

Request for Quotation

Instruction to Bidders/ Terms and Conditions

READ THESE TERMS AND CONDITIONS CAREFULLY

The terms and conditions are intended to be used in conjunction with the Request for Quotation, Notice to Bidders, listed on the Wichita State University, Office of Purchasing website.

Failure to abide by all of the conditions may result in the rejection of a bid. Inquiries about the terms and conditions as they relate to a particular Request for Quotation (RFQ) should indicate the bid number and be directed to the procurement officer noted on the bid announcement.

RFQs and their addenda are regularly posted to the WSU Office of Purchasing Internet website. **These and the related documents can be downloaded by going to the following website:**

www.wichita.edu/purchasing

It shall be the bidder's responsibility to monitor this website on a regular basis for any changes/addenda to all RFQs.

SECTION I CONDITIONS TO BIDDING

Solicitation Reference Number: The Bid Announcement will reference a RFQ Number that begins with the character "B" and is followed by a 7-digit number. This RFQ number **MUST** be shown on all correspondence and all other documents associated with this Solicitation and **MUST** be referred to in all verbal communications. All inquiries, written or verbal, shall be directed to the procurement officer only.

Failure to notify the Procurement Officer of any conflicts or ambiguities in the Request may result in items being resolved in the best interest of WSU. Any modification to this Request as a result of the pre-bid conference, as well as written answers to written questions, shall be made in writing by addendum and emailed to all bidders who attend the Pre-Bid Conference, if applicable, as well as posted as an addendum on the Office of Purchasing, Bid Solicitation web site. Only written communications are binding.

Cost of Preparing Bid Response: The cost of developing and submitting the bid response is entirely the responsibility of the bidder. This includes costs to determine the nature of the engagement, preparation of the bid response, submitting the bid response, negotiating for the contract and other costs associated with this Solicitation. All responses will become the property of WSU and will be a matter of public record subsequent to signing of the contract or rejection of all bids.

Evaluation of Bids: Award shall be to the lowest responsible bidder taking into consideration conformity with the specifications, terms of delivery and other conditions imposed by this Request for Quotation. Award will be by line item, group totals, or total lot, whichever is in the best interest of WSU.

Acceptance or Rejection: WSU reserves the right to accept or reject any or all bid responses or part of a bid response; to waive any informalities or technicalities; clarify any ambiguities in bid responses; modify any criteria in this Solicitation; and unless otherwise specified, to accept any item in a bid response.

Contract: The successful bidder may be required to enter into a written contract with the WSU. The bidder agrees to accept the provisions of form DA-146a, Contractual Provisions Attachment, which is incorporated into all contracts with WSU and is attached to this Solicitation.

Contract Documents: The Solicitation, these Terms and Conditions/Bidding Instructions and any addenda, and the bid response and any amendments of the successful vendor shall be incorporated along with the DA-146a into the written contract award which shall compose the complete understanding of the parties.

In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:

1. Form DA-146a;
2. written modifications and Change Orders to the executed contract;
3. written contract signed by the parties;
4. this Solicitation including any and all addenda; and
5. bidder's written bid response submitted in response to the Request as finalized.

Contract Formation: No contract shall be considered to have been entered into by WSU until all statutorily required signatures and certifications have been rendered; funds for the contract have been encumbered; and a written contract has been signed by the successful bidder.

Notice to Proceed: No work may be started until all insurance, bonding and any other requirements have been satisfied by the contractor, and a Notice to Proceed has been issued by WSU. Once a Notice to Proceed has been issued, the successful contractor shall work continuously without interruptions until job is completed, unless instructed by Wichita State University to cease or interrupt work.

Open Records Act (K.S.A. 45-215 et seq.): All bid responses become the property of WSU. Kansas law requires all information contained in bid responses to become open for public review once a contract is signed or all bid responses are rejected.

