



Terms & Conditions

These **GENERAL CONDITIONS** are applicable to all bids and contracts with the Kentucky Community & Technical College System (KCTCS), Procurement to Payment Services Department.

We encourage you/your firm to study these conditions and retain copies for reference, as they are an integral part of all contracts awarded by the KCTCS Procurement to Payment Services Department.

The following **GENERAL CONDITIONS** are applicable to each Invitation to Bid issued by KCTCS and to each purchase made by any authorized method of acquisition. Each firm submitting a bid or selling to KCTCS shall be deemed to have assented to these conditions by the act of bidding and/or acceptance of a purchase request.

These **GENERAL CONDITIONS** will not be repeated in each Invitation to Bid although they shall be an integral part of each invitation and resulting contract. These General Conditions will be sent to any supplier upon request.

Additional conditions may be incorporated in specific Invitations to Bid, and contracts, and are generally termed "Special Conditions." Such special conditions will in no way operate to alter or nullify the general conditions and each bidder shall be responsible for compliance with both the general and special conditions. However, in cases of irreconcilable conflict, the special conditions will govern.

1. DEFINITIONS

Contract – The entire written agreement between the parties including, but not limited to, the Invitation to Bid and its terms, conditions and specifications, solicitation instructions, solicitation addenda, contractor's offer, the contract document, and contract amendments if any, including, without limitations, these General Terms and Conditions and the purchase order or price agreement document excluding correspondence of any type unless specifically accepted by both parties in writing.

Contractor – A person, company, corporation, organization or other legal entity with whom KCTCS has executed a Contract.

KCTCS - Kentucky Community & Technical College, an agency and instrumentality of the Commonwealth of Kentucky.

2. BID AND PROPOSAL SUBMISSION COMPLIANCE AND PROVISIONS:

A. In submitting bids and proposals to KCTCS the bidder agrees to:

1. Submit only one response for each solicitation.
2. Submit each bid in legible form on the Invitation to Bid or form, respectively.
3. Have the bid signed, before the specified opening time by a proper agent of the firm. No bid will be considered valid unless signed in the space provided on the KCTCS bid form.

4. Specify brand name or trademark and model and catalog number for each item offered
5. Extend prices for items where applicable and provide an extended total and a grand total where appropriate, it being understood that in cases of an error in an extension of prices, the unit price will govern.
6. Unless instructed otherwise to do so, quote only one price for each item stated on the solicitation document.
7. Quote prices on a delivered, prepaid basis, F.O.B. DESTINATION, shown in shipping instructions of the Invitation unless otherwise stated in the Invitation. Do not quote "F.O.B. FACTORY FREIGHT ALLOWED" or other such terms.
8. Provide technical specifications with solicitation response together with any other data necessary to properly evaluate products offered as equal to those specified in the solicitation, when alternate products are allowable.
9. Refrain from including Kentucky Sales and/or Use Tax in the bid, unless otherwise stated. KCTCS is exempt from such tax. However, bidders are informed that construction contracts for KCTCS are not exempt from the provisions of the Kentucky Sales and/or Use Tax. All adjustments and allowances for the current sales and/or use tax shall be provided for in the bid amount as no adjustments will be permitted and/or made after the fact.
10. Provide new, unused, and current commodities (latest model) unless otherwise specified in the Invitation.
11. Provide firm prices unless otherwise stated in the solicitation.
12. Submit bids in such a way as to ensure that they arrive in the Department of Procurement to Payment Services before the opening time set for the bid, the time shown on a recording clock at KCTCS being agreed upon as the official time. Bids received after the time set for opening shall be considered "late bids" and will not be eligible for award of contract unless no valid bid, quote or proposal is received. To be considered for an award of contract, a late bid must be postmarked before the opening/closing date and must be the only responsive bid received.
13. Maintain as a firm offer any and all bids, with respect to price, terms and conditions after they are opened, it being understood that solicitations may be withdrawn after they are opened, and prior to an award only where evidence is presented to the Procurement to Payment Manager which clearly demonstrates that the bidder has made a bona fide error in the preparation of the bid or offer and that the error will result in a substantial loss to the bidder if he or she is forced to perform under the contract.
14. Accept any contracts awarded on the price, terms and conditions stated in the bid.
15. Submit a bid bond or check if specified in the Special Instructions of the Solicitation, it being understood that any bid may be rejected for failure to comply with instructions or specifications regarding both bonds and/or checks.
16. Comply with the General Instructions and with all requests regarding the submission of samples and to pay all shipping costs for samples either sent to or returned from KCTCS Procurement to Payment Services. The bidder agrees that title to any sample vests in the Procurement to Payment Services Department if return is not requested within thirty (30) days.
17. Make available records, papers, books or other documents whether during performance or in connection with a preliminary investigation of bidder's financial status. Such information shall be limited to the information generally available to the public, provided it satisfactorily indicated the bidder's ability to perform as specified under the contract. If the initial investigation does not reasonably satisfy the Procurement to Payment Services department that the contract can be performed, the Procurement to Payment Services Department may request additional information before a contract is awarded. The bidder further agrees, if so requested, to furnish Procurement to Payment Services a list of names of several users of the bidder's product or services.

