

Note: We are accepting proposals on an as-needed basis to fill gaps in expertise needed to meet community and sponsor needs. Please do not contact or submit a proposal to KSU Purchasing. To inquire about submitting a proposal after February 9th, 2022, please contact Blase, Maggie and Daena below:

REQUEST FOR PROPOSAL (RFP)

RFP Number: 41480
Date Posted: 01/11/2022
Closing Date: 02/9/2022, 2:00 P.M. C.T.
Purchasing Contact: Tayler Johnson
Telephone: 785-532-6214
E-Mail: kspurch@k-state.edu

- Blase Leven, baleven@ksu.edu,
785-565-8198

- Maggie Belanger, maggiejessie@ksu.edu,
785-230-6825

- Daena Blair, daenar@ksu.edu

In this RFP, the most useful sections are:
Specifications, Proposal Response, and
Proposal Attachment Sections

Item: Consultants for Kansas State University's Technical Assistance to Brownfields Communities (TAB) Program

Agency: Kansas State University (KSU) – Center for Hazardous Substance Research
Location(s):

Period Of Contract: February 16, 2022 through September 30, 2026

Guarantee: No Monetary Guarantee Required

Scope Of Request: The intent of this Request for Proposal is to establish a contract for consultant work to support KSU's Technical Assistance to Brownfields Communities (TAB) Program in EPA regions 5, 6, 7, 8, and nationally. This includes assisting with planning, environmental, and economic/community revitalization topics; as well as the development or use of web-based tools, media, and communications.

A pre-proposal conference will be held at 10:00 A.M. (CST), January 18, 2022 via Zoom.

Zoom registration link: <https://ksu.zoom.us/j/9123456789>

READ THIS REQUEST CAREFULLY

Failure to abide by all of the conditions of this Request may result in the rejection of a bid. Inquiries about this request should indicate the proposal number and be directed to the purchasing contact. Return the signature page, cost page, and supporting documentation no later than the closing date indicated above. Retain the remaining documents for reference.

RFP Number 41480 was recently posted to the KSU Purchasing Office Internet website.

The document may be downloaded by going to the following website:

<https://dfs.ksucloud.net/rfq/>

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

Request for Proposal 41480 Consultant Work for the TAB Program

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1. INSTRUCTIONS

In order for your proposal to be considered, the Proposal Response and Proposal Attachment Section shall be executed completely and correctly.

Please review and follow the information and instructions contained in the General Provisions and this Request for Proposal (RFP). Prepare and submit a proposal following the format indicated in Section 5 (Proposal Response and Section 9 (Proposal Attachments).

Bidder bears the risk of incomplete response, late delivery or delivery at wrong location of the University other than specified in this RFP.

The term of the contract between the successful bidder and the University shall be for **four (4) years and 8 months** with amendments, extensions or renewals possible for similar scopes of work, depending on other funding received during this period.

Each proposal must be submitted via the Vendor Bid Submission Secure File Upload portal, <https://www.k-state.edu/finsvcs/purchasing/bidsubmission.html>, prior to 2 p.m. CT on the closing date.

Please attach with your bid submission:

1. Written Proposal Response, following the format in Section 5, plus the attachments listed below, per Section 9.
2. Organizational chart including the individuals/offices that will be involved;
3. Resumes of key personnel;
4. Three (3) references who can speak to qualifications and suitability for this work, from local and tribal government; and
5. At least three (3) profiles of past projects that demonstrate ability to perform the requested scope of work.
6. Signature Sheet
7. Price Schedule Sheet
8. KSU-146a Acceptance
9. Tax Clearance Certificate

2. BACKGROUND

Overview of Kansas State University

Kansas State University was founded in 1863 as the country's first operational land-grant university. The university has physical campuses in Manhattan, Salina and Olathe, and offers a Global Campus, which administers K-State's online programs. The university boasts an enrollment of approximately 21,000 students, drawing from all 50 states and approximately 100 countries. K-State, with an annual budget of more than \$900 million, has nine colleges — Agriculture; Architecture, Planning & Design; Arts and Sciences; Business Administration; Education; Engineering; Health and Human Sciences; Technology and Aviation; and Veterinary Medicine — and a Graduate School. K-State and offers more than 400 degrees and options, including bachelor's, master's, doctorates and certificates.

K-State's main Manhattan campus covers more than 2,320 acres, including research and agricultural facilities, and is known as the "Silicon Valley for biodefense" because of its leadership in food safety and security and agro-defense. The Salina Aerospace and Technology Campus is known for its educational focus on experiential learning, professional pilot program and renowned unmanned aircraft systems programs. K-State Olathe serves the industry and workforce needs of Greater Kansas City. Global Campus administers 100-plus online programs as well as professional development workshops and enrichment programs. K-State Research and Extension has a presence in every county throughout Kansas and supports research in more than 20 K-State departments.

