Bid Guidelines for State of Kansas

Agencies

Updated 2014

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Section I

**Do I Need To Do A Bid?**

**Procurement and Contracts (P&C**) is part of the Office of Facilities and Procurement Management of the Department of Administration. The processes followed by P&C have been established for sound reasons.

1. **Statutorily Required:** Statutes are in place that provide for the competitive bidding of goods and services, with the expectation that State of Kansas agencies will get the best value possible.
2. **Open Records:** State of Kansas agencies have an obligation to be transparent in when procuring goods and services, and our reasons for selecting a vendor should be clear and defensible to all.

These processes can seem hard to understand if new to State government or if you have not engaged in a formal bid process through this office before, but there are resources available to you and your agency:

1. Call one of the buyers at Procurement & Contracts. A list of commodities that each buyer is assigned is available at this link:

<http://admin.ks.gov/offices/procurement-and-contracts/buyer-commodity-assignments>

1. Familiarize yourself with the Procurement Food Chain document, which will help you understand when to use the State Use catalogue, Kansas Correctional Industries, Statewide or Agency-specific contracts, open market purchases under each agency’s delegated authority (defined dollar purchasing limitation for your agency), and exemptions from having to bid. <http://admin.ks.gov/docs/default-source/ofpm/procurement-contracts/bid-process.xls?sfvrsn=4>

**The Procurement Order of Precedence (Do I need to do a Bid?)**

1. **State Use Catalog –** No, if it an item listed in the catalog;
2. or manufactured by **Kansas Correctional Industries;**
3. or on a **Statewide Mandatory or Optional Use Contracts;**
4. or on a contract established for your agency - **Agency- Specific Contracts** or on another agency’s contract available to political subdivisions;
5. or If none of the above, if I can make an **Open Market Purchase under my agency’s Delegated Authority;**
6. Orif there is a legitimate reason for an **Exemptions from Bidding** and I get prior approval to do so through the **Prior Authorization Process.**

**PAR Manual:** [http://www.da.ks.gov/purch/PriorAuthorizationManual.xlsx](http://www.da.ks.gov/purch/PriorAuthorizationManual.xlsx%20)

**Form Location:** <http://www.da.ks.gov/purch/Forms.htm>

**TYPES OF BIDS**

**RFQ -** *(Request For Quotation)*

Used for One-Time Purchases

Bids will not be negotiated

(“Sealed Bid”)

Awarded as Purchase Order (PO)

Awarded to the Lowest Responsive and Responsible Bid Meeting Specifications

**IFB -** *(Invitation For Bid)*

Used for Repetitive Purchases

Bids will not be negotiated

(“Sealed Bid”)

Awarded as SMART-based Contract or Purchase Order (PO)

Awarded to the Lowest Responsive and Responsible Bid Meeting Specifications

**RFP -** *(Request For Proposal)*

Used for One-Time or Repetitive Purchases

NEGOTIATED PROCUREMENT

(“Competitive Sealed Proposals”)

Awarded as Contract or Purchase Order

Awarded to the bidder Offering Best Value

Evaluation starts with lowest cost proposal; by statute, any award that bypasses a lower cost proposal must be reported to the Legislature.

**Bid Timelines**

All timelines are approximate and may need to be modified depending on the complexity of each procurement.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **ACTION** | **RESPONSIBLE PARTY** | **TIME NEEDED** | | |
| **RFQ** | **IFB** | **RFP** |
| Purchase Requisition, Specifications, Suggested Vendor List (P&C) and PNC Request Letter submitted to Procurement Contracts | Agency |  |  |  |
| Posted and Advertised  If specs require more than minimal changes, may be longer. | P&C | 1-5 business days from receipt. | 1-5 business days from receipt. | 1-5 business days from receipt. |
| Questions Due from Vendors | P&C forwards to agency | 5 days from Post or Advertise Date | 5 days from Post or Advertise Date | 14 days from Advertise Date |
| Responses to Questions prepared | Agency w/ P&C review | 1-2 days | 1-2 days | 1-7 days |
| Pre-Proposal Conference Held (if applicable) | Agency, P&C | 5-7 days from Post or Advertise Date | 5-7 days from Post or Advertise Date | 7 days after Questions deadline |
| Amendment issued reflecting Answers to Vendor Questions and/or Pre-Proposal Discussions | P&C | 1-2 days from Questions deadline or Pre-Proposal Conference, whichever is later | 1-2 days from Questions deadline or Pre-Proposal Conference, whichever is later | 5-7 days from Questions deadline or Pre-Proposal Conference, whichever is later |
| Bids Close | P&C | 10 days from post or advertise date or 5 days after last bid amendment | 10 days from post or advertise date or 5 days after last bid amendment | Typically 10-14 days after the last bid Amendment |
| Review of Technical Responses \*\* | Agency, other PNC members | NA | NA | 3-30 days |
| Narrative Technical Review submitted to P&C | Agency | NA | NA |  |
| Receipt and Review of Cost Proposals | P&C, Agency | NA | NA | 1-2 days from Review submission |
| Technical and Cost Review submitted to P&C, along with recommendation of Vendor Selection for Negotiations | Agency | NA | NA |  |
| Negotiations | P&C, Agency, PNC | NA | NA | Mutually convenient time, usually 7-10 days from Notifying P&C of selection |
| Revised Offers Due | P&C receive and forward | NA | NA | 1-10 Days, depending on complexity |
| Review of Revised Offers and Final Selection Made | P&C, Agency, PNC | NA | NA | 2-10 Days |
| Recommendation for award submitted to P&C | Agency | NA | NA |  |
| PNC Award documents prepared | P&C | NA | NA |  |
| Contract Awarded/Finalized | P&C | Goes to Purchase Order | NA |  |

\*\* If needed, the vendor may be requested to provide further clarification of their responses before providing Narrative Technical.

Section II

The RFQ – Request for Quotation

An RFQ is used for a **one-time purchase, usually goods**, rarely services. This is a **sealed bid**, **awarded as a purchase order to the lowest, responsive and responsible bidder meeting bid specifications**. These bids will not be negotiated. Bidders who are not responsive, i.e., do not bid comparable items, or impose different conditions within the bid, may be disqualified. That being said, agencies are not to write specifications that limit competition to one manufacturer and/or one distributor.

