

Hutton's Cost**Selective Demolition**

		Cost/SF
13th and 14th Flr	9,726 SF	9.00
12th Flr	15,585 SF	9.00
11th thru 9th Flr	93,912 SF	9.00
8th thru 6th Flr	93,912 SF	9.00
5th thru 2nd Flr	172,444 SF	9.00
Asbestos Abatement	1 Allow	
Interior Demolition - 1st Flr	43,964 SF	3.00
Interior Demolition - Basement	35,000 SF	3.00
Demolition Contingency	5.00%	

Building Envelope

Roofing	43,964 SF	11.00
Clean, tuck, and recaulk Stone (30%)	8,362 SF	20.00
Replace Curtain Wall/Windows (20%)	5,575 SF	40.00
New Exterior Walls (50%)	13,937 SF	100.00

Structural Modifications/Upgrades 1 ALLW

Systems

Mechanical (includes Fire protection)	43,964 SF	30.00
Basement Mechanical	30,000 SF	20.00
Add for New Plant Equip @ DSOB	1 LS	2,400,000.00
Electrical	43,964 SF	25.00
Basement Electrical	30,000 SF	15.00
Passenger Elevator (in existing shaft)	1 EA	60,000.00
Freight Elevators (in extg shaft)	1 EA	75,000.00

Finishes

Interior Tenant Finishes (KHP)	5,000 SF	100.00
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Soft Costs

Design & Engineering Fees	7.50%
CM Fee and General Conditions	8.00%

Additional Contractor Logistics & Temporary Protection

Contingencies

Design Contingency	3.00%
Construction Contingency	5.00%
Owners Contingency	8.00%

Income / Expense Analysis (Based on Full Occupancy)

Gross Building Area	43,964 SF	
Net Leasable (90%)	39,568 SF	13.00

Debt Service on \$17.5MM/15 years/3%

Net Annual Cost of Project

Current Energy Center Proposal 16,600,000/15 years/2.32%

Net An
Total Savings over 1

Lease Analysis

	257,399 SF	13.06
Parking Stall Rental	355 ea	46.00
	65 ea	32.00
	159 ea	40.00
		Total Annua

Total

Opinion**McCarthy Cost Opinion**

Cost Factor	Cost	Cost/SF	Cost Factor	Cost
1.75	\$153,185	\$ 9.00	1.75	\$ 153,185
1.50	\$210,398	\$ 9.00	1.50	\$ 210,398
1.35	\$1,141,031	\$ 9.00	1.35	\$ 1,141,031
1.20	\$1,014,250	\$ 9.00	1.20	\$ 1,014,250
1.10	\$1,707,196	\$ 9.00	1.10	\$ 1,707,196
	\$1,000,000			\$ 1,000,000
1.00	\$131,892	\$ 3.00	1.00	\$ 131,892
1.00	\$105,000	\$ 3.00	1.00	\$ 105,000
	\$273,148			\$ 273,148

Demolition Costs \$5,736,098

1.00	\$483,604	\$ 13.00	1.00	\$ 571,532
1.00	\$167,240	\$ 20.00	1.00	\$ 167,240
1.00	\$223,000	\$ 45.00	1.00	\$ 250,875
1.00	\$1,393,700		1.00	\$ 1,393,700
	\$2,267,544			\$ 100,000
				\$ 2,483,347
1.00	\$1,318,920			\$ 1,318,920
1.00	\$600,000			\$ 600,000
1.00	\$2,400,000			\$ 2,400,000
1.00	\$1,099,100			\$ 1,099,100
1.00	\$450,000			\$ 450,000
1.00	\$60,000			\$ 60,000
1.00	\$75,000			\$ 75,000
	\$6,003,020			\$ 6,003,020
1.00	\$500,000			\$ 500,000

Construction Costs \$8,770,564

\$657,792	9.00%	\$ 808,773
\$701,645		\$ 701,645

\$1,359,437	\$ 1,500,000
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	Project Cost	\$10,130,001			
	\$303,900		5.00%	\$	599,839
	\$506,500		5.00%	\$	599,839
	\$810,400		10.00%	\$	1,199,679
	\$1,620,800				
	Total Project Cost	\$17,486,899			
/SF	\$514,379 /Year				
	\$1,685,990 /Year				
	\$1,171,611	\$17,574,168			
	\$1,599,282	\$23,989,230			
Annual Savings	\$427,671				
finance term	\$6,415,061				
/SF Avg	\$3,361,631 /Year				
Each	\$195,960 /Year				
Each	\$24,960 /Year				
Each	\$76,320 /Year				
al Lease Cost	\$3,658,871				
cost of lease	\$91,471,773.50				
	\$3,658,871				
	\$14.21 /SF				
Utilities	\$5.00				
	\$19.21 /SF				



Total Cost	Comments
\$ 5,736,098	<p>With the limited amount of knowledge, information & time we have on the existing building, this number seems adequate.</p> <p>Includes prep & modifications to the existing slab prior to roofing</p>
\$ 8,986,367	<p>Due to the complexities of the project, we would expect design fees to be higher than 7.5%</p> <p>Scope related to temporary weather protection, temp heat/cooling, phased construction, shoring, etc. would not be included in the General Conditions above.</p>

\$ 11,996,785

With the risk associated with the commpleixty of this project, we would recommend a higher contingency factor.

\$ 20,132,240

EVT0003634 – New Energy and Service Center

Final Analysis and Award

Explanation and Purpose of the Request For Proposal

The purpose of this Request For Proposal (RFP) was to seek proposals for the building of the New Energy and Service Center. Drawings and specifications were prepared by HTK Architects and their consultants, and in consultation with representatives of the Office of Facilities and Property Management (OFPM).

The RFP was developed to seek pricing proposals for the various options allowed by the bid event. Option A provided the State the flexibility to award the project to a general contractor if the State were to have funding available to do so. Option B provided the State the flexibility to award the project to a vendor that could build and finance the construction on a lease to own basis, or to an Energy Service Company that could build and finance the construction on a lease to own basis.

Statement of Award

As provided and allowed by K.S.A 75-37, 102 (c), the Procurement Negotiation Committee (PNC) consisting of Mark McGivern, George Steele, and David Stueve have unanimously selected McCarthy to build the New Energy and Service Center.

Vendors To Be Considered

Proposals were received by Johnson Controls Inc. (JCI), McCarthy Building Companies Inc. (McCarthy), and OpTerra Energy Services. JCI provided an Option B proposal, McCarthy provided an Option A proposal and an Option B proposal, and OpTerra Energy Services provided an Option B proposal.

Negotiations

The State held negotiations with all three vendors, and the end results of those negotiations are outlined as follows:

OpTerra Energy Services

The PNC held one negotiation session with OpTerra, as well as a conference call to learn more about their history of financing similar projects. The initial OpTerra proposal did not provide pricing or scheduling information of any kind. At negotiations session one, they provided a verbal base bid price of \$17,000,000.00 to build the plant only. This base bid price was developed by their selected general contractor JE Dunn, and was prepared entirely in-house, and competitive bids were not requested from the construction community. They did not provide pricing of any kind for any Energy Conservation Measures (ECM), nor any unit prices.

The OpTerra team explained that they needed two to three months of additional time to establish pricing for any ECM's that they would find appropriate.

The initial approach by Opterra was to enter into a contract within the first thirty days and then they would begin their due diligence in the discovery of as-built conditions and project costs.

The PNC has determined that this proposal did not provide the best value to the State and therefore eliminated OpTerra from consideration.

Johnson Controls Inc.

The PNC held three negotiations sessions with JCI, three conference calls, and a Best and Final Offer meeting. Five different sets of requests for additional information and pricing were sent to JCI during the course of the negotiations. A detailed listing of value engineering items was included in the set of questions dated June 12, 2015.

On June 10th, Johnson Controls Inc. (JCI) provided a loan amortization schedule that included JCI operating the plant, building the plant, performing energy conservation measures 1, 2, 5, 7, 9, 11, and Measurement and Verification Work, and also included cap-ex expenditures. The loan amount was \$27,171,091.00, with interest at 4.5% and a 30 year loan, and a yearly payment of \$1,668,075.20, and the extended total amount is \$50,042,256.00.

On June 17th, JCI provided a loan amortization schedule that provided for a better interest rate, that included JCI operating the plant, building the plant, performing energy conservation measures 1, 2, 5, 7, 9, 11, and Measurement and Verification Work, and also included cap-ex expenditures. The loan amount was \$27,171,091.00, with interest at 3.95% and a 30 year loan, and a yearly payment of \$1,561,781.64, and the extended total amount is \$46,853,449.00.

On June 22, 2015, the State asked for 10, 15, and 20 year loan amortization schedules with the State providing manpower, JCI building the plant, performing energy conservation measures 2, 5, and 11 only, and JCI including a 5% fee. NO cap-ex expenditures are included. The next three paragraphs provide the analysis:

For the 10 year loan amount of \$21,663,265.00, and 2.25% interest, and a yearly payment of \$2,443,349.47, the extended amount is \$24,433,494.00.

For the 15 year loan amount of \$21,663,265.00, and 2.60% interest, and a yearly payment of \$1,762,561.67, the extended amount is \$26,438,425.00.

For the 20 year loan amount of \$21,663,265.00, and 3.50% interest, and a yearly payment of \$1,524,250.65, the extended amount is \$30,485,013.00.

The JCI team extended a best and final offer of \$17,189,791.00, which includes the base bid of \$16,738,710.00; the 5% JCI fee of \$251,081.00; the \$150,000.00 startup costs; and \$50,000.00 in training. With their financing at the rate of 2.6% for a 15 year term, this results in a yearly payment of \$1,398,591.89.

The JCI construction schedule commits to a seventy (70) week project.

McCarthy

The PNC held two negotiations with McCarthy and a Best and Final Offer meeting. A detailed listing of value engineering items was sent to McCarthy after negotiation session two.