Federal, State and Local Taxes-Governmental Entity: Unless otherwise specified, the bid response price shall include all applicable federal, state and local taxes. The successful vendor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Solicitation. **WSU is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the vendor's price quotations.**

Debarment of Contractors: Any contractor who defaults on delivery as defined in this Solicitation may, be barred (a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Vice President for Administration and Finance (VPAF), after consultation with the Director of the Office of Purchasing, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period exceeding three years. The VPAF, after consultation with the Director of the Office of Purchasing, shall have authority to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding three months unless an indictment has been issued for an offense which would be a cause for debarment under subsection (b), in which case the suspension shall, at the request of the VPAF, remain in effect until after the trial of the suspended person.

Insurance: WSU shall not be required to purchase any insurance against loss or damage to any personal property nor shall WSU establish a "self-insurance" fund to protect against any loss or damage. Subject to the provisions of the Kansas Tort Claims Act, the vendor shall bear the risk of any loss or damage to any personal property.

SECTION II BID INSTRUCTIONS

Preparation of Bid Response: Prices are to be entered in spaces provided on the BID FORM if provided therein. Computations and totals shall be indicated where required. WSU has the right to rely on any price quotes provided by bidders. The bidder shall be responsible for any mathematical error in price quotes. WSU reserves the right to reject bid responses which contain errors.

Bidders are instructed to prepare their Bid Response following the same sequence as the Request for Quotation.

Submission of Bid Responses: Bidder's bid response shall consist of:

- Signature Sheet
- Other required submittals as indicated on the Bid Announcement
- One (1) copy of the bid response, including literature and other supporting documents;

Bidder's bid response, sealed securely in an envelope or other container, shall be received promptly at the date and time as indicated in the Bid Announcement, and addressed as follows:

Wichita State University
Office of Purchasing
1845 Fairmount St, Campus Box 12
Wichita, KS 67260-0012
Bid # B000XXXX Project Name: XXXXXXXXXXXXX

It is the bidder's responsibility to ensure bids are received by the closing date and time. Delays in mail delivery or any other means of transmittal, including couriers or agents of the issuing entity shall not excuse late bid submissions.

Faxed or emailed bids are not acceptable unless stated otherwise in the Solicitation specifications.

Bid responses received prior to the closing date shall be kept secured and sealed until closing. WSU shall not be responsible for the premature opening of a bid response or for the rejection of a bid response that was not received prior to the closing date because it was not properly identified on the outside of the envelope or container. Late Bid Response will be retained unopened in the file and not receive consideration.

Signature of Bid Responses: Each bid response shall give the complete mailing address of the bidder and be signed by an authorized representative by original signature with his or her name and legal title typed below the signature line. Each bid response shall include the bidder's social security number or Federal Employer's Identification Number. If the bidder's tax number is the same as their social security number, this information may be omitted from the written bid response. If your SSN is required to process a contract award, you will be contacted by an authorized representative from the Office of Purchasing at a later date.

Acknowledgment of Addenda: All bidders shall acknowledge receipt of any addenda to this Solicitation. Failure to acknowledge receipt of any addenda may render the bid response to be non-responsive. Changes to this Solicitation shall be issued **only** by the Office of Purchasing in writing.

Modification of Bid Responses: A bidder may modify a bid response by letter or by FAX transmission at any time **prior** to the closing date and time for receipt of bid responses.

Withdrawal of Bid Responses: A bid response may be withdrawn on written request from the bidder to the Procurement Officer at the Office of Purchasing **prior** to the closing date.

Bid Disclosures: At the time of closing, bid prices shall be made public information. Interested bidders or their representatives may be present at the announcement at the following location:

Wichita State University
Office of Purchasing
1845 Fairmount St.
Morrison Hall, Room 021
Wichita, KS 67260

Copies of individual bid responses may be obtained under the Kansas Open Records Act by calling the office of Vice President and General Counsel at 316-978-6791 to request an estimate of the cost to reproduce the documents. A vendor may make an appointment by calling the above number to view the bid file. Upon receipt of the funds, the documents will be mailed. Information in bid files shall not be released until a contract has been executed or all bid responses have been rejected.

Notice of Award: An award is made on execution of the written contract by all parties. Only WSU is authorized to issue news releases relating to this Solicitation, its evaluation, award and/or performance of the contract. The Office of Purchasing shall issue either a purchase order or a written contract to the successful vendor.

