FORT HAYS STATE UNIVERSITY

Forward thinking. World ready.

CONTRACT RENEWAL

January 24, 2013

Contract Number: **04509**

Fort Hays State University Purchasing Office
Telephone: 785-628-4251
E-Mail Address: purchasing@fhsu.edu
Web Address: http://www.fhsu.edu/purchasing/contracts

Item: **HVAC Controls Materials**

Agency: **Fort Hays State University, Hays, KS**

Period of Contract: **January 24, 2013 through January 23, 2023**

Contractor: **Automated Control Systems Corporation**
7858 Barton
Lenexa, KS 66214
Telephone: 888-265-2773
Fax: 913-248-8833
FEIN: 48-1088393
Contact Person: Robert Rodriguez
Email: brodriguez@acs-1.com

Payment Terms: **Net 30**

By mutual agreement of both parties, this contract is renewed through January 23, 2023. Fort Hays State University is part of the Regents Purchasing Program and is administering the HVAC Controls Materials contract #04509 instead of State of Kansas Procurement and Contracts.

Scope: Provide material/parts on an as needed basis as requested for Electronic, Digital, Pneumatic, HVAC, Alarm, Security, CCTV, Intrusion and Controls Systems; Provide labor on an as needed basis as requested for Electronic, Digital, Pneumatic, HVAC, Alarm, Security, CCTV, Intrusion and Controls Systems.

Prices: The following rates are added to this contract:

- Materials/Parts: 55% discount from current US List Price schedules
- Travel Cost per mile (not to exceed): $ .58/mile
- Lodging per night: $ 75.00/day
- Meals: $ 35.00/day
- Labor:
  - Project Management: $ 90.00/hour
  - Engineering: $ 90.00/hour
  - Technician:
    - Regular/straight time: $ 80.00/hour
    - Overtime: $ 120.00/hour
    - Holiday: $ 160.00/hour

Procurement Cards: May use the State of Kansas Business Procurement Card for purchases from this contract.

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/purchasing/contracts

CONDITIONS

Term of Contract: The term of this contract is for a ten (10) year period from January 24, 2013 through January 23, 2023 by written agreement of the parties.

Conditions of Contract: The following terms and conditions of award are incorporated by reference and include: DA-45/146a; specifications and conditions of the proposal, including any addenda; vendors 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. This FHSU Contract Award #04509 and attachments;
c. Written modifications and addenda to the executed contract;
d. Automated Control Systems Proposal dated 1-23-13;
e. The below referenced Request for Proposal (RFP) including any addenda;
f. Contractors Proposal including any addenda, appendices and exhibits.

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.

Invoices: Invoices shall be forwarded to the using agency in duplicate and shall state the following:
(1) date of invoice;
(2) date of completion of work;
(3) contract number 04509;
(4) itemization of all applicable charges;
(5) net amount due.

Mail invoices to the following address:
Fort Hays State University
Keith Dreher, Energy Division
600 Park Street
Hays, KS 67601

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.

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:

- the Contractor fails to make delivery of goods or services as specified in this contract; or
- the Contractor provides substandard quality and/or workmanship;
- 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.

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.

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, 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.

Debarment of University Contractors: Any vendor who defaults on delivery or does not perform in a satisfactory manner as defined in this RFP 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.

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.

In the event of termination, the Contractor shall receive payment prorated 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.

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.

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.

Proof of Insurance: Upon request, the vendor shall present Certificates of Insurance to the FHSU Purchasing Office evidencing the following coverage during the performance of the Services:

(a) Worker's Compensation with statutory limits;
(b) Employers Liability, with a minimum $1,000,000 limit of liability per occurrence;
(c) Commercial General Liability, including Contractual Liability coverage, with the following minimum limits of liability: $1,000,000 per occurrence for Bodily Injury and Property Damage, and $1,000,000 General Aggregate; and
(d) Professional Liability in the minimum amount of $1,000,000 per claim.