Their original bid for Option B was \$16,370,000.00. They offered a best and final credit of \$97,741.00, making their final amount \$16,272,259.00. The State then asked for \$50,000.00 in training to be provided by McCarthy and their subs/vendors. This provides for a Best & Final Offer of \$16,322,259.00. With their financing fee of 1.5% (\$245,550.00) and financing at the rate of 2.52% interest for a 15 year term, this results in a yearly payment of \$1,340,092.71.

The McCarthy construction schedule commits to a sixty-one (61) week project.

Operation of The New Energy and Service Center

The McCarthy proposal included information related to the State partnering with Veolia Energy Operating Services, LLC. This partnership would be directly between the State and Veolia with no involvement from McCarthy. The PNC agreed that it would not request any cost proposals for such an option.

In early negotiations sessions the State and JCI were engaged in discussions related to the manpower required to operate the ESC plant, in a very limited role. The PNC agreed at this early stage of negotiations that the State providing the manpower would be a better overall value to the State, and any subsequent pricing from JCI was not to include any costs relating to JCI operating the ESC.

The PNC agreed that the State would provide the necessary manpower required to operate the ESC.

Side by Side Analysis of McCarthy versus Johnson Controls Inc.

The following information will expand on why the PNC ultimately selected McCarthy to build and finance the New Energy and Service Center. (Narratives of each of the three vendors proposals follows this Final Analysis and Award document.)

The PNC notes that the proposal for Option A from McCarthy could not be utilized due to the States' funding and budget constraints, therefore the PNC has evaluated all Option B proposals.

With Option A no longer being a viable option, the PNC felt that it was necessary to analyze McCarthy and JCI in various ways in an effort to determine the best value to the State.

Exhibits A, B, C and D provide those views and cost comparisons. These four exhibits are explained in the next four sections.

Exhibit A

The PNC chose to make a comparison of the two proposals in their most simplest terms, simply the stand-alone construction of the New Energy and Service Center. Exhibit A provides a 15 year lease-to own total of McCarthy's base bid of \$16,272,259.00; plus \$50,000.00 of training;

plus the 1.5% issuance fee of \$245,550.00; plus the total financing at the rate of 2.52%; which arrives at a yearly payment of \$1,340,092.71.

This same Exhibit A also provides a 15 year lease-to-own total of JCI's base bid of \$16,738,710.00; plus JCI's 5% fee of \$251,081.00; plus JCI's startup costs of \$150,000.00; plus \$50,000.00 of training; plus the total financing at the rate of 2.6%; which arrives at a yearly payment of \$1,398,591.89. (No ECM's are utilized, and no capex funding is in place.)

In summary of Exhibit A, it is the decision of the PNC that McCarthy clearly provides a better value for the State.

Exhibit B

The PNC determined it was necessary to develop a 25 year cycled plan for the replacement and overhauls of chillers, boilers, cooling towers, pumps, and controls. Exhibit B provides a detailed analysis of these capex improvements over that 25 year period. The exhibit also provides historical pricing information compiled from recent improvements. The purpose of this analysis was to determine how much money would need to be set aside on a yearly basis so that a specific fund was available to pay for these future repairs. The PNC then determined that a yearly amount of \$161,000.00 would be sufficient for making the necessary replacements or overhauls. The State has the experience and staff to bid and oversee these improvements, and in many cases self-perform the work.

Exhibit C

The PNC made a comparison between a McCarthy proposal that uses the annual \$161,000.00 capex funding noted in Exhibit B, and a JCI proposal that includes their annual capex funding. Exhibit C provides a 15 year summary total of McCarthy's base bid of \$16,272,259.00; plus \$50,000.00 of training; plus the 1.5% issuance fee of \$245,550.00; plus financing at the rate of 2.52%, plus capex yearly funding of \$161,000.00 (not indexed); and arrives at a yearly payment of \$1,501,092.71.

This same Exhibit C also illustrates a 15 year summary total of JCI's base bid of \$16,738,710.00; plus JCI's 5% fee of \$251,081.00; JCI's capex funding (not indexed), plus JCI's startup costs of \$150,000.00; plus \$50,000.00 of training; plus financing at the rate of 2.60%; plus JCI's graduated yearly capex funding (not indexed); and arrives at a yearly payment of \$1,564,591.89 for years 1 thru 6; a yearly payment of \$1,649,591.89 for years 7 thru 12; and a yearly payment of \$1,669,591.89 for years 13 thru 15.

Exhibit D

Exhibit D provides the same view as Exhibit C, except that it assumes a 3%, 5%, and 7% annual indexed analysis for capex funding for both McCarthy and JCI.

McCarthy is clearly a better value for the State. If you were to extend this to a 20 or 30 year term (not recommended by the PNC), the value to the State becomes arguably better with McCarthy.

Final Summary

The PNC noted that the proposal for Option A from McCarthy could not be utilized due to funding and budget constraints, and because it was not a financed proposal.

The PNC has decided that McCarthy's proposal provides the best Option B value to the State. Exhibit C or Exhibit D with McCarthy provides the perfect pathway towards the completion of the project. This option allows the State to set aside the needed \$161,000.00 per year for capex expenditures, and perform the overhauls and replacements required and noted by Exhibit B. Again, the State has the experience and staff to be able to bid, self-perform and oversee these improvements.

The PNC understands that the ECM's in JCI's final proposal could provide value to the State, however the PNC has concluded that the State could bid and oversee these improvements in the future. The work related to ECM #5 which is the AHU replacements in the Landon Building has been underway by the State over the past several years, and will continue down that road itself as part of the ongoing maintenance and renovation of the Landon State Office Building. The ECM related to monitoring and verification can be performed by plant and supervisory staff.

The PNC believes that it is extremely important to note the following from JCI's 20 Year Services Summary and the Capital Expenditure Schedule section: ***"This schedule assumes that the contract is in full force for the 20 years. If the SOK opts to terminate for convenience or non-appropriation, no refund will be made and any future obligations for Lifecycle will terminate. The systems replacements will be consider like for like or better. No detailed breakdown of costs will be provided for replacement items as this is considered an all-in price."*** The PNC notes the State would be making yearly payments that includes capex funds, but will have no right to refund. Coupled with the unknown change in equipment technology advancements, this requirement would be extremely painful to accept.

The PNC recognizes the tough financial times that the State is currently facing. It also recognizes the side effects of a complicated JCI contract during a 15, 20, or 30 year term. Not only does the PNC maintain that McCarthy provides the best value under any scenario, a lease-to-own contract with McCarthy also provides the most flexibility for current and future personnel to review and forecast future operating costs. The JCI proposal obligates the State to pay annual increases regardless of circumstances, and eliminates all opportunity for the State to respond to objective criteria such as labor costs, equipment costs escalation, labor scheduling, etc.

THE STATE OF KANSAS
CONSTRUCTION CONTRACT

(For use when a single contract is awarded for the project as a whole, as authorized by K.S.A. 75-3741(b) as amended).

1. This Contract is made this December 21, 2015 by and between the Department of Administration, Topeka, Kansas representing the State of Kansas and hereinafter referred to as the first party, and McCarthy Building Companies, Inc., 10601 Mission Road, Suite 220, Leawood, Kansas, 66206 hereinafter referred to as the second party.

2. For and in consideration of the payments and agreements hereinafter mentioned, which are to be made and performed by the first party, the second party hereby agrees and contracts with the first party to commence and complete the construction described as follows:

- (a) Project No. EVT0003634
(b) Title/Description: New Energy and Service Center
(c) Location Topeka, Kansas

hereinafter called the Project for the sum of:

Sixteen Million Four Hundred Thirty-Two Thousand One Hundred Sixty-Six Dollars (\$16,432,166.00)

Revised Final Base Bid\$16,602,166.00

Accepted Value Engineering Items..... <\$72,259.00> Best and Final Deduct.....<\$97,741.00>

and all extra work in connection therewith, under the terms as stated in the Contract Document; and at the second party's own cost and expense to furnish all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the Contract Documents, prepared by the Project Architect (hereinafter referred to as the Architect/Engineer) or any designee of the Secretary of Administration who is vested with the authority and responsibility of the Architect/Engineer for this project.

The second party agrees to meet the following completion date: **360 Calendar Days from Formal Notice to Proceed.**

Liquidated damages in the amount of **\$ 250.00** per day will be assessed if the project is not completed as called for in the specifications.

3. For the purposes of this Contract, the term Contract Documents shall include the following:

- | | |
|---|--|
| (a) Notice to Bidders | (h) The Specifications |
| (b) Instruction to Bidders | (i) Drawings, maps, plans, etc., prepared by the Architect/Engineer or the designee of the Secretary of Administration |
| (c) The Bid Form | (j) Any duly issued addenda |
| (d) Contractor's Performance Bond | (k) Any duly executed Contract Change Orders |
| (e) Contractor's Public Works Bond to the State | |
| (f) General Conditions of the Contract | |
| (g) Supplemental General Conditions | |

It is hereby further agreed by the parties that the Contract Documents are intended to be complementary, so that any work included in one portion of the Contract Documents which is not included in another portion, should be executed by the second party as though the work was described in both portions.

4. The second party hereby agrees to use the services of the following subcontractors on this project:

- (a) Electrical subcontractor:
(name) Torgeson Electric Company
(address) 3545 SW 6th Ave., Topeka, Kansas, 66606
- (b) Mechanical subcontractor:
(name) Central Mechanical Construction Co.
(address) 631 Pecan Circle, Manhattan, Kansas 66506
- (c) Additional subcontractors, if any designated to perform any project alternates required by the Contract Documents which are listed in the Bid Proposal and which would change for (a) or (b) above:
(name) N/A
(address) N/A
(name) N/A
(address) N/A

The second party also agrees that no change or substitution may be made in the list of subcontractors without prior approval of the Secretary of Administration.

5. This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas.

6. The second party 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 not to discriminate against any person who performs work hereunder, because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in this work, national origin or ancestry, or age;

(b) to include in all solicitations or advertisements for employees, the phrase equal opportunity employer;

(c) to comply with the reporting requirements set out in K.S.A. 44-1031 and K.S.A. 44-1116;

(d) to include these 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 or such acts by the Kansas Human Rights Commission it shall constitute a breach of the contract and the contract may be canceled, terminated or suspended in whole or in part by the State of Kansas. Parties to this contract understand that subsections (b) through (e) of the paragraph are not applicable to a party who employs fewer than four employees or whose contract with this agency of the Kansas state government totals less than \$5,000 during the fiscal year.

