

EMPORIA STATE UNIVERSITY

REQUEST FOR PROPOSAL (RFP)

RFP Number:	003-24
Date Issued:	March 1, 2024
Questions Deadline:	March 8, 2024, 2:00 p.m. (CST)
Closing Date:	March 15, 2024, 2:00 p.m. (CST)
Procurement Officer:	Ashley Brandt
Mailing Address:	Emporia State University Purchasing Office 1 Kellogg Circle, Box 4021, Plumb Hall 103M, Emporia, KS 66801
Telephone:	620-341-5137
E-Mail Address:	purchaseorders@emporia.edu
Item:	PAROC Nature Walking Trail
Agency:	Emporia State University (ESU)
Location(s):	Emporia, KS 66801
Period of Contract:	Contract Award through project completion.
Guarantee:	Indefinite Quantity Contract: This Request is for an open-ended contract between a Contractor and ESU to furnish an undetermined quantity of a good or service in a given period of time. The quantities ordered will be those actually required during the contract period, and the Contractor will deliver only such quantities as may be ordered. No guarantee of volume is made. An estimated quantity based on past history or other means may be used as a guide.
Scope of Work:	ESU is issuing this RFP to obtain competitive responses from suppliers to provide a <u>Nature Walking Trail for our Prophet Aquatic Research and Outreach Center (PAROC)</u> , per the specifications listed in this document. Any additional specifications and addenda are available online at: https://vrapp.vendorregistry.com/Bids/View/BidsList?BuyerId=cc49dc6a-03ac-4446-b53d-24aed14468a5
Questions/Addenda:	A mandatory pre-bid conference is scheduled for this RFP on March 6, 2024, at 10:00 a.m. (CST). Vendors will meet on the deck at the Prophet Aquatic Research and Outreach Center located at 601 E 18th Ave., Emporia, KS. Questions and requests for clarification of the RFP must be submitted through Vendor Registry or by email to ESU Purchasing at purchaseorders@emporia.edu by March 8, 2024, at 2:00 p.m. (CST).

Impromptu questions may be permitted, and spontaneous unofficial answers provided. However, bidders should understand that the only official answer or position of Emporia State University will be in writing.

Failure to notify the ESU Purchasing Office of any conflicts or ambiguities in the RFP may result in items being resolved in the best interest of ESU. Any modification to this RFP as a result of the pre-proposal conference, as well as written

answers to written questions, shall be made in writing by addendum. Only written communications are binding.

Answers to questions will be available in the form of an addendum on the Vendor Registry bidding website: <https://vrapp.vendorregistry.com/Bids/View/BidsList?BuyerId=cc49dc6a-03ac-4446-b53d-24aed14468a5>. It shall be the responsibility of all participating suppliers to acquire any and all addenda and additional information as it is made available from the website cited above. **Suppliers are required to check the website on a regular basis for any additional information, addenda, or instructions.**

Failure to abide by all of the conditions of this Request for Proposal (RFP) may result in the rejection of a bid. Inquiries about this RFP should indicate the RFP number and be directed to the Emporia State University Purchasing Office.

READ THIS REQUEST CAREFULLY

Failure to abide by **all** of the conditions of this Request may result in the rejection of a bid.

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SIGNATURE SHEET

Item: PAROC Nature Walking Trail
Agency: Emporia State University
Location: Plumb Hall 103M
Closing Date: March 15, 2024, 2:00 p.m. (CST)

By submission of a bid and the signatures affixed thereto, the bidder certifies all products and services proposed in the bid meet or exceed all requirements of this specification as set forth in the request and that all exceptions are clearly identified.

Legal Name of Person, Firm or Corporation _____

Mailing Address _____ City & State _____ Zip _____

Phone _____ Cell _____ Fax _____

Tax Number _____

E-Mail _____

Signature _____ Date _____

Typed Name _____ Title _____

In the event the **contact for the bidding process** is different from above, indicate contact information below.

Bidding Process Contact Name _____

Mailing Address _____ City & State _____ Zip _____

Phone _____ Cell _____ Fax _____

E-Mail _____

If awarded, contract and purchase orders are to be directed to an address other than above, indicate mailing address and telephone number below.

Award Contact Name _____

Mailing Address _____ City & State _____ Zip _____

Phone _____ Cell _____ Fax _____

E-Mail _____

May Emporia State University use the Business Procurement Card for contract purchases? Yes No
(Refusal will not be a determining factor in award of this contract.)

Would this contract be available to other political subdivisions of the State of Kansas? Yes No
(Award will not be based on accepting or declining.)

TAX CLEARANCE

Emporia State University strongly supports the State of Kansas Tax Clearance Process. Suppliers submitting bids or proposals which exceed \$10,000 over the term of the contract shall include a copy of a Tax Clearance Certification Form with their submittal. Failure to provide this information may be cause for rejection of supplier's bid or proposal.

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. Information pertaining to a Tax Clearance is subject to change(s), which may arise as a result of a State Tax Audit, Federal Revenue Agent Report, or other lawful adjustment(s).

To obtain a Tax Clearance Certificate, you must:

- Go to <http://www.ksrevenue.org/taxclearance.html> to request a Tax Clearance Certificate.
- Return to the website the following working day to see if KDOR will issue the certificate.
- If issued an official certificate, print it, and attach it to your bid response.
- If denied a certificate, engage KDOR in a discussion about why a certificate was not issued.

***Please Note:** Individual and business applications are available. For applications entered prior to 5:00 PM Monday through Friday, results typically will be available the following business day. Tax clearance requests may be denied if the request includes incomplete or incorrect information.*

***Please Note:** You will need to sign back into the KDOR website to view and print the official tax clearance certificate.*

Bidders (and their subcontractors) are expected to submit a current Tax Clearance Certificate with every event response.

Failure to provide this information may be cause for rejection of supplier's bid or proposal.

Information about Tax Registration can be found at the following website: <http://www.ksrevenue.org/busregistration.html>.