Agency Steps to Complete a RFQ:

1. Determine what needs to be purchased and get an estimate of the cost.

* If under $5,000, it is suggested that the agency do informal bids in order to obtain competitive quotes.
* If over $5,000, the bids must be submitted to Procurement & Contracts for bidding.

1. Write the specification.

* A specification is “a precise and articulate description of the physical or functional characteristic of a product”
* It identifies performance, quality, and operational characteristics
* It enable suppliers and service providers to compare their product against stated requirements and offer bids on a comparable or equal basis
* It enable the procurement officer and end user to evaluate bid responses
* It maximizes competition in the marketplace

1. Enter the requisition into SMART with the estimated price.

* Do not enter a SMART vendor ID into the requisition;
* Mark the requisition “RFQ Required”;
* Attach the specifications; be prepared to answer any questions the buyer may have about the specifications;
* Provide a vendor list.

1. Allow adequate time for the bid process.

* Allow 3 to 7 business days for the bid to be posted to the P&C website.
* Allow approximately 10 days after the bid posting for the bid to “close.”
* Bids over $50,000 have advertising requirements and may be posted longer.
* The P&C buyer will let the agency purchasing contact know when the bid will close.
* Bid clarifications can delay the bid closing date, and can depend on the buyer’s ability to notify all interested vendors with any RFQ amendments in a timely manner.

1. After the bid closing, the buyer will send the bids to the agency for review and award recommendation.
2. The P&C Buyer will write the Purchase Order and copy the agency purchasing contact.

Tips for a Successful RFQ procurement:

* Call the buyer who has this commodity if you have any questions about what to include in the specification, or if there is a very pressing need to fast track the bid (fast tracking should be the exception rather than the rule, but we understand there are times when you need something quickly).
* Procurement & Contracts discourages agencies from having a potential vendor write your specifications for you.
* It is appropriate for agency personnel to let a preferred vendor and other area vendors know that a bid is posted; even when the buyer makes every effort to notify persons on your vendor list via a mailed or emailed notice, sometimes the bid notices are missed by vendors.

Section III

The IFB – Invitation For Bid

An IFB is used to establish a contract for multiple, recurring needs or goods, services, or a combination of goods and services for a given period of time. Like the RFQ, this is a sealed bid, awarded as a contract to the lowest, responsive and responsible bidder meeting bid specifications. These bids will not be negotiated. Bidders who are not responsive, i.e., do not bid comparable items, or impose different conditions within the bid, may be disqualified.

Agency Steps to Complete an IFB:

1. Determine what goods or services need to be procured and get an estimate of the cost, typically for a one-year period. Usage is a key factor in determining the cost. Example, if your agency spent $7,000 for snow removal services in FY 14, an IFB to establish a contract for these services is indicated.

* If usage is generally under $5,000 in a year, the agency typically does not arrange for a contract, but may contact vendors on their own and arrange for a contract.
* If over $5,000, the bids must be submitted to Procurement & Contracts for bidding.

1. Write the specification or statement/scope of work.

* If wanting to establish a contract for products, such as packing supplies, clothing, or tractors, follow the specifications guidelines found in Section II to identify performance, quality, and operational characteristics;
* If services are needed, a statement or scope of work (SOW) is needed. A scope of work will:
  + - capture and define the work activities, deliverables, and timeline a vendor must execute in performance of specified work
    - The SOW usually includes detailed requirements and pricing

1. Enter the requisition into SMART with the estimated price.

* Do not enter a SMART vendor ID into the requisition;
* Mark the requisition “RFQ Required”;
* Attach the specifications or SOW; be prepared to answer any questions the buyer may have about these;
* Attach any additional language or attachments you may require to be inserted into the bid document.
* Provide a vendor list.

1. Allow adequate time for the bid process.

* Allow 3 to 7 business days for the bid to be posted to the P&C website.
* Allow approximately 10 days after the bid posting for the bid to “close.”
* Bids over $50,000 have advertising requirements and may be posted longer.
* The P&C buyer will let the agency purchasing contact know when the bid will close.
* Bid clarifications can delay the bid closing date, and can depend on the buyer’s ability to notify all interested vendors with any RFQ amendments in a timely manner.

1. After the bid closing, the buyer will send the bids to the agency for review and award recommendation.
2. The P&C Buyer will write the contract and route to the agency purchasing contact after the vendor’s signature is obtained.

Tips for a Successful IFB procurement:

* Call the buyer who has this commodity if you have any questions about what to include in the specification or scope of work;
* Recognize that the buyer has familiarity with the commodity and in some instances can provide copies of others’ IFB documents for assisting you to write your IFB; the buyer may suggest changes to your specifications or SOW.
* If you need additional language inserted into the terms and conditions, be sure to include that with the requisition.
* Procurement & Contracts discourages agencies from having a potential vendor write your specifications for you.
* It is appropriate for agency personnel to let a preferred vendor and other area vendors know that a bid is posted; even when the buyer makes every effort to notify persons on your vendor list via a mailed or emailed notice, sometimes the bid notices are missed by vendors.

Section III

The RFP – Request for Proposal

The Negotiated Procurement process is based upon the concept of “Best Value” and enables agencies to consider many factors in the evaluation of bid responses beyond cost, including vendor qualifications, past performance, methodology, among others. An RFP is typically used to establish a contract for complex services but can also be used for a combination of goods and services. Evaluation starts with lowest cost proposal; by statute, any award that bypasses a lower cost proposal must be reported to the Legislature

**With this additional flexibility comes additional responsibility in terms of documenting actions taken throughout the bid process, the task of evaluating technical and cost proposals, and in preparing a written justification for actions taken and award recommendations.**

The following is provided as information for preparation of issuing an RFP.

**Other types of Negotiated Procurements:**

* Financial Services (KSA 75-3799 – p.13)
* Telecommunications Services (KSA 75-4713 – p.14)
* IT Services (There was a change in PNC appointees for IT projects (KSA 75-37,102) per HB 2200 from the 2013 Legislative Session)

**For IT Projects, when necessary, agency submits specifications for review by KITO**, and receives an approval to proceed (KSA 75-7201 through 75-7212).