18. File a performance bond pursuant to a request from the Procurement to Payment Services Department whether or not such a bond was required by the Invitation to Bid. The bidder will sign the bond as principal and in addition will have the bond signed by a surety company authorized to do business in the Commonwealth of Kentucky, it being understood that if the surety has its authority to do business in Kentucky revoked or withdrawn from doing business in the Commonwealth, the bidder who meets the requirements of this condition will promptly obtain another surety on the bond. All bonds furnished under this condition shall be conditioned upon the full performance of all obligations imposed on the bidder by their contract with KCTCS and shall provide for recovery by KCTCS of any and all damages suffered by it by reason of the bidder's failure to perform any of his contract obligations, said recovery being permissible from the bidder and the surety or either of them.
19. Obtain a bond meeting the requirements stated above from the bidder's source of supply when requested to do so by KCTCS Procurement to Payment Services. If such a bond is required, it shall be made in favor of KCTCS and shall be conditioned on the source of supply making available to the bidder such equipment or products as will enable him to fulfill his or her obligations under contract with KCTCS.
20. Provide bonds, insurance and any other documents or meet requirements stipulated in general or specific conditions of Invitations to Bid for Construction Contracts.
21. Refrain from assigning any interest, right or duty in any contract with KCTCS to any other person without the prior written consent of the Procurement to Payment Services Department, except that claims for sums due or to become due under a contract may be assigned to a bank, trust company or other person and may then be reassigned. Notice of any assignment shall be given by the supplier or his assignee to the using agency and the Director of Procurement to Payment Services, 300 North Main Street, Versailles KY 40383, immediately after the assignment is made, and the invoice or voucher submitted by the supplier shall clearly show both the supplier name and address and the assignee's name and address. The warrant issued by Procurement to Payment Services shall be payable in such case jointly to the supplier and the assignee and shall be forwarded to the assignee. Any assignee shall be subject to the set-off rights of the Commonwealth provided in Kentucky Revised Statutes. See KRS 371.040 and KRS 44.030.
22. If state offices are closed on days other than scheduled holidays, bid openings scheduled for that day shall be held on the next normal working day at the scheduled hour. If opening hours of state offices are delayed, morning bid openings shall be delayed by the same amount of time. (i.e. If offices open two hours late, morning bids shall be opened two hours late.) Afternoon bids shall be opened as scheduled.
23. When responding to an Invitation to Bid refrain from imposing conditions that would modify the terms and conditions of the solicitation or limit the bidder's liability to KCTCS on the contract awarded on the basis of such Invitation/Proposal.

B. Through the Commonwealth of Kentucky, KCTCS is entitled to exemption from Federal Excise Tax. All bidders or contractors shall take this into consideration in their bids.

C. Withdrawal or modification of bids prior to the closing time and date designated for receipt of bids may be accomplished under circumstances as follows:

1. A properly identified representative of the bidding firm may request that a bid be withdrawn prior to the opening date. This request may be made in writing if signed by a duly authorized representative of the firm whose name appears on the face of the envelope. If a bidder decides to withdraw the bid but is unable to appear or have an authorized representative appear in person prior to official opening date for bids, the bid will be opened, read and tabulated along with any other bids. Any written request for bid withdrawal will be reviewed and evaluated in accordance with policies as stated herein.