The ESU Purchasing Office reserves the right to confirm tax status of all potential contractors and subcontractors prior to the release of a purchase order or contract award.

In the event that a current tax certificate is unavailable, the ESU Purchasing Office reserves the right to notify a bidder (one that has submitted a timely event response) that they have to provide a current Tax Clearance Certificate within ten (10) calendar days, or ESU may proceed with an award to the next lowest responsive bidder, whichever is determined by the Purchasing Director to be in the best interest of ESU and the State.

**CERTIFICATION REGARDING
IMMIGRATION REFORM & CONTROL**

All Contractors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the Contractor as well as any subcontractor or sub-subcontractor. The usual method of verification is through the Employment Verification (I-9) Form. With the submission of this bid, the Contractor hereby certifies without exception that Contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at the State's option, may subject the contract to termination and any applicable damages.

Contractor certifies that, should it be awarded a contract by the State, Contractor will comply with all applicable federal and state laws, standards, orders, and regulations affecting a person's participation and eligibility in any program or activity undertaken by the Contractor pursuant to this contract. Contractor further certifies that it will remain in compliance throughout the term of the contract.

At the State's request, Contractor is expected to produce to the State any documentation or other such evidence to verify Contractor's compliance with any provision, duty, certification, or the like under the contract.

Contractor agrees to include this Certification in contracts between itself and any subcontractors in connection with the services performed under this contract.

Signature, Title of Contractor

Date

CERTIFICATION OF COMPANY NOT CURRENTLY ENGAGED IN THE PROCUREMENT OR OBTAINMENT OF CERTAIN EQUIPMENT, SERVICES, OR SYSTEMS

WHEREAS, pursuant to Public Law 115-232, Section 889 of the John S. McCain National Defense Authorization Act of 2019, “covered telecommunications equipment or services” is defined as:

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- (2) Video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, and Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

WHEREAS, a “covered foreign country” means any of the following: (1) The People’s Republic of China, (2) The Russian Federation, or (3) any country that is a state sponsor of terrorism¹

WHEREAS, foreign adversaries are increasingly creating and exploiting vulnerabilities in covered telecommunications equipment which store and communicate vast amounts of sensitive information and support infrastructure and emergency services, in order to commit malicious cyber-enabled actions;

WHEREAS, the unrestricted acquisition or use in the State of Kansas of covered telecommunications equipment designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries augments the ability of foreign adversaries to create and exploit vulnerabilities in technological equipment, services, or systems; and

WHEREAS, the State of Kansas has an interest in protecting itself against threats related to foreign adversary’s exploitation of vulnerabilities in covered telecommunications equipment.

THEREFORE, Contractor certifies that it shall not provide or procure to the State of Kansas or any agency thereof any covered telecommunications equipment either in whole or in part of any product or during the commission of any service.

FURTHERMORE, and notwithstanding any other contracts or agreements with Contractor, if Contractor has violated, misrepresented, or otherwise fails to comply with this certification document as determined by the State, the State may terminate any contract without penalty with Contractor immediately.

By signing below, Contractor acknowledges and agrees to comply with the provisions of this policy.

CONTRACTOR

Signature, Title Date

¹ Designations of a “state sponsor of terrorism” may be found at the U.S. Department of State website. <https://www.state.gov/state-sponsors-of-terrorism/#:~:text=Currently%20there%20are%20four%20countries,%2C%20Iran%2C%20and%20Syria.&text=For%20more%20details%20about%20State,in%20Country%20Reports%20on%20Terrorism>

REFERENCES

Provide four (4) references. References shall have purchased similar items/services from the supplier in the last year. Supplier employees and ESU shall not be shown as references.

1. NAME: _____
COMPANY: _____
ADDRESS: _____
TELEPHONE: _____
EMAIL: _____

2. NAME: _____
COMPANY: _____
ADDRESS: _____
TELEPHONE: _____
EMAIL: _____

3. NAME: _____
COMPANY: _____
ADDRESS: _____
TELEPHONE: _____
EMAIL: _____

4. NAME: _____
COMPANY: _____
ADDRESS: _____
TELEPHONE: _____
EMAIL: _____

Duplicate as needed

SUPPLIER RESPONSE CHECK-LIST

The following items are provided to assist bidders in ensuring all requirements are met and all required submissions are included with the bid. Suppliers are instructed to utilize this **list, including Addenda Acknowledgement, and include it with their bid submission**. In order to ensure fair and accurate evaluation, page numbers indicating the location of your response within your bid shall be included, where indicated.

Technical and cost proposals, including other supporting documents:

- Signature Sheet Page 4
- Copy of the Tax Clearance Certificate from the Kansas Department of Revenue Page 5
- Signed Certification regarding Immigration Reform and Control Form Page 6
- Certification of Company Not Currently Engaged in the Procurement or Obtainment of Certain Equipment, Services, or Systems..... Page 7
- References..... Page 8
- Price Sheet Page 26
- W-9 (form can be found at <http://www.irs.gov/>)

Addenda Acknowledgement: Bidder acknowledges receipt of the following addenda:

Addendum No. _____, _____, _____, _____.

Signature acknowledging receipt of addenda

Date

Questions/Addenda: Questions and requests for clarification of the RFP must be submitted by email to the attention of the ESU Purchasing Office at purchaseorders@emporia.edu by **March 8, 2024, at 2:00 p.m. (CST)**. Each question or clarification should reference the appropriate RFP section.

Supplier’s bid response: must be submitted no later than **2:00 p.m. (CST)**, on or before **March 15, 2024**.

Please submit bid responses by the way of ESU’s Vendor Registry e-Bidding Portal by registering your business then submitting the bid document(s) at: <https://vrapp.vendorregistry.com/Bids/View/BidsList?BuyerId=cc49dc6a-03ac-4446-b53d-24aed14468a5>

Technical assistance will be provided by contacting Vendor Registry at 844-802-9202 or eservice@vendorregistry.com

If complications continue to arise, email or carrier mailed submissions will also be accepted. Please allow ample time for submissions as late proposals are not considered.