From the 8,616-acre Konza Prairie Biological Station to the Johnson Cancer Research Center, the university is home to 90-plus research centers, ensuring researchers and partners have the tools they need to solve global challenges. Scientific research expenditures exceed \$213 million annually and extramural funding tops \$199 million per year.

Kansas State University is consistently recognized by Princeton Review, U.S. News & World Report and Forbes magazine has one of the nation's best colleges, including being the most inclusive.

The Center for Hazardous Substance Research (CHSR) was established in 1989 and is part of the College of Engineering at Kansas State University. The purpose of the center is to conduct research, education, and service pertaining to environmental topics, where a reputable, neutral organization is needed to develop technically sound, consensus-based solutions for diverse groups of stakeholders.

Topics of research and other activities include sustainability; environmental assessments and remediation; technical assistance to communities, defense agencies and other organizations; and international programs. Environmental assessment work involves proposed nonlethal defense technologies, and software tools for environmental decision making. Remediation research has focused on contaminated soil and water from agriculture, forestry, mining, and mineral processing, and other industrial activities. Service activities include providing free technical assistance to citizens and other stakeholders who are providing input on cleanup and re-use of EPA Superfund, Brownfield, tribal and other types of sites.

3. INTRODUCTION

I. PURPOSE

Kansas State University ("University") is soliciting proposals in response to this Request for Proposal RFP No. 41480 ("this RFP") from qualified vendors to provide consultant work for the Technical Assistance to Brownfields Communities (TAB) Program. The Consultant Work, which are more specifically described in Section III of this RFP, include capacity building & e-tools, outreach programming (e.g., workshops, webinars, on-demand training, and resources), one-on-one, site-specific support, and participatory outcomes evaluation to urban, rural and tribal communities.

Intent to Award: This RFP shall result in multiple awards for Consultant Work for the TAB Program to separate Vendors. Kansas State University reserves the right to continue to accept proposals on an as-needed

basis after the RFP closes through September 30, 2026. Vendor shall prepare a proposal document, noting the consultant work being proposed following the format in Section 5 and Section 9. Vendor should consider addressing items noted in Section 4. Specifications.

II. KEY RFP DATES/MILESTONES

The following dates and milestones apply to this RFP and subsequent contract award. Vendors are advised that these dates and milestones are not absolute and may change due to unplanned events during the bid proposal and award process.

Notable Dates

Issuance of Request for Proposal	January 11, 2022
Questions Due Prior to Pre-Proposal Meeting	January 14, 2022, 12:00 P.M. CST
Pre-Proposal Meeting via Zoom	January 18, 2022, 10:00 A.M. CST
Questions Due	January 20, 2022, 5:00 PM CT
Proposals Due	February 9, 2022, 2:00PM CT
Negotiations of Final Offer(s)/Contracts	February 10, 2022 – February 15, 2022
Beginning of Contract	February 16, 2022
End of Initial Term	September 30, 2026
Renewal (if mutually accepted)	As funds allow, for similar scopes of work.

** Each date subject to change*

4. SPECIFICATIONS

1. Scope of Work

KSU is seeking planning, environmental and community/economic development experts to assist with implementation of multiple Technical Assistance to Brownfields Communities (TAB) program awards to KSU, for work in EPA regions 5, 6, 7, 8, nationally. Work involves capacity building & e-tools; outreach programming (e.g., workshops, webinars, on-demand training, and resources); one-on-one, site-specific support; and participatory outcomes evaluation to urban, rural and tribal communities. There is a special focus on communities with the highest economic, social and health impact needs.

KSU is responsible for completing the overall scope of the TAB award from EPA, and subs with expertise in any of the listed topic areas are providing services to help complete the scope, on an as-needed basis, as agreed by both parties and directed by KSU. KSU expects to award Service Agreements for time and materials contracts and consultancies, and subawards, as appropriate, through September of 2026. Bidders may express interest in entering into subawards (i.e., subgrants), if an applicant is proposing to complete separate portions of the scope of work. Subawards (i.e., subgrants) are subject to a 5% limit on administrative overhead, per requirements of the funding agency. There is no limitation on administrative overhead for contracts. Annual amounts of work may range from less than \$3,500/yr. to over \$50,000/yr. per agreement, depending on the types and frequency of work to be performed.

During or beyond the Spring of 2022, KSU may receive additional funding for technical assistance work, to include support of brownfields and other redevelopment aspects of the Bipartisan Infrastructure Law, or to conduct work funded by other sources. The result will be to perform a greater amount and/or a longer period of the same scope of work, under amended/extended contracts and subawards. Please share any kind of expertise your firm has that hasn't been mentioned in this RFP, that could be useful to communities and tribes in assessing, cleaning up and implementing any type of end uses of brownfields, including those related to infrastructure topics, such as green energy/distribution, energy efficiency and food security, mitigating carbon emissions and effects of climate change, ecosystem/cultural restoration, Land banks, etc. Please also note any expertise related to legal aspects of brownfields or state/tribal response programs, self-determination/governance in general, such as with laws/codes/ordinances, contracts, compliance/enforcement, permitting processes, etc.