Agency submits the following as attachments to a SMART requisition:

* Request letter to Director of Purchases to establish the Procurement Negotiating Committee (PNC) – see template below
* Specifications document
* List of suggested bidders, including name, address and e-mail address if available.
* How many copies of the proposals your agency will need;
* Non-disclosure agreements for all committee members and reviewers;
* Include a pricing structure that the agency would like to see, such as a firm, fixed fee or a payment schedule tied to deliverables, or a combination of the two;
* Any additional language that is not in the RFP boilerplate (pp. xx –xx);
* Any additional attachments you may require to be inserted into the bid document.

Per K.S.A. 75-37,102, the **PNC** consists of:

* Director of Purchases, or designee
  + The Director of Purchases representative will shepherd the project through the procurement process.
* Secretary of Administration, or designee
* Agency Head, or designee

Others may be involved in bid evaluation, negotiations, program planning, but the three designated members are statutorily responsible for the final decision.

**A Non-Disclosure and Conflict of Interest Agreement**: PNC members, reviewers of the bid response and others needing access to the bid responses before award are required to sign a Non-Disclosure and Conflict of Interest Agreement. The signed agreements must be sent to the Procurement and Contracts Procurement Officer before the bid responses will be released to the agency. The Procurement Officer will maintain the signed agreements with the bid file. Agencies may submit the signed documents either in hard copy or scanned copy.

This form documents that the specified individual:

* Will keep the RFP bid responses confidential,
* Will safeguard the information to insure it’s not inappropriately made available, and
* Acknowledges that they have no conflict of interest regarding the RFP.

**Specifications** should include information the following areas:

* Background/History, if applicable
* Scope of Work
* Services to be Provided
* Deliverables
* Timeline
* State Resources to be Provided, if applicable
* Contract term and renewal options
* Suggested Cost Structure

The **Request for Proposal (RFP) is prepared** by Central Procurement Officer using the agency’s provided Specifications and the State’s RFP template. The Central Procurement Officer will also review the Specifications, requesting clarifications from the agency when necessary.

**RFP information is advertised in the Kansas Register,** per statutory requirement. While the statutory posting requirement is required, the bid to be posted 10 days prior to the bid closing date, time must also be allotted for pre-bid conferences, pre-bid questions and answers, and for vendor proposal preparation. Generally, the time from first posting the bid to the closing date is approximately 30 days.

**RFP is posted to the Internet; notice of RFP is e-mailed or mailed to interested vendors**

* The RFP document reminds bidders to monitor the Central Procurement website for periodic posting of new information related to the bid document.

RFP will typically involve a **Pre-Bid Question & Answer Period** or may include a **Pre-Bid Conference** if on-site discussions/tour are needed,

* Allows potential vendors to request clarification of RFP information
* Q&A released to all known interested vendors via addendum, posted to the Internet

**Bid Closing Date** (Proposal Submission Deadline)

* Vendors are instructed to submit their technical proposals in separate sealed envelopes, separate from the cost proposals.
* At bid opening, only names of bidders are announced

**Review of Proposals** begins when *Technical Proposals only* are forwarded to PNC Members and other agency participants / evaluators

* Cost Proposals are retained by Central Procurement
* Why? Technical Evaluation should be conducted without the prejudice or influence of price.

Agency provides to Central Procurement a complete and detailed **Technical Evaluation** of each Proposal submitted, the technical evaluation shall be in narrative format, with pros and cons, strengths and weaknesses of each proposal with an attempt to address items including (but not limited to):

* Response format as required by the RFP;
* Adequacy and completeness of proposal;
* Vendor's understanding of the project;
* Compliance with the specifications, terms and conditions of the RFP;
* Experience in providing like services;
* Qualified staff;
* Methodology to accomplish tasks;

Upon receipt of an adequate, complete Technical Evaluation (of appropriate quality and substance), the **Cost Proposals** are released to the Agency and PNC for review.

The Agency **reviews the Cost Proposals in concert with the Technical Evaluations**, **and recommends to the PNC one or more vendors to invite to negotiations**

* The Agency is encouraged to examine the bids according to cost, starting with the lowest bid.
  + Why? Per 75-37,102, *“…in the event that the negotiating committee selects a bid which is not the lowest bid on a given contract, the directors report shall contain a rationale explaining why the lowest bidder was not awarded the contract…”*

**Upon concurrence of the PNC, a list of Vendors to Invite to Negotiations is developed.**

* In some instances, it may not be necessary to conduct formal negotiations.

**Negotiation Session(s) are scheduled**

* Preparations for Negotiations should include the development of Q&A / Discussion Points for negotiations, to be sent to the vendor in advance of the negotiations to allow the vendor to be better prepared for the meeting.
* Demonstrations of systems or equipment may be necessary to advance to Negotiations
* At the end of negotiations, the PNC may request a Revised Offer
  + Especially important if clarification of the vendor’s expectations / understanding of the project results in a change of cost;

Once Revised Offers have been submitted, the Agency **again reviews cost and technical proposals**, to arrive at a recommendation for award.

* Several Requests for Revised Offers may be issued for some procurements

The Agency submits a **formal written recommendation for award to PNC, providing full documentation of the recommendation.**

* Deadline for documentation of reasons for not awarding to vendors lower in cost

**Upon PNC concurrence of the Agency’s recommendation, Contract Documents are prepared** and are routed for signatures.

Once all required signatures have been acquired,

* Work on the project may begin.
* The bid file becomes available for review under the Kansas Open Records Act.

**Central Procurement**, based upon their experience with the transaction, remains available for **follow-up,** including answering contract questions, assisting with vendor performance issues, and, standing ready to assist with termination, should the situation warrant this action.

