



Division of Financial Services
Operations

CONTRACT AWARD

Date: 12/16/2022

CONTRACT NO.: 5197 (RFP 41719)

*The KSU Contract Number must be shown on all documents
and correspondence between vendor and University.*

Purchasing Contact: Cathy Oehm

Phone: 785-532-6214

E-mail: kspurch@k-state.edu

Item: **HVAC and Plumbing Parts and Supplies**

Primary Using Department: **Kansas State University –
Division of Facilities, Storeroom (#60010)**
Shannon Ruder | sruder@ksu.edu (Business Contact)
Tim Brunner | tbrunner@ksu.edu (Technical Contact)
110 Fairchild Hall
1601 Vattier St
Manhattan, KS 66506

Period of Contract: **Date of Award through June 30th, 2027**

Contractor Information: Hughes Machinery, and FCX Performance Company
3450 North Rock Rd, Ste 603C
Wichita, KS 67226

Jason Ryan
jryan@fcxperformance.com
614-930-2679

Prices: See Attached Pricing

Payment Terms: Net 30.

Scope: This contract provides a pool of pre-screened vendors to provide plumbing and HVAC supplies and parts for University wide purchase at the Manhattan, Salina, Olathe, KS campuses and affiliated locations.

Political Subdivisions: Pricing is available to all Kansas Board of Regents public universities

Attachments: Schedule A - Agreement
Schedule B - Contractual Provisions Attachment (Form KSU-146a, Rev. 07-20)
Schedule C - University Terms and Conditions
Schedule D - Hughes Machinery Addendum

2323 Anderson Avenue, Manhattan, KS 66502 | k-state.edu/finsvcs

General Accounting
785-532-6202
Fax: 785-532-1305
Suite 500

Purchasing
785-532-6214
Fax: 785-532-5577
Suite 500

Fund Balancing
785-532-1838
Fax: 785-532-3640
Suite 600

Sponsored Programs
785-532-6207
Fax: 785-532-3640
Suite 600

Systems
785-532-2048
Fax: 785-532-3640
Suite 600

ARGEEMENT

This contract is entered into this 5th day of January, 2023 by and between Kansas State University (University) and Hughes Machinery (Contractor).

The parties agree as follows:

1. Subject to the terms and conditions of this contract, the University hereby accepts the offer of Hughes Machinery as expressed by Contractor's response submitted to Kansas State University Purchasing Office in response to Solicitation Number RFP 41719, hereby incorporated by reference.
2. It is understood and agreed that pursuant to the Solicitation, Hughes Machinery agrees to provide plumbing and HVAC supplies and parts for the University for the period of 5 years on order of the University at the price or prices contained in the Solicitation. University agrees to pay the amount(s) due to the Contractor in accordance with the Solicitation as shown on proper delivery invoice(s) of the Contractor to the University. Payment will be made as soon after receipt of the invoice(s) as possible in accordance with state law.
3. It is understood and agreed that all the provisions set out in the University's Solicitation Number RFP 41719 are incorporated and made a part of this contract by reference as though fully set forth herein. Contractor agrees and understands that those provisions are controlling over the Contractor's offer, invoice, agency order forms or any other documents of the Contractor unless otherwise agreed below.

Hughes Machinery

By: Jason Ryan
Name: Jason Ryan
Title: Regional VP of Sales
Date: 01/05/2023

Kansas State University

DocuSigned by:
By: Cathy Oehm
AAE73D0A87974D5...
Cathy Oehm
Assistant Director Purchasing
Date: 1/5/2023

OGC Review: DS 1/6 1/5/23

Dept Review: _____

SPECIFICATIONS

To provide plumbing and HVAC supplies and parts for University wide purchase at the Manhattan, Salina, Olathe, KS campuses and affiliated locations.

