

EMPORIA STATE UNIVERSITY

REQUEST FOR PROPOSAL (RFP)

RFP Number: 001-21

Date Issued: March 1, 2021
Questions Deadline: March 8, 2021 (2:00 p.m. CST)
Closing Date: March 22, 2021 (2:00 p.m. CST)

Procurement Officer: Debbie Redeker
Mailing Address: Emporia State University Purchasing Office
1 Kellogg Circle, Box 4021, Plumb Hall 103M, Emporia, KS 66801

Telephone: 620-341-5134
E-Mail Address: purchaseorders@emporia.edu

Item: **Qualified Independent Accounting Services for NCAA Agreed-Upon Procedures of Athletic Financial Data**

Agency: Emporia State University (ESU)
Location(s): Emporia, KS 66801

Period of Contract: Contract Award through project completion per the RFP specifications

Guarantee: This Request is for a close-ended contract between the Contractor and ESU to furnish a predetermined quantity of a good and/or service in a given period of time.

Scope of Work: ESU is issuing this RFP to obtain competitive responses from qualified independent accountants to provide **NCAA Agreed-Upon Procedures of Athletic Financial Data** for ESU for the years ended June 30, 2020 and June 30, 2017, per the attached specifications. Any additional specifications and addenda available online at: <https://vrapp.vendorregistry.com/Bids/View/BidsList?BuyerId=cc49dc6a-03ac-4446-b53d-24aed14468a5>.

Questions/Addenda: No-prebid conference is scheduled for this RFP. Questions and requests for clarification of the RFP must be submitted by email to the attention of ESU Purchasing Office at purchaseorders@emporia.edu by Monday, March 8, 2021 at 2:00 p.m.

Impromptu questions may be permitted, and spontaneous unofficial answers provided, however, bidders should understand that the only official answer or position of ESU 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 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.

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SIGNATURE SHEET

Item: Qualified Independent Accounting Services for NCAA Agreed-Upon Procedures of Athletic Financial Data
Agency: Emporia State University
Location: Plumb Hall 103M
Closing Date: March 22, 2021 (2:00 p.m.)

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 _____

Toll Free Phone _____ Local _____ Cell _____

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 _____

Toll Free Phone _____ Local _____ Cell _____

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 _____

Toll Free Phone _____ Local _____ Cell _____

E-Mail _____

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

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.

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.

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

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.

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

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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

REFERENCES

Provide four (4) references. References shall have purchased similar services from the supplier in the last two years. 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: _____

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 received from the Kansas Department of Revenue	Page 5
_____	Signed Certification Regarding Immigration Reform & Control Form	Page 6
_____	References	Page 7
_____	Proposal Response	Page 12
_____	Cost Proposal	Page 21
_____	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, 2021 (2:00 p.m.)**. 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 22, 2021**.

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 cservice@vendorregistry.com

Emailed or carrier mailed submissions will also be accepted (below). Please allow ample time as late proposals are not considered.

Emailed bid submissions:
Emporia State University Purchasing Office
purchaseorders@emporia.edu
RFP# 003-21
March 22, 2021 (2:00 p.m. CST)

Mailed submissions are also acceptable to:
Emporia State University Purchasing Office
1 Kellogg Circle
Campus Box 4021
Emporia, KS 66801

Bid Opening will be at: Emporia State University Purchasing Office, Plumb Hall 103M, 1 Kellogg Circle, Emporia, KS 66801, following bid closing. Due to COVID-19, we do not allow attendance at bid opening.

SECTION 1 - 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 ESU Purchasing Office reflected on Page 1 of this proposal. There shall be no communication with any other ESU employee regarding this RFP except with designated ESU participants in attendance **ONLY DURING negotiations, contract signing, or 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. 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.
- 4. 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. See instructions on page 5 for the tax clearance process.
- 5. 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.

Technical proposals shall contain a concise description of supplier's capabilities to satisfy the requirements of this RFP with emphasis on completeness and clarity of content. Repetition of terms and conditions of the RFP without additional clarification shall not be considered responsive.
- 6. Signature of Proposals:** Each proposal shall give the complete mailing address of the supplier and be signed by an authorized representative by original or electronic signature with name and legal title typed below the signature. 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.
- 7. 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.
- 8. 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.
- 9. 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.

- 10. 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.
- 11. Evaluation of Proposals:** Award shall be made in the best interest of ESU 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
- 12. 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.
- 13. 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.

ESU 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

14. Disclosure of Proposal Content and Proprietary Information: All proposals become the property of ESU. 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 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.

ESU does not guarantee protection of any information which is not submitted as required.

15. 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”.

16. Notice of Award: An award is made on execution of the written contract by all parties.

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
- References
- W-9

Supplier proposal shall be received by March 22, 2021 no later than 2:00 p.m. CST, through Vendor Registry, by email, or by mailed submission (see instructions on page 8).

Proposals received prior to the closing date shall be kept secured and sealed until closing. ESU 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 has identified 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 with regard to race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (except as provided by law), disability, or genetic information.

 - Has cost or pricing information 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 or 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 ESU. **Accept or Reject** _____
4. **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.
 5. **Timeline:** A timeline for implementing services must be submitted with the bid. NOTE: June 15, 2021 is the desired completion date.
 6. **Technical Literature:** All bids shall include specifications and technical literature sufficient to allow ESU 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.
 7. **Procurement Card (P-Card):** Presently, ESU 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. 07-19) Contractual Provision Attachment (mandatory provision) 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:

1. Form ESU-146a (Rev. 07-19) (attached)
 2. written modifications to the executed contract
 3. written contract signed by all parties
 4. this RFP including all addenda
 5. any supporting manuals/documents that have been incorporated in this Request
 6. 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. 07-19) 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# 001-21

Qualified Independent Accounting Services for NCAA Agreed-Upon Procedures of Athletic Financial Data
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:** ESU and/or its Purchasing Office may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:
 - Contractor fails to make delivery of services as specified in this contract
 - Contractor provides substandard quality
 - Contractor fails to perform any of the provisions of this contract
 - 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:** ESU 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.
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 contract termination or expiration, Contractor shall provide all reasonable and necessary assistance to ESU to allow for a functional transition to another supplier.