7. Acceptance of Contract. This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been rendered, and until funds for the contract have been encumbered.

8. Arbitration, Damages, Warranties. Notwithstanding any language to the contrary, no interpretation of this contract shall be allowed to find the state or any agency thereof has agreed to binding arbitration, the payment of damages or penalties upon the occurrence of a contingency, or to permit disclaimer of any or all warranties.

9. Termination Due to Lack of Funding Appropriation. If appropriated funds are withdrawn from the project through legislative action and sufficient funds are not available to continue the function performed in this agreement or pay for the charges hereunder, the first party may terminate this agreement. The first party agrees to give written notice of termination to the second party at least 30 days in advance of termination. First party will pay to the second party all regular contractual payments due for work incurred prior to termination. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the first party.

10. Disclaimer of Liability. Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor for any liability whatsoever.

11. Representative's Authority to Contract. By signing this document, the representative of the second party thereby represents that such person is duly authorized by the second party to execute this document on behalf of the second party and that the second party agrees to be bound by the provisions thereof.

12. Terms Herein Controlling Provisions. It is expressly agreed that the terms of each and every provision in this contract shall prevail and control over the terms of any other conflicting provision in any other document relating to this agreement.

13. The second party binds itself, its partners, heirs, executors, successors, assigns and legal representatives to all covenants of this agreement.

14. The second party shall not assign, sublet or transfer any interest in this agreement without the written consent of the Secretary of Administration.

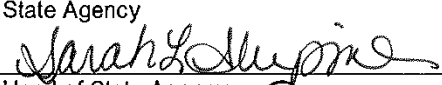
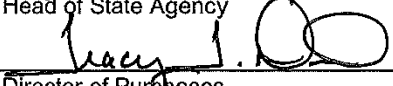
15. The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment.

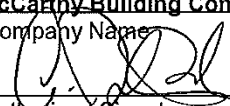
In order to expedite the processing of this agreement, the parties mutually agree to the simultaneous execution of a copy of this document by all parties and persons mentioned below. After the execution of their copy of the agreement, the individuals shall submit them to the State of Kansas, Division of Purchases, for assembly and may make a copy for their files if they wish. Upon receipt of all executed copies, and the submittal of the required bonds and insurance certificates, the Division of Purchases shall date and assemble the copies and it shall constitute a binding agreement as of the date of assembly. The assembled copies shall be retained in the Division of Purchases, and a fully-executed set of contracts shall be delivered to the contractor and state agency. It is further agreed that if any individual wishes to change any part of the agreement, they shall notify the Division of Purchases, who shall prepare a new agreement and resubmit it to all parties and persons mentioned below for their signatures and processing as mentioned above.

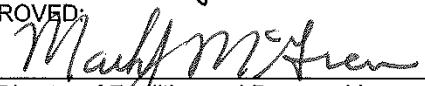
Signed this EVT0003634 by the respective parties as follows:

STATE OF KANSAS, FIRST PARTY

SECOND PARTY

By: Department of Administration
State Agency

Head of State Agency

Director of Purchases

By: McCarthy Building Companies, Inc.
Company Name

Authorized Signature
43-0399290
FEIN

APPROVED:

Director of Facilities and Property Management

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DIVISION OF PURCHASES

ATTACHMENT A

To The Construction Contract for EVT0003634

Between the State of Kansas and McCarthy Building Companies Inc.

For The Construction Of The New Energy and Service Center

Changes to Document D – General Conditions of the Contract

Article 12 – Changes In Work

The parties have agreed to a change to Paragraph D.1, and specifically the overhead, profit, and fee chart. The amount of Overhead that will be allowed to the contractor on work performed by other than his own forces shall be revised from 0% to 5%.

Article 35 – General Guarantee

The parties have agreed that substantial completion is when construction is complete and the State is using the new Energy and Service Center for its beneficial use. Punch-list items of work shall follow and retainage will be held for completion of the punch-list items of work.

Miscellaneous Clarifications

Allowance for Bracing and Support of Westar Duct Banks

The State recognizes the \$50,000.00 allowance that the contractor included in their bid day proposal. The parties have agreed that the contractor shall provide pricing to the State for each of the three duct bank bracing and support scopes of work prior to construction. The State will review and provide approval of the pricing prior to the contractor performing the work.

Site Remediation

The parties have agreed to work together in the event of any required site remediation. While the contract has provisions for the earthwork operations required to excavate and backfill for the building and parking lot areas, both parties realize that the potential for additional site remediation exists. In the event that additional depth excavation, removal of materials and subsequent backfill is required, the State will utilize a hazardous waste fund for payment to the contractor. The contractor shall employ the services of Blackstone Environmental (of Topeka, Kansas) and Geosource (of Topeka, Kansas) during the removal of additional materials outside the contract, as well as the subsequent backfill and the required compactions. Blackstone Environmental shall observe and document the remediation work, and Geosource shall observe and document the backfill operations.

Final Clarifications By McCarthy Building Companies, Inc.

1. Unforeseen conditions, conflicts not directly indicated on the documents is not included in this proposal. Please refer to the Unit Prices provided on the bid form if these issues are encountered.
2. We plan to use the permanent system for temporary cooling during construction.
3. We have included utility consumption for the construction of the Building, however once the chillers are operational all utility consumption will become responsibility of the State.
4. Specification Section 10140, 2.3, B calls out exterior cast plaques at the monument sign. We have not found any monument signs on the plans, therefore we have not included any of this scope in our proposal.
5. Unclassified earth and rock excavation is based on the interpretation of the core samples. Any materials above & beyond that interpretation will be based on pricing provided on the bid form.
6. The parties have agreed to a change to Paragraph D.1, and specifically the overhead, profit, and fee chart. The amount of Overhead that will be allowed to the contractor on work performed by other than his own forces shall be revised from 0% to 5%.
7. The initial fill of the fuel & oil tanks are assumed to be the responsibility of the State of Kansas. We have included refueling of these tanks for work associated with our start-up and testing.
8. We have assumed that the existing utility plant has ample capacity to take the relocated chillers off-line without having to provide make-up capacity from temporary sources.
9. Costs for extending the warranty of the chillers that are relocated is not included.
10. The demolition of the Docking Building is not included.
11. Fire protection has not been indicated in the tunnel. Therefore, we have not included fire protection in the tunnel.
12. Through conversations with Westar we have identified 3 duct banks that require signification bracing and support. One was built in the 1930's and one approximately 30 years ago. We are including an allowance of \$50,000 for bracing and supporting these duct banks. We have included temporary supports of other site utilities for the tunnel construction.
13. The chemical treatment specified in section 238400 – Equipment and the clean and flush activities is included. The chemical treatment materials is to be provided by the State.
14. Resubmission of bid on Friday Dec. 18th, 2015 shall be valid until February 15th, 2016.
15. Special Inspection Testing, or any third party testing, is not included.
16. Per Letter send to David Stueve on June 16th, 2015 – The following VE items have been accepted: #1, #2, #3a, #3b, #3c, #4, and #7.
17. Removal and replacement of Trees, Plants, Grass, Pavers, and Stone Curb to be BY OWNER, as the Landscape scope of work is BY OWNER.

18. Specification Sections to be BY OWNER (Supply and Install):

- a. 06 4023 – Interior Architectural Woodwork
- b. 10 2800 – Toilet, Bath and Laundry Accessories
- c. 10 4416 – Fire Extinguishers
- d. 10 5300 – Lockers
- e. 12 2413 – Roller Window Shades f.
329200 – Turf and Grasses
- g. 329300 – Plants

Signed this Attachment A for EVT0003634 by the respective parties as follows:

State of Kansas, First Party

Second Party

By: Department of Administration

By: McCarthy Building Companies, Inc.

Head of State Agency

Authorized Signature

Director of Purchases

A. John Buescher

Director of OFPM

RECEIVED
2016 JAN -5 A 9:34
DIVISION OF PURCHASES

Executed in Triplicate

PERFORMANCE BOND

Federal Insurance Company, 82393757
Travelers Casualty and Surety Company
of America, 106329979

KNOW ALL PERSONS BY THESE PRESENTS:

That we, McCarthy Building Companies, Inc. of Leawood, Kansas as Principal, hereinafter
Federal Insurance Company
called Contractor, and Travelers Casualty and Surety Company of America Company, a corporation organized
under the laws of the State of IN, CT, with its home office in the city and state
of Warren, NJ, Hartford, CT, as Surety and hereinafter referred to as Surety, are held and firmly
bound unto the State of Kansas, as Obligee, hereinafter called the State, in the sum of
Sixteen Million Four Hundred Thirty-Two Thousand One Hundred Sixty-Six Dollars (\$16,432,166.00)
dollars for the payment of which sum we as Contractor and Surety bind ourselves and our legal
representatives and successors, jointly and severally, by this instrument.

WHEREAS, Contractor has by written agreement dated, December 21, 2015 entered into a contract with the
State of Kansas for:

New Energy and Service Center

Department of Administration

Topeka, Kansas

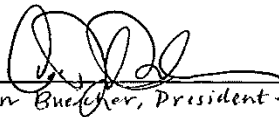
in accordance with plans and specifications set forth in the State of Kansas, project # EVT0003634 and
which contract is by reference made a part hereof, and is hereinafter referred to as the contract.

IT IS THEREFORE the condition of the above obligation that whenever Contractor shall be in default
and is declared by the State to be in default under the contract, the State having performed the State's
obligations under the Contract, the Surety will promptly remedy the default by completion of the Contract in
accordance with the terms and conditions of the Contract.