Plumbing and HVAC parts and supplies desired by the University include, but are not limited to the following:

- Condensate traps,
- Pumps centrifugal inline or end suction,
- Copper pipe and fittings,
- Black pipe and fittings,
- Steam pressure control/reducing valves,
- Suction diffuser,
- Triple duty valves,
- Gate valves,
- Ball valves,
- Check valves,
- Strainers,
- Condensate pump electric and steam driven,
- Domestic water heaters, heat exchanger type steam to water,
- Motors,
- Standard spec either specified 150# or 300#,
 - Lead free copper/brass fittings and valves, cast iron pumps, cast iron strainers, pilot operated steam reducing valves.
- Compressors,
- And any other parts and supplies pertaining to plumbing and HVAC repair and maintenance.

CONTRACT PRICING & DELIVERY INFORMATION

Company Name: Hughes MachinerySales/Service Representative Name and Contact Info: Steve Stocker ,sstocker@hughesmachinery.com, 620-786-4275Supplies/Equipment Description: Plumbing and HVAC Parts and Supplies

1. Please Choose (Check) One of The Following Methods:

A. ☒ Percentage Discount Off List Price: 0-35 % Off*Vendors may submit one discount, or a discount range, for example 0-20%*B. ☐ Supplies and Equipment Will Be Offered at Shelf Price (0.0% Discount).C. ☐ Cost Plus Pricing _____ Markup %

2. Please Choose (Check) One of the Following Delivery Methods:

A. ☐ Vendor Will Deliver Supplies at No Charge to KSUB. ☒ Vendor Will Deliver and Add Freight Charges to Final Invoice.C. ☐ Vendor Chooses Not to Deliver to KSU3. Does your company offer on-line catalog availability? Yes: ☐ No: ☒If yes, provide web site: not currently available4. Do you have a walk-in (retail) store for will-call purchases? Yes: ☒ No: ☐

5. Vendor can offer a discount of _____ % for shelf/catalog purchases.

All catalogs distributed to KSU will be labeled on the cover with the applicable discount(s).

List any specialty, sole source, highly unique, or proprietary goods your company offers:

We have a fully function steam system in our world-class training facility in Lenexa, Ks location which allow us to share our industry expertise. From steam basics to boiler training classes, our team will provide excellent training for your staff. We offer valve repair and assembly , Pump repair, thermal assessments and energy audits, Steam trap surveys, flow studies and on site support and training for the products we offer. Metrology Services, Jordan valve, Lowflow, Steriflow, Marwin Valve, Jamesbury Valmet-Neles, DFT, Fairchild, Flexicraft, Flowserve, PBM Valve Solutions, Zwick valves, Advanced Thermal Systems, Tranter, American-Marsh Pumps, Carver Pumps, Delta P carver, Flo Fab, Bosch Boilers, Cambridge Air, Fulton Steam, Heatcraft coils, SSI fabrication, Siemens steam products, Thrush Company Inc., Titan flow control. Plus access to many more products through our sister companies along with great working relationships with numerous other manufactures and vendors.

CONTRACT PRICING & DELIVERY INFORMATION

Describe your company's return policy:

RETURNED GOODS – You must obtain a written return authorization (RA) from us before returning any items and pay any resulting restocking charges as determined by us. We reserve the right to refuse delivery on all items returned to us without a valid RA. Any RA will be valid for 30 days from the date of issuance. Returned material must be received within that 30-day period, or the RA is void. You must prepay all freight. We will issue credit for freight where incorrect shipments have been made by us. All returned items must be new and unused. Special orders cannot be canceled or returned. All returned items must either be stock or non-stock items that we can return to the manufacturer.

EXCLUSIONS
If there are categories of supplies, equipment, and services that are not eligible for discount please indicate categories in the space provided below:

9.2 PROPOSAL FORM**Vendor Name:** Hughes Machinery**Goods**

Plumbing Supplies & Parts

HVAC Supplies & Parts

☐ Vendor will provide Plumbing Supplies & Parts Only☐ Vendor will provide HVAC Supplies & Parts Only☒ Vendor will provide Plumbing & HVAC Supplies & Parts**Pricing Schedule**

See Attachment A: Contract Pricing & Delivery Information

Additional Payment Information:

Vendor is responsible for any costs not included in this price. Kansas State University shall not pay for or be responsible for any separate line item charges including but not limited to a monthly fee, monthly balancing fee, or merchant processing or credit card fees.