Team members are **prohibited** from promoting their services while providing TAB assistance and will avoid other conflicts of interest. However, team members may respond to requests for information or proposals from the community and perform services for the community at a separate time – not while providing direct service to the community as KSU's team member.

KSU currently maintains a program web site with e-tools and a mobile phone app, all maintained on third party servers by a development contractor. This includes databases that interface with other platforms via APIs. These applications require ongoing maintenance and improvements, and new applications are built on an as-needed basis. Public-facing web pages must interface with this suite of applications.

TAB and its team members serve brownfields leads in local, regional, and tribal governments, and in non-profit organizations, in partnership with state and federal brownfield programs. KSU Technical Assistance Coordinators typically organize will request involvement of selected brownfields experts as-needed.

2. Specifications

1. Experienced brownfields practitioners in universities and non- / for-profit firms, and individual consultants, with various skill sets that can work in teams to provide expertise and education to empower and guide communities and tribes through the brownfields process, including: identifying/prioritizing sites, setting revitalization goals, resources (funding) road mapping, performing environmental assessments, cleanup, and economic and sustainable community redevelopment.

2. Knowledge and experience with any of the following: development or use of web-based tools, media, and communications, such as TAB EZ (an application tool for EPA brownfields grants), Brownfields Inventory Tool a (site inventory database), remote and hybrid training/communication techniques (to include videography, websites, and social media).
3. Experience identifying and working with disadvantaged/environmental justice, and state, tribal and federal brownfields contacts in parts or all of KSU's geographic service areas, and the ability to serve as a program point of contact in a state or region, if needed.
4. Economical cost of services and level of in-kind or matching effort are considerations in selecting service providers.

Specific Outreach Tasks to be performed under this Agreement are:

Note that a description of these tasks and other information are in the KSU Work Plan Excerpt for the EPA TAB award available at <https://www.engg.ksu.edu/chsr/rfp>.

- 1) Building Capacity within communities (including serving as expert panelists to review community projects, assisting with web-tools, and identifying resources);
- 2) outreach programming (e.g., workshops, webinars, on-demand training, and resources);
- 3) one-on-one, site-specific support (to include high-level planning charrettes, economic feasibility analysis, technical environmental document reviews); and participatory outcomes evaluation (help measure and report success of local programs and of TAB assistance). A detailed summary of these tasks and other information is included in an excerpt of KSU's Work Plan to the EPA, available at: (<https://www.engg.ksu.edu/chsr/rfp>). Technical assistance to Tribes and States may include help establishing and enhancing the four elements of 128a programs, such as assistance in creating tribal codes and regulations.

This may involve travel to and work within the communities we serve, or to workshop events.

Note: Services are advisory and/or educational in nature. Services provided by TAB and its team members are intended to guide communities and tribes through the brownfields process and will not involve the actual performance of brownfields redevelopment work, such as performing actual environmental site assessment work or producing work products that would usually certified by licensed professionals, that are typically paid for by EPA grants and other funding. TAB's goal is to fill gaps and perform big-picture work that gives communities capacity to obtain funding, pay for these services directly to move their redevelopment projects towards completion.

Selection criteria for selecting team members for this project include:

- Expertise and qualifications in any of the following listed in this RFP; brownfield's redevelopment technical topics; assisting communities and their stakeholders; and/or development/use of online software, media and communications in support of technical assistance activities;
- Experience in providing technical assistance in teams;
- Experience with EPA and state brownfields, and TAB programs;
- Geographic location as it relates to proposed services;
- Cost of services;
- Potential level of in-kind or matching effort; and
- Completeness of proposal.

3. Evaluation Criteria

The award of this consultant work Service Agreement will be based upon a comprehensive review, analysis and negotiation of the proposal which best meets the needs and objectives of the university and the Grant that this project is related to. The specific evaluation criteria will include, but is not limited to, the Selection Criteria listed in the paragraph above. The University expects to begin awarding February 16, 2022. This timeline is an indication only and may change at the University's discretion.

5. PROPOSAL RESPONSE

Format for Written Proposal

All vendors that desire to be considered for this Request are to submit the following items in a written proposal:

1. **Transmittal Letter**: All vendors must respond to the following statements:
 - a. the vendor is the prime contractor and identifying all subcontractors;
 - b. the vendor is a corporation or other legal entity;
 - c. no attempt has been made or will be made to induce any other person or firm to submit or not to submit a proposal;
 - d. the vendor does not discriminate in employment practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin, or disability;
 - e. the vendor presently has no interest, direct or indirect, which would conflict with the performance of services under this contract and shall not employ, in the performance of this contract, any person having a conflict;
 - f. the person signing the proposal is authorized to make decisions as to pricing quoted and has not participated, and will not participate, in any action contrary to the above statements;
 - g. whether there is a reasonable probability that the vendor is or will be associated with any parent, affiliate, or subsidiary organization, either formally or informally, in supplying any service or furnishing any supplies or equipment to the vendor which would relate to the performance of this contract. If the statement is in the affirmative, the vendor is required to submit with the proposal, written certification and authorization from the parent, affiliate or subsidiary organization granting the University the right to examine any directly pertinent books, documents, papers, and records involving such transactions related to the contract. Further, if at any time after a proposal is submitted, such an association arises, the vendor will obtain a similar certification and authorization and failure to do so will constitute grounds for termination of the contract at the option of the University;
 - h. the vendor agrees that any lost or reduced federal matching money resulting from unacceptable performance in a contractor task or responsibility defined in the Request, contract or modification shall be accompanied by reductions in payments to Contractor; and
 - i. the vendor has not been retained, nor has it retained a person to solicit or secure a University contract on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the vendor for the purpose of securing business. For breach of this provision, the PNC shall have the right to reject the proposal, terminate the contract and/or deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee or other benefit.

2. **Vendor Information:** The vendor must include a narrative of the vendor's corporation and each subcontractor if any. The narrative shall include the following:
 - a. date established;
 - b. ownership (public, partnership, subsidiary, etc.);
 - c. number of personnel, full and part-time, assigned to this project by function and job title;
 - d. resources assigned to this project and the extent they are dedicated to other matters;
 - e. organizational chart;
 - f. financial statement may be required.
3. **Qualifications:** A description of the vendor's qualifications and experience providing the requested or similar service, including resumes of personnel assigned to the project stating their education and work experience, and at least three project profiles, shall be submitted with the proposal. The vendor must be an established firm recognized for its capacity to perform. The vendor must have sufficient personnel to meet the deadlines specified in the Request.
4. **Timeline:** A timeline for implementing services must be submitted with the proposal.
5. **Methodology:** Vendors shall submit with their proposal, a detailed explanation of the methodology for implementing services. Please provide a description of approach to completing Specific Outreach Tasks (i.e., Tasks 1 – 4 referenced in this RFP) and other Topics of interest to you/your organization, to include geographic areas you will serve and amount of work (man hours of effort) you are willing to dedicate to these activities.
6. **References:** Provide references who can speak to qualifications and suitability for this work, from local communities and/or tribal government. References shall show firm name, contact person, address, e-mail address and phone number. Vendor employees and the buying department shall not be shown as references. Additionally, vendors shall list clients who have terminated services within the past five years, indicating reasons for termination. Provide the firm name, contact person, address, e-mail address and phone number of each referenced organization.
7. **Technical Literature:** All proposals may include specifications and technical literature sufficient to allow the University to determine that the equipment/services meet(s) all requirements. If a requirement is not addressed in the technical literature, it must be supported by additional documentation and included with the proposal.
8. **Exceptions:** A description of exceptions to instructions, terms and conditions, provisions or other requirements in this Request for Proposal.
9. **Attachments:**
 - a) **Organizational Chart, Resumes, References and Project Profiles;**
 - b) **Signature Sheet;**
 - c) **Pricing Schedule Sheet;** Please provide an itemized list of hourly rates and other unit costs (such as for travel expenses), and approaches you plan to take to provide leveraged/in-kind effort (e.g., discounted rates, waiving pass-through fees, reduced hourly rates for time spent traveling, etc.);
 - d) **KSU-146a Acceptance;** Initialed acceptance of Contractual Provisions Attachment (Form KSU-146a, Rev. 7-20), with reference to Exceptions Section of proposal, if appropriate *See page 23; and*
 - e) **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) Director of Taxation. Kansas State University supports the State of Kansas tax clearance process. Vendors submitting proposals, contracts, etc., are required to provide a

current tax clearance certificate. For more information regarding this process, visit:
<https://www.ksrevenue.org/taxclearance.html>

6. BIDDING INSTRUCTIONS

1. **Proposal Reference Number**: The RFP number, indicated on the first page of this Request, must be shown on all correspondence and must be referred to in all verbal communications. There shall be no communication regarding this Request with any University employee outside of the Purchasing Office except with designated participants in attendance during:
 - Negotiations,
 - Contract Signing,
 - As otherwise specified in this Request.

Violations of this provision by the vendor or University personnel may result in the rejection of the proposal.

2. **Negotiated Procurement**: This is a negotiated procurement. Final evaluation and award will be made by the Procurement Negotiation Committee (PNC) consisting of the following entities (or their designees):
 - Chief Financial Officer or designee,
 - Director of Operations, and
 - Head of Using College / Department
3. **Pre-Proposal Conference**: The pre-proposal conference will be held at 10:00 A.M. (CST), January 18, 2022 via Zoom. Attendance is expected at this pre-proposal conference. Questions to be addressed at the conference may be emailed to kspurch@k-state.edu prior 12:00 P.M. on January 14, 2022, with the RFP number clearly referenced in the Subject line. Impromptu questions will be permitted, and spontaneous unofficial answers provided, however vendors should clearly understand that the only official answer or position of the University will be in writing.
4. **Preparation Of Proposal**: Prices are to be entered in spaces provided on the Pricing Schedule, if provided herein. The vendor shall be responsible for any mathematical error in price quotes. The PNC reserves the right to reject proposals which contain errors.