2. Withdrawn bids may be resubmitted up to the closing time designated for receipt of bids. A bid may not be modified, withdrawn or canceled by the bidder during the stipulated time period following the time and date designated for receipt of bids without approval of the appropriate procurement official and subject to the forfeit of bid guarantee and suspension of future bidding privileges.

D. Unless otherwise specified, telephone or facsimile responses shall not be accepted.

3. APPLICABILITY OF GENERAL TERMS AND CONDITIONS:

These terms are in addition to the terms and conditions set forth in any solicitation document and/or purchase agreement and should be read in conjunction with the same unless the document indicates otherwise. To the extent that Contractor terms and conditions conflict with these KCTCS General Terms and Conditions, the latter shall control. Either party's failure to insist upon the performance of any provision of these General Terms and Conditions shall not be construed as a waiver of that party's present or future right to such performance or each party's obligation in respect thereto shall continue in full force and effect.

4. CONTRACT PROVISIONS BY REFERENCE

It is mutually agreed by and between KCTCS and the Contractor that KCTCS's acceptance of the Contractor's offer by the issuance of a Purchase Order or Contract shall create an agreement between the parties thereto containing the following:

- All specifications, terms and conditions in the solicitation document except as amended in the contract.
- The provision of the awarded contract to include all terms, special conditions, specifications, and the Contractor's offer.
- KCTCS's General Terms and Conditions.

Unless otherwise specified, in the event of any conflicts, the documents shall control in the following order:

1. The written contract or purchase order (if any);
 2. Contractor's exceptions, if expressly accepted by KCTCS;
 3. The RPF, bid or other solicitation document;
 4. KCTCS's General Terms and Conditions; and
 5. Contractor's offer
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5. GOVERNING LAW AND DISPUTE RESOLUTION

Contracts with KCTCS shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky. Any claim, action, suit, or proceeding between KCTCS and the Contractor that arises from or relates to any contract between the parties shall be brought in the Franklin Circuit Court in accordance with Kentucky Revised Statutes (KRS 45A.245). Pursuant to KRS 45A.230, any dispute arising under the Contract shall be submitted to KCTCS's Executive Vice President for Finance and Administration.

6. INDEMNIFICATION

The Contractor shall indemnify, hold and save harmless KCTCS, its affiliates and subsidiaries and their officers, agents, and employees from losses, claims, suits, actions, expenses, damages, costs (including attorney fees of attorneys of KCTCS's choice and court costs) expenses, all liability of any nature or kind arising out of or relating to the Contractor's performance hereunder. This clause shall survive the termination of any contract for as long as necessary to protect KCTCS.

7. INSURANCE

The successful Contractor shall procure and maintain, at its expense, the following minimum insurance coverages insuring all services, work activities and contractual obligations undertaken in this contract. These insurance policies must be with insurers acceptable to KCTCS. Insurance requirements may be modified in the Special Conditions of any solicitation document. In such cases, the insurance requirements of the Special Conditions shall prevail.

Prior to the beginning of the contract, the contractor will furnish to KCTCS Procurement to Payment Services Certificates of Insurance that show it has and will maintain all insurance protection (including products liability insurance) at the contractor's expense.

Minimum liability coverage must be:

Public Liability -Comprehensive General Owners, Landlords and Tenants

Bodily Injury Liability

Each Person \$1,000,000

Each Occurrence \$1,000,000

Property Damage Liability \$1,000,000

Products Liability

Each Person \$1,000,000

Each Occurrence \$1,000,000

Automobile Liability

Bodily Injury

Each Person \$1,000,000

Each Occurrence \$1,000,000

Personal Injury Liability

Each Person \$1,000,000

Property Damage Liability \$1,000,000

Worker's Compensation Statutory

Employers Liability \$ 500,000

The Kentucky Community and Technical College System must be named as an additional insured in the policy for Comprehensive General Liability. In the event of failure by the contractor to maintain, in force, insurance coverage acceptable to KCTCS, KCTCS will have the right to terminate this Agreement immediately upon written notice to the contractor. Copies of the Insurance Certificates are to be furnished to the KCTCS

Procurement to Payment Services Department. Modification of this requirement must be requested in writing with supporting statements, prior to the time of the bid submission.