SECTION I - INSTRUCTIONS

1. **Proposal Reference Number:** The RFP number, indicated in the header of this document, as well as on the first page of this proposal, has been assigned to this RFP and **MUST** be shown on all correspondence or other documents associated with this RFP and **MUST** be referred to in all verbal communications. All inquiries, written or verbal, shall be directed only to the Emporia State University Purchasing Office reflected on Page 1 of this proposal. There shall be no communication with any other Emporia State University employee regarding this RFP except with designated Emporia State University participants in attendance **ONLY DURING:**

Negotiations
Contract Signing
as otherwise specified in this RFP.

Violations of this provision by supplier or ESU personnel may result in the rejection of the proposal.

2. **Negotiated Procurement:** This is a negotiated procurement pursuant to K.S.A. 75-37,102. Final evaluation and award will be made by The Procurement Negotiation Committee (PNC) composed of individuals from appropriate departments or their designees with the Director of Purchasing as the Chair of the PNC.
3. **Appearance Before Committee:** Any, all or no suppliers may be required to appear before the PNC to explain the supplier'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 suppliers as needed. If information is requested, the PNC is not required to request the information of all suppliers.

Suppliers selected to participate in negotiations may be given an opportunity to submit a revised technical and/or cost proposal to the PNC, subject to a specified cut off time for submittal of revisions. Meetings before the PNC are not subject to the Open Meetings Act. Suppliers are prohibited from electronically recording these meetings. All information received prior to the cut-off time will be considered part of the supplier's revised offer.

No additional revisions shall be made after the specified cut-off time unless requested by the PNC.

4. **Cost of Preparing Proposal:** The cost of developing and submitting the proposal is entirely the responsibility of the supplier. 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 RFP.
5. **Tax Clearance:** ESU strongly supports the State of Kansas Tax Clearance Process. Suppliers submitting bids or proposals which exceed \$10,000 over the term of the contract shall include a copy of a Tax Clearance Certification Form with their submittal. Failure to provide this information may be cause for rejection of supplier's bid or proposal. Tax Clearances may be obtained at the following website: <http://www.ksrevenue.org/taxclearance.html>. See page 5 for instructions.
6. **Preparation of Proposal:** Prices are to be entered in spaces provided on the pricing sheet provided herein. Computations and totals shall be indicated where required. In case of error in computations or totals, the unit price shall govern. The PNC has the right to rely on any price quotes provided by suppliers. The supplier 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 the price in the proposal was not arrived at independently and without collusion, consultation, communication, or agreement as to any matter related to price with any other supplier, competitor, or public officer/employee.

7. **Signature of Proposals:** Each proposal shall give the complete mailing address of the supplier and be signed by an authorized representative by original signature with his or her name and legal title typed below the signature line. If the contract's contact will be a different entity, indicate that individual's contact information for communication purposes. Each proposal shall include the supplier's tax number.
8. **Acknowledgment of Addenda:** All suppliers shall acknowledge receipt of any addenda to this RFP by filling out and signing the supplier response check-list page, including the Addenda Acknowledgement, and returning it with their bid. Failure to acknowledge receipt of any addenda may render the proposal to be non-responsive. Only the ESU Purchasing Office shall issue changes to this RFP, which will be in writing.
9. **Modification of Proposals:** A supplier may modify a proposal by letter format to purchaseorders@emporia.edu or mail at any time prior to the closing date and time for receipt of proposals.
10. **Withdrawal of Proposals:** A proposal may be withdrawn on written request attachment from the supplier to the ESU Purchasing Office at purchaseorders@emporia.edu (or mail) prior to the closing date.
11. **Competition:** The purpose of this RFP is to seek competition. The supplier shall advise the ESU 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 ESU Purchasing Office no later than five (5) business days prior to the bid closing date. The ESU Purchasing Office reserves the right to waive minor deviations in the specifications which do not hinder the intent of this RFP.
12. **Evaluation of Proposals:** Award shall be made in the best interest of Emporia State 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 (suppliers are not to inflate prices in the initial proposal as cost is a factor in determining who may receive an award or be invited to formal negotiations. ESU reserves the right to award to the lowest responsive bid without conducting formal negotiations, if authorized by the PNC.)
 - Adequacy and completeness of proposal
 - Supplier's understanding of the project
 - Compliance with the terms and conditions of the RFP
 - Experience in providing like services
 - Qualified staff
 - Methodology to accomplish tasks
 - Response format as required by this RFP
13. **Acceptance or Rejection:** The Committee reserves the right to accept or reject any or all proposals or part of a proposal; to waive any informalities or technicalities; clarify any ambiguities in proposals; modify any criteria in this RFP; and unless otherwise specified, to accept any item in a proposal.
14. **Proposal Disclosures:** At the time of closing, only the names of those who submitted proposals shall be made public information. No price information will be released.

Bid results will not be given to individuals over the telephone. Results may be obtained after contract finalization by obtaining a bid tabulation from the ESU Purchasing Office by sending (do not include with bid):

- A check for \$3.00, payable to Emporia State University
- A self-addressed, stamped envelope
- RFP Number

Send Request for Bid Tabulation to:
Emporia State University Purchasing Office
1 Kellogg Circle, Campus Box 4021
Emporia, KS 66801

Copies of individual proposals may be obtained under the Kansas Open Records Act. ESU's KORA Policy is available at: <http://www.emporia.edu/about/kora.pdf>. Please see below for instructions to request an estimate of the cost to reproduce the documents. Upon receipt of the funds, the documents will be mailed. You may also request to review the proposal file. Please contact the Custodian of Records indicated below to set up an appointment. Information in proposal files shall not be released until a contract has been executed or all proposals have been rejected.

Emporia State University asks that you submit a written request to obtain public records. Please include your name, contact information, and a specific description of the records you are requesting. Make your request as specific as possible to expedite the process.