If Surety does not promptly remedy the default, Surety shall be liable to the State for funds sufficient to
pay the cost of completion less the balance of the contract price. Balance of contract price shall mean total
amount payable by State to Contractor under the contract, less amounts properly paid to Contractor by State.
If Contractor faithfully, promptly and accurately executes the Contract and complies with all the conditions
thereof, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands this 31st day of December, 2015.

Principal McCarthy Building Companies, Inc.

By 
(Title) A. John Buecher, President - Central Division

10601 Mission Road, Suite 220
Address Leawood, Kansas 66206

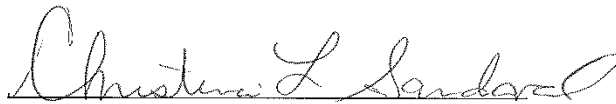
By 
(Attorney-in-Fact) Susan A. Welsh
Federal Insurance Company
Surety Travelers Casualty and Surety Company of America
15 Mountain View Road, Warren, NJ 07059
Address One Tower Square, Hartford, CT 06183

ACKNOWLEDGEMENT BY SURETY

STATE OF ILLINOIS
COUNTY OF COOK

On this 31st day of December, 2015, before me, Christina L. Sandoval, a Notary Public, within and for said County and State, personally appeared Susan A. Welsh to me personally known to be the Attorney-in-Fact of and for Federal Insurance Company and Travelers Casualty and Surety Company of America and acknowledged that she executed the said instrument as the free act and deed of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid County, the day and year in this certificate first above written.



Notary Public in the State of Illinois
County of Cook





**Chubb
Surety**

**POWER
OF
ATTORNEY**

**Federal Insurance Company
Vigilant Insurance Company
Pacific Indemnity Company**

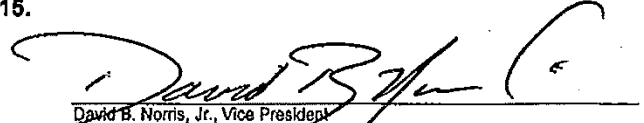
**Attn: Surety Department
15 Mountain View Road
Warren, NJ 07059**

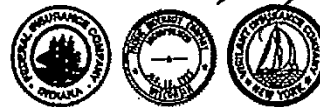
Know All by These Presents, That **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, and **PACIFIC INDEMNITY COMPANY**, a Wisconsin corporation, do each hereby constitute and appoint Marcia K. Cesafsky, Debra J. Doyle, Derek J. Elston, Jennifer L. Jakaitis, Judith A. Lucky-Eftimov, James B. McTaggart, Linda M. Napolillo, Sandra M. Nowak, Diane M. O'Leary, Christina L. Sandoval, Christopher P. Troha, Susan A. Welsh and Sandra M. Winsted of Chicago, Illinois -----

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** have each executed and attested these presents and affixed their corporate seals on this 19th day of **October, 2015**.


Dawn M. Chloros, Assistant Secretary


David B. Norris, Jr., Vice President



STATE OF NEW JERSEY

SS.

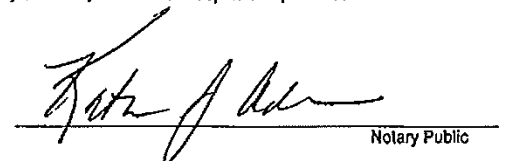
County of Somerset

On this 19th day of **October, 2015** before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY**, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that she is Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By-Laws of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with David B. Norris, Jr., and knows him to be Vice President of said Companies; and that the signature of David B. Norris, Jr., subscribed to said Power of Attorney is in the genuine handwriting of David B. Norris, Jr., and was thereto subscribed by authority of said By-Laws and in deponent's presence.

Notarial Seal



KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2316685
Commission Expires July 16, 2019


Notary Public

CERTIFICATION

Extract from the By-Laws of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY**:

"Except as otherwise provided in these By-Laws or by law or as otherwise directed by the Board of Directors, the President or any Vice President shall be authorized to execute and deliver, in the name and on behalf of the Corporation, all agreements, bonds, contracts, deeds, mortgages, and other instruments, either for the Corporation's own account or in a fiduciary or other capacity, and the seal of the Corporation, if appropriate, shall be affixed thereto by any of such officers or the Secretary or an Assistant Secretary. The Board of Directors, the President or any Vice President designated by the Board of Directors may authorize any other officer, employee or agent to execute and deliver, in the name and on behalf of the Corporation, agreements, bonds, contracts, deeds, mortgages, and other instruments, either for the Corporation's own account or in a fiduciary or other capacity, and, if appropriate, to affix the seal of the Corporation thereto. The grant of such authority by the Board or any such officer may be general or confined to specific instances."

I, Dawn M. Chloros, Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** (the "Companies") do hereby certify that

- (i) the foregoing extract of the By-Laws of the Companies is true and correct,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in the U.S. Virgin Islands, and Federal is licensed in Guam, Puerto Rico, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this December 31, 2015




Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com

TRAVELERS **POWER OF ATTORNEY**

Farmington Casualty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.
 St. Paul Fire and Marine Insurance Company
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
 Travelers Casualty and Surety Company
 Travelers Casualty and Surety Company of America
 United States Fidelity and Guaranty Company

Attorney-In Fact No. 229936

Certificate No. 006440701

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Debra J. Doyle, Diane M. O'Leary, James B. McTaggart, Jennifer L. Jakaitis, Judith A. Lucky-Eftimov, Sandra M. Winsted, Sandra M. Nowak, Susan A. Welsh, and Christina L. Sandoval

of the City of Chicago, State of Illinois, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 17th day of September, 2015.

Farmington Casualty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.
 St. Paul Fire and Marine Insurance Company
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
 Travelers Casualty and Surety Company
 Travelers Casualty and Surety Company of America
 United States Fidelity and Guaranty Company



State of Connecticut
 City of Hartford ss.

By: 

Robert L. Raney, Senior Vice President

On this the 17th day of September, 2015, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
 My Commission expires the 30th day of June, 2016.




 Marie C. Tetreault, Notary Public

Executed in Quintuplicate

**CONTRACTOR'S PUBLIC WORKS BOND TO THE STATE
(PURSUANT to K.S.A. 60-1111 as amended)**

Federal Insurance Company, 82393757
Travelers Casualty and Surety Company
of America, 106329979

**KNOW ALL PERSONS BY THESE PRESENTS: McCarthy Building Companies, Inc., 10601 Mission Rd.,
Suite 220, Leawood, Kansas, 66206** as principal, and Federal Insurance Company
Travelers Casualty and Surety Company of America

as Surety, and held and firmly bound unto the STATE OF KANSAS, in the sum of:

Sixteen Million Four Hundred Thirty-Two Thousand One Hundred Sixty-Six Dollars (\$16,432,166.00)

lawful money of the United States, will and truly to be paid, to which payment we here bind ourselves, our heirs, executors, administrators, successors or assigns, jointly and severally, firmly by these presents.

The condition of the above obligation is such that, whereas, the said McCarthy Building Companies, Inc., Leawood, Kansas, 66206 hereinafter called the contractor, has on December 21, 2015 entered into a contract with the State of Kansas,

New Energy and Service Center

Department of Administration

Topeka, Kansas

in accordance with plans and specifications of Project No. EVT0003634 on file in the Department of Administration, Office of Facilities and Property Management.

AND, NOW, THEREFORE, if the said contractor and all sub-contractors, if any, of said contractor shall pay all indebtedness incurred for labor furnished, materials, equipment or supplies used or consumed in connection with, or in or about the construction of said public building or making said public improvements, then the above obligation shall be void, otherwise it shall remain in full force and effect.

IN WITNESS WHEREOF, We have hereunto set our hands this 31st day of December, 2015.

Principal **McCarthy Building Companies, Inc.**

By

A. John Sureschke, President Central Div.
Federal Insurance Company

Surety Travelers Casualty and Surety Company of America

By

Susan A. Welsh

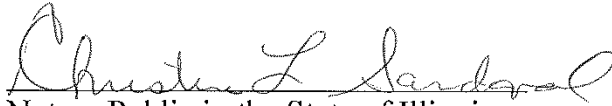
Susan A. Welsh, Attorney-in-Fact

ACKNOWLEDGEMENT BY SURETY

STATE OF ILLINOIS
COUNTY OF COOK

On this 31st day of December, 2015, before me, Christina L. Sandoval, a Notary Public, within and for said County and State, personally appeared Susan A. Welsh to me personally known to be the Attorney-in-Fact of and for Federal Insurance Company and Travelers Casualty and Surety Company of America and acknowledged that she executed the said instrument as the free act and deed of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid County, the day and year in this certificate first above written.



Notary Public in the State of Illinois
County of Cook





**Chubb
Surety**

**POWER
OF
ATTORNEY**

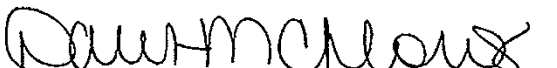
**Federal Insurance Company
Vigilant Insurance Company
Pacific Indemnity Company**

**Attn: Surety Department
15 Mountain View Road
Warren, NJ 07059**

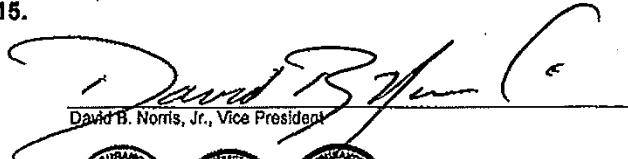
Know All by These Presents, That **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, and **PACIFIC INDEMNITY COMPANY**, a Wisconsin corporation, do each hereby constitute and appoint Marcia K. Casafsky, Debra J. Doyle, Derek J. Elston, Jennifer L. Jakaitis, Judith A. Lucky-Eftimov, James B. McTaggart, Linda M. Napolillo, Sandra M. Nowak, Diane M. O'Leary, Christina L. Sandoval, Christopher P. Troha, Susan A. Welsh and Sandra M. Winsted of Chicago, Illinois

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than ball bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** have each executed and attested these presents and affixed their corporate seals on this **19th** day of **October, 2015**.



Dawn M. Chloros, Assistant Secretary



David B. Norris, Jr., Vice President



STATE OF NEW JERSEY

ss.