Is your pricing available to political subdivisions of the State of Kansas? **Yes** / No

Payment Terms: Net 30

Will P-Card be accepted for payment? **Yes** / NoWill ACH (direct deposit) be accepted for payment? **Yes** / No

State of Kansas
Kansas State University
KSU-146a (Rev. 7-20)

Schedule B - Contractual Provisions Attachment (Form KSU-146a, Rev. 07-20)

Contract # 41719
Initials JR
See Addendum

9.3 CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to and specifically incorporated in all contractual agreements by adding the following statement to the main body of the contract: "The Provisions found in Contractual Provisions Attachment (Form KSU-146a, Rev. 7-20), which is attached hereto, are hereby incorporated in this contract and made a part hereof."

1. **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 the contract (including, without limitation, all other attachments) in which this attachment is incorporated. Any terms that conflict with or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** All matters arising out of or related to 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 arising out of or related to this contract shall reside only in courts located in the State of Kansas.
3. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require Kansas State University or any of its controlled corporations (collectively "University") to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The terms, conditions, and limitations of liability of the State of Kansas, the University, and their employees are exclusively defined under the Kansas Tort Claims Act (K.S.A. 75-6101, et seq.).
4. **Arbitration, Damages, Warranties:** No interpretation of this contract shall find that the University has agreed to binding arbitration, or the payment of damages or penalties. Further, the University does 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 or rights of action available to the University at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
5. **Termination Due To Lack Of Funding Appropriation:** If sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, the University may terminate this agreement at the end of its current fiscal year. The University 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 under any contract for which it has not been paid. The University 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 the University, title to any such equipment shall revert to Contractor at the end of the University'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.
6. **Responsibility For Taxes:** The University 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.
7. **Insurance:** The University 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 the University to establish a "self-insurance" fund to protect against any such loss or damage.
8. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the required approvals and certifications have been given, including, but not limited to, the signature of an authorized representative of the University as defined in the University Contracts Policy: <https://www.k-state.edu/policies/ppm/3000/3070.html>.
9. **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.
10. **Export Control:** Prior to providing University with any items under this contract that are subject to export controls regulations, including items controlled under the International Traffic in Arms Regulations (ITAR), 22 C.F.R. §§ 120-130, or the Export Administration Regulations (EAR), 15 C.F.R. §§ 730-774, Contractor will notify University and identify the export controlled items at issue and the applicable categories and subcategories of the United States Munitions List and/or Export Control Classification Number(s). University reserves the right to decline to accept any items or information controlled under ITAR or EAR. Contractor will direct all notices under this section to the appropriate University contact as follows: comply@k-state.edu.
11. **Privacy of Student Records:** Contractor understands that the University is subject to FERPA (Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g). To the extent Contractor possesses any education records of University's students under this contract, Contractor is deemed to be a school official with a legitimate educational interest in the records and Contractor agrees to comply with FERPA and its regulations. Contractor specifically agrees that it shall use personally identifiable education records only for purposes related to this contract, and shall not disclose such records to any third party without authorization from the University. Contractor shall promptly report to the University any request for, or improper disclosure of, University student educational records.
12. **Anti-Discrimination Clause:** Contractor agrees to comply with all applicable state and federal anti-discrimination laws. When requested by University, Contractor shall cooperate with University in meeting obligations under University's own policies and procedures, including but not limited to the University's anti-discrimination policy: <http://www.k-state.edu/policies/ppm/3000/3010.html>. Contractor specifically acknowledges that its employees on campus and/or participating in University programs or activities have reviewed, understand, and will comply with University's anti-discrimination policy and its reporting website at <https://www.k-state.edu/report/>. Contractor also 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 or if it is determined that the contractor has violated applicable provisions of ADA, such violation(s) shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the University.
13. **Information/Confidentiality:** As a state agency, the University's contracts and prices paid for goods and services are generally public records, and therefore no provision of this contract shall restrict the University's ability to produce this contract in response to a lawful request or from otherwise complying with the Kansas Open Records Act (K.S.A. 45-215, et seq.). Moreover, 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.
14. **The Eleventh Amendment:** The Eleventh Amendment is an inherent and incumbent protection of the State of Kansas and need not be reserved, but prudence requires the University to reiterate that nothing in or related to this contract shall be deemed a waiver of the Eleventh Amendment.
15. **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.
16. **Facility Access:** To the extent Contractor is required to be on the University's premises in the performance of any contract, Contractor and its representatives will adhere to the University's policies and procedures, and will use commercially reasonable efforts not to interfere with the University's regular operations. Contractor further agrees, upon request, to include the University as an additional insured on its general liability insurance policy on a primary and non-contributory basis, with such policy to provide continuous coverage for at least a period of two years after the end of the contract and such policy is not be cancelled without 30 day prior notice to the University and another general liability insurance policy in place prior to the termination of the existing policy. The Contractor shall also provide the University with a certificate of insurance within five business days upon request.
17. **Electronic Signature:** The parties agree that the contract may be signed with electronic signatures. If an electronic signature is used, the parties agree that it is the legally binding equivalent to the signing party's handwritten signature. Whenever either party executes an electronic signature on the contract, it has the same validity and meaning as a handwritten signature. The parties agree that neither party will, at any time in the future, repudiate the meaning of an electronic signature or claim that an electronic signature is not legally binding.
18. **No Endorsement:** Contractor agrees it will not use or display the name, marks, or images of the University to advertise and/or endorse its enterprises or products, or for any other purpose without the prior written approval of the University.