Mail your request(s) to:
General Counsel and ESU KORA Custodian of Records
Office of General Counsel
1 Kellogg Circle, Box 4001
Emporia, KS 66801
kora@emporia.edu

15. **Disclosure of Proposal Content and Proprietary Information:** All proposals become the property of Emporia State University. The **Kansas Open Records Act** (K.S.A. 45-205 et. seq.) of the State of Kansas 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. (See: <http://da.ks.gov/purch/KSOpenRecAct.doc> and <http://www.emporia.edu/about/kora.pdf>). No proposals shall be disclosed until after a contract award has been issued. ESU reserves the right to destroy all proposals if the RFP is withdrawn, a contract award is withdrawn, or in accordance with Kansas law. Late proposals will be retained unopened in the file and not receive consideration or returned to the bidder.

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** provided as separate from the main proposal. Pricing information is not considered proprietary, and the supplier's entire proposal response package will not be considered proprietary.

All information requested to be handled as "Proprietary" shall be submitted separately from the main proposal and clearly labeled, in a separate envelope or clipped apart from all other documentation. The supplier shall provide detailed written documentation justifying why this material should be considered "Proprietary." The ESU Purchasing Office reserves the right to accept, amend or deny such requests for maintaining information as proprietary in accordance with Kansas law.

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

16. **Exceptions:** By submission of a response, the supplier acknowledges and accepts all terms and conditions of the RFP unless clearly avowed and wholly documented in a separate section of the proposal to be entitled: "Exceptions".
17. **Notice of Award:** An award is made on execution of the written contract by all parties.
18. **News Releases:** Only Emporia State University is authorized to issue news releases relating to this RFP, its evaluation, award and/or performance of the contract.

SECTION II - PROPOSAL RESPONSE

1. Submission of Proposals: Supplier’s proposal shall consist of:

- Technical Proposal
- Cost Proposal (Price Sheet)
- Completion of supplier response check list
- Signature sheet
- Tax Clearance Certificate
- Certification regarding immigration reform & control
- Certification for Company Not Currently Engaged in the Procurement or Obtainment of Certain Equipment, Services, or Systems
- W-9

Supplier's proposal shall be received no later than 2:00 p.m., Central Standard Time, on the closing date indicated on Page 1:

Emporia State University Purchasing Office
purchaseorders@emporia.edu
RFP# 003-24
March 15, 2024

Emporia State University Purchasing Office
1 Kellogg Circle
Campus Box 4021
Emporia, KS 66801

Bid opening will be at: Emporia State University Purchasing Office, 1 Kellogg Circle, Plumb Hall 103M , Emporia, KS 66801 following bid closing.

Faxed or telephoned proposals are not acceptable unless otherwise specified.

Proposals received prior to the closing date shall be kept secured and sealed until closing. Emporia State University shall not be responsible for the premature opening of a proposal or for the rejection of a proposal that was not received prior to the closing date because it was not properly identified on the outside of the envelope or container. Late proposals will be retained unopened in the file and not receive consideration.

It is the supplier’s responsibility to ensure bids are received by the closing date and time. Delays in mail delivery or any other means of transmittal, including couriers or agents of the issuing entity shall not excuse late bid submissions.

2. Proposal Format: Suppliers are encouraged to prepare their Technical Proposal following the same sequence as this RFP.

3. Transmittal Letter: All bidders shall respond to the following statements:

- The supplier is the prime contractor and identifying all subcontractors?

- The supplier is a corporation or other legal entity?

- Has an attempt been made or will be made to induce any other person or firm to submit or not to submit a proposal?

- The supplier does **not** discriminate in employment practices (see ESU-146a #5 for the full description).

- Cost or pricing information has been included in the transmittal letter or the Technical Proposal?

- The supplier 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?

- 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?

- Supplier agrees that any lost or reduced state or federal matching money resulting from unacceptable performance in a contractor task or responsibility defined in the RFP, contract or modification shall be accompanied by reductions in ESU payments to Contractor?

- The supplier has not been retained, nor has it retained a person to solicit or secure a state 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 supplier for the purpose of securing business. For breach of this provision, the Committee 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.

Accept **Reject**

- Disclaimer: There is a reasonable probability that the supplier 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 supplier which would relate to the performance of this contract. If the statement is in the affirmative, the supplier is required to submit with the proposal, written certification and authorization from the parent, affiliate or subsidiary organization granting the State and/or the federal government 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 supplier will obtain a similar certification and authorization and failure to do so will constitute grounds for termination for cause of the contract at the option of the ESU.

Accept **Reject**

4. Supplier Information: The supplier must include a narrative of the supplier'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.

5. **Qualifications:** A description of the supplier's qualifications and experience providing the requested or similar service, including resumes of personnel assigned to the project stating their education and work experience, shall be submitted with the Technical Proposal. The supplier must be an established firm recognized for its capacity to perform. The supplier must have sufficient personnel to meet the deadlines specified in the RFP.
6. **Timeline:** A timeline for implementing services must be submitted with the bid.
7. **Methodology:** Bidders shall submit with the bid, a detailed explanation of the methodology for implementing services.
8. **Technical Literature:** All bids shall include specifications and technical literature sufficient to allow Emporia State 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 bid. Bid responses without sufficient technical documentation may be rejected.
9. **Procurement Card (P-Card):** Presently, Emporia State University uses a State of Kansas Business Procurement Card (Visa-branded) in lieu of a state warrant to pay for some of its purchases. No additional charges will be allowed for using the card. **Please indicate on the Signature Sheet if you will accept the Business Procurement Card for payment.**

SECTION III - TERMS AND CONDITIONS

1. **Documents:** This RFP, any amendments, the response, and any response amendments of the Contractor, and the ESU-146a (Rev. 12-23) Contractual Provision Attachment shall be incorporated 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:

- a) Form ESU-146a (Rev. 12-23) (attached)
 - b) written modifications to the executed contract
 - c) written contract signed by all parties
 - d) this RFP including any and all addenda
 - e) any supporting manuals/documents that have been incorporated in this Request
 - f) contractor's written proposal submitted in response to this Request as finalized
2. **Contract:** The successful supplier will be required to enter into a written contract with ESU. The supplier agrees to accept the provisions of ESU-146a (Rev. 12-23) Contractual Provision Attachment which is incorporated into all contracts with ESU and is attached to this RFP.
 3. **Contract Formation:** No contract shall be considered to have been entered into by ESU until all statutorily required signatures and certifications have been rendered and a written contract has been signed by the successful supplier.
 4. **Notices:** All notices, demands, requests, approvals, reports, instructions, consents, or other communications (collectively "notices") which may be required or desired to be given by either party to the other shall be **IN LETTER FORMAT as an attachment to an email (or mail)** and addressed as follows:

Purchasing Office
Emporia State University
RFP# 003-24
PAROC Nature Walking Trail
purchaseorders@emporia.edu

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

5. **Termination for Cause:** Emporia State University and/or its Purchasing Office 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;
 - the Contractor provides substandard quality and/or workmanship;
 - the Contractor fails to perform any of the provisions of this contract, or
 - the Contractor fails to make progress as to endanger performance of this contract in accordance with its terms.

ESU 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 ESU may authorize in writing), ESU shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.

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

- 6. Termination for Convenience:** Emporia State University 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 ESU. In the event that ESU 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.

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

- 7. Debarment of University Contractors:** Any Contractor who defaults on delivery or does not perform in a satisfactory manner as defined in this contract may be barred for a period up to three (3) years, pursuant to KSA 75-37,103, or have their work evaluated for pre-qualification purposes pursuant to K.S.A 75-37,104.
- 8. Rights and Remedies:** If this contract is terminated, ESU, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to ESU in the manner and to the extent directed, any completed materials. ESU shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

In the event of termination, the Contractor shall receive payment prorated for that portion of the contract period services were provided to and/or goods were accepted by ESU subject to any offset by ESU for actual damages including loss of state or federal matching funds.

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

- 9. Force Majeure:** The Contractor shall not be held liable if the failure to perform under this contract arises out of causes beyond the control of the Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes, etc.
- 10. 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 ESU shall not constitute a waiver.
- 11. 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.

- 12. 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 contract specifications may result in termination of this contract and/or damages.

- 13. Subcontractors:** The Contractor shall be the sole source of contact for the contract. ESU 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.

- 14. Proof of Insurance:** Upon request, the Contractor shall present an affidavit of Worker's Compensation, Public Liability, and Property Damage Insurance to the ESU Purchasing Office or other designated ESU office.
- 15. 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 ESU and who are providing services involving this contract or services similar in nature to the scope of this contract to ESU. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any ESU employee who has participated in the making of this contract until at least two years after his/her termination of employment with ESU.
- 16. Confidentiality:** The Contractor may have access to private or confidential data maintained by ESU to the extent necessary to carry out its responsibilities under this contract. Contractor must comply with all the requirements of the Kansas Open Records Act in providing services under this contract. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. Contractor may be required to agree to additional confidentiality terms and execute related documentation. 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 ESU promptly at the request of ESU in whatever form it is maintained by Contractor. On the termination or expiration of this contract, Contractor will not use any of such data or any material derived from the data for any purpose and, where so instructed by ESU, will destroy or render it unreadable.
- 17. 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.
- 18. Environmental Protection:** The Contractor shall abide by all federal, state, and local laws, rules, and regulations regarding the protection of the environment. The Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws, rule or regulations may result in termination of this contract for cause.
- 19. Hold Harmless:** The Contractor shall indemnify ESU against any and all loss or damage to the extent arising out of the Contractor's negligence in the performance of services under this contract and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations, or performance of work under this contract.
- ESU shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control, where such loss or destruction is to State property. The Contractor shall do nothing to prejudice ESU's right to recover against third parties for any loss, destruction, or damage to State property.
- 20. Care of State Property:** The Contractor shall be responsible for the proper care and custody of any state-owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this contract. The Contractor will reimburse ESU for such property's loss or damage caused by Contractor, normal wear and tear excepted.
- 21. 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 ESU employee at any time.

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

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

The Contractor agrees that authorized federal and state representatives, including but not limited to, personnel of ESU; 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 within five (5) business days at no cost to ESU.

23. Antitrust: If the Contractor elects not to proceed, the Contractor assigns to ESU all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and ESU relating to the particular products or services purchased or acquired by ESU pursuant to this contract.

24. Modification: This contract shall be modified only by the written agreement of the parties with the approval of the PNC. No alteration or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.

25. Assignment: The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of ESU.

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

26. Third Party Beneficiaries: This contract shall not be construed as providing an enforceable right to any third party.

27. 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.

28. 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.

29. Governing Law: This contract shall be governed by the laws of the State of Kansas and shall be deemed executed at Emporia, Lyon County, Kansas, unless otherwise specified and agreed upon by ESU.

30. Jurisdiction: The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas, District Court of Lyon County, unless otherwise specified and agreed upon by ESU. The United States District Court for the State of Kansas sitting in Topeka, Shawnee County, Kansas, shall be the venue for any federal action or proceeding arising hereunder in which the State is a party. Supplier/contractor waives personal service of process, all defenses of lack of personal jurisdiction and forum non conveniens. The Eleventh Amendment of the United States Constitution is an inherent and incumbent protection with Emporia State University and need not be reserved, but prudence requires the University to reiterate that nothing related to this Agreement shall be deemed a waiver of the Eleventh Amendment.

31. 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.

- 32. Criminal Or Civil Offense:** Any conviction for a criminal or civil offense of an individual or entity that controls a company or organization or will perform work under this contract that indicates a lack of business integrity or business honesty must be disclosed. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in disqualification of the bid or termination of the contract.
- 33. Injunctions:** Should ESU 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 ESU, Contractor shall not be entitled to make or assert claim for damage by reason of said delay.
- 34. 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.
- 35. Materials and Workmanship:** The Contractor shall perform all work and furnish all supplies and materials, machinery, equipment, facilities, and means, necessary to complete all the work required by this Contract, within the time specified, in accordance with the provisions as specified.