A proposal shall not be considered for award if prices in the proposal were not arrived at independently and without collusion, consultation, communication or agreement as to any matter related to price with any other vendor, competitor or public office/employee.

Each proposal shall give the complete mailing address of the vendor and be signed by a representative authorized to represent and bind the vendor into agreements. If the contract's contact will be a different individual than the proposal contact, indicate that individual's contact information for communication purposes.

Technical proposals shall contain a concise description of the vendor's capabilities to satisfy the requirements of this Request with emphasis on completeness and clarity of content. Repetition of terms and conditions of the Request without additional clarification shall not be considered responsive. Vendors are instructed to prepare their proposal following the same sequence as the Proposal Response Section (Section 5) and Proposal Attachments Section (Section 9) of this Request.

The cost of developing and submitting the proposal is entirely the responsibility of the vendor. This includes costs to determine the nature of the engagement, preparation of the proposal, submitting the proposal, negotiating for the contract and other costs associated with this Request.

5. **Disclosure Of Proposal Content and Proprietary Information**: All proposals become the property of the University once submitted. The Kansas Open Records Act (K.S.A. 45-215 et seq.) requires public information

be placed in the public domain at the conclusion of the selection process and be available for examination by all interested parties. No proposals shall be disclosed until after a contract award has been issued. The University reserves the right to destroy all proposals if the RFP is withdrawn, a contract award is withdrawn, or in accordance with Kansas law.

Trade secrets or proprietary information legally recognized as such and protected by law may be requested to be withheld if clearly labeled "Proprietary" on each individual page and submitted as a separate document from the main proposal. The vendor shall provide detailed written documentation justifying why this material should be considered "Proprietary". Pricing information is not considered proprietary and the vendor's entire proposal response package will not be considered proprietary.

The Purchasing Office reserves the right to accept, amend or deny such requests for maintaining information as proprietary in accordance with Kansas law.

Kansas State University does not guarantee protection of any information which is not submitted as required.

6. **Questions / Addenda**: Questions requesting clarification of this Request may be emailed to kspurch@k-state.edu prior to 12:00 P.M. on January 14, 2022 (prior to the pre-bid meeting) and/or by (final remaining questions by January 20, 2022, with the RFP number clearly referenced in the Subject line. Each question or clarification should reference the appropriate RFP section. Answers will be released in the form of an addendum.

It shall be the responsibility of all participating vendors to acquire any and all addenda and additional information as it is made available on K-State Purchasing's Solicitations webpage (<https://dfs.ksucloud.net/rfq/>). Vendors are required to check the website periodically for any additional information or instructions.

Failure to notify the Purchasing Office of any conflicts or ambiguities in this Request may result in items being resolved in the best interest of the University.

7. **Acknowledgment Of Addenda**: All vendors shall acknowledge receipt of any addenda to this Request. Failure to acknowledge receipt of any addenda may render the bid to be non-responsive. Changes to this Request shall be issued only by Kansas State University Purchasing in writing.
8. **Modification Of Proposals**: A proposal may be modified by emailing kspurch@k-state.edu any time prior to the deadline for receipt of proposals and the Purchasing Office is satisfied that the modification request was emailed prior to the deadline.
9. **Withdrawal Of Proposals**: A proposal may be withdrawn by emailing kspurch@k-state.edu any time prior to the deadline for receipt of proposals and the Purchasing Office is satisfied that the withdrawal request was emailed prior to the deadline.
10. **Closing Date for Proposals**: All proposals shall be received promptly by 2:00 P.M. CT on February 9, 2022. Proposals received after the closing will not receive consideration and will remain sealed in the bid file.
11. **Submission Of Proposals**: The official Signature Sheet, Cost Proposal form, and any other required documentation must be uploaded to the Vendor Bid Submission Secure File Upload portal, <https://www.k-state.edu/finsvcs/purchasing/bidsubmission.html>, prior to 2 p.m. CT on the closing date. Proposals submitted via any other method will not be considered. Under all circumstances, it shall be the vendor's responsibility to ensure their bid is properly received by the appropriate date/time at the Kansas State University Purchasing Office.
12. **Appearance Before Committee**: Any, all, or no vendors may be required to appear before the PNC to explain the vendor's understanding and approach to the project and/or respond to questions from the PNC concerning the proposal; or, the PNC may award without conducting negotiations, based on the initial

proposal. The PNC reserves the right to request information from vendors as needed. If information is requested, the PNC is not required to request the information of all vendors.

Vendors selected to participate in negotiations may be given an opportunity to submit a revised technical and/or cost proposal/offer to the PNC, subject to a specified cut off time for submittal of revisions. Meetings before the PNC are not subject to the Kansas Open Meetings Act (K.S.A. 75-4317, et seq.). Vendors are prohibited from recording these meetings. All information received prior to the cutoff time will be considered part of the vendor's revised offer.