UNIVERSITY TERMS AND CONDITIONS

1. **Contract:** The Contractor agrees to accept the negotiated provisions of the Contractual Provisions Attachment (Form KSU-146a, Rev. 7-20) which is incorporated into all contracts with the University.
2. **Contract Documents:** The Contractual Provisions Attachment (Form KSU-146a, Rev. 7-20), the Solicitation IFB/RFP 41719 and any addenda and the Contractor's response and any amendments of the Contractor are incorporated and made a part of this contract by reference which compose the complete understanding of the parties. In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:
 - Contractual Provisions Attachment (KSU-146a), which is attached hereto and forms part of and is incorporated in this Contract Award; and
 - this Request including any and all addenda.; and
 - Contractor's written proposal, including any and all addenda, submitted in response to this Request as finalized.
3. **Contract Formation:** No contract shall be considered to have been entered into by the University until all statutorily required signatures and certifications have been rendered and a written contract has been signed by the successful vendor.
4. **Notices:** Other than day to day commercial interactions, all formal 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:

Kansas State University
Purchasing Office
RE: # 5197
2323 Anderson Ave., Suite 500
Manhattan, KS 66502

Hughes Machinery
Jason Ryan
3450 N rock Rd
Suite 603-C
Wichita, KS 67226

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

5. **Termination for Cause:** Kansas State University Purchasing 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.

Kansas State University Purchasing 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), Kansas State University Purchasing 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. All non-cancelable or non-transferable contracts or commitments made on University's authorization existing at the expiration of the period following notice will be carried to completion by Contractor and paid for by University, unless agreed to in writing by Contractor. All outstanding invoices must be paid in full prior to assignment and transfer of materials to University.

6. **Termination for Convenience:** Kansas State University Purchasing may terminate performance of work under this contract in whole or in part whenever, for any reason, Kansas State University Purchasing shall determine that the termination is in the best interest of the University. In the event that Kansas State University Purchasing 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. All non-cancelable or non-transferable contracts or commitments made on University's authorization existing at the expiration of the period following notice will be carried to completion by Contractor and paid for by University, unless agreed to in writing by Contractor. All outstanding invoices must be paid in full prior to assignment and transfer of materials to University.