**Tips for a Successful RFP procurement:**

* Due to the complex nature of services and the review process as described above, allow at least 4 months from bid posting to contract signing. More complex services and those that require a transition from one provider to another may require more time. The buyer can discuss a reasonable timeline with the agency.
* Call the buyer who has this commodity if you have any questions about what to include in the specification or scope of work or about the RFP process in general.
* Recognize that the buyer has familiarity with the commodity and in some instances can provide copies of others’ RFP documents for assisting you to write your RFP; the buyer may suggest changes to your specifications or SOW.
* It is appropriate for agency personnel to let a preferred vendor and other area vendors know that a bid is posted; even when the buyer makes every effort to notify persons on your vendor list via a mailed or emailed notice, sometimes the bid notices are missed by vendors.

# Statutory Authorization

# Basic Negotiated Procurement

# 75-37,102

**Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES**

**Article 37.--DEPARTMENT OF ADMINISTRATION**

**75-37,102**. Procurement negotiating committees, services or technical products; composition; powers; notice and procedures; bidding and open meeting exemptions; reports to legislative coordinating council and committees. (a) Upon request of the chief administrative officer of a state agency and subject to the approval of the secretary of administration, the director of purchases may convene a procurement negotiating committee to obtain services or technical products for the state agency.

(b~~) Each procurement negotiating committee shall be composed of: (1) The director of purchases, or a person designated by the director; (2) the chief administrative officer of the state agency desiring to make the procurement, or a person designated by the officer; and (3) the secretary of administration, or a person designated by the secretary.~~ (b) Each procurement negotiating committee shall be composed of:(1) The director of purchases, or a person designated by the director; (2) the chief administrative officer of the state agency desiring to make the procurement, or a person designated by the officer; and (3) the secretary of administration, or a person designated by the secretary or, if a procurement involves information technology or services, the executive chief information technology officer or a person designated by the executive chief information technology officer.

(c) The negotiating committee is authorized to negotiate for the procuring state agency contracts with qualified parties to provide services or technical products needed by the state agency.

(d) Prior to negotiating for the procurement, a notice to bidders first shall be published in the Kansas register. Upon receipt of bids or proposals, the committee may negotiate with one or more of the firms submitting bids or proposals and select from among those submitting such bids or proposals the party to contract with to provide the services or technical products.

(e) Contracts entered into pursuant to this section shall not be subject to the provisions of K.S.A. 75-3738 through 75-3740a and amendments thereto. Meetings to conduct negotiations pursuant to this section shall not be subject to the provisions of K.S.A. 75-4317 through 75-4320a and amendments thereto. The director of purchases shall submit a report at least once in each calendar quarter to the legislative coordinating council and the chairpersons of the senate committee on ways and means and the house of representatives committee on appropriations of all contracts entered into pursuant to this section. In the event that the negotiating committee selects a bid which is not the lowest bid on a given contract, the directors report shall contain a rationale explaining why the lowest bidder was not awarded the contract.

(f) Nothing in this section shall be construed as requiring either negotiations pursuant to this section or bids pursuant to K.S.A. 75-3739 and amendments thereto for the procurement of professional services or services for which, in the judgment of the director of purchases, meaningful specifications cannot be determined.

History: L. 1987, ch. 324, § 1; L. 1996, ch. 6, § 3; July 1.

**There was a change in PNC appointees for IT projects (KSA 75-37,102) per HB 2200 from the 2013 Legislative Session.**

# Financial Services Negotiated Procurement

# 75-3799

**Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES**

**Article 37.--DEPARTMENT OF ADMINISTRATION**

**75-3799**. Financial services for state agencies; procedures for acquisition; negotiating committee. (a) Upon request of the chief administrative officer of a state agency and subject to the approval of the secretary of administration, the director of purchases may convene a financial services negotiating committee to obtain financial services for the state agency under this section.

(b) Each financial services negotiating committee shall be composed of (1) the director of purchases, or a person designated by the director of purchases, (2) the chief administrative officer of the state agency needing financial services, or a person designated by the officer, and (3) the director of accounts and reports, or a person designated by the director of accounts and reports.

(c) The financial services negotiating committee is authorized to negotiate contracts with qualified parties to provide financial services, including services relating to installment purchase, lease, or lease-purchase of equipment or to other financial related services needed by the state agency.

(d) Prior to negotiating for financial services, the committee shall advertise for proposals, negotiate with one or more of the firms submitting proposals and select from among those submitting such proposals the party to contract with for the purpose of providing financial services.

(e) Contracts entered into pursuant to this section for financial services shall not be subject to the provisions of K.S.A. 75-3738 to 75-3740a, inclusive, and any amendments thereto.

History: L. 1984, ch. 308, § 1; May 17.

# Telecommunications Services Negotiated Procurement

# 75-4713

**Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES**

**Article 47.--INFORMATION SYSTEMS AND COMMUNICATIONS**

75-4713. Acquisition of telecommunications services; negotiating committee; procedures. (a) ~~The telecommunications negotiating committee is a three-person committee composed of (1) the secretary of administration, or a person designated by the secretary of administration, (2) the director of purchases, or a person designated by the director of purchases, and (3) the director of the division of information systems and communications, or a person appointed by the director of information systems and communications. The telecommunications negotiating committee may negotiate contracts for telecommunications services to be entered into by the secretary of administration for state agencies and other entities as provided in K.S.A. 75-4709 and amendments thereto.~~ (a) The telecommunications negotiating committee is a three-per-son committee composed of (1) the governor, or a person designated by the governor, (2)the director of purchases, or a person designated by the director of purchases, and (3) the executive chief information technology officer, or a person appointed by the executive chief information technology officer. The telecommunications negotiating committee may negotiate contracts for telecommunications services to be entered into by the executive chief information technology officer for state agencies and other entities as provided in K.S.A. 75-4709*,* and amendments thereto.

(b) Prior to negotiating for telecommunications services, the committee shall advertise for sealed proposals. The committee then may negotiate with one or more firms submitting proposals and select from among those submitting such proposals the party to contract with for the purpose of providing telecommunications services.

(c) Contracts entered into pursuant to this section for telecommunications services shall not be subject to the provisions of K.S.A. 75-3738 to 75-3740a, inclusive, and amendments thereto.

History: L. 1985, ch. 285, § 1; March 7.