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

- 36. Industry Standards:** If not otherwise provided, materials or work called for in this contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.
- 37. Federal, State and Local Taxes:** Unless otherwise specified, the RFP price shall include all applicable federal, state, and local taxes. The Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Contract. **ESU is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the supplier's price quotation.** Upon request, ESU shall provide to the Contractor a certificate of tax exemption.

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

- 38. Accounts Receivable Set-Off Program:** If, during the course of this contract the Contractor is found to owe a debt to the State of Kansas, agency payments to the supplier may be intercepted / setoff by the State of Kansas. Notice of the setoff action will be provided to the Contractor. Pursuant to K.S.A. 75-6201 et seq., Contractor shall have the opportunity to challenge the validity of the debt. If the debt is undisputed, the Contractor shall credit the account of the agency making the payment in an amount equal to the funds intercepted.

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

- 39. Immigration and Reform Control Act of 1986 (IRCA):** All contractors are expected to comply with the Immigration and Reform Control Act of 1986 (see certification on page 6). With the submission of this bid, the contractor hereby certifies without exception that such contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at ESU's option, may subject the contract to termination and any applicable damages. Unless provided otherwise herein, all contractors are expected to be able to produce to ESU any documentation or other such evidence to verify Contractor's IRCA compliance with any provision, duty, certification or like under the contract.
- 40. Worker Misclassification:** The contractor and all lower tiered subcontractors under the contract shall properly classify workers as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes, and income tax withholding. Failure to do so may result in contract termination.
- 41. HIPAA Confidentiality:** Per the Health Insurance Portability and Accountability Act (1996) (HIPAA), ESU is a covered entity under the act and therefore Contractor is not permitted to use or disclose health information in ways that ESU could not. This protection continues as long as the data is in the hands of the Contractor.

The Contractor shall establish and maintain procedures and controls acceptable to ESU to protect the privacy of members' information. Unless the Contractor has the member's written consent, the Contractor shall not use any personally identifiable information obtained for any reason other than that mandated by this agreement.

- 42. Off-Shore Sourcing:** Suppliers shall disclose in their bid response the location where the contracted services will be performed and whether or not any of the work necessary to provide the contracted services will be performed at a site outside the United States.

If, during the term of the contract, the Contractor or subcontractor moves work previously performed in the United States to a location outside of the United States, the Contractor shall immediately notify the ESU Purchasing Office in writing, indicating the desired new location, the nature of the work to be moved and the percentage of work relocated. ESU must approve any changes prior to work being relocated. Failure to obtain ESU's approval may be grounds to terminate the contract for cause.

- 43. On-Site Inspection:** Failure to adequately inspect the premises shall not relieve the Contractor from furnishing without additional cost to ESU any materials, equipment, supplies or labor that may be required to carry out the intent of this Contract. Submission of a bid shall be construed as evidence that the supplier has made necessary examination, inspection and investigation. Failure to properly inspect the site may result in rejection of the supplier's bid.
- 44. Price Adjustments:** Prices shall remain firm for the entire contract period. Prices shall be net delivered, including all trade, quantity, and cash discounts. Any price reductions available during the contract period shall be offered to ESU. Failure to provide available price reductions may result in termination of the contract for cause.

On the yearly anniversary date of this contract, costs may remain at the existing contract price 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 expiration date to substantiate any claim for increase. Price increases shall not exceed five percent (5%) per year for the existing contract. ESU reserves the right to accept, amend or deny any such price increase. If parties to the contract cannot agree on renewal terms, it is hereby understood that the contract will be rebid.

45. Payment: Payment Terms are Net 30 days. Payment date and receipt of order date shall be based upon K.S.A. 75-6403(b). This Statute requires Emporia State University to pay the full amount due for goods or services on or before the 30th calendar day after the date Emporia State University receives such goods or services or the bill for the goods and services, whichever is later, unless other provisions for payment are agreed to in writing by the Contractor and Emporia State University. NOTE: If the 30-calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following workday will become the required payment date.

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

46. Invoices: Each purchase order must be individually invoiced 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.

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

48. Upgrades: Bidders shall indicate the upgrade price and policy for any software, firmware, or hardware upgrades anticipated for the equipment bid. If the upgrades are provided without cost, this should be indicated.

49. Shipping and F.O.B. Point: Unless otherwise specified, bid prices shall be F.O.B. DESTINATION, PREPAID AND ALLOWED (included in the price bid), which means delivered to ESU's receiving dock or other designated point as specified in this RFP without additional charge. Shipments shall be made in order to arrive at the destination at a satisfactory time for unloading during receiving hours.

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

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

51. Charge Back Clause: If the contractor fails to deliver the product within the delivery time established by the contract, ESU reserves the right to purchase the product from the open market and charge back the difference between contract price and open market price to the contractor.

52. Demonstration Requirements: A demonstration of the selected devices/equipment/solution for ESU may be required before final contract approval. ESU reserves the right to request said devices/equipment/solution fully configured/operational for testing, which shall be furnished at no expense to ESU within ten (10) days after receipt of request. Devices/equipment will be returned at the bidder's expense if not consumed during the evaluation process.

53. Subcontractors: Kansas Statute K.S.A. 75-3741, as amended, requires a Bidder to list and identify the "Major Sub-Contractors" for Mechanical Construction, Plumbing Construction, and/or Electrical Construction included as a part of the Proposed, when a single contract for the "Project as a whole" is to be awarded.

ESU requires tax clearance certificates for all subcontractors be submitted with the proposal, and that the bidder additionally provide subcontract(s) legal company name, contract information and tax ID number (FEIN/TIN) as well.