7. **Debarment of State Contractors:** Any vendor who defaults on delivery or does not perform in a satisfactory manner as defined in this Request may be barred for a period up to three (3) years, pursuant to K.S.A. 75-37,103, or have their work evaluated for pre-qualification purposes.
8. **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 Subcontractor(s)) and shall be fully qualified to perform the work required.

9. **Subcontractors:** Other than any third party provider the University selects to contract with which interacts with the services provided by the Contractor, the Contractor shall be the sole source of contact for the contract. The University 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.
10. **Proof of Insurance:** Upon reasonable request, the vendor shall present evidence of its insurance policies which shall meet the standard requirements of the industry to Kansas State University Purchasing.
11. **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 University 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 University employee who has participated in the making of this contract until at least two years after his/her termination of employment with the University.
12. **Confidentiality:** The Contractor may have access to private or confidential data maintained by University 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.
13. **Nondiscrimination and Workplace Safety:** The Contractor agrees to abide by all federal, state and local laws, rules and regulations as they apply to the services performed by the Contractor to the University prohibiting discrimination in employment and controlling workplace safety.
14. **Environmental Protection:** The Contractor shall abide by all federal, state and local laws, rules and regulations regarding the protection of the environment as they apply to the services performed by the Contractor to the University. The Contractor shall report any violations to the applicable governmental agency.
15. **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 University employee at any time.
16. **Retention of Records:** Unless the University specifies in writing a different period of time, the Contractor agrees to preserve and upon reasonable request during business hours once per year, 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 department; 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 as noted above. Reasonable delivery of and access to the records shall be at no cost to the University. If not commercially reasonable for Contractor to perform such delivery and access, University shall bear such costs.
17. **Modification:** This contract shall be modified only by the written agreement of the parties with the approval of the Kansas State University Purchasing Office. 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.
18. **Third Party Beneficiaries:** This contract shall not be construed as providing an enforceable right to any third party.
19. **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.
20. **Mandatory Provisions:** The negotiated provisions found in Contractual Provisions Attachment (KSU-146a) which is attached are incorporated by reference and made a part of this contract.
21. **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.
22. **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 University 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.

23. **Injunctions:** Should the University be prevented or enjoined from proceeding with the acquisition before or after contract execution as required by applicable law, procedure, or other circumstances beyond the control of University, Contractor shall not be entitled to make or assert claim for damage by reason of said delay.
24. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal 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 Request. Kansas State University 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.
25. **Political Subdivisions:** Political subdivisions [including but not limited to, the Kansas Board of Regents and its member institutions, Riley County, City of Manhattan, and local Unified School Districts (USDs)] are permitted to utilize contracts administered by Kansas State University. Conditions included in this contract shall be the same for political subdivisions. The University has no responsibility for payments owed by political subdivisions. The vendor must deal directly with the political subdivision. Bidders shall indicate below if pricing is available to political subdivisions.
26. **Tax Clearance Certificate:** A "tax clearance" is a comprehensive tax account review to determine and ensure that the account is compliant with all primary Kansas Tax Laws administered by the Kansas Department of Revenue (KDOR) Department of Taxation. Kansas State University supports the State of Kansas tax clearance process. Vendors submitting bids, proposals, contracts, etc., are required to provide a current tax clearance certificate. For more information regarding this process please go to: <http://www.ksrevenue.org/taxclearance.html>
The tax clearance certificate will be required for all contract renewals.
27. **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, 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 department making the payment in an amount equal to the funds intercepted. K.S.A. 75-6201 et seq. allows the Department 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.