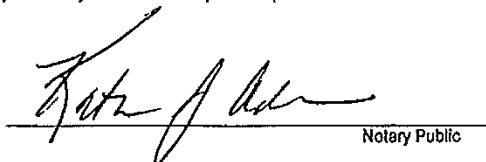
County of Somerset

On this **19th** day of **October, 2015** before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY**, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that she is Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By-Laws of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with David B. Norris, Jr., and knows him to be Vice President of said Companies; and that the signature of David B. Norris, Jr., subscribed to said Power of Attorney is in the genuine handwriting of David B. Norris, Jr., and was thereto subscribed by authority of said By-Laws and in deponent's presence.

Notarial Seal



KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2316685
Commission Expires July 16, 2019



Notary Public

CERTIFICATION

Extract from the By-Laws of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY**:

"Except as otherwise provided in these By-Laws or by law or as otherwise directed by the Board of Directors, the President or any Vice President shall be authorized to execute and deliver, in the name and on behalf of the Corporation, all agreements, bonds, contracts, deeds, mortgages, and other instruments, either for the Corporation's own account or in a fiduciary or other capacity, and the seal of the Corporation, if appropriate, shall be affixed thereto by any of such officers or the Secretary or an Assistant Secretary. The Board of Directors, the President or any Vice President designated by the Board of Directors may authorize any other officer, employee or agent to execute and deliver, in the name and on behalf of the Corporation, agreements, bonds, contracts, deeds, mortgages, and other instruments, either for the Corporation's own account or in a fiduciary or other capacity, and, if appropriate, to affix the seal of the Corporation thereto. The grant of such authority by the Board or any such officer may be general or confined to specific instances."

I, Dawn M. Chloros, Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** (the "Companies") do hereby certify that

- (i) the foregoing extract of the By-Laws of the Companies is true and correct,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in the U.S. Virgin Islands, and Federal is licensed in Guam, Puerto Rico, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this

December 31, 2015





Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 229936

Certificate No. 006440702

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Debra J. Doyle, Diane M. O'Leary, James B. McTaggart, Jennifer L. Jakaitis, Judith A. Lucky-Eftimov, Sandra M. Winsted, Sandra M. Nowak, Susan A. Welsh, and Christina L. Sandoval

of the City of Chicago, State of Illinois, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 17th day of September, 2015.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: Robert L. Raney
Robert L. Raney, Senior Vice President

On this the 17th day of September, 2015, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.



Marie C. Tetreault
Marie C. Tetreault, Notary Public

CitePayUSA

Receipt

Date: 01/06/2016
Receipt Number: 199570
Card Number: #####8290
Transaction Number: 1321343086
Authorization Number: 00666Z
Court: Shawnee County District Court

Payor: Mccarthy Building Companies Inc (plaintiff)

Items Paid

Case	Citation	Description	Amount
2016-SB-000002		Statutory Bond	\$36.00

Amount:	\$36.00
Transaction Fee:	\$1.44
Payment Total:	\$37.44



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/27/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Central, Inc. St. Louis MO Office 8182 Maryland Ave. St. Louis, Mo. 63105 Attn: Sue Schwartz	CONTACT NAME: PHONE (A/C, No, Ext): (314) 721-5100 FAX (A/C, No): (314) 719-5126 E-MAIL ADDRESS:														
INSURED McCarthy Building Companies, Inc. / Div. 01A 1341 N. Rock Hill Rd. St. Louis, MO 63124	<table border="1"><thead><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A: Arch Insurance Company</td><td>11150</td></tr><tr><td>INSURER B: National Union Fire Ins Co of Pittsburgh</td><td>19445</td></tr><tr><td>INSURER C:</td><td></td></tr><tr><td>INSURER D:</td><td></td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></tbody></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Arch Insurance Company	11150	INSURER B: National Union Fire Ins Co of Pittsburgh	19445	INSURER C:		INSURER D:		INSURER E:		INSURER F:	
INSURER(S) AFFORDING COVERAGE	NAIC #														
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INSURER B: National Union Fire Ins Co of Pittsburgh	19445														
INSURER C:															
INSURER D:															
INSURER E:															
INSURER F:															

COVERAGES

CERTIFICATE NUMBER: 447970

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURED	SUBROGATION	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Per Project/Location Aggre GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:	X		51PKG8897611	4/1/2015	4/1/2016	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			51PKG8897611	4/1/2015	4/1/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED \$ RETENTION \$			29157282	4/1/2015	4/1/2016	EACH OCCURRENCE \$ 15,000,000 AGGREGATE \$ 15,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	51WC18897511	4/1/2015	4/1/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Master 1XS
Job #003862.000; Kansas Energy & Service Center; Project No: EVT0003634; New Energy and Service Center, Building No. 17300-00038, Topeka, KS A-012651/TMA-1951
Kansas Energy and Service Center and Architect/Engineer are included as Additional Insureds on the General Liability policy when required by written contract.

CERTIFICATE HOLDERState of Kansas
Attn: George Steele
800 SW Jackson St., Suite 700
Topeka, KS 66612**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Catherine L. Seim

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

NOTICE OF CANCELLATION – CERTIFICATE HOLDERS

The person(s) or organization(s) listed or described in the Schedule below have requested that they receive written notice of cancellation when this policy is cancelled by us. We will mail or deliver to the Person(s) or Organization(s) listed or described in the Schedule a copy of the written notice of cancellation that we sent to you. Such copies of the notice will be mailed within 60 days, except 10 days for non-payment of premium, of the effective date of the cancellation, to the address or addresses of certificate holders as provided by your broker or agent.

Schedule

447970

Re:

State of Kansas

All certificate holders where written notice of the cancellation of this policy is required by written contract, permit or agreement with the Named Insured and whose names and addresses will be provided by the broker or agent listed in the Declarations Page of this policy for the purposes of complying with such request.

This notification of cancellation of the policy is intended as a courtesy only. Our failure to provide such notification to the person(s) or organization(s) shown in the Schedule will not extend any policy cancellation date nor impact or negate any cancellation of the policy. This endorsement does not entitle the person(s) or organization(s) listed or described in the Schedule below to any benefit, rights or protection under this policy.

Any provision of this endorsement that is in conflict with a statute or rule is hereby amended to conform to that statute or rule

All other terms and conditions of this policy remain unchanged.

Insured Name: **McCarthy Building Companies, Inc. / Div. 01A**

Policy Number: **51PKG8897611**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

NOTICE OF CANCELLATION –CERTIFICATE HOLDERS

The person(s) or organization(s) listed or described in the Schedule below have requested that they receive written notice of cancellation when this policy is cancelled by us. We will mail or deliver to the Person(s) or Organization(s) listed or described in the Schedule a copy of the written notice of cancellation that we sent to you. Such copies of the notice will be mailed within 60 days, except 10 days for non-payment of premium, of the effective date of the cancellation, to the address or addresses of certificate holders as provided by your broker or agent.

447970

Schedule

Re: State of Kansas

All certificate holders where written notice of the cancellation of this policy is required by written contract, permit or agreement with the Named Insured and whose names and addresses will be provided by the broker or agent listed in the Declarations Page of this policy for the purposes of complying with such request.

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Any provision of this endorsement that is in conflict with a statute or rule is hereby amended to conform to that statute or rule

All other terms and conditions of this policy remain unchanged.

Insured Name: McCarthy Building Companies, Inc. / Div. 01A

Policy Number: 51WCI8897511

January 27, 2016

George Steele, PE
Deputy Director – Engineering
Kansas Department of Administration
Office of Facilities & Property Management
800 SW Jackson, Suite 600
Topeka, KS 66612

Reference: Kansas Energy & Service Center – Project on Hold Email (1/26/16)

Subject: Notice of Delay and Additional Costs Resulting from Suspension and
Request for Direction Regarding Work

Dear George,

I have received your emails to delay work on the project (1/26/16 @ 4:59PM) and your email and letter today to delay and suspend the project (1/27/16 @ 8:41AM). As we have discussed, this directive will result in delays to the project schedule and additional costs for which McCarthy Building Companies, Inc. (McCarthy) and its subcontractors are entitled to an extension of time and increase in the contract amount.

Please be advised that we have passed the Kansas Department of Administration's directive to delay and suspend the project on to our subcontractors. At this time, the power supplied to the light poles have been disconnected, and the light poles have been removed and stored on State of Kansas property as the construction drawing indicated. Please note that there are necessary costs that will continue to be incurred while the project is suspended, such as, for example, rental costs. Please provide further direction as to whether we should demobilize from the project site and take steps to terminate rental agreements.

Please provide the clarification requested above by Friday January 29th, 2016, so that we may provide the proper direction to our subcontractors.

Sincerely,
McCarthy Building Companies, Inc.



Eric Dill
Assistant Project Manager

CC: Steve Meuschke (McCarthy)
Greg Lee (McCarthy)
Mark Heit (McCarthy)
File

Procurement & Contracts
Office of Facilities & Procurement Management
900 S.W. Jackson St., Room 451 South
Topeka, KS 66612



Phone: (785) 296-2376
Fax: (785) 296-7240
<http://admin.ks.gov/offices/procurement-and-contracts>

Jim Clark, Secretary

Sam Brownback, Governor

REQUEST FOR PROPOSAL (RFP)

Bid Event Number:	EVT0003634
Replaces Contract:	New
Date Mailed:	March 10, 2015
Closing Date:	May 12, 2015, 2:00 PM local Topeka time
Procurement Officer:	David Stueve Telephone: 785-296-0408 E-Mail Address: david.stueve@da.ks.gov Web Address: http://admin.ks.gov/offices/procurement-and-contracts/
Item:	New Energy and Service Center
Agency:	Department of Administration
Period of Contract:	Per The Negotiated Agreement
Guarantee:	Monetary Guarantee Required

This Bid Event was recently posted to the Procurement and Contracts Internet website.
The documents can be downloaded by going to the following website:

<http://admin.ks.gov/offices/procurement-and-contracts/>

There are several attachments to this bid event that are available by using the link directly above, then selecting "Bid Solicitations" along the left hand side of the page, and then scrolling down and selecting "Bid Number" EVT0003634. Then scroll down and find the "Bid Files" that are attached to this bid event.

