



FORT HAYS STATE UNIVERSITY

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CONTRACT AWARD

Date of Award: April 13, 2011

Contract Number: 11013

Replaces Contract: New

Fort Hays State University Purchasing Office

Telephone: 785-628-4251

E-Mail Address: purchasing@fhsu.edu

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

Item: Banking Services – FHSU Tiger Card

Agency: Fort Hays State University

Location(s): Hays, KS

Term of Contract: May 1, 2011 through April 30, 2016 with two (2) additional, optional one (1) year renewal periods) by written agreement of the parties.

Contractor: **Commerce Bank**
811 Main KCBC II
Kansas City, MO 64105
Telephone: 800-892-7100 or 816-760-8178
Fax: 816-234-1773
Contact Person: Don Becker
Email: don.becker@commercebank.com
FEIN: 48-0962626

Prices: See Attached

Payment Terms: Net 30

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/purchasing/>

CONDITIONS

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; 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 Request for Proposal (RFP) #11013 including any addenda;
- e. Contractors response including the Technical Proposal, Cost Proposal, email clarification dated 2-25-11 and any addenda, appendices, and exhibits.

Insurance: The vendor shall present an affidavit of Worker's Compensation, Public Liability, and Property Damage Insurance to the FHSU Purchasing Office.

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

Termination for Cause: Either party 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
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- Either party fails to perform any material provision of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms.

The party seeking to terminate the contract shall give the other party a written notice of the conditions endangering performance, and the party receiving notice shall have thirty (30) days (or such longer period as may be authorized in writing) after its receipt of said notice to remedy such failure. If the failure is not remedied by the defaulting party within the time period provided above, the non-defaulting party may terminate this contract by giving the defaulting party written notice. Receipt of notice shall be presumed to have occurred within three (3) business days of the date of the notice. If the breach is remedied by the defaulting party within the time period provided above, then this contract shall continue as though no such notice had been given.

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.

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.

Commerce Bank shall be entitled to conclusively rely upon and use any all information, data and instructions, including, but not limited to, University's memorandum, data entry instructions or computer field instructions, at any time submitted to Commerce Bank by the University and Commerce Bank shall have no responsibility or liability for the accuracy or inaccuracy of such information, data, and instructions or for whether or not such information, data, instructions comply with applicable federal and state laws and regulations.

Indefinite Quantity Contract: This Request is for 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.

Commerce Bank will provide banking services to any eligible student, faculty and staff member of the University. All students, faculty and staff that may be ineligible for traditional banking products may be provided prepaid cards or other bank products.

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.

Contracted services and support will be provided by Commerce within the United States. Banking fraud is a global challenge for financial institutions. Commerce may utilize some contractors with operations outside the United States to prevent cardholder and ACH fraud worldwide.

Experience: See Qualifications section of the proposal.

Data: Commerce will provide monthly Tiger Card reporting. No confidential customer data or proprietary information will be provided to the University.

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.

Prices: Prices shall remain firm for the entire contract period.

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

Mail invoices to:

Fort Hays State University
Office of Student Affairs
Attn: Shana Meyer, Assistant Vice President
601 Park Street, Sheridan Hall 208
Hays KS 67601

FHSU Contacts:

Student Services:

Shana Meyer, Assistant Vice President for Student Affairs

Fiscal Operations:

Judith A. Getty, Director of Student Fiscal Services

Required Features and Services: See Commerce Bank Technical Proposal.

Compensation: Contractor agrees to provide revenue and materials to FHSU as outlined below. See Commerce Bank Cost Proposal.

1. Annual Earnings of \$12,500 for a total of \$62,500 for five (5) years. Within 60 days of contract execution, Commerce Bank will pay \$37,500 to FHSU for the initial three (3) years of earnings. FHSU will be paid \$13,500 in each year of the renewal term if the contract renewal option is exercised by both parties.
2. Commerce Bank will pay monthly lease payments of \$10.50 per square foot for the campus branch through the five (5) year term of the agreement for a total of \$39,110 for five (5) years. Commerce Bank will pay \$11.50 per square foot for the campus branch through each renewal term if exercised by both parties. Lease payments will be made to the Memorial Union.
3. Commerce Bank will pay an annual fee of \$50 to FHSU for permission to use FHSU's protected identity marks. FHSU will charge no royalty fees for approved uses of its protected identity marks, and it is not necessary for a vendor to file royalty reports.
4. Commerce Bank will provide the University with up to \$15,000 in standard PVC or RFID cardstock. Commerce Bank will select supplier and will retain approval rights for pricing and banking specifications.
5. Marketing Commitment of up to \$90,000 for five (5) years. Commerce Bank will actively market the Tiger Card and Tiger Checking, financial products, services and financial literacy tools to the FHSU community.
6. Financial Aid Disbursement Savings of \$100,000 for five (5) years due to electronic disbursements.
7. Commerce Bank will provide Tracking and Assessment Reports on cardstock, marketing products, and financial aid disbursement savings during monthly contractual meetings.
8. FHSU will not incur expenses relating to the operation of the Tiger Card's bank processing, ATMs, bank accounts, on-file fees, web or other bank marketing.

Fee Schedule for Tiger Checking Account:

FEE SCHEDULE TIGER CHECKING ACCOUNT	
Minimum Deposit to Open	None
Monthly Service Fees	None
Check Writing	No Charge
Commerce Network ATM Withdrawals	No Charge
Commerce Network ATM Inquires and Transfers	No Charge
Foreign ATM Withdrawals and Inquires	\$1.50
Point-of-Sale Debit Card Transactions	No Charge
Pre-Authorized ACH Transfers from Parent/guardian or other Account	No Charge
Statements	No Charge
Check Safekeeping	Required
Overdraft Fees Non-sufficient Funds Check Returned Non-sufficient Funds Check Paid	\$33 per occurrence
Returned Deposited Item	\$7.50
Stop Payment	\$30.00
24-Hour Account Information Line	No Charge
PC Internet Banking	No Charge
Overdraft Protection	See Overdraft Services Brochure

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 dated September 27, 2011.

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."