- 54. Equipment:** All proposed equipment, equipment options, and hardware expansions must be identified by manufacturer and model number and descriptive literature of such equipment must be submitted with the bid.
- 55. Implied Requirements:** All products and services not specifically mentioned in this RFP, but which are necessary to provide the functional capabilities described by the specifications, shall be included. Other products required to make the described software functional shall be identified in the supplier's response.
- 56. Warranty:** Bidders shall indicate the type and extent of the warranty for all equipment, hardware, software, and services proposed. ESU requires a “standard” warranty of 365 days, or one (1) year, whichever is greater, unless otherwise indicated. This warranty shall be included in the cost of the equipment.

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

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

- 57. Acceptance:** No contract provision or use of items by ESU shall constitute acceptance or relieve the Contractor of liability in respect to any expressed or implied warranties.
- 58. Ownership:** All data, forms, procedures, software, manuals, system descriptions and workflows developed or accumulated by the Contractor under this contract shall be owned by ESU. The Contractor may not release any materials without the written approval of ESU.
- 59. Software Code and Intellectual Property Rights:** As applicable, all original software and software code and related intellectual property developed or created by the Contractor in the performance of its obligations under this Contract or any Task Order, Work Order, or P.O. issued under this Contract, shall become the sole property of ESU. The Contractor will surrender all original written materials, including any reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer-based training modules, electronically or magnetically recorded material, used to develop this software and/or software code and related intellectual property to ESU.
- 60. Data:** Any and all data required to be provided at any time during the bid process or contract term shall be made available in a format as requested and/or approved by ESU.
- 61. Submission of the Bid:** Submission of the bid will be considered presumptive evidence that the supplier is conversant with local facilities and difficulties, the requirements of the documents and of pertinent State and/or local codes, state of labor and material markets, and has made due allowances in the proposal for all contingencies. Later claims for labor, work, materials, equipment, and tax liability required for any difficulties encountered which could have been foreseen will not be recognized and all such difficulties shall be properly taken care of by Contractor at no additional cost to ESU.
- 62. Alternate Proposals/Equivalent Items:** Bids on goods and services comparable to those specified herein are invited. Whenever a material, article or piece of equipment is identified in the specifications by reference to a manufacturer's or supplier'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 suppliers shall perform to the standard of the item specified. Equivalent bids 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 Emporia State University and if not destroyed in the evaluation process, shall be returned at supplier's expense, if requested. Emporia State University reserves the right to determine and approve or deny “equivalency” in comparison of alternate bids.

- 63. Certification of Materials Submitted:** The response to this RFP, together with the specifications set forth herein and all data submitted by the supplier to support the response including brochures, manuals, and descriptions covering the operating characteristics of the item(s) proposed, shall become a part of any contract between the Contractor and ESU. Any written representation covering such matters as reliability of the item(s), the experience of other users, or warranties of performance shall be incorporated by reference into the contract.
- 64. Graphic Identity Standards and Use of University Marks:** Compliance with ESU Graphic Identity Standards and Use of University Marks Policies is required and may not be waived with equivalents.
- 65. Inspection:** ESU reserves the right to reject, on arrival at destination, any items which do not conform with specification of the Contract.
- 66. New Materials, Supplies or Equipment:** Unless otherwise specified, all materials, supplies or equipment offered by the Contractor shall be new, unused in any regard and of most current design. All materials, supplies and equipment shall be first class in all respects. Seconds or flawed items will not be acceptable. All materials, supplies or equipment shall be suitable for their intended purpose and, unless otherwise specified, fully assembled and ready for use on delivery.
- 67. Supplier Contracts:** Supplier must include with their RFP response, a copy of any contracts, agreements, licenses, warranties, etc. that the supplier would propose to incorporate into the contract generated from this RFP. (Form ESU-146a remains a mandatory requirement in all contracts.)
- 68. Contract Price:** Contracts are awarded to take advantage of volume discount pricing for goods and services that have a recurring demand. However, if ESU locates a supplier that can provide the identical item at a lower price, a waiver to “buy off contract” may be granted by ESU’s Controller.
- 69. Transition Assistance:** In the event of contract termination or expiration, Contractor shall provide all reasonable and necessary assistance to ESU to allow for a functional transition to another supplier.
- 70. Award:** Award will be by line item or group total, whichever is in the best interest of ESU.
- 71. Acceptance:** Acceptance of Bid and Agreement is formalized upon execution of a contract and issuance of an ESU purchase order, which incorporates all terms of this RFP, and corresponding execution of ESU marks licensing agreement by the parties.

SECTION IV - SPECIFICATIONS

1. Federal funds are supporting a portion of this project, therefore, the provisions of the Build America, Buy America Act (BABAA) must be met. This requires that all iron, steel, manufactured products, and construction materials (cement) used in federally funded projects for infrastructure must be produced in the United States. The successful contractor must provide written certification at every step in the supply chain, that their procurement / manufacturing was domestically produced, as required by the Buy America provision.
2. See specific drawings and specifications here:
<https://vrapp.vendorregistry.com/Bids/View/BidsList?BuyerId=cc49dc6a-03ac-4446-b53d-24aed14468a5>
3. Trail will be marked by GeoTech, Inc. prior to start of construction.

SECTION V - COST PROPOSAL

Base Bid: 5' wide per specifications \$ _____

Alternate A: 6' wide per specifications \$ _____

Alternate B: 8' wide per specifications \$ _____

State of Kansas
Emporia State University
ESU-146a (Rev. 12-23)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: Paragraphs 1-14 of this form contain statutorily mandated contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form ESU-146a, Rev. 12-23), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that partial or full performance of an agreement with these provisions attached constitutes acceptance of these terms as part of the agreement.

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 any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. **Disclaimer of Liability:** No provision of this contract will be given effect that attempts to require Emporia State University or any of its affiliates ("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 defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

3. **Termination Due to Lack of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, 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 the contract for which it has not been paid. The University will pay 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 under this provision, 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.

4. **Kansas Law and Venue:** All matters arising out of or related to this agreement 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 agreement shall reside only in courts located in the State of Kansas.