**ADDENDUM TO
ALL TERMS AND CONDITIONS
BETWEEN
KANSAS STATE UNIVERSITY
AND
HUGHES MACHINERY COMPANY**

Contractor warrants that all goods supplied under any and all Terms and Conditions between the parties, are free of liens and other encumbrances. Notwithstanding anything to the contrary in any Terms and Conditions between the parties or otherwise, the parties expressly agree that except for the warranty of title above, goods not manufactured by Contractor are sold only with such warranties as may be extended by the manufacturer of the goods. **CONTRACTOR MAKES NO OTHER WARRANTY AND THERE ARE NO IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR THOSE ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY CONTRACTOR.** So long as the University has paid in full for the goods subject to the warranty claim, Contractor will provide all reasonable assistance to the University in obtaining the benefits of applicable manufacturer's warranties. The University is responsible for use in accordance with manufacturer's instructions, and except as specifically provided for as a service in a Purchase Order, the University is responsible for installation. Contractor further warrants that all services directly performed by Contractor will be performed in accordance with applicable industry standards prevailing at the time of performance. If any service does not comply with the foregoing warranty and the University notifies Contractor in writing within ninety days after completion of the services, so long as the University has paid in full for the services subject to the warranty claim, Contractor's sole responsibility shall be to re-perform the nonconforming service, remedy the breach of the warranty, or refund the price allocable to the non-conforming service, at Contractor's option. Services provided by third-party contractors are subject only to such warranties as are extended by the third-party contractor. So long as the University has paid in full for the Services subject to the warranty claim, Contractor will provide all reasonable assistance to the University in obtaining the benefits of applicable third-party contractors' warranties. Any goods sold by and/or supplied by Contractor in conjunction with services rendered will be subject exclusively to the applicable warranty for goods set forth above and shall not be subject to separate warranties. **THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER CLAIMS OF RELIEF.**

NOTWITHSTANDING ANYTHING TO THE CONTRARY AND REGARDLESS OF CAUSE, FAULT OR GROUNDS, WHETHER UNDER LAW OR CONTRACT, AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION OR OTHERWISE: (i) IN NO EVENT SHALL CONTRACTOR BE LIABLE TO THE UNIVERSITY OR TO ANY THIRD PARTY FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE GOODS OR ASSOCIATED PRODUCTS, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, COST OF DELAYS, OR FOR ANY LIQUIDATED DAMAGES OR PENALTIES, AND ANY CLAIMS OF THE UNIVERSITY OR OF CUSTOMERS OF THE UNIVERSITY FOR SUCH DAMAGE; AND (ii) CONTRACTOR'S TOTAL, CUMULATIVE LIABILITY ON ANY CLAIM FOR LOSS OR DAMAGE ARISING OUT OF OR CONNECTED WITH THE PURCHASE ORDER, PERFORMANCE OF SERVICES OR THE SUPPLY OF ANY GOODS, OR THE SALE, RESALE, OPERATION OR USE OF ANY GOODS SHALL NOT EXCEED THE PRICE ALLOCABLE TO SUCH PRODUCTS OR SERVICES FURNISHED BY CONTRACTOR WHICH GIVE RISE TO THE CLAIM. THIS LIMITATION OF LIABILITY REFLECTS A DELIBERATE AND BARGAINED-FOR ALLOCATION OF RISKS BETWEEN CONTRACTOR AND THE UNIVERSITY AND CONSTITUTES THE BASIS OF THE PARTIES' BARGAIN, WITHOUT WHICH CONTRACTOR WOULD NOT HAVE AGREED TO PERFORM SERVICES FOR, OR SUPPLY GOODS TO THE UNIVERSITY.

The University covenants and agrees that, during the term of the Contract Terms and Conditions or the performance of services under a Purchase Order, and thereafter for a period of two (2) years, the University will not directly or indirectly solicit for employment or employ (including as a consultant, independent contractor or similar arrangement), or aid others to do so, any employee of Contractor or any subsidiary or affiliate of Contractor.

Notwithstanding anything to the contrary, each party ("Indemnifying Party") agrees that, at its own expense, it shall defend and/or, at its option settle, any third party action, claim, suit or proceeding for bodily injury (including death) or damage to property (excluding damage to the *goods*) ("Claim") brought against the other party or the other party's directors, officers, employees or agents (collectively "Indemnified Parties") to the extent and degree that the Claim directly results from the Indemnifying Party's negligence or willful misconduct.