No additional revisions shall be made after the specified cutoff time unless requested by the PNC.

13. **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. The 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 quotations.

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

14. **Exceptions:** By submission of a response, the vendor acknowledges and accepts all terms and conditions of this Request unless clearly avowed and wholly documented in a separate section of their Proposal to be entitled: "Exceptions".
15. **New Releases:** Only the University is authorized to issue news releases relating to this Request, its evaluation, award and/or performance of the contract.
16. **Bid Disclosure:** As of March 23, 2020, Kansas State University is maintaining limited operation status based on the latest guidance from the CDC and KDHE. As a public health precautionary measure, Kansas State University Purchasing will not hold any public bid openings until further notice. Bid tabulations will be available after the release of a purchase order or the contract is finalized. Results may be obtained by sending the RFP number for each tab requested to kspurch@k-state.edu

Copies of individual proposals may be obtained under the Kansas Open Records Act by submitting a written request to Open Records, Communications and Marketing, 128 Dole Hall, Kansas State University, Manhattan, KS 66506 (EMAIL openrecords@k-state.edu or FAX 785-532-7355). An estimate of the amount of time and copies it will take to complete the request will be compiled. After payment has been received, the documents will be released. Should a check be returned to Kansas State University for insufficient funds, the vendor will be suspended from all bidding until such time as the vendor makes good on payment. More information regarding the Kansas Open Records Act is available at <http://www.k-state.edu/policies/ppm/3000/3060.html>

Information in bid files will not be released until a bid has been awarded or all proposals have been rejected.

7. UNIVERSITY TERMS AND CONDITIONS

1. **Contract:** The successful vendor will be required to enter into a written contract with Kansas State University. The vendor agrees to accept the provisions of form KSU-146a, Contractual Provisions Attachment, which is incorporated into all contracts with the University and is available at <https://www.k-state.edu/policies/ppm/3000/3070.html> No other contract documents shall include any language superseding the KSU-146a.
2. **Contract Documents:** This Request and any addenda and the response and any addenda of the successful

vendor shall be incorporated along with the KSU-146a into the written contract which shall 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);
- written modifications to the executed contract;
- written contract signed by the parties;
- 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.

The finalized contract 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 shall be independent of and have no effect on any other contracts of either party.

3. **Contract Formation**: No contract shall be considered to have been entered into by Kansas State University until all statutorily required signatures and certifications have been rendered and a written contract has been signed by the successful vendor.
4. **Evaluation Of Proposals**: Award shall be made in the best interest of the University as determined by the PNC or their designees. Although no weighted value is assigned, consideration may focus toward but is not limited to:
 - Cost or Financial Proposal. Vendors are not to inflate prices in their initial proposal as they will be a factor in determining who may receive an award or be invited to formal negotiations. The University reserves the right to award to the lowest responsive bid without conducting formal negotiations, if authorized by the PNC.
 - Adequacy and completeness of proposal
 - Vendor's understanding of the project
 - Compliance with the terms and conditions of the Request
 - Experience in providing like services
 - Qualified staff
 - Methodology to accomplish tasks
 - Response format as required by this Request
5. **Acceptance Or Rejection**: The University reserves the right to accept or reject any or all proposals or part of a proposal; to waive any informalities or technicalities; to clarify any ambiguities in proposals; to modify any criteria in this Request; and unless otherwise specified, to accept any item in a proposal.
6. **Competition**: The purpose of this Request is to seek competition. The vendor shall advise the Purchasing Office if any specification, language, or other requirement inadvertently restricts or limits bidding to a single source. Notification shall be in writing and must be received by the Purchasing Office no later than five (5) business days prior to the bid closing date. The Purchasing Office reserves the right to waive minor deviations in the specifications which do not hinder the intent of this Request.
7. **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.
8. **Equivalent Items**: Whenever a material, article or piece of equipment is identified in the specifications by reference to a manufacturer's or vendor's name, trade name, catalog number, etc., it is intended to establish a standard, unless otherwise specifically stated. Any material, article or equipment of other manufacturers or vendors shall perform to the standard of the item specified. Equivalent proposals must be accompanied by

sufficient descriptive literature and/or specifications to provide for detailed comparison. Samples of items, if required, shall be furnished at no expense to the University and if not destroyed in the evaluation process, shall be returned at the vendor's expense, if requested.