Any deductibles or self-insured retention in the above-described policies must be paid and are the sole responsibility of the Contractor. Coverage is to be primary and non-contributory with other coverage, if any, purchased by KCTCS. All of these required policies must include a Waiver of Subrogation, except Workers' Compensation, in favor of KCTCS, its trustees and employees.

8. TERMINATION FOR CONVENIENCE

KCTCS reserves the right to terminate any contract at any time, in whole or in part, by thirty (30) day written notice to Contractor. Upon receipt by the Contractor of the "notice of termination", the Contractor shall discontinue all services with respect to the applicable contract. KCTCS, after deducting any amount(s) previously paid, shall pay for all services rendered or goods supplied by the Contractor, as well as any reasonable costs incurred by Contractor up to the time of termination but not including Contractor's loss of profit. The cost of any agreed upon services provided by the Contractor will be calculated at the agreed upon rate prior to "notice of termination" and a fixed fee contract will be pro-rated (as appropriate).

9. TERMINATION FOR NON-PERFORMANCE

KCTCS may terminate the resulting contract for non-performance, as determined by KCTCS, for such causes as:

- Failing to provide satisfactory quality of service, including, failure to maintain adequate personnel, whether arising from labor disputes, or otherwise any substantial change in ownership or proprietorship of the Contractor, which in the opinion of KCTCS is not in its best interest, or failure to comply with the terms of this contract;
- Failing to keep or perform, within the time period set forth herein, or violation of, any of the covenants, conditions, provisions or agreements herein contained;
- Adjudicating as a voluntarily bankrupt, making a transfer in fraud of its creditors, filing a petition under any section from time to time, or under any similar law or statute of the United States or any state thereof, or if an order for relief shall be entered against the Contractor in any proceeding filed by or against contractor thereunder. In the event of any such involuntary bankruptcy proceeding being instituted against the Contractor, the fact of such an involuntary petition being filed shall not be considered an event of default until sixty (60) days after filing of said petition in order that Contractor might during that sixty (60) day period have the opportunity to seek dismissal of the involuntary petition or otherwise cure said potential default; or
- Making a general assignment for the benefit of its creditors, or taking the benefit of any insolvency act, or if a permanent receiver or trustee in bankruptcy shall be appointed for the Contractor.

Demand for Assurances

In the event KCTCS has reason to believe Contractor will be unable to perform under the Contract, it may make a demand for reasonable assurances that Contractor will be able to timely perform all obligations under the Contract. If Contractor is unable to provide such adequate assurances, then such failure shall be an event of default and grounds for termination of the Contract.

Notification

KCTCS will provide ten (10) calendar days written notice of default. Unless arrangements are made to correct the nonperformance issues to KCTCS's satisfaction within ten (10) calendar days, KCTCS may terminate the contract by giving forty-five (45) days' notice, by registered or certified mail, of its intent to cancel this contract.

10. ATTORNEY'S FEES

In the event that either party deems it necessary to take legal action to enforce any provision of the contract, and in the event KCTCS prevails, the Contractor agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation.

11. COMPENSABLE DAMAGES FOR BREACH

The Contractor agrees that the following items shall be included as compensable damages for any breach of a contract with KCTCS.

- Replacement costs.
- Cost of repeating the competitive bidding procedure expenses.
- Expenses incurred as the result of delay in obtaining replacements.

The enumeration of compensable damage contained in this section is not intended to be exclusive and will not operate to bar recovery by KCTCS for any other damages occasioned by the Contractor's breach of a contract. However, in cases where contract provides for liquidated damages, said liquidated damages shall be in lieu of all other damages, including those enumerated.

12. ASSIGNMENT AND SUBCONTRACTING

The Contractor(s) may not assign or delegate its rights and obligations under any contract in whole or in part without the prior written consent of KCTCS. Any attempted assignment or subcontracting shall be void.

13. CONTRACTOR'S RESPONSIBILITY IN PERFORMING WORK

The Contractor is solely responsible for the fulfillment of the contract with KCTCS.

Contractor and its agents, subcontractors, and representatives shall be independent contractors and not act as agents of KCTCS. All persons furnished or retained by Contractor in connection with any contract shall be considered employees or agents of the Contractor.