ALL OTHER drawings, specifications, and documents related to this bid event can be accessed by using the link noted directly above, then selecting "Bid Solicitations" along the left hand side of the page, and then selecting the words "Additional files related to bid solicitations" located directly above the field of bid events.

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

NOTICE:

A Pre-Bid Conference will be held at 10:00 AM, local Topeka time, on April 1, 2015. The meeting will be held in Room 600A, at 800 SW Jacksons, Topeka, Kansas, 66612.

SIGNATURE SHEET

Item: New Energy and Service Center

Agency: Department of Administration

Closing Date: May 12, 2015, 2:00 PM local Topeka time

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 Telephone _____ Local _____ Cell: _____ Fax _____

Tax Number _____

CAUTION: If your tax number is the same as your Social Security Number (SSN), you must leave this line blank. DO NOT enter your SSN on this signature sheet. If your SSN is required to process a contract award, including any tax clearance requirements, you will be contacted by an authorized representative of the Division of Purchases at a later date.

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 Telephone _____ Local _____ Cell: _____ Fax _____

E-Mail _____

If **awarded a 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 Telephone _____ Local _____ Cell: _____ Fax _____

E-Mail _____

1. INSTRUCTIONS

Bid Event ID / Reference Number:

The Bid Event ID / RFP number, indicated in the header of this page, 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 procurement officer reflected on Page 1 of this proposal. There shall be no communication with any other State employee regarding this RFP except with designated state participants in attendance ONLY DURING:

- Negotiations
- Contract Signing
- as otherwise specified in this RFP.

Violations of this provision by bidder or state agency personnel may result in the rejection of the proposal.

1.1. 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) consisting of the following entities (or their designees):

- Secretary of Department of Administration;
- Director of Purchases, Department of Administration; and
- Head of Using Agency

1.2. Appearance Before Committee:

Any, all or no bidders may be required to appear before the PNC to explain the bidder'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 bidders as needed. If information is requested, the PNC is not required to request the information of all bidders.

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

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

1.3. Cost of Preparing Proposal:

The cost of developing and submitting the proposal is entirely the responsibility of the bidder. 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.

1.4. Preparation of Proposal:

Prices are to be entered in spaces provided on the cost proposal form if 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 prices provided by bidders. The bidder shall be responsible for any mathematical errors. The PNC reserves the right to reject proposals which contain errors.

All copies of cost proposals shall be submitted in a separate sealed envelope or container separate from the technical proposal. The outside shall be identified clearly as "Cost Proposal" or "Technical Proposal" with the Bid Event ID / RFP number and closing date.

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 bidder, competitor or public officer/employee.

Technical proposals shall contain a concise description of bidder'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.

1.5. Signature of Proposals:

Each proposal shall give the complete legal name and mailing address of the bidder 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 bidder's tax number.

1.6. Acknowledgment of Amendments:

All bidders shall acknowledge receipt of any amendments to this RFP by returning a signed hard copy with the bid. Failure to acknowledge receipt of any amendments may render the proposal to be non-responsive. Changes to this RFP shall be issued only by Procurement and Contracts in writing.

1.7. Modification of Proposals:

A bidder may modify a proposal by letter or by FAX transmission at any time prior to the closing date and time for receipt of proposals.

1.8. Withdrawal of Proposals:

A proposal may be withdrawn on written request from the bidder to the Procurement Officer at Procurement and Contracts prior to the closing date.

1.9. Competition:

The purpose of this RFP is to seek competition. The bidder shall advise Procurement and Contracts 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 Procurement and Contracts no later than five (5) business days prior to the bid closing date. The Director of Purchases reserves the right to waive minor deviations in the specifications which do not hinder the intent of this RFP.

1.10. Evaluation of Proposals:

Award shall be made in the best interest of the State as determined by the PNC or their designees. Although no weighted value is assigned, consideration may focus toward but is not limited to:

- Cost. Bidders 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. The State reserves the right to award to the lowest responsive bid without conducting formal negotiations, if authorized by the PNC.
- Adequacy and completeness of proposal
- Bidder'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

1.11. 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.

1.12. 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. A List of Bidders may be obtained in the following manner:

- Attending the bid closing at the time and date noted on the Bid Event, or
- Requesting a List of Bidders via e-mail to tabsheets@da.ks.gov or in writing to the following address. Include the Bid Event number in all requests.

Kansas Department of Administration
Procurement and Contracts
Attention: Bid Results
900 SW Jackson, Suite 451 South
Topeka, KS 66612-1216

- Once a contract has been executed, the Bid Tabsheet is available upon request following the same instructions noted above.

Bid results will not be given to individuals over the telephone.

Copies of individual proposals may be obtained under the Kansas Open Records Act by sending an email to tabsheets@da.ks.gov or calling 785-296-0002 to request an estimate of the cost to reproduce the documents and remitting that amount with a written request to the above address or a vendor may make an appointment by calling the above number to view the proposal file. Upon receipt of the funds, the documents will be mailed. Information in proposal files shall not be released until a contract has been executed or all proposals have been rejected.

1.13. Disclosure of Proposal Content and Proprietary Information:

All proposals become the property of the State of Kansas. The Open Records Act (K.S.A. 45-215 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. (<http://admin.ks.gov/offices/chief-counsel/kansas-open-records-act/kansas-open-records-act-procurement-and-contracts>) No proposals shall be disclosed until after a contract award has been issued. The State reserves the right to destroy all proposals if the RFP is withdrawn, a contract award is withdrawn, or in accordance with Kansas law. Late Technical and/or Cost proposals will be retained unopened in the file and not receive consideration or may be 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 bidder'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 bidder shall provide detailed written documentation justifying why this material should be considered "Proprietary". Procurement and Contracts reserves the right to accept, amend or deny such requests for maintaining information as proprietary in accordance with Kansas law.

If any part or all of the proposal is marked as being copyrighted, by submission of the proposal itself, the proposer provides the State of Kansas full authority to provide copies of such material, either in paper format or electronically, to interested parties in order for the State to meet its obligations under the Kansas Open Records Act.

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

1.14. Exceptions:

By submission of a response, the bidder acknowledges and accepts all terms and conditions of the RFP unless clearly avowed and wholly documented in a separate section of the Technical Proposal to be entitled: "Exceptions".

1.15. Notice of Award:

An award is made on execution of the written contract by all parties.

1.16. News Releases

Only the State is authorized to issue news releases relating to this bid event, its evaluation, award and/or performance of the resulting contract.

2. PROPOSAL RESPONSE

2.1. Submission of Proposals:

Bidder's proposal shall consist of:

- One (1) original and three (3) copies of the Technical Proposal, including the signed Event Details document, applicable literature and other supporting documents;
- One (1) original and three (3) copies of the cost proposal including the signed Event Details document,
- One (1) electronic / software version(s) of the technical and cost proposals are required. This shall be provided on CD or flash drive, in Microsoft® Word or Excel. Technical and cost responses shall be submitted on separate media.

All copies of cost proposals shall be submitted in a separate sealed envelope or container separate from the technical proposal. The outside shall be identified clearly as "Cost Proposal" or "Technical Proposal" with the Bid Event ID number and closing date.

Bidder's proposal, sealed securely in an envelope or other container, shall be received no later than 2:00 p.m., local Topeka time, on the closing date, addressed as follows:

Kansas Department of Administration
Procurement and Contracts
Proposal # EVT0003634
Closing Date: May 12, 2015
900 Jackson Street, Suite 451 South
Topeka, KS 66612-1216

It is the bidder'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.

Faxed, e-mailed or telephoned proposals are not acceptable unless otherwise specified.

Proposals received prior to the closing date shall be kept secured and sealed until closing. The State 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 Technical and/or Cost proposals will be retained unopened in the file and not receive consideration or may be returned to the bidder.

2.2. Proposal Format:

Bidders are instructed to prepare their Technical Proposal following the same sequence as this RFP.

2.3. Bidder Information:

The bidder must include a narrative of the bidder'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 and financial references shall be required.

2.4. Qualifications:

A description of the bidder'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 bidder must be an established firm recognized for its capacity to perform. The bidder must have sufficient personnel to meet the deadlines specified in the RFP.

2.5. Timeline:

A timeline for implementing services must be submitted with the bid.

2.6. Methodology:

Bidders shall submit with the bid, a detailed explanation of the methodology for implementing services.

2.7. References:

Provide references who have purchased similar items or services from the bidder in the last ten year(s). References shall show firm name, contact person, address, e-mail address and phone number. Bidder's employees and the buying agency shall not be shown as references.

2.8. Technical Literature:

All Technical Proposals shall include specifications and technical literature sufficient to allow the State 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. Proposals without sufficient technical documentation may be rejected.

2.9. Procurement Card (P-Card):

Many State Agencies use a State of Kansas Procurement Card (currently Visa) in lieu of a state warrant to pay for certain purchases. No additional charges will be allowed for using the P-Card. Bidders shall indicate on the Event Details document if they will accept the Procurement Card for payment.

3. TERMS AND CONDITIONS

3.1 Contract Documents:

This RFP, any amendments, the response and any response amendments of the Contractor, and the State of Kansas DA-146a (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:

- Form DA 146a;
- written modifications to the executed contract;
- written contract signed by the parties;
- the RFP, including any and all amendments;
- and Contractor's written proposal submitted in response to the RFP as finalized.

3.2 Contract:

The successful bidder will be required to enter into a written contract with the State. The contractor agrees to accept the provisions of Form DA 146a (Contractual Provisions Attachment), which is incorporated into all contracts with the State and is incorporated into this RFP.

3.3 Contract Formation:

No contract shall be considered to have been entered into by the State until all statutorily required signatures and certifications have been rendered and a written contract has been signed by the successful bidder.

3.4 Notices:

All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") that may be required or desired to be given by either party to the other shall be IN WRITING and addressed as follows:

Kansas Department of Administration
Procurement and Contracts
900 Jackson Street, Suite 451 South
Topeka, KS 66612-1216
RE: Bid Event ID Number EVT000????