9. **Insurance**: The University shall not be required to purchase any insurance against loss or damage to any personal property nor shall the University establish a "self-insurance" fund to protect against any loss or damage. Subject to the provisions of the Kansas Tort Claims Act, the vendor shall bear the risk of any loss or damage to any personal property.
10. **Inspection**: The University reserves the right to reject, on arrival at destination without cost to the University, any items which do not conform with the specifications of this Request.
11. **Injunctions**: Should the University 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.
12. **Proof Of Insurance**: Upon request, the vendor shall present an affidavit of workers compensation, public liability, and property damage insurance.
13. **Criminal Or Civil Offense**: Any conviction for a criminal or civil offense of an individual or entity that controls a vendor 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 the 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;
 - (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 vendor 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 managements or policies. Failure to disclose an offense may result in disqualification of the bid or termination of the contract.
14. **Governing Law**: This agreement shall be governed by the laws of the State of Kansas and shall be deemed executed in Manhattan, Riley County, Kansas, unless otherwise specified and agreed upon.
15. **Notice Of Award**: An award is made upon execution of the written contract by all parties.
16. **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 on their cost proposal if pricing is available to political subdivisions.
17. **P-Card Payment**: Kansas State University participates in the State of Kansas / UMB Bank Visa Purchasing Program. Merchants are paid by UMB Bank within three days of the business transaction. The use of the procurement card (p-card) as a form of payment for goods and services for University business must comply with all applicable State of Kansas and Kansas State University accounting and purchasing statutes, regulations, policies, procedures, guidelines, and processes. No additional charges will be allowed for use of the business procurement credit card.
18. **ACH Payment**: Automated Clearing House electronic fund transfer through the Federal Reserve System or

by any other means approved by the Kansas State Treasurer.

8. ADDITIONAL PROVISIONS

1. **Term Of Contract**: The term of this contract is from February 12, 2022 through September 30, 2026.
2. **Open-Ended Contract**: This Request is for a contract between a vendor and Kansas State University to furnish an undetermined quantity of a good or service in a given period of time.
3. **Modification**: This contract shall be modified only by the written agreement of the parties with the approval of Kansas State University Purchasing. 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.
4. **Quality**: Materials used and workmanship shall be of the highest quality. Failure to produce and/or supply materials of the highest quality may result in rejection of an order entirely at the Contractor's expense.

The decision of Kansas State University Purchasing shall be final in all instances of dispute herein. The proof of accuracy or manufacture and quality of material rests with the Contractor.

5. **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 Request, 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 the department and/or the Purchasing Office said issue is due to imperfection in material, design, workmanship, or contractor fault.

6. **Industry Standards**: If not otherwise provided, materials or work called for in this contract shall be furnished and performed in accordance with best established practices and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.
7. **Price**: Prices shall remain firm throughout the contract period. Price quotes are to be net delivered, including all trade, quantity, and cash discounts. Any price reductions available during the contract period shall be offered to the University. Failure to provide available price reductions may result in termination of the contract.

On the yearly anniversary date of this contract, costs may remain at the price bid or a request for adjustment may be made, either upward or downward, keyed to industry changes. Contractor shall furnish documentation at least 30 days prior to the anniversary date to substantiate any claim for increase. Price increases up to 3% of the existing contract unless otherwise negotiated and agreed up on by both parties. The University reserves the right to accept, amend or deny any such price increase. It is understood that in the event the parties cannot agree upon the renewed price the contract will be terminated.

8. **Invoices**: Each purchase order must be individually invoiced. Invoices shall be forwarded to the using department 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.
9. **Payment**: Payment Terms shall be Net 30, unless stated otherwise. Payments will be made in regular routine

per K.S.A. 75-6403 upon receipt by the ordering department of the Contractor's invoice. Payments shall not be made for costs or items not listed in the Contractor's response to this Request.

10. **Deliveries:** All orders shall be shipped FOB destination, prepaid and included, unless stated otherwise. Deliveries must be clearly marked with the purchase order number. If delays in delivery are anticipated, the Contractor shall notify the ordering department of the expected delivery date or partial delivery date. The order may be cancelled if delivery time is unsatisfactory. The Contractor shall inform Kansas State University Purchasing of any supply or delivery problems.
11. **Default On Delivery:** Any Contractor who defaults on delivery as defined in this Request may, at the discretion of the Purchasing Office, be barred from bidding on any subsequent Request for a period to be determined.
12. **Termination:** Kansas State University Purchasing 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 provides substandard quality and/or workmanship; or
 - (3) The Contractor fails to perform any of the provisions of this contract, or so fails to make progress as to endanger the performance of this contract in accordance with its terms.

The using department or the Purchasing Office shall provide the 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 may be authorized in writing), Kansas State University Purchasing shall issue the Contractor an order to stop work immediately. Receipt of this notice shall be presumed to have occurred within three (3) days of the date of the notice.

Kansas State University Purchasing may terminate performance of work under this contract in whole or in part whenever, for any reason, it is determined 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, the Contractor shall be provided a 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.

13. **Right And Remedies:** If this contract is terminated, the University, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to the University in the manner and to the extent directed, any completed materials. The University may be obligated only for those services and materials rendered and accepted prior to the date of termination. Subject to proof of market price, the measure of damages for non-delivery or repudiation by the Contractor shall be the difference between the market price at the time when the University learned of the breach and the contract price together with any incidental and consequential damages less expenses saved in consequence of the contractor's breach. Market price shall be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

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

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.