SECTION III GENERAL PROVISIONS

Inspection: WSU reserves the right to reject, on arrival at destination, any items which do not conform to specification of this Solicitation.

Termination for Cause: The Director of Purchasing may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:

1. the Contractor fails to make delivery of goods or services as specified in this contract; or
2. the Contractor fails to perform any of the provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms.

The Director of Purchasing shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within ten (10) days from the receipt of the notice (or such longer period as WSU may authorize in writing), the Director of Purchasing shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.

Termination for Convenience: The Director of Purchasing may terminate performance of work under this contract in whole or in part whenever, for any reason, the Director of Purchasing shall determine that the termination is in the best interest of WSU. In the event that the Director of Purchasing elects to terminate this contract pursuant to this provision, it shall provide the Contractor written notice at least thirty (30) days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may have not been terminated by the notice.

Notices: All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") which may be required or desired to be given by either party to the other shall be **IN WRITING** and addressed as follows:

Buyer Named on Bid Invitation
Wichita State University
Office of Purchasing
1845 Fairmount St, Campus Box 12
Wichita, KS 67260-0012

or to any other persons or addresses as may be designated by notice from one party to the other.

Rights and Remedies: If this contract is terminated, WSU, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to WSU in the manner and to the extent directed, any completed materials. WSU shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

If it is determined, after notice of termination for cause, that Contractor's failure was due to causes beyond the control of or negligence of the Contractor, the termination shall be a termination for convenience.

In the event of termination, the Contractor shall receive payment pro rated for that portion of the contract period services were provided to and/or goods were accepted by WSU subject to any offset by WSU for actual damages including loss of federal matching funds.

The rights and remedies of WSU provided for in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

Force Majeure: The Contractor shall not be held liable if the failure to perform under this contract arises out of causes beyond the control of the Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes, etc.

Waiver: Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by WSU shall not constitute a waiver.

Independent Contractor: Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

Staff Qualifications: The Contractor shall warrant that all persons assigned by it to the performance of this contract shall be employees of the Contractor (or specified Subcontractor) and shall be fully qualified to perform the work required. The Contractor shall include a similar provision in any contract with any Subcontractor selected to perform work under this contract.

Failure of the Contractor to provide qualified staffing at the level required by the bid specifications may result in termination of this contract and/or damages.

Conflict of Interest: The Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are also in the employ of WSU and who are providing services involving this contract or services similar in nature to the scope of this contract to WSU. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any WSU employee who has participated in the making of this contract until at least two years after his/her termination of employment with WSU.

Nondiscrimination and Workplace Safety: The Contractor agrees to abide by all federal, state and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws, rules and regulations may result in termination of this contract.

Sexual Harassment and Retaliation Prohibited. In accordance with Kansas Executive Order 18-04, Wichita State University has policies prohibiting sexual harassment, discrimination, and retaliation. These policies provide for confidentiality and anonymous reporting. To view these policies or to make a report of sexual harassment, discrimination, or retaliation, please visit <http://webs.wichita.edu/inaudit/tablepp.htm>.

Environmental Protection: The Contractor shall abide by all federal, state and local laws, rules and regulations regarding the protection of the environment. The Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws, rule or regulations may result in termination of this contract.

Hold Harmless: The Contractor shall indemnify WSU against any and all loss or damage to the extent arising out of the Contractor's negligence in the performance of services under this contract and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

WSU shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control,

where such loss or destruction is to WSU property. The Contractor shall do nothing to prejudice the WSU's right to recover against third parties for any loss, destruction or damage to WSU property.

Care of WSU Property: The Contractor shall be responsible for the proper care and custody of any WSU owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this contract, and Contractor will reimburse WSU for such property's loss or damage caused by Contractor, normal wear and tear excepted.

Prohibition of Gratuities: Neither the Contractor nor any person, firm or corporation employed by the Contractor in the performance of this contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any WSU employee at any time.

Retention of Records: Unless WSU specifies in writing a shorter period of time, the Contractor agrees to preserve and make available all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of five (5) years from the date of the expiration or termination of this contract.

Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

The Contractor agrees that authorized federal and state representatives, including but not limited to, personnel of the using agency; independent auditors acting on behalf of WSU and/or federal agencies shall have access to and the right to examine records during the contract period and during the five (5) year post-contract period. Delivery of and access to the records shall be at no cost to the WSU.

Federal, State and Local Taxes Contractor: WSU makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

Antitrust: If the Contractor elects not to proceed, the Contractor assigns to WSU all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and WSU relating to the particular products or services purchased or acquired by the State pursuant to this contract.

Anti-Kickback: When the University has reasonable grounds to believe that a violation of the Anti-Kickback Act of 1986 may have occurred, the university shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting department or agency of the United States, the head of the contracting department or agency of the United States if the department or agency does not have an inspector general, or the Department of Justice.

The university shall cooperate fully with any Federal agency investigating a possible violation of the Anti-Kickback Act of 1986

The Contracting Officer may (1) offset the amount of kickback against any monies owed by the United States under the prime contract and/or (2) direct that the Prime Contractor withhold from sums owed a contractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (1) of this clause be paid over to the United States Government unless the Government has already offset those monies under subdivision (2) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

WSU agrees to incorporate the substance of this clause, including this subparagraph, in all subcontracts under this contract which exceeds \$100,000.

Modification: This contract shall be modified only by the written agreement of the parties with the approval of the Director of Purchasing. No alteration or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.

Assignment: The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of WSU.

This contract may terminate in the event of its assignment, conveyance, encumbrance or other transfer by the Contractor without the prior written consent of WSU.

Third Party Beneficiaries: This contract shall not be construed as providing an enforceable right to any third party.

Captions: The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.

Severability: If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.

Governing Law: This contract shall be governed by the laws of the State of Kansas and shall be deemed executed at Wichita, Sedgwick County, Kansas.

Jurisdiction: The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas, District Court of Sedgwick County. The United States District Court for the State of Kansas sitting in Wichita, Sedgwick County, Kansas, shall be the venue for any federal action or proceeding arising hereunder in which WSU is a party.

Mandatory Provisions: The provisions found in Contractual Provisions Attachment (DA-146a) which is attached are incorporated by reference and made a part of this contract.

Integration: This contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This contract between the parties shall be independent of and have no effect on any other contracts of either party.

Criminal Or Civil Offense Of An Individual Or Entity That Controls A Company Or Organization Or Will Perform Work Under This Contract: Any conviction for a criminal or civil offense that indicates a lack of business integrity or business honesty must be disclosed. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a WSU contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in disqualification of the bid or termination of the contract.

Competition: The purpose of this Solicitation is to seek competition. The bidder shall advise the Office of Purchasing if any specification, language or other requirement inadvertently restricts or limits bidding to a single source. Notification shall be in writing and must be received by the Office of Purchasing no later than five (5) business days prior to the bid closing date. The Director of Purchasing reserves the right to waive minor deviations in the specifications which do not hinder the intent of this Solicitation.

Injunctions: Should WSU be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of WSU, contractor shall not be entitled to make or assert claim for damage by reason of said delay.

Acceptance: No contract provision or use of items by WSU shall constitute acceptance or relieve the contractor of liability in respect to any expressed or implied warranties.

Breach: Waiver or any breach of any contract term or condition shall not be deemed a waiver of any prior or subsequent breach. No contract term or condition shall be held to be waived, modified, or deleted except by a written instrument signed by the parties thereto.

If any contract term or condition or application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition or application. To this end the contract terms and conditions are severable.

Statutes: Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the application of either party the contract shall be amended to make such insertion or correction.

New Materials, Supplies or Equipment: Unless otherwise specified, all materials, supplies or equipment offered by a contractor shall be new, unused in any regard and of most current design. All materials, supplies and equipment shall be first class in all respects. Seconds or flawed items will not be acceptable. All materials, supplies or equipment shall be suitable for their intended purpose and, unless otherwise specified, fully assembled and ready for use on delivery.

Payment Terms: Unless specified otherwise, Payment Terms are Net 30 days. Payment date and receipt of order date shall be based upon K.S.A. 75-6403(b). This Statute requires state agencies to pay the full amount due for goods or services on or before the 30th calendar day after the date the agency receives such goods or services or the bill for the goods and services, whichever is later, unless other provisions for payment are agreed to in writing by the bidder and WSU. NOTE: If the 30th calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following workday will become the required payment date.