**There was a change in PNC appointees for Telecommunications (Sec. 25. K.S.A. 75-4713) per HB 2200 from the 2013 Legislative Session.**

RFP Boilerplate

1. TERMS AND CONDITIONS
2. Will be a standard boilerplate section and remain the same for ALL RFPs

3.1 Contract Documents:

1. This RFP, any amendments, the response and any response amendments of the Contractor, and the State of Kansas DA-146a (Contractual Provision Attachment) shall be incorporated into the written contract, which shall compose the complete understanding of the parties.
2. In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:
3. • Form DA 146a;
4. • written modifications to the executed contract;
5. • written contract signed by the parties;
6. • the RFP, including any and all amendments;
7. • and Contractor's written proposal submitted in response to the RFP as finalized.

3.2 Contract:

1. The successful bidder will be required to enter into a written contract with the State. The contractor agrees to accept the provisions of Form DA 146a (Contractual Provisions Attachment), which is incorporated into all contracts with the State and is incorporated into this RFP.

3.3 Contract Formation:

1. No contract shall be considered to have been entered into by the State until all statutorily required signatures and certifications have been rendered and a written contract has been signed by the successful bidder.

3.4 Notices:

1. All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") that may be required or desired to be given by either party to the other shall be IN WRITING and addressed as follows:
2. Kansas Department of Administration
3. Procurement and Contracts
4. 800 SW Jackson St, Suite 600
5. Topeka, Kansas 66612-1286
6. RE: Bid Event ID Number (on page 1)

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

3.5 Termination for Cause:

1. The Director of Purchases may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:
2. • the Contractor fails to make delivery of goods or services as specified in this contract;
3. • the Contractor provides substandard quality or workmanship;
4. • the Contractor fails to perform any of the provisions of this contract, or
5. • the Contractor fails to make progress as to endanger performance of this contract in accordance with its terms.
6. The Director of Purchases 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 State may authorize in writing), the Director of Purchases 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.

3.6 Termination for Convenience:

1. The Director of Purchases may terminate performance of work under this contract in whole or in part whenever, for any reason, the Director of Purchases shall determine that the termination is in the best interest of the State of Kansas. In the event that the Director of Purchases elects to terminate this contract pursuant to this provision, it shall provide the Contractor written notice at least 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.

3.7 Debarment of State Contractors:

1. Any Contractor who defaults on delivery or does not perform in a satisfactory manner as defined in this Contract may be barred for a period up to three (3) years, pursuant to KSA 75-37,103, or have their work evaluated for pre-qualification purposes pursuant to K.S.A. 75-37,104.

3.8 Rights and Remedies:

1. If this contract is terminated, the State, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to the State in the manner and to the extent directed, any completed materials. The State shall be obligated only for those services and materials rendered and accepted prior to the date of termination.
2. In the event of termination, the Contractor shall receive payment prorated for that portion of the contract period services were provided to or goods were accepted by State subject to any offset by State for actual damages including loss of federal matching funds.
3. The rights and remedies of the State provided for in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

3.9 Force Majeure:

1. 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.

3.10 Waiver:

1. 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 State shall not constitute a waiver.

3.11 Independent Contractor:

1. 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.
2. The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation, social security, income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

3.12 Staff Qualifications:

1. 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.
2. Failure of the Contractor to provide qualified staffing at the level required by the contract specifications may result in termination of this contract or damages.

3.13 Subcontractors:

1. The Contractor shall be the sole source of contact for the contract. The State 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.
2. The State of Kansas requires tax clearance certificates for all subcontractors be submitted with the technical proposal, and that the bidder additionally provide subcontractor(s) legal company name, contact information and tax ID number (FEIN/TIN) as well.

3.14 Proof of Insurance:

1. Upon request, the Contractor shall present an affidavit of Worker's Compensation, Public Liability, and Property Damage Insurance to Procurement and Contracts.

3.15 Conflict of Interest:

1. 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 the State and providing services involving this contract or services similar in nature to the scope of this contract to the State. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any state employee who has participated in the making of this contract until at least two years after his/her termination of employment with the State.

3.16 Confidentiality:

1. The Contractor may have access to private or confidential data maintained by State to the extent necessary to carry out its responsibilities under this contract. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 et seq.)in providing services under this contract. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this contract shall be disseminated by either party except as authorized by statute, either during the period of the contract or thereafter. Contractor must agree to return any or all data furnished by the State promptly at the request of State in whatever form it is maintained by Contractor. On the termination or expiration of this contract, Contractor will not use any of such data or any material derived from the data for any purpose and, where so instructed by State, will destroy or render it unreadable.

3.17 Nondiscrimination and Workplace Safety:

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

3.18 Environmental Protection:

1. The Contractor shall abide by all federal, state and local laws, and 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 or rule or regulations may result in termination of this contract for cause.

3.19 Hold Harmless:

1. The Contractor shall indemnify the State 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.
2. The State 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 state property. The Contractor shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction or damage to State property.

3.20 Care of State Property:

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

3.21 Prohibition of Gratuities:

1. 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 State employee at any time.

3.22 Retention of Records:

1. Unless the State specifies in writing a different period of time, the Contractor agrees to preserve and make available at reasonable times 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.
2. 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.
3. 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 state 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 within five (5) business days at no cost to the state.

3.23 Antitrust:

1. If the Contractor elects not to proceed with performance under any such contract with the State, the Contractor assigns to the State 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 the State of Kansas relating to the particular products or services purchased or acquired by the State pursuant to this contract.

3.24 Modification:

1. This contract shall be modified only by the written agreement and approval of the parties. 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.

3.25 Assignment:

1. The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of the State. State may reasonably withhold consent for any reason.
3. This contract may terminate for cause in the event of its assignment, conveyance, encumbrance or other transfer by the Contractor without the prior written consent of the State.

3.26 Third Party Beneficiaries:

1. This contract shall not be construed as providing an enforceable right to any third party.

3.27 Captions:

1. 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.

3.28 Severability:

1. 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.

3.29 Governing Law:

1. This contract shall be governed by the laws of the State of Kansas and shall be deemed executed in Topeka, Shawnee County, Kansas.