In 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 the University, subject to any offset by the University for actual damages, including loss of federal matching funds.

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

14. **Hold Harmless:** The Contractor shall indemnify the University 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 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.

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

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

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

17. **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.

18. **Antitrust:** The Contractor assigns to the University all of its rights to and interests in any causes of action it has or may acquire under the antitrust laws of the United States and the State of Kansas relating to the particular product or services purchased or acquired by the University pursuant to this contract.

19. **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.

20. **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.

21. **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.

22. **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 will 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 University promptly at the request of the University in whatever form it is maintained by the Contractor. On the expiration or termination 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 the University, will destroy or render it unreadable.
23. **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 which consent will not be unreasonably withheld or delayed. This contract shall immediately terminate in the event of its assignment, conveyance, encumbrance, or other transfer by the Contractor without the prior written consent of the University.
24. **Subcontractors:** The Contractor shall be the sole source of contract 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 subcontractors.
25. **Debarment:** Any Contractor who defaults on delivery or does not perform in a satisfactory manner as refined 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.
26. **Third Party Beneficiaries:** This contract shall not be construed as providing an enforceable right to any third party.
27. **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 the University shall not constitute a waiver.
28. **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.
29. **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.
30. **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.
31. **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, rules or regulations may result in termination of this contract.
32. **Retention Of Records:** Unless the University 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 or 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. Delivery of and access to the records shall be at no cost to the University.

33. **Accounts Receivable Setoff Program**: During the course of this contract if the Contractor is found to owe a debt to the State of Kansas or to federal creditor agencies, payments to the Contractor may be intercepted (setoff) by the State of Kansas. Notice of the setoff action will be provided to the Contractor. The Contractor 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 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 Contractors benefits fully from the payment because its obligation to the State is reduced by the amount subject to setoff.

9. PROPOSAL ATTACHMENT SECTION

Closing Date: **February 9, 2022 at 2:00 PM CT**

Item: **Consultant Work for TAB Program**

Department: **Kansas State University – Center for Hazardous Substance Research**

Please provide the following as attachments to your proposal, per Section 5 (above). The Signature Sheet, Pricing Schedule, and KSU-146a Acceptance are provided below:

a) Organizational Chart, Resumes, and Project Profiles;

b) Signature Sheet;

c) Pricing Schedule Sheet: Please provide an itemized list of hourly rates and other unit costs (such as for travel expenses), and approaches you plan to take to provide leveraged/in-kind effort (e.g., discounted rates, waiving pass-through fees, reduced hourly rates for time spent traveling, etc.);

d) KSU-146a Acceptance: Initialed acceptance of Contractual Provisions Attachment (Form KSU-146a, Rev. 7-20), with reference to Exceptions Section of proposal, if appropriate *See page 23; and*

e) 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) Director of Taxation. Kansas State University supports the State of Kansas tax clearance process. Vendors submitting proposals, contracts, etc., are required to provide a current tax clearance certificate. For more information regarding this process, visit:

<http://www.ksrevenue.org/taxclearance.html>

9.1 SIGNATURE SHEET

We submit a proposal to furnish requirements during the contract period in accordance with the specifications.

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or persons submitting a bid for the same materials, supplies, or equipment, and is in all respect fair and without collusion or fraud. I understand that collusive bidding is a violation of State and Federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of this bid, and certify that I am authorized to sign this bid for the bidder. I understand that should my proposal be accepted, the provisions found in Contractual Provisions Attachment (Form KSU-146a, rev. 7-20), which is attached hereto, are hereby incorporated in the contract and made a part hereof."

ADDENDA:

The undersigned acknowledges receipt of the following Addenda: #1(____) #2(____) #None(____)

LEGAL NAME OF PERSON, FIRM OR CORPORATION _____

ADDRESS _____

CITY & STATE _____ ZIP CODE _____

WEBSITE _____

CONTACT NAME _____

CONTACT E-MAIL _____

CONTACT PHONE NUMBER _____

AUTHORIZED SIGNATURE & DATE _____

TYPED NAME _____

TITLE _____

E-MAIL _____

Please provide the contact information of the individual authorized to execute contracts on behalf of your company should your company's proposal be accepted.

TYPED NAME _____

TITLE _____

E-MAIL _____

9.2 PRICING SCHEDULE

Vendor Name: _____

Bid related to 41480 Consultant Work for the TAB Program

Pricing Schedule:

Personnel (Name and Title)	Hourly Labor Rates	Other Rates/Travel (e.g. Per mile, per hour, per day, etc.); Please specify
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$

Payment Terms (Net 30, etc.): _____

Will P-Card be accepted for payment? Yes / No

Will ACH (direct deposit) be accepted for payment? Yes / No

For Universities/Colleges, private firms, and nonprofit applicants; please select an option below:

_____ I/We would prefer to be awarded with a **subaward**.

_____ I/We would prefer to be awarded with a **contract**.

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 to 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.