The statute further defines the date goods or services are received as the date such goods or services are completely delivered and finally accepted by the state agency. The date the payment is made by the state agency is defined as the date on which the warrant or check for such payment is dated, i.e. warrant issue date.

Disclosure of Bid Content: The laws of the State of Kansas require public information be placed in the public domain at the conclusion of the selection process, and be available for examination by all interested parties. No bids shall be disclosed until after a Contract Award has been issued. WSU reserves the right to destroy all bids if the RFQ is withdrawn, a Contract Award is withdrawn, or otherwise in the normal course of business.

Trade secrets or proprietary information legally recognized as such and protected by law may be withheld if they are clearly labeled "Proprietary" in the margin of each individual page where they appear in the bid response package. Pricing information is normally not considered proprietary. The Bidder's entire bid response package shall not be considered proprietary.

SECTION IV SPECIAL PROVISIONS

Bid Response Format: Bidders are instructed to prepare their Bid Response following the same sequence as the sections of the Request for Quotation.

Timeline and Methodology: The contractor may be required to include a timeline for completing services contained in their bid submission. Said timeline shall be the number of days from Notice to Proceed to the completion date of the Project, and the timeline, if required, shall be submitted on the Bid Form. The timeline submitted shall include the time to complete the base bid and all alternatives.

As an alternative, WSU may require that the Contractor will be allowed a specified number of days to complete the Project, starting from the date of the Notice to Proceed. In such a case, Bidders shall be informed of which alternative, if any, is required, in the Notice to Bidders and/or the Project Specifications. Contractors which cannot meet a specified length timeline may not have their bids considered.

Pay Application Retainage Amounts: 10% of the amount being billed each month shall be set aside as retainage until the project becomes 50% completed. No additional retainage will be held from the remaining progress payments following 50% completion, until 100% of work is completed. The retainage amount can be reduced at Substantial Completion, as determined by the owner and Architect. The remainder of the retainage amount will be paid to the Contractor at Final Completion and acceptance by the Architect and Owner.

Payment: Payment shall be made after receipt of goods or services in agreement with Kansas Law. Payments shall not be made for costs or items not listed in the bidder's bid response.

Change Orders: From time to time, during the performance of the contract resulting from award of an RFQ, it may be necessary for the owner to request consideration of a change order. A change order shall only be issued for work that was not a part of the initial plans and specifications and shall be agreed to by all parties in writing.

Overhead and profit on Change Orders: The overhead and profit charged by the Contractor shall be considered to include, but not limited to, Performance Bond, Public Works Bond and Public Liability Insurance, job site office expense, incidental job supervision, field supervision, company benefits, general office overhead, and cost associated with the preparation of design documents, layout drawings, or shop drawings. The percentages for overhead and profit charged on Change Orders shall be negotiated and may vary according to the nature, extent, and complexity of the Work involved but in no case shall exceed the following:

	Overhead & Profit	Fee
To Contractor on work performed by other Than his own forces:	0%	10%
To first level subcontractor on work performed By his subcontractors:	0%	10%
To contractor and/or his sub-contractors for that Portion of work performed with their respective forces:	10%	0%

On proposals covering both increases and decreases in the amount of the Contract, the application of overhead and profit shall be on the net change indirect cost for the Contractor or Subcontractor of any tier performing the Work.

The percentages for overhead and profit credit to the Owner on Change Orders that are strictly decreases in the Quantity of work or material shall be negotiated and may vary according to the nature, extent, and complexity of the Work involved.

Invoices: Each purchase order must be individually invoiced. Invoices shall be forwarded to the using agency in duplicate and shall state the following:

1. date of invoice.
2. date of shipment (or completion of work);
3. purchase order number and contract number;
4. itemization of all applicable charges; and
5. net amount due.

TERMS AND CONDITIONS

Bidder Contracts: Include a copy of any additional contracts proposed.

