limited to…

a. Materials, equipment, services, or construction solicited for procurement are no longer required;

b. Ambiguous or otherwise inadequate specifications were part of the solicitation;

c. Solicitation did not provide for consideration of all factors of significance to the WVURC;

d. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

e. All otherwise acceptable bids or proposals received are clearly at unreasonable prices; or

f. Cause to believe that the bids or proposal did not abide by the guiding principle for independent and open competition, or may be collusive or submitted in bad faith.

Notice of rejection may be sent to all offerors that submitted bids or proposals.
4. **Documentation**

   The basis for cancellation or rejection shall be made a part of the procurement file.

**B) REJECTION OF INDIVIDUAL BIDS OR PROPOSALS**

Solicitations issued by the WVURC shall provide that any bid or proposal may be rejected in whole or in part when such rejection is considered to be in the best interest of the WVURC in accordance with the WVURC Procurement Manual.

**C) BASIS FOR REJECTION OF BIDS OR PROPOSALS**

1. Offeror’s bid is non-responsive; it does not conform in all material respects to the RFB.

2. Offeror’s bid is unacceptable for reasons that the materials, equipment, services, or construction offered fails to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the RFB;

3. Offeror fails to meet delivery requirements which are significant to the purchase; and/or,

4. Offeror fails to comply with the stated terms and conditions.

**D) NOTICE OF REJECTION**

Upon request, unsuccessful bidders or offerors shall be advised of the basis for the rejection thereof.

**E) DISPOSITION OF BIDS OR PROPOSALS**

When bids or proposals are rejected, or a solicitation cancelled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the procurement file, or if unopened, returned to the bidders or offerors upon request at their expense, or otherwise retained in the procurement file.

**SECTION IX – SOLE/SINGLE SOURCE PROCUREMENT**

1. Sole source and single source procurement **$25,000 and Greater** is permissible when the materials, equipment, services or construction required by a purchaser are only available from a single, legitimate service provider or manufacturer and receives the written approval of the WVURC President or WVURC Procurement Officer. The requirement for a particular proprietary (used, manufactured, or sold by a person or company with an exclusive property right such as a patent or trademark) item does not substantiate a sole source or single source procurement, especially when there is more than one potential
provider or manufacturer capable of providing the materials, equipment, service or construction. The criteria which could necessitate sole/single source procurement...

a. When compatibility of the equipment, accessories, or replacement parts is the paramount consideration; or

b. When specific, specialized or unique materials, equipment, services, construction or potential vendor is specified in a sponsored research grant or contract; assuming that a price comparison was performed as part of the proposal.

2. All requests for sole/single source procurement for purchase $25,000 and Greater shall be submitted in writing to the WVURC Procurement Officer and include a comprehensive justification for the sole source procurement. Explain why the product or service requested is the only single product and/or service provider that can satisfy your requirements and why alternatives are not acceptable or in the best interest of the WVURC.

SECTION X – EMERGENCY PURCHASES

1. Emergency purchases may be made when there exists a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, loss of essential function of the WVURC or to meet bona fide emergencies arising from unforeseen causes, including delays by contractors, delays in transportation, and unanticipated volume of work, provided that such emergency purchases shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the purchasing file. Emergency purchases shall be limited to those materials, supplies, equipment, services, printing, repairs and alterations, or construction items necessary to meet the emergency.

2. After the emergency situation has stabilized, all emergency purchases should be reviewed and formally approved by WVURC President or WVURC Procurement Officer. Always strive to obtain the required approval of the WVURC President prior to obligating the WVURC.

SECTION XI – SURPLUS EQUIPMENT, SUPPLIES AND MATERIALS

A) DISPOSAL OF SURPLUS

1. All assets purchased with non-sponsored WVURC funds are titled to WVU and are required to follow WVU surplus property policies. All assets purchased with sponsored WVURC funds should follow the property guidelines established by the granting agency. If title vests with the grantee (WVURC), the asset is titled to WVU and WVU surplus
property policies are followed. If title vests with the grantor, the asset shall be disposed of in accordance with the granting agency regulations (contact WVU Property Management for further instructions).

2. All assets submitted to Property Management as surplus property will be screened to insure that maximum utilization within WVU has been met prior to the asset's disposal.

   a. Assets that are determined to have no utilization value will be disposed of as soon as possible.

   b. Assets that are determined to still have value will be maintained at the Surplus Redistribution Warehouse for a minimum period of three (3) weeks for review and redistribution within the WVU community. If these items are not re-distributed within this time frame, disposition action will be taken.

   c. WVU surplus property shall be disposed of in one of the following ways:

      • Transfer to another state agency
      • Sealed bid sale through the WVU Procurement Office
      • Property Management coordinated public auction

B) ACQUISITION OF SURPLUS

1. Acquisition by WVURC of surplus equipment, supplies, and materials generated by the State will continue through the West Virginia State Agency for Surplus Property (WVSASP), except through transfer or exchange among WVU units.