3.30 Jurisdiction:

1. The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas District Court of Shawnee County, unless otherwise specified and agreed upon by the State of Kansas. Contractor waives personal service of process, all defenses of lack of personal jurisdiction and forum non conveniens. The Eleventh Amendment of the United States Constitution 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 Agreement shall be deemed a waiver of the Eleventh Amendment.

3.31 Mandatory Provisions:

1. The provisions found in Contractual Provisions Attachment (DA 146a) are incorporated by reference and made a part of this contract.

3.32 Integration:

1. 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 Agreement between the parties shall be independent of and have no effect on any other contracts of either party.

3.33 Debarment of State Contractors:

1. Any Contractor who defaults on delivery or does not perform in a satisfactory manner as defined in this Agreement may be barred for up to a period of three (3) years, pursuant to K.S.A. 75-37,103, or have its work evaluated for pre-qualification purposes. Contractor shall disclose any conviction or judgment for a criminal or civil offense of any employee, individual or entity which controls a company or organization or will perform work under this Agreement that indicates a lack of business integrity or business honesty. 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 state 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.

3.34 Immigration and Reform Control Act of 1986 (IRCA):

1. All contractors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the contractor as well as any subcontractor or sub-contractors. The usual method of verification is through the Employment Verification (I-9) Form.
2. With the submission of this bid, the contractor hereby certifies without exception that such contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at the State's option, may subject the contract to termination for cause and any applicable damages.
3. Unless provided otherwise herein, all contractors are expected to be able to produce for the State any documentation or other such evidence to verify Contractor's IRCA compliance with any provision, duty, certification or like item under the contract.
4. Contractor will provide a copy of a signed Certification Regarding Immigration Reform and Control Form (see <http://admin.ks.gov/docs/default-source/ofpm/procurement-contracts/irca.doc?sfvrsn=6>) with the technical proposal.

3.35 Worker Misclassification:

1. The contractor and all lower tiered subcontractors under the contractor shall properly classify workers as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes, and income tax withholding. Failure to do so may result in contract termination.

3.36 Injunctions:

1. Should Kansas 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 the State, Contractor shall not be entitled to make or assert claim for damage by reason of said delay.

3.37 Statutes:

1. 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.

3.38 Federal, State and Local Taxes:

1. Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. The Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Contract. The State of Kansas is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the bidder's price quotation. Upon request, the State shall provide to the Contractor a certificate of tax exemption.
2. The State makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

3.39 Accounts Receivable Set-Off Program:

1. If, during the course of this contract the Contractor is found to owe a debt to the State of Kansas, agency payments to the Contractor may be intercepted / setoff by the State of Kansas. Notice of the setoff action will be provided to the Contractor. Pursuant to K.S.A. 75-6201 et seq, Contractor shall have the opportunity to challenge the validity of the debt. If the debt is undisputed, the Contractor shall credit the account of the agency making the payment in an amount equal to the funds intercepted.
2. K.S.A. 75-6201 et seq. allows the Director of Accounts & Reports to setoff funds the State of Kansas owes Contractors against debts owed by the Contractors to the State of Kansas. Payments setoff in this manner constitute lawful payment for services or goods received. The Contractor benefits fully from the payment because its obligation to the State is reduced by the amount subject to setoff.