On-Site Inspection: Failure to adequately inspect the premises shall not relieve the successful bidder from furnishing without additional cost to WSU any materials, equipment, supplies or labor that may be required to carry out the intent of this Solicitation. Submission of a bid response shall be construed as evidence that the bidder has made necessary examination, inspection and investigation. Failure to properly inspect the site may result in rejection of the bidder's bid response.

Submission of the Bid Response: Submission of the bid response will be considered presumptive evidence that the bidder is conversant with local facilities and difficulties, the requirements of the documents and of pertinent State and/or local codes, state of labor and material markets, and has made due allowances in the bid response for all contingencies. Later claims for labor, work, materials, and equipment required for any difficulties encountered which could have foreseen will not be recognized and all such difficulties shall be properly taken care of by Contractor at no additional cost to WSU.

Bid Bond: The Director of Purchasing requires that a bid bond in the amount of \$ 5% be submitted by all bidders for bid dollar amounts of \$40,000.00 or more to ensure faithful performance with the conditions of this Solicitation and/or ensuing contract. Bid Bond shall be written by a Bonding Company

approved by the United States Treasury Department and licensed to do business in the State of Kansas. A properly executed bid bond shall be payable to Wichita State University. Bid Bonds must be submitted along with the bid to the Purchasing Office on the specified closing date and time.

Public Works Bond: The Successful Bidder shall file with the Director of Purchasing a Public Works Bond as required by K.S.A. 60-1111 in an amount equal to one hundred percent (100%) of price bid and shall be filed with the Clerk of the District Court in the County where the project is being constructed. If damages exceed the amount of the guaranty, WSU may seek additional damages. A Public Works Bond is not required for Projects with a contract price below \$100,000.00.

Performance Bond: The Successful Bidder shall file with the Director of Purchasing a Performance Bond in an amount equal to one hundred percent (100%) of the price bid as security for the faithful performance of this contract and as security for the payment of all persons performing labor and furnishing materials in connection with this solicitation. If damages exceed the amount of the guaranty, WSU may seek additional damages. A Performance Bond is not required for Projects with a contract price below \$40,000.00.

Necessary bond forms will be furnished by the Office of Purchasing and can be completed by any General Insurance Agent. Bonds shall be issued by a Surety Company licensed to do business in the State of Kansas.

Subcontractors: Kansas Statute K.S.A. 75-3741 as amended requires a Bidder to list and identify the "Major Sub-Contractors" for Mechanical Construction, Plumbing Construction, and/or Electrical Construction included as a part of the Proposed, when a Single Contract for the "Project as a whole" is to be awarded.

The contractor shall be the sole source of contact for the contract. Wichita State University will not subcontract any work under the contract to any other firm and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of the contract shall apply without qualification to any services performed or goods provided by any subcontractor.

Insurance: The Contractor shall not commence work under this Contract until the Contractor has obtained all the insurance required under this Article and such insurance has been approved by The University under the terms of this agreement. The Contractor shall not allow any subcontractor to commence work on the subcontract until the insurance required of the subcontractor has been so obtained and approved.

Companies providing insurance coverage must be authorized to transact the business of insurance in Kansas as an authorized insurer or eligible "non-admitted" insurer in accordance with K.S.A. 40-214 and K.S.A. 40-246e, respectively. Automobile liability and workers compensation insurance coverage must be obtained from insurers that are "authorized" to transact the business of insurance in Kansas pursuant to K.S.A. 40-3103 and K.S.A. 44-532, respectively.

The Contractor shall procure and maintain at its expense, from the date of the Contractor's receipt of a Notice to Proceed until acceptance of the entire work by the University, the following insurance:

1. Worker's compensation insurance for the Contractor, all partners and employees working on the project. The Contractor shall require all subcontractors to provide workmen's compensation for themselves, their partners and employees to be engaged in such work unless the subcontractor's employees are covered by the Contractor's workers' compensation coverage. The Contractor and all subcontractors shall include employer's liability coverage with a one hundred thousand dollars (\$100,000) limit for each accident; disease-policy limit; and disease- each employee limit.
2. Commercial general liability insurance, in an amount not less than five hundred thousand dollars (\$500,000) each occurrence for bodily injury and property damage, a general aggregate of one million dollars and a products-completed operations aggregate of one million dollars (\$1,000,000). Commercial general liability shall include the following coverages: operations; broad form property damage; completed operations; independent contractors and contractual.

