



CONTRACT AWARD

Date of Award: February 22, 2008

Contract Number: 08015

Replaces Contract: 08486

Fort Hays State University Purchasing Office

Telephone: 785-628-4251

E-Mail Address: purchasing@fhsu.edu

Web Address: <http://www.fhsu.edu/adminfin/purchasing/>

Item: Chemicals

Agency: Fort Hays State University

Location(s): Hays, KS

Term of Contract: Date of Award through February 28, 2009
(with the option to renew for two (2)
additional one (1) year periods)

Scope: This Contract shall cover the procurement of Chemicals for the FHSU University Farm, Hays, Kansas, during the contract period referenced above.

Contractors: Sims Fertilizer & Chemical Co.
P.O. Box 330, Industrial Avenue
Osborne, KS 67473
Toll Free Phone: 800-821-4289
Phone: 785-346-5681
Fax: 785-346-2785
Contact Person: Katie Lix

Prices: See Attached

Payment Terms: Net 30

Procurement Cards: FHSU **may use** State of Kansas Business Procurement Card for purchases from this contract.

Political Subdivisions: Pricing **is not** available to the political subdivisions of the State of Kansas.

The above referenced contract award was recently posted to the Fort Hays State University Internet website. The document can be downloaded by going to the following website:

<http://www.fhsu.edu/adminfin/purchasing/>

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

TERMS AND CONDITIONS

Term of Contract: The term of this contract is from February 22, 2008 through February 28, 2009 for a one (1) year period from the date of award with two (2) additional one (1) year renewal(s) by written agreement of the parties.

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

Conditions of Contract: The following terms and conditions of award are incorporated by reference and include: form DA-45/DA-146a; specifications and conditions of the proposal including any addenda; vendor's response including any addenda, appendices and exhibits.

Order of Preference: Any conflict to the provisions of this contract and the documents incorporated by reference shall be determined by the following priority order:

- a. Contract Provisions Attachment DA-45/146a;
- b. Written modifications and addenda to the executed contract;
- c. This contract document;
- d. The above referenced Invitation for Bid (IFB) including any addenda;
- e. Contractors response including any addenda, appendices and exhibits.

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

**Fort Hays State University
Purchasing Office
601 Park Street Sheridan Hall Rm 318
Hays, KS 67601**

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

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

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

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

The FHSU Purchasing Director 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 FHSU may authorize in writing), the FHSU Purchasing Director shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.

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

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

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

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

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

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

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

Ownership: All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by the Contractor under this contract shall be owned by FHSU. The Contractor may not release any materials without the written approval of FHSU.

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

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

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

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

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

Confidentiality: The Contractor may have access to private or confidential data maintained by FHSU 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 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 FHSU promptly at the request of FHSU 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 FHSU, will destroy or render it unreadable.

Reviews and Hearings: The Contractor agrees to advise the FHSU Purchasing Director of all complaints of recipients made known to the Contractor and refer all appeals or fair hearing requests to the FHSU Purchasing Director. FHSU has the discretion to require the Contractor to participate in any review, appeal, fair hearing or litigation involving issues related to this contract.

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

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

Hold Harmless: The Contractor shall indemnify FHSU 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.

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

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

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

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

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

The Contractor agrees that authorized federal and state representatives, including but not limited to, personnel of FHSU; 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 at no cost to FHSU.

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

Antitrust: If the Contractor elects not to proceed, the Contractor assigns to FHSU 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 FHSU pursuant to this contract.

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

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

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

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

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

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

Governing Law: This contract shall be governed by the laws of the State of Kansas and shall be deemed executed at Hays, Ellis County, Kansas, unless otherwise specified and agreed upon by FHSU.

Jurisdiction: The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas, District Court of Ellis County, unless otherwise specified and agreed upon by FHSU. The United States District Court for the State of Kansas sitting in Topeka, Shawnee County, Kansas, shall be the venue for any federal action or proceeding arising hereunder in which the State is a party.

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

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

State Credit Card: FHSU uses a State of Kansas Business Procurement Card (Visa) in lieu of a state warrant to pay for some of its purchases. No additional charges will be allowed for using the card.

Criminal Or Civil Offense Of An Individual Or Entity That Controls A Company Or Organization Or Will Perform Work Under This Contract: Any conviction for a criminal or civil offense that indicates a lack of business integrity or business honesty must be disclosed. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a 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.

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

Injunctions: Should FHSU 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 FHSU, vendor shall not be entitled to make or assert claim for damage by reason of said delay.

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

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

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

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

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

Payment Terms: Unless specified otherwise, Payment Terms are Net 30 days. Payment date and receipt of order date shall be based upon K.S.A. 75-6403(b). This Statute requires FHSU to pay the full amount due for goods or services on or before the 30th calendar day after the date FHSU 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 vendor and FHSU. NOTE: If the 30th calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following workday will become the required payment date.

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

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

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

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

Subcontractors: The contractor shall be the sole source of contact for the contract. FHSU 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.

Qualifications: A description of the vendor's qualifications and experience providing the requested or similar service including resumes of personnel assigned to the project stating their education and work experience. The vendor must be an established firm recognized for its capacity to perform. The vendor must be capable of mobilizing sufficient personnel to meet the deadlines specified in this solicitation.