Contractor shall control all employee misconduct while on KCTCS's premises. Any employee under the influence of alcohol or controlled substances, other than prescription medications, shall not be allowed on the premises of KCTCS and shall be permanently dismissed if found to be so. Further, offensive language, sexual or other types of harassment of students, employees or visitors to KCTCS campus could result in immediate and permanent dismissal of the offending person(s) from KCTCS site.

Contractor shall comply with KCTCS's tobacco-free policy. This policy prohibits the use of tobacco in or around its facilities including UK HealthCare. Additional information on this policy is available at: <http://www.uky.edu/TobaccoFree/>. Contractor shall ensure that employees abide by any applicable University policies and regulations concerning behavior/conduct.

14. ADDITIONS, DELETIONS OR CONTRACT CHANGES

KCTCS reserves the right to add, delete, or change related items or services to any contract. No modification or change of any contract provision shall be made, unless such modification is mutually agreed to in writing by the **Contractor** and KCTCS, and incorporated as a written modification to the contract. Memoranda of understanding and correspondence shall not be interpreted as a modification to or part of the contract, unless specifically agreed to by both parties.

15. PERMITS, LICENSES AND TAXES

The Contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations and ordinances of all federal, state, and local governments in which work under this contract is performed. The Contractor shall pay any sales, use, personal property, and other taxes arising out of this contract and the transactions contemplated hereby. Any other taxes levied upon this contract, the transaction, or the equipment or services delivered pursuant hereto shall be the responsibility of the Contractor.

16. ROYALTIES, PATENTS, COPYRIGHTS AND TRADEMARKS

The Contractor shall pay all applicable royalties and license fees. If a particular process, products or device is specified in the contract documents and it is known to be subject to patent rights or copyrights, the existence of such rights shall be disclosed in the contract documents and the Contractor is responsible for payment of all associated royalties. To the fullest extent permitted by law the Contractor shall indemnify, hold KCTCS harmless, and defend all suits, claims, losses or damages resulting from any infringement of patent, copyright, and trademark rights resulting from the incorporation in the Work or device specified in the Contract Documents.

Unless provided otherwise in the contract, the Contractor shall not use KCTCS's name nor any of its trademarks or copyrights, although it may state that it has a Contract with KCTCS.

17. COPYRIGHT OWNERSHIP AND TITLE TO DESIGNS AND COPY

Contractor and University both consider the products and results of the services to be rendered by Contractor to be a work made for hire. Contractor acknowledges and agrees that the work and all rights therein, including, without limitation, copyright, belongs to and shall be the sole and exclusive property of KCTCS. For any work that is not considered a work made for hire under applicable law, title and copyright ownership shall be assigned to KCTCS.

Title to all dies, type, cuts, artwork, negatives, positives, color separations, progressive proofs, plates, copy, and any other requirement not stated herein required for completion of the finished product for use in connection with any KCTCS job shall be the property of and owned by KCTCS. Such items shall be returned

to the appropriate department upon completion and/or delivery of work unless otherwise authorized by KCTCS. In the event that time of return is not specified, Contractor shall return all such items to the appropriate University department within one week of delivery.

18. PROPRIETARY INFORMATION, DATA DUPLICATION, AND DISCLOSURE

Contractor agrees that any information disclosed from KCTCS to the Contractor for the purpose of any contract shall be used only in the performance of the contract. Contractor will keep information confidential, will not disclose it to any third party except as authorized by the Owner, and will only disclose it to those within its organization who need to use it in performance of the Contract. Upon completion or termination of this contract, Contractor shall return all such information to KCTCS or make such other disposition thereof as may be directed or approved by KCTCS.

No item furnished under this contract, or tools, plans, designs or specifications for producing the same which have been specifically designed for by KCTCS shall be duplicated or used by Contractor. Upon completion or termination of this contract, Contractor shall return all items, tools, plans, designs or specifications to KCTCS or make such other disposition thereof as may be directed by or approved by KCTCS.

Contractor agrees that it will not, without prior written approval of KCTCS, publicize this contract or disclose, confirm or deny any details thereof to third parties, or use KCTCS's name in connection with Contractor's sales promotion or publicity without prior written approval of KCTCS.

Nothing in this provision shall restrict Contractor's right to use or disclose any information which is or becomes generally known to the public without breach of this provision by Contractor, or is rightfully obtained without restriction from other sources.