5. **Required Non-Discrimination Provision:** Contractor agrees to comply with all applicable state and federal anti-discrimination laws. Contractor specifically 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 Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (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. The provisions of this paragraph (except the provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the University cumulatively total \$5,000 or less during the fiscal year.

Contractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance individuals in employment without regard to race, color, religion, sex, national origin, protected veteran status or disability.

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

7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the 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.

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

9. **Responsibility for Taxes:** The 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.

10. **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.

11. **Information/Confidentiality:** As a state agency, the University's contracts are generally public records. Accordingly, 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.

CONTRACTUAL PROVISIONS ATTACHMENT - page 2

12. **The Eleventh Amendment:** The Eleventh Amendment is an inherent and incumbent protection of the State of Kansas and need not be reserved, but the University here reiterates that nothing in or related to this contract shall be deemed a waiver of the Eleventh Amendment.

13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

14. **Privacy of Student Records:** Contractor understands that the University is subject to FERPA (Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g) and agrees to handle any student education records it receives pursuant to this Agreement in a manner that enables the University to be compliant with FERPA and its regulations. Contractor agrees to protect the privacy of student data and educational records in a commercially reasonable manner and shall not transmit, share, or disclose any data about a student without the student's written consent, except to other University officials who seek the information within the context of his/her professionally assigned responsibilities and used within the context of official University business. Contractor shall promptly report to the University any disclosure of University's student educational records.

INFORMATION TECHNOLOGY RELATED PROVISIONS

15. **Digital Accessibility Provision:** Emporia State University affords equal opportunity to individuals in its employment, services, programs, and activities in accordance with federal and state laws. This includes effective communication and access to electronic and information communication technology resources for individuals with disabilities. Contractor shall: (1) deliver all applicable services and products in reasonable compliance with applicable university standards (for example, Web Content Accessibility Guidelines 2.X, Level AA or Section 508 Standards for Electronic and Information Technology as applicable); (2) upon request, provide the university with its accessibility testing results and written documentation verifying accessibility; (3) promptly respond to and resolve accessibility complaints; and (4) indemnify and hold the university harmless in the event of claims arising from inaccessibility.

16. **Information Security Provision:** Contractor agrees to comply with all applicable requirements of the Family Educational Rights and Privacy Act ("FERPA"), Gramm-Leach-Bliley Act ("GLBA") and the Health Insurance Portability and Accountability Act ("HIPAA"), together hereinafter the "Acts", and guarantees that all information covered by the Acts and provided to Contractor by the University ("University Information") will be used only in conjunction with the product or service being provided, that it will not be used for any other purpose, or be released by Contractor or copied in any manner for any other use and will be promptly returned or destroyed upon termination of agreement. Contractor shall use commercially reasonable efforts to notify all of its foreseeable agents, employees, subcontractors and assigns who will come into contact with University Information that they shall comply with, and are subject to the confidentiality requirements set forth in the Acts and shall provide each with a written explanation of the Acts' requirements for confidentiality before they are permitted to access the University Information.

Contractor shall meet NIST SP 800.x. Contractor shall provide and maintain a secure environment that ensures confidentiality of all University Information, wherever located. No University Information shall be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by an Agreement and as approved by the University. Contractor agrees to notify the University, within seventy-two (72) hours, of any security breach that could result in the unauthorized disclosure of University Information. University Information shall not be retained in any files or otherwise by Contractor or its agents, except as set forth in an Agreement and approved by the University. Disclosure of University Information may be cause for legal action against Contractor or its agents. Defense of any such action shall be the sole responsibility of Contractor.

Contractor agrees, upon termination, cancellation, expiration, or other conclusion of this Agreement, within 30 days to return to the Institution or if return is not feasible, destroy and not retain any copies (and furnish the Institution with an appropriate Certificate of Destruction) of any and all Confidential Information that is in its possession.

17. **Ownership of Data:** All data and/or content collected, created, or prepared by the University and provided to Contractor in the performance of its obligations under the Agreement shall be the exclusive property of the University. Contractor shall not use, willingly allow or cause to have such data used for any purpose other than the performance of University's obligations under the Agreement without the prior written consent of the University. This provision shall survive the termination of any agreement.

18. **Data Security and Control:** Contractor attests that it has implemented administrative, physical, and technical safeguards for its data security that at a minimum meet industry best practice. Contractor shall ensure that all such safeguards, including the manner in which data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement. Contractor further attests that all University data shall be stored in the United States.

Contractor shall timely notify University of any data breach whether or not it is University data, including a data breach involving any of Contractor third-party service providers that process, store or transmit data.

Contractor will provide assessment, audit, examination, or review of all controls in Contractor's physical and/or technical environment in relation to all data being handled and/or services being provided to University pursuant to this Agreement. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, and application software that processes, stores, or transmits data pursuant to this Agreement.

If at any time, University wants to change or remove data and/or content, University shall notify Contractor. Contractor will use its best efforts to immediately respond to the request and at a minimum change or remove data and/or content.

19. **General Data Privacy Regulation (GDPR):** Emporia State University is subject to the European Union's General Data Privacy Regulation [Regulation (EU) 2016/679] (the "GDPR") when the University is a "controller" or "processor" of "personal data" from an individual "data subject" located in the European Union, as those terms are defined in the GDPR. Contractor acknowledges and agrees that it is acting as a "processor" of "personal data" for the University under this Agreement and that all applicable requirements of the GDPR are incorporated by reference as material terms of this Agreement. Contractor represents and warrants that (1) it is aware of and understands its compliance obligations as a "processor" under GDPR; (2) it has adopted a GDPR compliance policy/program, a copy of which has been provided to the University; (3) it will process "personal data" only in accordance with the University's instructions; and (4) with regard to its obligations under this Agreement, it shall comply with all applicable requirements of the GDPR to the same extent as required for the University. Additionally, the Contractor shall indemnify and hold the University, its trustees, officers, and employees harmless from and against any claims, demands, suits, damages, penalties, fines, or costs arising from any violation of GDPR by the Contractor.