3. Automobile liability insurance in an amount not less than five hundred thousand dollars (\$500,000) for bodily injury and for property damage combined. Said coverage shall cover all owned, non-owned or hired vehicles of the contractor.

Scope of insurance and special hazards: The insurance provided under paragraph B above shall provide protection for the Contractor and his subcontractors against damage claims which may arise from operations under this Contract, whether such operations be by the insured or by anyone directly or indirectly employed by him, and also against any of the following special hazards which may be encountered in the performance of work under this Contract such as but not limited to: blasting, explosion, collapse, underground, rigging and hoisting, railroad protective, elevators and hoists.

Special form builder's risk: For this project, the principal contractor shall procure and maintain special form builder's risk insurance to include theft to protect the mutual interest of the University and the contractor in an amount of one hundred percent (100%) of the contract price. No other contractor is required to carry the special form builder's insurance on this project. The insurance is to apply from the contractor's receipt of a Notice to Proceed until acceptance of the entire work by the owner.

Property Damage in an amount of not less than \$1 million to cover all sums, which the Contractor will legally be liable to pay be reason of liability for damages to or destruction of the University's property, including the loss of use thereof

The principal Contractor's property coverage shall name the University and all contractors and/or subcontractors performing work on the project as additional insureds.

The principal Contractor's general liability coverage (excluding professional liability) shall name WSU and Project Architect/Engineer on the project as additional insureds.

Subcontractors' insurance: The contractor shall either (1) require each of his subcontractors to procure and maintain during the life of his subcontract commercial general liability insurance, and automobile liability insurance of the type and in the same amount specified in the preceding paragraphs; or (2) insure the activities of his subcontractors in his own policies.

Proof of insurance: The Contractor shall furnish the University with certificates showing the types, amounts, special coverages, effective dates and dates of expiration of policies. Such certificates shall provide the insurance company endeavor to give thirty (30) days' notice of policy cancellation to the certificate holder.

The Contractor shall indemnify the University against any and all claims for injury to or death of any person; for loss or damage to any property; and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

The University shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractors custody and control, where such loss or destruction is to University's property. The Contractor shall do nothing to prejudice the University's right to recover against third parties for any loss, destruction or damage to University property.

Liquidated Damages: The University shall be entitled to liquidated damages to cover the costs of alternate facilities, extra observation, the salaries of contingent forces and other expenses incurred by the University due to delays in completion of the work caused by the Contractor.

Liquidated damages shall be assessed in an amount per day as indicated below for each calendar day between the adjusted contract completion date and the date of substantial completion of the project.

- A. Liquidated damages are established at the rate of **One Hundred (\$100.00) Dollars** per calendar day for projects \$500,000 or less.
- B. Liquidated damages are established at the rate of **Two Hundred (\$200.00) Dollars** per

calendar day for projects over \$500,000.

Materials and Workmanship: The Contractor shall perform all work and furnish all supplies and materials, machinery, equipment, facilities, and means, necessary to complete all the work required by this solicitation, within the time specified, in accordance with the provisions as specified.

Shipping and F.O.B. Point: Unless otherwise specified, bid prices shall be F.O.B. DESTINATION, PREPAID AND ALLOWED (included in the price bid), which means delivered to WSU's receiving dock or other designated point as specified in this Solicitation without additional charge. Shipments shall be made in order to arrive at the destination at a satisfactory time for unloading during regular working hours between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Equivalent Items: Whenever a material, article or piece of equipment is identified in the specifications by reference to a manufacturer's or vendor's name, trade name, catalog number, etc., it is intended to establish a standard, unless otherwise specifically stated. Any material, article or equipment of other manufacturers or vendors shall perform to the standard of the item specified. Equivalent bids must be accompanied by sufficient descriptive literature and/or specifications to provide for detailed comparison. Samples of items, if required, shall be furnished at no expense to WSU and if not destroyed in the evaluation process, shall be returned at bidder's expense, if requested.