19. CONTRACTOR'S RESPONSIBILITY FOR RECORDS, AUDITS AND REPORTS

Contractor shall retain all records and documents and shall provide unlimited access, at all reasonable times and upon reasonable notice, to all accounting records and supporting documentation relating to the goods and services furnished during any contract and for a period of five (5) years thereafter, unless required to be retained for a longer period by state or federal statute. KCTCS reserves the right to audit such records and employ any auditor KCTCS deems appropriate to perform an audit of Contractor's records. Should such audit disclose incorrect billings or improprieties, KCTCS reserves the right to charge the Contractor for the cost of the audit and pursue appropriate reimbursement.

Contractor will be responsible for providing line item usage reports to KCTCS Procurement to Payment Services

Department on a quarterly basis. Procurement to Payment Services reserves the right to request other pertinent reports.

20. NON-DISCRIMINATION AND EQUAL OPPORTUNITY

Contractor is subject to and shall comply with all applicable Federal, state and local laws and regulations governing equal employment opportunity and affirmative action including, but not limited to, the Kentucky Equal Employment Act of 1978 (KRS 45.550 et. seq. of the Kentucky Revised Statutes) and the Federal requirements set forth in Titles VI and VII of Civil

Rights Act of 1964, as amended; Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; the Americans with

Disabilities Act of 1990, as amended; Executive Order 11246 as amended; The Age Discrimination in Employment Act of

1967, as amended; the Age Discrimination Act of 1975, as amended; The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; and all regulations and administrative rules established pursuant to the foregoing laws. Expressly, Contractor shall not discriminate in employment on the basis of race, color, religion, age, sex, national origin, physical or mental disability, or because he or she is a disabled veteran or a veteran of the Vietnam era.

21. CONTRACTOR AND SUBCONTRACTOR RESPONSIBILITY WITH FEDERALLY FUNDED CONTRACTS

Section 503: Disabilities

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

VEVRAA

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

22. OPEN RECORDS

Any contract with KCTCS, and all related information and documentation may be subject to public disclosure under the Kentucky Revised Statutes 61.870 et. seq. Contractor is hereby notified that KCTCS strictly adheres to this statute and the interpretations thereof rendered by the courts and the Kentucky Attorney General. Contractor shall be deemed to have knowledge of this law and the means of protecting Contractor's legitimate interests.

23. DEBARRED, SUSPENDED AND INELIGIBLE STATUS

Contractor certifies that is has not been debarred, suspended, or declared ineligible as defined in the Federal Acquisition Regulation (FAR 48 C.F.R Ch. 1 Subpart 9.4). Contractor will immediately notify KCTCS if the Contractor is placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors.

24. CONFLICTS OF INTEREST

Contractor affirms that, to the best of Contractor's knowledge, there exist no conflicts of interest between the Contractor of KCTCS or its employees as defined by all applicable Kentucky Revised Statutes and University of Kentucky ethics and compliance policies and procedures. In the event of change in

Contractor's interests, Contractor shall inform KCTCS regarding any conflicts of interest that are likely to arise as a result of such change. Contractor hereby represents that it has not participated in any illegal or unethical conduct in connection with the contract. If, at any time, KCTCS determines the Contractor is in violation of the forgoing representation, KCTCS may cancel the contract upon written notice to the Contractor and KCTCS shall have no further obligation to the Contractor.

25. GENERAL WARRANTIES

Contractor warrants that all goods shall conform to the specifications of the contract and shall be merchantable, free from defects (including defects in design and fit) and suitable for the intended purposes. Contractor further warrants that all services shall conform to the specifications of the contract and shall be performed in a professional and workmanlike manner. These warranties shall remain in effect for at least one year following University's acceptance of the goods or services or for the duration of Contractor's standard warranty period if such period exceeds one year. The foregoing warranties are in addition to, and shall not limit, any other warranties or buyer protections that exist by operation of law.