3.40 Definitions:

1. A glossary of common procurement terms is available at http://da.ks.gov/purch, under "Purchasing Forms".
2. OTHER TERMS AND CONDITIONS
3. *will be changed as appropriate for each proposal and will continue in numbered sequence as in Section 3, "Terms and Conditions"*
   1. Indefinite OR Definite Quantity Contract:
4. This Request is for an open-ended contract between a Contractor and the State to furnish an undetermined quantity of a good or service in a given period of time. The quantities ordered will be those actually required during the contract period, and the Contractor will deliver only such quantities as may be ordered. No guarantee of volume is made. An estimated quantity based on past history or other means may be used as a guide.
5. OR
6. **DEFINITE QUANTITY CONTRACT**: This Request is for a close-ended contract between the Contractor and the State to furnish a predetermined quantity of a good or service in a given period of time.
   1. HIPAA Confidentiality:
7. Per the Health Insurance Portability and Accountability Act (1996) (HIPAA), the agency is a covered entity under the act and therefore Contractor is not permitted to use or disclose health information in ways that the agency could not. This protection continues as long as the data is in the hands of the Contractor.
8. The Contractor shall establish and maintain procedures and controls acceptable to the agency to protect the privacy of members' information. Unless the Contractor has the member's written consent, the Contractor shall not use any personally identifiable information obtained for any reason other than that mandated by this agreement
   1. Off-Shore Sourcing:
9. Bidders shall disclose in their bid response the location where the contracted services will be performed and whether or not any of the work necessary to provide the contracted services will be performed at a site outside the United States.
10. If, during the term of the contract, the Contractor or subcontractor plans to move work previously performed in the United States to a location outside of the United States, the Contractor shall immediately notify Procurement and Contracts and the respective agency in writing, indicating the desired new location, the nature of the work to be moved and the percentage of work that would be relocated. The Director of Purchases, with the advice of the respective agency, must approve any changes prior to work being relocated. Failure to obtain the Director's approval may be grounds to terminate the contract for cause.
    1. Proposal Preparation Information:
11. **OPTIONAL** Additional reference material is available for review at the requesting agency. This information has been assembled by the using agency to assist bidders in the preparation of the proposals and to ensure that all bidders have equal access to information.
12. OPTIONAL: Bidders may access this information by contacting the following individual for an appointment:
    1. On-Site Inspection:
13. Failure to adequately inspect the premises shall not relieve the Contractor from furnishing without additional cost to the State any materials, equipment, supplies or labor that may be required to carry out the intent of this Contract. Submission of a proposal 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 response.
    1. Experience:
14. All bidders (must have/or are preferred to have) a minimum of \_\_\_\_\_\_ years continuous active participation in the applicable industry, providing equipment/services comparable in size and complexity to those specified herein.
15. 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.
    1. Prices OR Price Adjustments:
16. Prices shall remain firm for the entire contract period and subsequent renewals. Prices shall be net delivered, including all trade, quantity and cash discounts. Any price reductions available during the contract period shall be offered to the State of Kansas. Failure to provide available price reductions may result in termination of the contract for cause.
17. OR
18. **PRICE ADJUSTMENTS:** Prices shall remain firm for the entire contract period. Prices shall be net delivered, including all trade, quantity and cash discounts. Any price reductions available during the contract period shall be offered to the State of Kansas. Failure to provide available price reductions may result in termination of the contract for cause.
19. On the yearly anniversary date of this contract, costs may remain at the existing contract price or a request for adjustment may be made, either upward or downward, keyed to industry changes. Contractor shall furnish documentation at least 30 days prior to expiration date to substantiate any claim for increase. Price increases shall not exceed five percent (5%) of the existing contract. The State of Kansas reserves the right to accept, amend or deny any such price increase. If parties to the contract cannot agree on renewal terms, it is hereby understood that the contract will be rebid.
    1. Payment:
20. 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 Contractor and the state agency. 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.
21. Payments shall not be made for costs or items not listed in the Contractor's response.
22. **OPTIONAL** Payment schedule shall be on a frequency mutually agreed upon by both the agency and the Contractor.
    1. Unit Pricing:
23. Each item required by the bid must be individually priced (i.e. priced per single unit) and be able to be ordered individually.
    1. Upgrades:
24. Bidders shall indicate the upgrade price and policy for any software, firmware, or hardware upgrades anticipated for the equipment bid. If the upgrades are provided without cost, this should be indicated.
    1. Shipping and F.O.B. Point:
25. Unless otherwise specified, bid prices shall be F.O.B. DESTINATION, PREPAID AND ALLOWED (included in the price bid), which means delivered to a state agency's receiving dock or other designated point as specified in this RFP without additional charge. Shipments shall be made in order to arrive at the destination at a satisfactory time for unloading during receiving hours.
    1. Deliveries:
26. All orders shall be shipped FOB destination, prepaid and allowed, within \_\_\_\_ days ARO, clearly marked with the purchase order number. If delays in delivery are anticipated, the Contractor shall immediately notify the ordering agency of the revised delivery date or partial delivery date. The order may be canceled if delivery time is unsatisfactory. The Contractor shall inform Procurement and Contracts of any supply or delivery problems. Continued delivery problems may result in termination of the contract for cause.
27. In the event delivery minimums apply, bidders shall submit that information with their bid response.
    1. Charge Back Clause:
28. If the Contractor fails to deliver the product within the delivery time established by the contract, the State reserves the right to purchase the product from the open market and charge back the difference between contract price and open market price to the Contractor.
    1. Demonstration Requirements:
29. A demonstration of the selected devices/equipment/solution for the using agencies may be required before final contract approval. The State of Kansas reserves the right to request said devices/equipment/solution fully configured/operational for testing, which shall be furnished at no expense to the State within ten (10) days after receipt of request. Devices/equipment will be returned at the bidder's expense if not consumed during the evaluation process.
    1. Quarterly Reports:
30. REQUIRED FOR STATEWIDE AND "VARIOUS" CONTRACTS; OPTIONAL FOR "AGENCY SPECIFIC" CONTRACTS. The Contractor shall be required to file a quarterly report by each state agency or political subdivision making purchases under this contract. Reports are due no later than 30 days after the end of each calendar quarter and shall correlate with figures submitted as Administrative Fees (see below). Above referenced reports are to be filed with Procurement and Contracts Open Records Officer or his/her designee located at 800 SW Jackson, Suite 600, Topeka, KS 66612-1286. Reports may also be required to be submitted to the specific using agency.
31. Electronic files shall be e-mailed to the following e-mail address: reports@da.ks.gov, in Microsoft® Excel or Microsoft® Access Database format.
32. The required reporting format may be found on the Procurement and Contracts website at http://da.ks.gov/purch, under the "Forms" link.
33. Report Types - Reports shall be available reflecting the following information. Agencies and Procurement and Contracts reserve the right to request additional information.
34. Sales Summary -- Report shall include a list of agencies and political subdivisions who have used the contract, a subtotal of sales to each agency or political subdivision, as well as a grand total of all sales.
35. Items Sold -- Report shall include a list of items sold to agencies and political subdivisions, indicating the contract price and using agency, a subtotal of sales to each agency or political subdivision, as well as a grand total of all sales.
36. Items Sold, by Agency - Same as above, except sorted by agency.
    1. Quarterly Report Contact Information:
37. Contact information must be provided for use should the State of Kansas need to contact the appropriate officials within your company to discuss the issue of quarterly reports. Please complete the required information on the "Response Check List", attached.
    1. Administrative Fee:
38. Contractor(s) must pay a 1/2% Administrative Fee on all purchases (including political subdivisions) made against this contract. The fee is to be included in the cost (bid price) of the goods or services. The Administrative Fee is to be based upon the total dollars invoiced under the contract. The Administrative Fee shall be made in check form, payable to the "State of Kansas - Procurement and Contracts" and must be paid within 30 days following the end of each quarter. Fees paid under this mandate shall correlate with figures submitted on the quarterly reports.
    1. Materials and Workmanship:
39. 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 Contract, within the time specified, in accordance with the provisions as specified.
40. The contractor shall be responsible for all work put in under these specifications and shall make good, repair and/or replace, at the contractor's own expense, as may be necessary, any defective work, material, etc., if in the opinion of agency and/or Procurement and Contracts said issue is due to imperfection in material, design, workmanship or contractor fault.
    1. Industry Standards:
41. 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.
    1. Subcontractors:
42. 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, or Electrical Construction included as a part of the Proposal, when a single contract for the "Project as a whole" is to be awarded.
43. The State of Kansas requires tax clearance certificates for all subcontractors be submitted with the technical proposal, and that the bidder additionally provide subcontractor(s) legal company name, contact information and tax ID number (FEIN/TIN) as well.
    1. Bid Guaranty:
44. The Director of Purchases requires that a bid guaranty in the amount of five percent (5%) of the total bid be submitted by all bidders to ensure faithful performance with the conditions of this RFP. A bid guaranty must be one of the following: (1) certified check, cashier check, or certificate of deposit payable to the State; or (2) a properly executed bid bond payable to the State.
45. All checks or certificates of deposit submitted as a bid guaranty shall be returned after contract award unless the guaranty shall serve as a performance guaranty for the successful bidder. Bonds will not be returned. If the successful bidder fails or refuses to enter into a written contract, the State shall retain the bid guaranty as liquidated damages.
    1. Public Works Bond:
46. The Contractor shall file with the Director of Purchases a Public Works Bond as required by K.S.A. 60-1111, as amended, in an amount equal to one hundred percent (100%) of contract price and shall be filed with the Clerk of the District Court in the County where the project is being constructed.
47. The bond funding will be released upon the completion of this contract subject to total or partial forfeiture for failure to perform adequately the terms of this contract. If damages exceed the amount of the guaranty, the State may seek additional damages. A Public Works Bond is not required for projects with a contract price below $100,000.00.
48. Necessary bond forms will be furnished by Procurement and Contracts 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.
    1. Performance Guaranty/Bond:
49. The Contractor shall file with the Director of Purchases a performance guaranty/bond in the amount of $\_\_\_\_\_\_\_\_\_ or \_\_\_\_ % of the contract price. The guaranty shall be released upon the completion of this contract subject to total or partial forfeiture for failure to adequately perform the terms of this contract. If damages exceed the amount of the guaranty, the State may seek additional damages.
50. A performance guaranty must be one of the following: (1) certificate of deposit payable to the State; or (2) a properly executed bond payable to the State.
51. Necessary bond forms will be furnished by Procurement and Contracts 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.
    1. Equipment:
52. All proposed 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.
    1. Implied Requirements:
53. All products and services not specifically mentioned in this RFP, 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 bidder's response.
    1. Warranty:
54. Bidders shall indicate the type and extent of the warranty for all equipment, hardware, software, and services proposed. The State requires a "standard" warranty of <a specific amount of> days, or 1 year, whichever is greater. This warranty shall be included in the cost of the equipment.
55. The Contractor will be the sole point of contact on any problems with the equipment or systems during the warranty period.
56. The Contractor shall be responsible for all work performed 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 agency or Procurement and Contracts said defect is due to imperfection in material, design, or workmanship for the warranty period specified.
    1. Acceptance:
57. No contract provision or use of items by the State shall constitute acceptance or relieve the Contractor of liability in respect to any expressed or implied warranties.
    1. Ownership:
58. All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by the Contractor under this contract shall be owned by the using agency. The Contractor may not release any materials without the written approval of the using agency.
    1. Software Code and Intellectual Property Rights:
59. As applicable, all original software and software code and related intellectual property developed or created by the Contractor in the performance of its obligations under this Contract or any Task Order issued under this Contract, shall become the sole property of the State of Kansas. The Contractor will surrender all original written materials, including any reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer-based training modules, electronically or magnetically recorded material, used to develop this software or software code and related intellectual property to the state entity for which it was developed.
    1. Data:
60. Any and all data required to be provided at any time during the bid process or contract term shall be made available in a format as requested and/or approved by the State.
    1. Submission of the Bid:
61. Submission of the bid 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 proposal for all contingencies. Later claims for labor, work, materials, equipment, and tax liability required for any difficulties encountered which could have been foreseen will not be recognized and all such difficulties shall be properly taken care of by Contractor at no additional cost to the State of Kansas.
    1. Alternate Proposals/Equivalent Items:
62. Bids on goods and services comparable to those specified herein are invited. 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 the State and if not destroyed in the evaluation process, shall be returned at bidder's expense, if requested.
63. The State of Kansas reserves the right to determine and approve or deny "equivalency" in comparison of alternate bids.
    1. Certification of Materials Submitted:
64. The response to this RFP, 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 Contractor and the State of Kansas. 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.
    1. Inspection:
65. The State reserves the right to reject, on arrival at destination, any items which do not conform with specification of the Contract.
    1. New Materials, Supplies or Equipment:
66. Unless otherwise specified, all materials, supplies or equipment offered by the 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.
    1. Bidder Contracts:
67. Bidders must include with their RFP response, a copy of any contracts, agreements, licenses, warranties, etc. that the bidder would propose to incorporate into the any contract generated from this Bid Event. (State of Kansas form DA-146a remains a mandatory requirement in all contracts.)
    1. Contract Price:
68. Statewide contracts are awarded by Procurement and Contracts to take advantage of volume discount pricing for goods and services that have a recurring demand from one or more agencies. However, if a state agency locates a vendor that can provide the identical item at a lower price, a waiver to "buy off state contract" may be granted by Procurement and Contracts.
    1. Transition Assistance:
69. In the event of contract termination or expiration, Contractor shall provide all reasonable and necessary assistance to State to allow for a functional transition to another vendor.
    1. Award:
70. Award will be by line item or group total, whichever is in the best interest of the State of Kansas.
71. SPECIFICATIONS
72. will be changed as appropriate for each proposal.
73. The following sections will follow the agency's specifications for the product/service desired. This section must be numbered.
74. Agency shall provide specifications for this RFP, to include, but not be limited to:

* Background/History, if applicable
* Scope of Work
* Services to be Provided
* Deliverables
* Timeline
* State Resources to be Provided, if applicable

**Request to Establish PNC Template**

***AGENCY LETTERHEAD***

Date

Tracy Diel, Director

Department of Administration

Procurement and Contracts

800 SW Jackson, Suite 600

Topeka, KS 66612-1216

Dear Mr. Diel:

On behalf of the **Department/Division Name**, I am requesting that you convene a Procurement Negotiating Committee in accordance with KSA 75-37,102. The purpose of the committee is to secure a contract to provide **Name of Contract or Services.**

I have delegated **Name of Agency Purchasing Representative** as my designee for this committee. Additionally, I would like to recommend **Name of Agency Subject Matter Expert** as the Secretary of Administration designee on the Procurement Negotiating Committee.

Thank you for your consideration and assistance in this matter.

Sincerely,

**Name**

**Title**

**Notes (delete before preparing letter):**

***Per statute, the request to establish a PNC is to be requested by the Chief Administrative Officer of the agency***