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 and shall be fully qualified to perform the work required. 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 subcontractors.
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. Amendments 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 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. 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.
- 28. 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.
- 29. 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 ESU 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.
- 30. 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.
- 31. 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.

- 32. 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.
- 33. 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.
- 34. 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.

- 35. 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.

- 36. Immigration and Reform Control Act of 1986 (IRCA):** All contractors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA) and to complete the certification on page 6.
- 37. Information Security:** Contractor agrees to comply with all applicable requirements of the Family Educational Rights and Privacy Act (**FERPA**) 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 the 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 the Contractor or copied in any manner for any other use and will be promptly returned or destroyed upon termination of the agreement. Contractor shall use commercially reasonable efforts to notify all its foreseeable agents, employees, subcontractors, and assigns who will come into contact with University Information that they shall comply with confidentiality requirements as set forth in the Acts and shall provide each with a written explanation of the Acts' requirements before they are permitted to access the University Information.
- 38. Experience:** All bidders are preferred to have a minimum of 5 years continuous active participation in the applicable industry.
- 39. Price Adjustments:** Prices shall remain firm for the entire contract period.
- 40. 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 ESU to pay the full amount due for goods or services on or before the 30th calendar day after the date ESU 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 ESU. NOTE: If the 30th 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.

41. Invoices: Each purchase order must be individually invoiced and shall state the following:

- date of invoice
- date of completion of work
- purchase order number and contract number
- itemization of all applicable charges
- net amount due

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

43. 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 shall be identified in the supplier's response.

44. 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.

45. 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.

46. 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.

47. Submission of the Bid: Submission of the bid will be considered presumptive evidence that the supplier 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.

48. Acceptance: Acceptance of Bid and Agreement is formalized upon execution of a contract, which incorporates all terms of this RFP.

IV. SPECIFICATIONS

Scope Overview. Emporia State University (ESU) seeks qualified independent accountants to submit proposals to provide professional services as mandated by provisions of the National Collegiate Athletics Association (NCAA) Bylaw 6.2.3 for Division II institutions. ESU expects to award a contract for the year ended June 30, 2020 and the year ended June 30, 2017. Two audits must be completed, and two reports issued using the Agreed-Upon Procedures (AUP) document published by the NCAA for each year audited. (NOTE: If desired, the bidder may include an optional third year for June 30, 2023, however, this will not affect the award related to the first two years requested.)

Overview of Intercollegiate Athletics. ESU supports thirteen NCAA Division II teams including Men's Baseball, Cross Country, Football, Basketball, Tennis, and Track & Field. Women's sports include Basketball, Cross Country, Soccer, Softball, Tennis, Track & Field, and Volleyball. Additional information regarding ESU's Intercollegiate Athletic programs and facilities may be found at <https://www.emporia.edu/student-life/emporia-state-athletics/>.

Scope of Work. Provisions of NCAA Bylaw 6.2.3.1. states "At least once every three years, all expenses and revenues for or on behalf of a Division II member institution's intercollegiate athletics programs, including those by any affiliated or outside organization, agency or group of individuals (two or more), shall be subject to agreed-upon procedures approved by the Division II membership (in addition to any regular financial reporting policies and procedures of the institution) conducted for the institution by a qualified independent accountant who is not a staff member of the institution and who is selected by the institution's president or by an institutional administrator from outside the athletics department designated by the president."

The primary purpose of the engagement is to ensure the President is made aware of all financial activity (internal and external) for athletics purposes and to assist the institution in exercising control over financial activity made by or on behalf of the intercollegiate athletics program.

The scope shall include a comparison of actual revenues and expenses related to the intercollegiate athletics program to amounts budgeted; internal controls that affect operations of the program; and the relationship of expenses for or on behalf of intercollegiate athletics by affiliated and supporting organizations.

Minimum NCAA agreed-upon procedures for revenue, expenses, and other reporting items to be performed by the independent accountant can be found in an Appendix by category and with instructions (see attached 2020 AUP Appendix D).

The independent accountants' report should be in the format of procedures and findings. Instructions are included in an Appendix focusing on required elements, report presentation, and notes and disclosures (see attached 2020 AUP Appendix E).

NOTE: June 15, 2021 is the desired completion date and ESU is requesting the year ended June 30, 2020 AUP be completed first.

**SECTION V - COST PROPOSAL
(per specifications on page 20)**

Year 1 (year ended June 30, 2020) \$ _____

Year 2 (year ended June 30, 2017) \$ _____

Total for both years \$ _____

OPTIONAL Year 3 (year ended June 30, 2023) \$ _____

(The report would need to be completed no later than November 30, 2023 to incorporate information into the ESU 2023 NCAA report.)

Please indicate the way you will conduct fieldwork: Virtual _____

On-site _____

Hybrid _____

Comments/Clarifications _____

State of Kansas
Emporia State University
ESU-146a (Rev. 07-19)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form ESU-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, being this 1st day of March 2021.

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.

CONTRACTUAL PROVISIONS ATTACHMENT - page 2

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.

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.