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 the FHSU and who are providing services involving this contract or services similar in nature to the scope of this contract to the University. 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 of 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.

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 state property. The Contractor shall do nothing to prejudice the 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 state-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.

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 FHSU 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 PNC. 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 University.

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

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.

Criminal Or Civil Offense: Any conviction for a criminal or civil offense of an individual or entity that controls a company or organization or will perform work under this contract 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.

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 University, vendor shall not be entitled to make or assert claim for damage by reason of said delay.

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.

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.

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 Fort Hays State University said issue is due to imperfection in material, design, workmanship or contractor fault.

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.

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

The University makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

Accounts Receivable Set-Off Program: During the course of this contract if the vendor is found to owe a debt to the State of Kansas, agency payments to the vendor may be intercepted / setoff by the State of Kansas. Notice of the setoff action will be provided to the vendor. The vendor shall credit the account of the agency making the payment in an amount equal to the funds intercepted.

K.S.A. 75-6201 et seq. allows the Director of Accounts & Reports to setoff funds the State of Kansas owes vendors against debts owed by the vendors to the State of Kansas. Payments setoff in this manner constitute lawful payment for services or goods received. The vendor benefits fully from the payment because its obligation to the State is reduced by the amount subject to setoff.

Immigration and Reform Control Act of 1986 (IRCA): 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. The usual method of verification is through the Employment Verification (I-9) form.

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 University's option, may subject the contract to termination and any applicable damages.

Unless provided otherwise herein, all contractors are expected to be able to produce to FHSU any documentation or other such evidence to verify Contractor's compliance with any provision, duty, certification or like under the contract.

Definite Quantity Contract: This Request is for a close-ended contract between the vendor and FHSU to furnish a predetermined quantity of a good or service in a given period of time.

HIPAA Confidentiality: 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.

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

Off-Shore Sourcing: 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.

If, during the term of the contract, the Contractor or subcontractor moves work previously performed in the United States to a location outside of the United States, the Contractor shall immediately notify the FHSU Purchasing Office in writing, indicating the new location and the percentage of work relocated.

On-Site Inspection: Failure to adequately inspect the premises shall not relieve the successful vendor from furnishing without additional cost to FHSU any materials, equipment, supplies or labor that may be required to carry out the intent of

this contract. Submission of a bid shall be construed as evidence that the vendor has made necessary examination, inspection and investigation. Failure to properly inspect the site may result in rejection of the vendor's bid.

Prices: Prices shall remain firm for the entire contract period and subsequent renewals. 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 FHSU. Failure to provide available price reductions may result in termination of the contract.

Payment: 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 Fort Hays State University to pay the full amount due for goods or services on or before the 30th calendar day after the date Fort Hays State University 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 Fort Hays State University. 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.

Payments shall not be made for costs or items not listed in the vendor's response.

Upgrades: 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.

Shipping and F.O.B. Point: Unless otherwise specified, bid prices shall be F.O.B. DESTINATION, PREPAID AND ALLOWED (included in the price bid), which means delivered to FHSU'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.

Deliveries: All orders shall be shipped FOB destination, prepaid and allowed, clearly marked with the purchase order number. If delays in delivery are anticipated, the Contractor shall immediately notify the Fort Hays State University of the revised delivery date or partial delivery date. The order may be cancelled if delivery time is unsatisfactory. The Contractor shall inform the FHSU Purchasing Office of any supply or delivery problems. Continued delivery problems may result in termination of the contract.

In the event delivery minimums apply, bidders shall submit that information with their bid response.

Charge Back Clause: If the contractor fails to deliver the product within the delivery time quoted on the contract, FHSU 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.

Demonstration Requirements: A demonstration of the selected devices/equipment/solution for FHSU may be required before final contract approval. FHSU reserves the right to request said devices/equipment/solution fully configured/operational for testing, which shall be furnished at no expense to FHSU within ten (10) days after receipt of request. Devices/equipment will be returned at the bidder’s expense if found to be non-compliant with the specifications as set forth in this RFP.