26. PRICE WARRANTY

Contractor warrants that the price(s) for the articles or services sold to KCTCS hereunder are not less favorable than those extended to any other customer (whether government or commercial) for the same or similar articles or services in similar quantities. In the event Contractor reduces its price(s) for such articles or services during the term of this contract, Contractor agrees to reduce the prices hereof accordingly. Contractor warrants that prices shown on this contract shall be complete, and no additional charges of any type shall be added without KCTCS's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, customs, duties, taxes, storage, insurance, boxing and crating

27. FINAL INSPECTION AND ACCEPTANCE

KCTCS reserves the right to perform inspection and/or expediting of the materials and fabrication thereof at the facility of the Contractor or its suppliers at any reasonable times. All materials and services are subject to final inspection and acceptance by KCTCS at destination, notwithstanding any prior payments or inspection at the source. Such final inspection shall take place within thirty (30) days from the date of delivery or installation or completion of services whichever is latest.

In addition to other remedies which may be available under law or in equity, KCTCS, at its option may return to the Contractor any nonconforming or defective item(s), at no cost to KCTCS, and require correction or replacement of the item(s). If KCTCS does not require correction or replacement of nonconforming or defective item(s), Contractor shall repay such portion of the contract price or such additional amount as is equitable under the circumstances. The rights of KCTCS are in addition to and shall not be limited by Contractor's standard warranties.

28. DELIVERY, TRANSPORTATION AND PACKAGING

The Contractor covenants that, if awarded a contract, the Contractor shall:

Adequately pack all commodities and equipment according to accepted commercial practice and according to the packing and marking instructions stated in the contract documents or purchase order.

Make deliveries as stated in the contract; it is understood by the Contractor that all deliveries shall be made by the end of KCTCS's fiscal year in which the contract is awarded unless otherwise specified in a specific contract.

Make deliveries during normal working day hours to the point or points specified in the contract documents or purchase order unless otherwise noted.

29. PRICE REDETERMINATION

Prices quoted shall be firm and fixed unless otherwise stipulated in the Special Conditions of the Invitation to Bid. For multiple year contracts, prices shall remain firm and fixed during the initial term of the contract. At the end of the initial contract term, and at the end of each contract term thereafter, the Contractor may request a price adjustment. Such requests must be submitted in writing at least 60 calendar days prior to the end of the contract term and shall include the cause for the adjustment, the amount of change requested, and documentation to support the requested adjustment.

Only pass through price adjustments will be considered and any proposed price increase must be proven to be general throughout the industry. Requests for price increases must be accompanied by sufficient documentation to justify the request including, for example, certified letters from a manufacturer or published price indices such as the Producer Price Index that substantiate a price increase.

KCTCS Procurement to Payment Services must agree to and approve any proposed price adjustment before its effective date. The adjusted price(s) become effective starting with the term beginning after the approval and shall be firm and fixed for the next contract term.

30. FREIGHT

KCTCS's freight terms are F.O.B. destination, freight prepaid and allowed. If shipment is indicated on the purchase order as freight prepaid and added, the Contractor will prepay the freight charges and, if mutually agreed to, add them to the invoice. Separate freight invoices will not be accepted. Collect shipments will be returned at Contractor's expense unless otherwise instructed by KCTCS.

31. TERMS FOR PROMPT PAYMENT

KRS 45.451 to 45.458 require that all bills shall be paid within 30 working days of either the receipt of correct invoice, and receipt of goods or services in satisfactory condition. A penalty payment of 1% per month shall be added to the amount due the supplier for each full or partial month that the payment exceeds 30 working days unless the invoice is in dispute. As an incentive for earlier payment, bidders for state contracts are encouraged to offer discounts for payments made in less than the prescribed 30 days.

32. PROCUREMENT CARD

KCTCS utilizes a procurement card program as the preferred method of payment. KCTCS assumes that all successful bidders will accept KCTCS's procurement card as a method of payment unless a specific

exception is stated in the bidder's response to the Invitation For Bid. No additional charges may be added for acceptance of the procurement card.

33. PAYMENT CARD INDUSTRY – DATA SECURITY STANDARD REQUIREMENTS (PCI-DSS)

Contractor shall be required to comply with the Gramm-Leach-Bliley Act (GLBA). To the extent any purchase includes services, including support, such that the provider of the service (defined in the GLBA as "Service Provider") may receive "customer information" through the course of contracted activities with KCTCS, Service Provider agrees to the following additional terms and conditions:

- (a) Throughout the term of this Agreement, Service Provider shall implement and maintain "appropriate safeguards", as that term is used in § 314.4(d) of the FTC Safeguard Rule, 16 C.F.R. § 314, for all "customer information," as that term is defined in 16 C.F.R. § 314.2(b), received by Service Provider pursuant to this Agreement.
- (b) Service Provider shall promptly notify KCTCS, in writing, of each instance of (i) unauthorized access to or use of any customer information that could result in substantial harm or inconvenience to a customer of KCTCS or (ii) unauthorized disclosure, misuse, alteration, destruction or other compromise of any customer information. Within 30 days of the termination or expiration of this Agreement, Service Provider shall destroy all records, electronic or otherwise, in its or its agents' possession that contains such customer information and shall deliver a written certification of the destruction to KCTCS.
- (c) Service provider consents, upon reasonable advance notice, to KCTCS's right to conduct an on-site audit of Service Provider's security program.
- (d) Notwithstanding any other provisions of this Agreement, KCTCS may terminate this Agreement for cause if Service Provider has allowed a material breach of its security program, if Service Provider has lost or materially altered customer information, or if KCTCS reasonably determines that Service Provider's security program is inadequate.
- (e) Service Provider shall defend, indemnify, and hold harmless KCTCS, its agents, officers, board members, and employees from and against any and all claims, damages, losses, and expenses, including reasonable attorney's fees, for any claims arising out of or in any way relating to any allegations of security breaches, violations of the Safeguard Rule caused by Service Provider's negligence, intentional acts or omissions, or any loss or material alteration of customer information.
- (f) Service Provider shall reimburse KCTCS for any damages, including but not limited to any costs required to reconstruct lost or altered information, resulting from any security breach, loss, or alteration of customer information.

Contractor hereby agrees as follows:

- (a) Contractor shall be responsible for the security of cardholder data that it possesses, even temporarily, including any functions relating to storing, processing and transmitting of cardholder data on behalf of KCTCS. In the case of a payment processing system and/or equipment purchased from Contractor that is covered by PA DSS (Payment Application Data Security Standard), Contractor warrants and represents that its software and/or equipment shall not impede the KCTCS's PCI DSS (Payment Card Industry Data Security Standard) compliance efforts. In the event that Contractor's software and/or equipment does impede such efforts, KCTCS may, in its sole discretion, upon thirty (30) days' notice and opportunity to cure, terminate this Agreement, with any prepaid amounts refunded to KCTCS on a pro-rata basis.

(b) Contractor warrants and represents that, as of the effective date of this Agreement, it has complied with all applicable requirements for validation and compliance with the PCI DSS (Payment Card Industry Data Security Standard), as appropriate for its Service Provider level. Contractor agrees to supply the current status of its PCI DSS compliance, and evidence of its most recent validation of compliance, upon execution of this Agreement. Further, Contractor must supply to the KCTCS a new status report and evidence of validation of compliance at least annually and upon request by KCTCS. Contractor will immediately notify KCTCS if it learns that it is no longer PCI DSS compliant and will immediately report to KCTCS the steps being taken to remediate the non-compliance status. In no event should Contractor's notification to KCTCS be later than seven (7) calendar days after Contractor learns it is no longer PCI DSS compliant. Failure to maintain PCI DSS compliance shall be a breach of contract and KCTCS may, at its sole discretion, terminate this Agreement if Contractor does not become compliant within thirty (30) days, with any prepaid amounts refunded to KCTCS on a pro-rata basis.

(c) Contractor warrants and represents that, as of the effective date of this Agreement; it has complied with all applicable requirements for validation with the PA DSS (Payment Application Data Security Standard) for its payment processing system. Contractor agrees to supply evidence of its most recent validation upon execution of this Agreement. Further, Contractor agrees to maintain PA DSS validation for the installed payment processing system version throughout the term of any maintenance agreement with KCTCS. If the PA DSS validation deadline for the payment system lapses, Contractor acknowledges that it shall be in breach of this Agreement and KCTCS may, at its sole discretion, terminate this Agreement if Contractor does not become compliant within thirty (30) days, with any prepaid amounts refunded to KCTCS on a pro-rata basis.

(d) While doing business in KCTCS facilities or on its property, if credit card payments will be processed over the internet via the Contractors own system and/or equipment and through its own merchant account, Contractor will provide its own internet connection to process such payments, and will not be permitted to use KCTCS's network and equipment.

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Our Colleges

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300 North Main Street | Versailles, KY 40383 | Phone (859) 256-3100

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