2. Acquisition of Federal surplus equipment, supplies, and materials will also continue through the W.V.S.A.S.P., although screening for available Federal surplus items may be conducted by any departments as an individual or group effort.

SECTION XII – VENDOR INFORMATION

A) COMPLAINTS

Complaints shall be made in writing to the WVURC Procurement Officer, about the procurement activities or actions of the WVURC. The complaint should identify the number of the Request for Quotations, Bids, Proposals, Expressions of Interest or purchase order, the reason for the complaint, and the action the complainant is seeking from the WVURC. A complaint shall not be considered a protest, but an informal expression of dissatisfaction by the complainant about procurement activities or actions. Complaints shall not be considered sufficient reason to delay or postpone evaluation and award of a contract or purchase order. Complainants should seek resolution of complaints with the Procurement Officer.
B) PROTESTS

1. Protests must be filed in writing and contain the name and address of the protestor, the assigned number for the contract, RFQ, RFB, RFP, or REOI, a statement outlining the grounds for protest, any supporting documentation, and the relief sought.

2. Protests based on specifications or improprieties in any type of solicitation which are apparent, or should have been apparent, prior to the bid or proposal opening date must be filed no later than five (5) calendar days prior to the bid or proposal opening or closing date. A protest of the award must be filed no later than five (5) calendar days following the notice of intent to award posted in the WVU Purchasing, Contracts, and Payment Services Office. The WVURC Procurement Officer will review the protest and issue a written decision.

3. Requests for reconsideration of protest shall be submitted in writing to the WVURC Treasurer within five (5) calendar days following receipt of the WVURC Procurement Officer’s written protest decision. The request shall include the name and address of the protestor, number assigned to the RFQ, RFB, RFP, or REOI, a statement outlining the basis for the action requested with any supporting documentation, a copy of the WVURC Procurement Officer’s written decision concerning the initial protest, and the relief sought. The WVURC Treasurer shall review the request for reconsideration and issue a final decision to the protestor and the Procurement Office.

SECTION VIII – VENDOR SUSPENSION

1. If the WVURC Procurement Officer determines that sufficient cause exists to warrant a one-year suspension of a vendor, the Procurement Office will send a certified letter informing the vendor of the suspension and the basis for the decision. The vendor has ten (10) calendar days following receipt of the notification to provide a written response to the WVURC Procurement Officer.

2. Following review of the vendor’s response, the WVURC Procurement Officer shall make a decision on whether the suspension shall be enforced and inform the vendor of his or her decision by means of certified mail.

3. Requests for reconsideration for vendor suspensions must be submitted in writing to the WVURC Treasurer and postmarked no later than five (5) calendar days following receipt of the WVURC Procurement Officer’s notice of suspension. The request should include the name and address of the suspended vendor, the number assigned to the contract, RFQ, RFB, RFP, or REOI, a statement outlining the basis for the action requested with any supporting documentation, a copy of the WVURC Procurement Officer’s written notice of suspension, and the relief sought. The WVURC Treasurer shall review the request for reconsideration and issue a final decision in writing.
SECTION XIV -- ETHICAL PRACTICES

1. Neither the WVURC Board of Directors, nor any employee of WVURC or WVU, shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the procurement of any equipment, materials, supplies, services or construction, or in any firm, partnership, corporation, or association furnishing them. Neither the WVURC Board or any employee of WVURC or WVU shall accept or receive directly or indirectly from any person, firm or corporation known by the Board, or such employee to be interested in any bid, contract or purchase, any money, compensation, reward, rebate, gift, loan or other thing of value whatsoever, or any promise, obligation or contract for future money, compensation, reward, gift, loan or other thing of value.

2. The following ethical practices (based upon those of the National Association of Educational Buyers) shall guide the procurement activities of the WVURC.

   a. Give first consideration to the objectives and policies of WVURC.

   b. Strive to obtain the maximum value for each dollar of expenditure.

   c. Decline personal gifts or gratuities.

   d. Grant all competitive suppliers equal consideration insofar as applicable law and the WVURC Procurement Manual allow.

   e. Conduct business with potential and current suppliers in an atmosphere of good faith, devoid of intentional misrepresentation.

   f. Demand honesty in sales representation whether offered through the medium of a verbal or written statement, an advertisement, or a sample of the product.

   g. Receive consent of originator of proprietary ideas and designs before using them for competitive procurement purposes.

   h. Make every reasonable effort to negotiate an equitable and mutually agreeable settlement of any controversy with a supplier.

   i. Accord a prompt and courteous reception insofar as conditions permit to all who call on legitimate business missions.

   j. Cooperate with trade, industrial and professional associations, and with governmental and private agencies for the purposes of promoting and developing sound business methods.

   k. Foster fair, ethical and legal trade practices.