Equipment: 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.

Implied Requirements: All products and services not specifically mentioned in 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 vendor's response.

Warranty: Bidders shall indicate the type and extent of the warranty for all equipment, hardware, software, and services proposed. FHSU requires a “standard” warranty of a specific amount of days, or one (1) year, whichever is greater. This warranty shall be included in the cost of the equipment.

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

The Contractor shall be responsible for all work 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 the FHSU Purchasing Office said defect is due to imperfection in material, design, or workmanship for the warranty period specified.

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.

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.

Data: 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 FHSU.

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.

Transition Assistance: In the event of contract termination or expiration, Contractor shall provide all reasonable and necessary assistance to FHSU to allow for a functional transition to another vendor.

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

CONTRACTUAL PROVISIONS ATTACHMENT

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

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

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

1. **Terms Herein Controlling Provisions**: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. **Kansas Law and Venue**: This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.

3. **Termination Due To Lack Of Funding Appropriation**: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. **Disclaimer Of Liability**: No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

5. **Anti-Discrimination Clause**: The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

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

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

6. **Acceptance Of Contract**: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. **Arbitration, Damages, Warranties**: Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

8. **Representative's Authority To Contract**: By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes**: The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. **Insurance**: The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.

11. **Information**: **No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.**

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

13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer

or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

ADDENDUM

April 3, 2006

Addendum Number: 1

Contract Number: 04509

PR Number: 006486

Procurement Officer: Galen D. Greenwood
Telephone: 785-296-2401
E-Mail Address: galen.greenwood@da.state.ks.us

Item: HVAC Controls Materials

Agency: Fort Hays State University
Location(s): Hays, KS

Period of Contract: January 1, 2002 through December 31, 2012

Contractor: Automated Control Systems Corporation
7858 Barton
Lenexa, KS 66214
Telephone: 913-248-8828
Fax: 913-248-8833
FEIN: 48-1088393
Contact Person: Tony Crise

Conditions:

The following rates are added to this contract:

Engineering (control drawings) and project management $ 85.00 per hour
Technician (programming) $ 75.00 per hour.
Travel cost per mile $ .43
Lodging per night $ 64.00
Meals per day $ 30.00

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

http://da.state.ks.us/purch/contracts/ContractData/04509.doc

BILL GRAVES
Governor

JOYCE H. GLASSCOCK
Acting *Secretary of Administration*

JOHN T. HOULIHAN
Director of Purchases
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Topeka, KS 66612-1286
(785) 296-2376
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http://da.state.ks.us/

DEPARTMENT OF ADMINISTRATION

Division of Purchases

CONTRACT AWARD

Date of Award:	January 18, 2002
Contract Number:	04509
PR Number:	6486
Replaces Contract:	31935
Procurement Officer: Telephone: E-Mail Address: Web site:	Galen D. Greenwood 785-296-2401 galen.greenwood@state.ks.us http://da.state.ks.us/purch
Item:	**HVAC Controls Materials**
Agency: Location(s):	Fort Hays State University Hays, KS
Period Of Contract:	January 1, 2002 through December 31, 2012
Contractor:	Automated Control Systems Corporation 7858 Barton Lenexa, KS 66214 Telephone: 913-248-8828 Fax: 913-248-8833 Contact Person: Tony Crise
Prices:	Materials Only: 55% discount off Current Price Schedule
Payment Terms:	Net 30

Pricing **is** available to the political subdivisions of the State of Kansas.

Agencies **may** use State of Kansas Business Procurement Card for purchases from this contract.

Conditions:

State Credit Card: Presently, the State is implementing a program for agencies to use a State of Kansas Business Procurement Card (Visa) to pay for some of it's purchases. At this time, the use of the card is limited to a few agencies and a selected group of commodities. No additional charges will be allowed for using the card.