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

3.5 Termination for Cause:

The Director of Purchases 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 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.

The Director of Purchases 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 State may authorize in writing), the Director of Purchases 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.

3.6 Termination for Convenience:

The Director of Purchases may terminate performance of work under this contract in whole or in part whenever, for any reason, the Director of Purchases shall determine that the termination is in the best interest of the State of Kansas. In the event that the Director of Purchases 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.

3.7 Debarment of State 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.

3.8 Rights and Remedies:

If this contract is terminated, the State, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to the State in the manner and to the extent directed, any completed materials. The State 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 or goods were accepted by State subject to any offset by State for actual damages including loss of federal matching funds.

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

3.9 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.

3.10 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 State shall not constitute a waiver.

3.11 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, social security, income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

3.12 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 or damages.

3.13 Subcontractors:

The Contractor shall be the sole source of contact for the contract. The State 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.

The State of Kansas requires tax clearance certificates for all subcontractors be submitted with the technical proposal, and that the bidder additionally provide subcontractor(s) legal company name, contact information and tax ID number (FEIN/TIN) as well.

3.14 Proof of Insurance:

Upon request, the Contractor shall present an affidavit of Worker's Compensation, Public Liability, and Property Damage Insurance to Procurement and Contracts.

3.15 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 State and providing services involving this contract or services similar in nature to the scope of this contract to the State. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any state employee who has participated in the making of this contract until at least two years after his/her termination of employment with the State.

3.16 Confidentiality:

The Contractor may have access to private or confidential data maintained by State 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 (K.S.A. 42-215 et seq.) in providing services under this contract. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this contract shall be disseminated by either party except as authorized by statute, either during the period of the contract or thereafter. Contractor must agree to return any or all data furnished by the State promptly at the request of State 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 State, will destroy or render it unreadable.

3.17 Nondiscrimination and Workplace Safety:

The Contractor agrees to abide by all federal, state and local laws, and rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws or rules or regulations may result in termination of this contract.

3.18 Environmental Protection:

The Contractor shall abide by all federal, state and local laws, and 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 or rule or regulations may result in termination of this contract for cause.

3.19 Hold Harmless:

The Contractor shall indemnify the State 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.

The State 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 the State's right to recover against third parties for any loss, destruction or damage to State property.

3.20 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 shall reimburse State for such property's loss or damage caused by Contractor, normal wear and tear excepted.

3.21 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 State employee at any time.

3.22 Retention of Records:

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

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

The Contractor agrees that authorized federal and state representatives, including but not limited to, personnel of the using agency; 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 the state.

3.23 Antitrust:

If the Contractor elects not to proceed with performance under any such contract with the State, the Contractor assigns to the State 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 the State of Kansas relating to the particular products or services purchased or acquired by the State pursuant to this contract.

3.24 Modification:

This contract shall be modified only by the written agreement and approval of the parties. 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.

3.25 Assignment:

The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of the State. State may reasonably withhold consent for any reason.

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

3.26 Third Party Beneficiaries:

This contract shall not be construed as providing an enforceable right to any third party.

3.27 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.

3.28 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.

3.29 Governing Law:

This contract shall be governed by the laws of the State of Kansas and shall be deemed executed in Topeka, Shawnee County, Kansas.

3.30 Jurisdiction:

The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas District Court of Shawnee County, unless otherwise specified and agreed upon by the State of Kansas. 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 the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this Agreement shall be deemed a waiver of the Eleventh Amendment.

3.31 Mandatory Provisions:

The provisions found in Contractual Provisions Attachment (DA 146a) are incorporated by reference and made a part of this contract.

3.32 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 Agreement between the parties shall be independent of and have no effect on any other contracts of either party.

3.33 Debarment of State Contractors:

Any Contractor who defaults on delivery or does not perform in a satisfactory manner as defined in this Agreement may be barred for up to a period of three (3) years, pursuant to K.S.A. 75-37,103, or have its work evaluated for pre-qualification purposes. Contractor shall disclose any conviction or judgment for a criminal or civil offense of any employee, individual or entity which controls a company or organization or will perform work under this Agreement that indicates a lack of business integrity or business honesty. 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.

3.34 Immigration and Reform Control Act of 1986 (IRCA):

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-contractors. 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 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 the State's option, may subject the contract to termination for cause and any applicable damages.

Unless provided otherwise herein, all contractors are expected to be able to produce for the State any documentation or other such evidence to verify Contractor's IRCA compliance with any provision, duty, certification or like item under the contract.

Contractor will provide a copy of a signed Certification Regarding Immigration Reform and Control Form (<http://admin.ks.gov/docs/default-source/ofpm/procurement-contracts/irca.doc>) with the technical proposal.

3.35 Worker Misclassification:

The contractor and all lower tiered subcontractors under the contractor 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.

3.36 Injunctions:

Should Kansas be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of the State, Contractor shall not be entitled to make or assert claim for damage by reason of said delay.

3.37 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.

3.38 Federal, State and Local Taxes:

Unless otherwise specified, the proposal 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. The State of Kansas is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the bidder's price quotation. Upon request, the State shall provide to the Contractor a certificate of tax exemption.

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

3.39 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 Contractor 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.

3.40 Definitions:

A glossary of common procurement terms is available at <http://admin.ks.gov/docs/default-source/ofpm/procurement-contracts/glossary-of-procurement-terms.doc>.

4. OTHER TERMS AND CONDITIONS

4.1. Definite Quantity Contract:

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

4.2. On-Site Inspection:

Failure to adequately inspect the premises shall not relieve the Contractor from furnishing without additional cost to the State any materials, equipment, supplies or labor that may be required to carry out the intent of this Contract. Submission of a proposal shall be construed as evidence that the bidder has made necessary examination, inspection and investigation. Failure to properly inspect the site may result in rejection of the bidder's response.

4.3. Experience:

All bidders must describe applicable experience of active participation in the applicable industry, providing equipment/services comparable in size and complexity to those specified herein.

Bidders may be required to furnish information supporting the capability to comply with conditions for bidding and fulfill the contract if receiving an award of contract. Such information may include, but not be limited to, a list of similar size and type projects the bidder has completed.

4.4. Payment:

Payment under Option A will be:

A. The Owner will make partial payments to the Contractor for the value, proportionate to the amount of the Contract, of all labor and material incorporated in the work during the preceding calendar month upon receipt of certification from the Project Architect/Engineer and approval of the Owner and the Office of Facilities and Procurement Management. No payment will be made to the Contractor until Procurement and Contracts has received all documentation required to be submitted by the Contractor.

B. The Contractor shall submit to the Project Architect/Engineer a request for certification for each payment, on current AIA documents G702 and G703. Contractors shall be responsible for securing their own AIA forms. Each item identified on the Schedule of Values shall be broken down into material and labor as separate items on the G703. This request for certification shall be submitted in the number of copies directed, and shall include the Contractor's detailed estimate of all items and activities of work to be performed, in the space provided on the form. If requested, the statement shall be supported by such evidence as may be required, showing the Contractor's right to the payment claimed.

1. Project architect/engineer will review, approve and forward undisputed requests to the Owner within seven (7) days of receipt.

- C. Periodic estimates of Work completed shall be correlated with the schedule of values and furnished to the Project Architect/Engineer with requests for partial payment.
- D. Request for payment for preparatory work and materials delivered and suitably stored at the site to be incorporated into the work at some future period, will be given due consideration. The Project Architect/Engineer may, under certain circumstances, approve payment up to ninety percent (90%) of the value of manufactured products delivered to a suitable warehouse at or near the locale of the project. Stored products shall be insured to one hundred percent (100%) of their value. Proof of said insurance shall be given to the Project Architect/Engineer. A bill of sale and their costs, including an itemized inventory of all stored products, shall be obtained and provided the Project Architect/Engineer. Approval of the surety company of the Contractor shall also be obtained and provided to the Project Architect/Engineer before these items are stored. Insurance for stored materials shall include transportation from the warehouse to the job site.
- E. Payments by the Owner will be due within thirty (30) days after receipt of certified request for payment from the Project Architect/Engineer.
- F. Ten percent (10%) of the Work Completed to Date will be retained on each payment request until final completion and acceptance of all Work covered by the Contract.
1. Upon 50% completion, the Office of Facilities and Procurement Management, Owner and Project Architect/Engineer may reduce retainage to a minimum of 5% of the total project cost upon the following conditions:
- (a) Reduction of retainage is not automatic. Any reduction must be requested. Approval may be withheld for a variety of reasons, to include progress not on schedule, concerns about quality of work, etc. Applications for payment that assume a reduction before it is approved will be returned for correction, thus delaying payment.
- (b) Retainage of 10% is mandatory if the critical path progress of the work is not on schedule, including previously agreed upon change order days. If retainage had been reduced on previous applications for payment, and work falls behind the critical path schedule, retainage will revert back to the full 10% of the total invoiced cost to date on all applications until the work is back on schedule.
2. Retainage will be released on any undisputed payment within thirty (30) days after Substantial Completion of the project. When a subcontractor continues to work on the project after Substantial Completion, the Owner may withhold that portion of the retainage attributed to the subcontractor until thirty (30) days after the work is completed.
- G. All material and work covered by partial payments shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and adequate protection from weather, damage, vandalism, theft, and fire of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the Contract.
- H. If overpayment occurs, the Owner has the right to stop payment applications until the actual Work completed is equal to the payment applications and certified by the Project Architect/Engineer to be in compliance with the contract documents.
- I. Final payment will be made within thirty (30) days after final completion of the work.
- J. Prior to the issuance of final payment, the Contractor shall submit a certification that all debts and claims against this project have either been paid in full or otherwise satisfied in the form of an Affidavit of Contractor.
- K. No recourse shall be had against any individual employee or agents of the State of Kansas, or officer thereof, for any payment under the contract or any claim based thereon.

