



FORT HAYS STATE UNIVERSITY

Forward thinking. World ready.

CONTRACT AWARD

Date of Award: September 26, 2011

Contract Number: 12003

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: **Develop Online Animated Wind Energy Technology Courses**

Agency: Fort Hays State University

Location(s): Hays, KS

Term of Contract: September 26, 2011 through June 15, 2013 or upon completion of the courses.

Scope: This Contract shall cover the procurement to **Develop Online Animated Wind Energy Technology Courses** for Fort Hays State University, Hays, Kansas, during the contract period referenced above.

Contractors: SchwindTEC, Inc
403 Maple Court
Lansing, KS 66043
PH: 913-240-8939
Contact Person: Michael W. Schwind, President
Email Address: mike@schwindtec.com
Web Address: www.schwindtec.com

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

Term of Contract: The term of this contract is from September 26, 2011 through June 15, 2013 or upon completion of the courses.

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. 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.

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 University 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 Fort Hays State University. 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.

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.

Invoices: Invoices shall be forwarded to the using agency in duplicate and shall state the following:

- (1) date of invoice;
- (2) contract number 12003
- (3) itemization of all applicable charges;
- (4) date of completion of work;
- (5) net amount due per the payment schedule.

Mail invoices to:

Fort Hays State University
EnergyNET
Attn: Tim Cossaart, Assistant Director
600 Park Street
Hays KS 67601

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.

Non-competition. Contractor, individually or in cooperation with any third party, may not create any product which, in the reasonable opinion of the persons familiar with this product, be similar to or potentially compete with the product to be created pursuant to this contract. This prohibition begins on the date that this contract is fully executed by both parties and remains in effect until such time that Cloud County Community College (CCCC) no longer offers courses towards a degree or certificate in wind energy.

Fort Hays State University Contacts:

Mike Michaelis, Director
EnergyNET
Phone: 785.628.4620
mwmichaelis@fhsu.edu

Tim Cossaart, Assistant Director
EnergyNET
Phone: 785-628-4611
tcossaart@fhsu.edu

Sabrina William, Online Course Developer
EnergyNET
Phone: 785-628-4612
slwilliam@fhsu.edu

Cloud County Community College Contacts:

Bruce Graham, Instructor
Phone: 785-243-1435, ext. 256
bgraham@cloud.edu

Dr. Kim Krull - Vice President of Academic Affairs
Phone: 785-243-1435, ext. 249
kkrull@cloud.edu

Schedule for the Proposal:

September 23, 2011	Vendor Selected
October 7, 2011	Contract signed
October 28, 2011	Outline of plan and timeline due to EnergyNET
November 11, 2011	Wire frame (template, or shell) due for review
April 30, 2012	Completion of Group I Course List (6 courses – 18 credit hours)
September 30, 2012	Completion of Group II Course List (6 courses – 19 credit hours)
January 31, 2013	Completion of Group III Course List (6 courses – 19 credit hours)
May 31, 2013	Completion of Group IV Course List (4 courses – 12 credit hours)
May 31, 2013	Conclusion of all work and delivery of final product by vendor

Course Deliverables: Develop the following 68 credit hours for on-line delivery; including instructional, curriculum, graphic, multimedia, web, animation, and simulation design; and assessment.

<u>Courses</u>	<u>Credit Hours</u>
<u>Group I</u>	
CM 155 Networking and Computer Technology	3
WE 100 Introduction to Wind Energy	3
WE 110 Electrical Theory	3
WE 260 Wind Turbine Siting	3
WE 150 Mechanical Systems	3
WE 225 Airfoils and Composite Repair	3
<u>Group II</u>	
WE 120 Hydraulics	3
WE 210 Electronics	3
WE 270 Transformer Theory	3
WE 230 Substation and Voltage Regulation	3
WE 225 Motors, Generators, PLCs	3
SC 107 Meteorology	4
<u>Group III</u>	
SC 109 Applied Physics	3
WE 265 Field Training and Project Operations (Hybrid)	3
WE 250 Data Communications and Acquisition	3
WE 105 Employability Skills, Safety, Blueprint Reading	3
WE 257 Applied Airfoils (Hybrid)	3
WE 262 Blade Repair Operations (Hybrid)	4
<u>Group IV</u>	
WE 205 Wind Business	3
WE 240 GIS/GPS	3
WE 130 Wind Public/Landowner Relations	3
WE 202 Wind Power Delivery	3

Payment Schedule: In return for the delivery of the services identified in the RFP, Fort Hays State University agrees to pay SchwindTEC, Inc. the sum of **\$265,000**. The parties agree that the project timeline and compensation shall be as follows:

- 25% (\$66,250) of project cost within 45 days of receipt of a signed contract between FHSU and SchwindTEC.
- 25% (\$66,250) of project cost at the mutually agreed upon completion of Group I and Group II.
- 25% (\$66,250) of project cost at the mutually agreed upon completion of Group III.
- Final 25% (\$66,250) of project cost upon receipt, test completion, and approval of Group IV.

All payments will be made after receipt of an invoice from vendor and confirmation of the appropriate level of work completed.

1% will be deducted for each business day for late delivery based on the completion schedule.

State of Kansas
Department of Administration
DA-146a (Rev. 04-11)

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. 04-11), 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."