Contract Price: Statewide contracts are awarded by the Division of Purchases 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 the Division of Purchases.

Conditions Of Contract: The following terms and conditions of award are incorporated by reference and include: State of Kansas DA-45/146a; specifications and conditions of the proposal including any addenda; contractors 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. State of Kansas Contract Provisions Attachment DA-45/146a;
b. Written modifications and addenda to the executed contract;
c. This contract document.;
d. The above referenced Request for Proposal (RFP) including any addenda;
e. Contractors response including any addenda, appendices and exhibits.

Price Adjustments: On the yearly anniversary date of this contract, prices as bid may remain at the price bid or maybe 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.

SECTION III
GENERAL PROVISIONS

Term of Contract: The term of this contract is for a one (1) year period from the date of award with four (4) additional one (1) year renewal(s) by written agreement of the parties.

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

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

1. the Contractor fails to make delivery of goods or services as specified in this contract; or

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

The Director of 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.

Termination for Convenience: 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 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, 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.

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 State subject to any offset by State for actual damages including loss of federal matching funds.

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.

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

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 State 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 the using agency. The Contractor may not release any materials without the written approval of the using agency.

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 the State and who are 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.

Confidentiality: 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 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 of 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.

Reviews and Hearings: The Contractor agrees to advise the Director of Purchases of all complaints of recipients made known to the Contractor and refer all appeals or fair hearing requests to the Director of Purchases. The State 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 the State against any and all claims for injury to or death of any persons; for loss or damage to any property; and for infringement of any copyright or patent to the extent caused by Contractor or Contractors employee or subcontractor.

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.

Care of State Property: 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, and Contractor will reimburse State 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 State employee at any time.

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

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

The Contractor agrees that authorized federal and state representatives, including but not limited to, personnel of the using agency; independent auditors acting on behalf of 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 the state.

Federal, State and Local Taxes Contractor: The State make 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 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.

Modification: This contract shall be modified only by the written agreement of the parties with the approval of the Director of Purchases. 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 State.

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

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 Topeka, Shawnee County, Kansas.

Jurisdiction: The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas, District Court of Shawnee County. 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.

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 termination of the contract.

Injunctions: 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.

Acceptance: 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.

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.

SECTION IV
SPECIAL PROVISIONS

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 contract.

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

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

TERMS AND CONDITIONS

Insurance: The Contractor shall present an affidavit of Worker's Compensation, Public Liability, and Property Damage Insurance to the Division of Purchases.

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 contract, within the time specified, in accordance with the provisions as specified.

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

Deliveries: All orders shall be shipped FOB destination, prepaid and allowed, within SEVEN (7) business days of receipt of a purchase order. Deliveries must be 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 the Division of Purchases of any supply or delivery problems. Continued delivery problems may result in termination of the contract.

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 contractor who defaults on delivery as defined in this Contract may, be barred from bidding on any subsequent Contract for a period to be determined.

Indefinite Quantity Contract: This Contract 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. An estimated quantity based on past history or other means may be used as a guide.

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

Discount: 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 State of Kansas. Failure to provide available price reductions may result in termination of the contract.

Unit Pricing: Each item required by the contract must be individually priced (i.e. priced per single unit) and be able to be ordered individually.

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

Contractors must provide a ONE (1) year PARTS AND LABOR warranty on all devices and/or labor provided as part of a award that results from this Contract.

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

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

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

Sales Tax Determination:

State Tax: The undersigned attests this Contractor is not in arrears in taxes due the State of Kansas.

This Project has been determined by the Kansas Department of Revenue to be exempt from Kansas Sales Tax(es). The cost of said tax must be EXCLUDED FROM Contract prices. Sales tax includes all applicable state, county and city sales tax. "The Owner's Business Office will provide the Contractor with a tax exemption number for his use."