Experience: All bidders must have a minimum of three (3) years continuous active participation in the applicable industry as a distinct company, providing equipment and systems comparable in size and complexity to the equipment and systems specified. Bidders may be required to furnish information supporting the capability to comply with conditions for bidding and fulfill the contract if receiving an award of contract. Such information may include, but not be limited to, a list of similar size and type projects the Bidder has completed.

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

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

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

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

Contact: Any correspondence by the Contractor, with FHSU, must be documented in writing and submitted to the FHSU Purchasing Office, to be considered for any possible addenda, and/or in the evaluation of the bid. Any change in specification shall be authorized only by the FHSU Purchasing Office and will be issued by written addendum.

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

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

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

Indefinite Quantity Contract: This is an open-ended contract between a vendor and FHSU 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.

Prices: Prices shall remain firm for the entire contract period. Prices quoted shall be net delivered, including all trade, quantity and cash discounts. Any price reductions available during the contract period shall be offered to the FHSU. Failure to provide available price reductions may result in termination of the contract.

Price Adjustments: On the yearly anniversary date of this contract, prices as bid may remain at the price bid or may be based on a price adjustment, either upward or downward, keyed to industry and changes. Contractor shall furnish figures at least thirty (30) days prior to expiration date to substantiate any claim for increase. Price increases shall not exceed five percent (5%) of the existing contract. If parties to the contract can not agree on renewal terms, it is hereby understood that the contract will be re-bid.

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

Certification of Materials Submitted: The response to the IFB, together with the specifications set forth herein and all data submitted by the vendor to support the response including brochures, manuals, and descriptions covering the operating characteristics of the item(s) proposed, shall become a part of any contract between the successful vendor and FHSU. 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.

SPECIFICATIONS

Background and Scope: This is established to furnish chemicals for the FHSU University Farm.

Deliverables: Vendor will deliver requested quantities as needed within one (1) week of the telephone/purchase order. Farm personnel will work with vendor to match orders to barrel or shuttle quantities, when possible, but some orders will need to be filled with smaller quantities. All shipping charges & shuttle deposits will be the responsibility of the vendor and not billed to the University Farm. All shuttles will be returned to the vendor when the material is used and no later than the end of the contract period at the vendor's expense.

FHSU Contact: Harland Werth at 785-628-8713.

Delivered To: Fort Hays State University (FHSU)
University Farm
1422C US 183 Alt
Hays, KS 67601-4099

PRICING

Vendor: Sims Fertilizer & Chemical Co.

Listed below is an estimate of what will be purchased annually for this contract. FHSU will purchase the most economically sized container. Orders will be as needed.

Alfalfa

5 gal. - Mustang Max
\$171.00 (1 gal. container)
 Brand Name & No. EPA Reg. No. 279-3249
 and/or Generic Name & No. _____

5 gal. - Pilot 4E (Chlorpyrifos)
\$22.95 (1 gal. container)
 Brand Name & No. EPA Reg. No. 66330-278
 and/or Generic Name & No. _____

Milo

100 gal. - Marksmen (Dicamba + Atrazine)
\$28.95 (1 gal. container)
 Brand Name & No. EPA Reg. No. 7969-136
 and/or Generic Name & No. _____

100 gal. - Crop Oil (Phytobland Paraffinic Oil)
\$6.30 (1 gal. container)
 Brand Name & No. _____
 and/or Generic Name & No. _____

100 gal. - Atrazine
\$12.99 (1 gal. container)
 Brand Name & No. EPA Reg. No. 1381-158
 and/or Generic Name & No. _____

Wheat-Milo-Summer Fallow

250 gal. - Unloaded (no surfactant) Glyphosate (Pricing good thru 03/01/08)
\$24.99 (2 ½ gal. container) \$22.99 (30 gal. container) \$21.99 (250 gal. shuttle)
 Brand Name & No. Glyphogan-generic
 and/or Generic Name & No. EPA Reg. No. 66222-105

250 gal. - LV6 (Isooctyl Ester of 2,4-Dichlorophenoxyacetic Acid) (Pricing good thru 05/01/08)
\$17.99 (2 ½ gal. container) \$17.25 (30 gal. container) \$17.00 (250 gal. shuttle)
 Brand Name & No. EPA Reg. No. 71368-11
 and/or Generic Name & No. _____

50 gal. - Oracle (Dicamba)
\$33.99 (1 gal. container)
 Brand Name & No. EPA Reg. No. 42750-40
 and/or Generic Name & No. _____

20 gal. - Tordon 22K
\$81.99 (1 gal. container)
 Brand Name & No. EPA Reg. No. 62719-6
 and/or Generic Name & No. Picloron-generic \$65.00

5 gal. - Milestone
\$325.00 (1 gal. container)
 Brand Name & No. EPA Reg. No. 62719-519
 and/or Generic Name & No. _____

100 gal. – Surfactant (Drexel)
\$12.99 (1 gal. container) \$10.90 (30 gal. container) \$9.90 (55 gal. container)
 Brand Name & No. EPA Est. No. 1386-OH-1
 and/or Generic Name & No. _____

CONTRACTUAL PROVISIONS ATTACHMENT

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

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being March 4, 2008.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

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

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."