Alternate Items: Bids on items comparable to the above are invited. Bidders should submit complete specifications, descriptive materials and indicate any deviation from the specifications of this solicitation. Bidder's requests to have alternate items accepted by WSU shall be submitted in writing to the Office of Purchasing prior to the date listed in the RFQ.

Benchmark Requirements: A demonstration or benchmark of the selected devices for the using agencies may be required before final contract approval.

Equipment: All offered equipment, equipment options, and hardware expansions must be identified by manufacturer and model number and descriptive literature of such equipment must be submitted with the bid response.

Implied Requirements: All products and services not specifically mentioned in this solicitation, but which are necessary to provide the functional capabilities described by the specifications, shall be included. Other products required to make the described software functional shall be identified in the bid response.

Industry Standards: If not otherwise provided, materials or work called for in this contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.

Technical Literature: All bids shall include specifications and technical literature sufficient to allow WSU to determine that the equipment meets all requirements. This technical literature will be the primary source for bid evaluation. If a requirement is not addressed in the technical literature it must be supported by additional documentation and included with the bid. Bid responses without sufficient technical documentation may be rejected.

Default on Delivery: Any contractor who defaults on delivery as defined in this Solicitation may, be barred from bidding on any subsequent Solicitation for a period to be determined.

Documentation: Examples of documentation delivered by the manufacturer with purchase of items shall be included. Bidder must be able to deliver additional copies (beyond the bid response set) of documentation on an immediate basis for use in the evaluation process. Within the section, bidders may use any format. Include detailed, standard, published literature describing each equipment item and feature offered.

If asked, bidders shall deliver additional copies of bid response documentation immediately. Within the section, bidders may use any format. Include detailed, standard, published literature describing each item and feature offered.

Warranty: Standard Manufacturer's Warranty, for all equipment bid, is to be considered a part of these conditions. All defective items shall be replaced free of charge.

Unless the Project Specifications require otherwise, bidders must provide a ONE (1) year PARTS AND LABOR warranty on all devices and/or labor provided as part of an award that results from this Solicitation.

The successful bidder will be the sole point of contact on any problems with the equipment or systems during the warranty period.

The contractor shall be responsible for all work put in under these specifications. The contractor shall make good, repair and replace, at the contractor's own expense, as may be necessary, any defective work, material acceptance, if in the opinion of WSU and/or Office of Purchasing said defect is due to imperfection in material, design, or workmanship for the warranty period specified.

Bidders shall indicate the type and extent of the warranty for all equipment, hardware, software, and services proposed.

Additional warranty requirements may be detailed in the specifications or scope of work.

References: All contractors who have not successfully provided like services to WSU to those services that are encompassed in the Project during the past 3 years shall be required to provide 3 references. References shall have purchased similar items or services from the bidder in the last year. References shall show firm name, contact person, address, and phone number. Bidder employees and the buying agency shall not be shown as references.

Bidders may substitute their inclusion on the State of Kansas, Department of Administration, Division of Facilities Management, *Contractor Pre-Qualification List*, for the above requirement to include references under this section. Information may be found at: http://www.da.ks.gov/fp/contractor/cpq_faq.htm

Certification of Specifications Compliance: By submission of a bid response and the signatures affixed thereto, the bidder certifies all products and services proposed in the solicitation meet or exceed all requirements of this specification as set forth in the solicitation.

Certification of Materials Submitted: The response to this solicitation, together with the specifications set forth herein and all data submitted by the bidder to support the response including brochures, manuals, and descriptions covering the operating characteristics of the item(s) proposed, shall become a part of any contract between the successful bidder and WSU. Any written representation covering such matters as reliability of the item(s), the experience of other users, or warranties of performance shall be incorporated by reference into the contract.

Experience: All bidders must have a minimum of three (3) years continuous active participation in the applicable industry as a distinct company, providing equipment and systems comparable in size and complexity to the equipment and systems specified.

Bidders may be required to furnish information supporting the capability to comply with conditions for bidding and fulfill the contract if receiving an award of contract.

Such information may include, but not be limited to, a list of similar size and type projects the Bidder has completed.

State of Kansas

Department of Administration
DA-146a (Rev. 06-12)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.

12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.