In addition, the Indemnifying Party shall indemnify and hold harmless the Indemnified Parties from and against any and all damages, liabilities, losses, settlement amounts and any other costs and expenses (including, but not limited to reasonable attorneys' fees), incurred as a result of any such Claim and/or enforcement of this indemnification obligation.

Notwithstanding anything to the contrary in any Terms and Conditions or otherwise, these Terms and Conditions are specific to mainland U.S. sales. All other sales, including export sales and sales intended for export by the University, are subject to a mutually agreed-to separate Purchase Order, which shall contain at the very least a different pricing, payment terms and freight schedule.

Notwithstanding anything to the contrary in any Terms and Conditions, or any other document, if Contractor is unable to deliver Goods or perform services or work in the time specified in the Terms and Conditions or any other document within a reasonable time and the University chooses to purchase the Goods or services from a third party, Contractor is not responsible to pay cover, the cost of replacement goods or services, delay, back charges, cover or any other types damages.

Notwithstanding anything to the contrary contained in any Terms and Conditions or any other document, the University and Contractor agree that the pricing initially agreed to by the parties in the Terms and Conditions, or other agreement, is a fair and reasonable price for the goods and/or services and that Contractor is under no obligation to later reduce this agreed to pricing for any reason, and the University shall pay the full agreed to price for all Goods and/or services or work directly to Contractor, without the right of setoff or back charge.

Notwithstanding anything to the contrary contained in any Terms and Conditions or any other document, the University's obligation to pay and the timing of payment, is not dependent on when or whether the University gets paid by any third party. Payments shall be made within thirty (30) days of the date of our invoice. Further, the University cannot offset or refuse to pay any invoice or any amounts due under any Terms and Conditions, for any reason. Should the University fail to timely pay any amounts in full when due, Contractor may suspend performance, without penalty and will automatically be granted an extension of time to complete performance, equal to the delayed payment time. If Contractor owes funds to the State of Kansas, K.S.A. 75-6201 (Accounts Receivable Set-Off Program) allows the Director of Accounts and Reports to setoff funds the State of Kansas owes vendors against debts owed by the vendors to the State of Kansas. The Contractor shall credit the University's account in an amount equal to the funds intercepted.

Notwithstanding anything to the contrary in any Terms and Conditions, Contractor agrees to maintain and pay for the following insurance coverages:

- A. WORKER'S COMPENSATION (including coverage for occupational diseases) or equivalent required by law and in any event covering all Contractor's employees who may be engaged in any work hereunder. This coverage will be in the amount of \$1,000,000 or as required by law.
- B. EMPLOYER'S LIABILITY (including coverage for occupational diseases), in the amount of \$1,000,000.00 for the injury or death of one or more employees per occurrence.
- C. COMPREHENSIVE GENERAL LIABILITY (including Products Liability / Completed Operations coverage):
GENERAL LIABILITY INSURANCE of the amount of \$1,000,000.00 per occurrence and \$2,000,000 in the aggregate for bodily injury and property damage.
- D. COMPREHENSIVE AUTOMOBILE LIABILITY (covering owned, hired, and other non-owned vehicles of Contractor):
COMBINED SINGLE LIMIT INSURANCE of \$1,000,000.00 per occurrence for bodily injury and property damage.
- E. UMBRELLA LIABILITY with a limit of \$5,000,000.00 per occurrence in excess of the limits stated above for Employer's,

General and Automobile Liability coverage.

Upon request, Contractor will provide the University with a certificate of insurance confirming the above listed insurance coverage.

Contractor's obligation to name the University as additional insured as required in any Terms and Conditions or other document shall only apply to the extent of Contractor's negligence or willful misconduct arising out of the performance of any Terms and Conditions or any Purchase Order.