4.4.1. PAYMENTS BY CONTRACTOR

- A. The Contractor shall pay within seven (7) days of receipt of payment from the Owner, each subcontractor out of the amount paid to the Contractor on account of each subcontractor's work, the amount to which said subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the

Contractor on account of each subcontractor's work. The Contractor shall, by an appropriate agreement with each subcontractor, require each subcontractor to make payments to his sub-subcontractors in similar manner.

4.4.2. SUBCONTRACTOR PAYMENT INDEMNIFICATION

A. The Contractor agrees that he will indemnify and save the Owner harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, material suppliers, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, incurred in the furtherance of the performance of this Contract.

4.4.3. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

A. The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

1. unsettled liens
2. faulty or defective work appearing after Final Project Completion
3. failure of the Work to comply with the requirements of the Contract Documents, or
4. terms of any special guarantees or warranties required by the Contract Documents.

B. The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and still unsettled.

Payment under Option B:

Payment under option B will be determined by the lease to Own mutually agreed provisions.

Payment date and receipt of order date shall be based upon K.S.A. 16-1903(c) the Fairness in Public Construction Act. This Statute requires state agencies to pay the full amount due for goods or services on or before the 30th calendar day after the date the agency 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 the state agency. 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.

4.5. Materials and Workmanship:

The Contractor shall perform all work and furnish all supplies and materials, machinery, equipment, facilities, and means, necessary to complete all the work required by this 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 agency and/or Procurement and Contracts said issue is due to imperfection in material, design, workmanship or contractor fault.

4.6. Industry Standards:

If not otherwise provided, materials or work called for in this contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.

4.7. 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, or Electrical Construction included as a part of the Proposal, when a single contract for the "Project as a whole" is to be awarded.

The State of Kansas requires tax clearance certificates for all subcontractors be submitted with the technical proposal, and that the bidder additionally provide subcontractor(s) legal company name, contact information and tax ID number (FEIN/TIN) as well.

4.8. Bid Guaranty:

The Director of Purchases requires that a bid guaranty in the amount of five percent (5%) of the total bid be submitted by all bidders to ensure faithful performance with the conditions of this RFP. A bid guaranty must be one of the following: (1) certified check, cashier check, or certificate of deposit payable to the State; or (2) a properly executed bid bond payable to the State.

All checks or certificates of deposit submitted as a bid guaranty shall be returned after contract award unless the guaranty shall serve as a performance guaranty for the successful bidder. Bonds will not be returned. If the successful bidder fails or refuses to enter into a written contract, the State shall retain the bid guaranty as liquidated damages.

4.9. Public Works Bond:

Option A:

The Contractor shall file with the Director of Purchases a Public Works Bond as required by K.S.A. 60-1111, as amended, in an amount equal to one hundred percent (100%) of contract price and shall be filed with the Clerk of the District Court in the County where the project is being constructed.

The bond will be released upon the completion of this contract subject to total or partial forfeiture for failure to perform adequately the terms of this contract. If damages exceed the amount of the guaranty, the State may seek additional damages. A Public Works Bond is not required for projects with a contract price below \$100,000.00.

Necessary bond forms will be furnished by Procurement and Contracts and can be completed by any General Insurance Agent. Bonds shall be issued by a Surety Company licensed to do business in the State of Kansas.

Option B:

A Public Works Bond will be required.

4.10. Performance Guaranty/Bond:

Option A:

The Contractor shall file with the Director of Purchases a performance guaranty/bond in the amount of 100 % of the contract price. The guaranty shall be released upon the completion of this contract subject to total or partial forfeiture for failure to adequately perform the terms of this contract. If damages exceed the amount of the guaranty, the State may seek additional damages.

A performance guaranty must be one of the following: (1) certificate of deposit payable to the State; or (2) a properly executed bond payable to the State.

Necessary bond forms will be furnished by Procurement and Contracts and can be completed by any General Insurance Agent. Bonds shall be issued by a Surety Company licensed to do business in the State of Kansas.

Option B:

A Performance Guaranty/Bond will be required.

4.11. 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 response.

4.12. 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 bidder's response.

4.13. Warranty:

Bidders shall indicate the type and extent of the warranty for all equipment, hardware, software, and services proposed. The State requires a "standard" warranty of 1 year. 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 agency or Procurement and Contracts said defect is due to imperfection in material, design, or workmanship for the warranty period specified.

4.14. Acceptance:

No contract provision or use of items by the State shall constitute acceptance or relieve the Contractor of liability in respect to any expressed or implied warranties.

4.15. Submission of the Bid:

Submission of the bid will be considered presumptive evidence that the bidder 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 the State of Kansas.

4.16. 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 vendor's name, trade name, catalog number, etc., it is intended to establish a standard, unless otherwise specifically stated. Any material, article or equipment of other manufacturers or vendors shall perform to the standard of the item specified. Equivalent 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 the State and if not destroyed in the evaluation process, shall be returned at bidder's expense, if requested.

The State of Kansas reserves the right to determine and approve or deny "equivalency" in comparison of alternate bids.

4.17. Certification of Materials Submitted:

The response to this RFP, together with the specifications set forth herein and all data submitted by the bidder 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 the State of Kansas. 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.

4.18. Inspection:

The State reserves the right to reject, on arrival at destination, any items which do not conform with specification of the Contract.

4.19. Bidder Contracts:

Bidders must include with their RFP response, a copy of any contracts, agreements, licenses, warranties, etc. that the bidder would propose to incorporate into the any contract generated from this Bid Event. (State of Kansas form DA-146a remains a mandatory requirement in all contracts.)

4.20. Transition Assistance:

In the event of contract termination or expiration, Contractor shall provide all reasonable and necessary assistance to State to allow for a functional transition to another vendor.

4.21. Award:

Award will be by line item or group total, whichever is in the best interest of the State of Kansas.

5. SPECIFICATIONS

5.1 General Summary

This Request for Proposal (the “RFP”) is issued by State of Kansas to solicit proposals and qualifications from vendors. The goal is for the vendors to provide proposals for:

Option A – providing the construction of the Energy and Service Center (ESC).

Option B – to provide the construction financing of the ESC in the best interest of the State of Kansas.

The Option B Vendors may be:

- 1) Developers that describe their proposal and capabilities to finance and construct the ESC improvements.
- 2) Energy Service Companies (ESCOs) that describe their proposal and capabilities to finance and Construct an ESC improvements and additional improvements on the Capital Complex to supplement their proposal.

The Vendor will actively work with the State assisting them with decisions on the design and construction of the ESC with the State of Kansas.

The Vendor is asked to put together a package for financing of a “lease to own” the ESC. This project is to be a Private/Public Partnership with no capital cost to the State of Kansas.

5.2 History/Existing Conditions

The Capitol Complex was served by a Central Utility Steam Plant located at or near 7th and Van Buren, owned and operated by Kansas Power and Light, providing heat for downtown buildings. Abandoned steam lines are still located below the sidewalk along Van Buren. In approximately 1984, the downtown distributed steam system was shut down and the Docking Boiler Plant was constructed to serve the State buildings served by that system. Steam lines were installed from Docking to the Capitol (“Capitol or Statehouse”) and then tied into the old downtown brick tunnel system on the east side of the Capitol. This old tunnel fed the Landon Building (“Landon”), and Memorial Hall (“Memorial”). Heat was fed to the Kansas Judicial Center via direct buried pipes from the old tunnel. This nearly 100-year-old tunnel system began to deteriorate and it was decided to partially replace the system with tunnels between the Capitol and Landon, piping through Landon and Memorial Hall, through a new tunnel between Memorial and Curtis Building (“Curtis”), through Curtis and to Kansas Judicial Center via a new tunnel constructed between Curtis and the Kansas Judicial Center. The work was completed in 2010 at a cost of \$4.8 million. The steam plant in Docking currently serves Docking, the Capitol, Landon, Memorial, Curtis, and the Kansas Judicial Center. Eisenhower State Office Building (“Eisenhower”) has its own boiler system.

Currently, the boilers and chillers to heat and cool the Capitol Complex are located in the basement and sub-basement of Docking. Before the building can be demolished, a new facility to house the equipment and maintenance shops will have to be constructed. Existing equipment that will be relocated as a part of the project includes two new 400-ton chillers and associated drives, pumps and valves. Existing electrical switchgear, generator, and associated equipment must also be relocated, if feasible.

The chilled water system from Docking to the Capitol was extended from the Capitol to Landon, and through Landon to Memorial with the new tunnel addition. While Docking, Landon, and Memorial have their own chillers, combining them allows economy of maximizing the loads on the running chillers and not running

multiple chillers partially loaded. The Capitol is supplied with chilled water from two Capitol chillers installed in 2012 in Docking. Curtis has a different type of distributed cooling system. Eisenhower and Kansas Judicial Center also have their own chiller systems.

5.3 State of Kansas Capitol Complex

The 31,300 square foot proposed ESC has been located as close as possible to the utilities of steam and chilled water to minimize the costs of tunnels and piping. The ESC will be located close to the Capitol Complex for ease of staff to access the buildings.

The facility will be built for a minimum 50-year service life. An energy efficient operation is important. Efficiency of space utilization for the shop areas shall be considered.

The ESC will house new boilers that will provide the steam heat for the Capital Complex. The Statehouse chillers and a new chiller will provide cooling for the Statehouse and connect to the existing chilled water distribution system.

In addition to the chillers and boilers, the building will house the Capitol Police (Troop K). The ESC will house the Department of Administration Lock Shop, Construction Crew, HVAC Crew, and Electrical Crew, as well as, the Department's warehouse.

The project to build the ESC also includes the construction of a tunnel to connect the facility to the Statehouse. The piping from the Center will continue thru the tunnel and Statehouse to reconnect back to the distribution piping coming from Docking.

The State of Kansas has engaged a Team of Professional Architects and Engineers to design the Center and Tunnel system. The consultant fees are included in the amount financed. The State of Kansas's scope of work to the Consultants' is in a project program.

The construction schedule has been developed by the State of Kansas (attached).

5.4 State of Kansas Utilities – Electrical

The State of Kansas receives electric service from Westar Electric as a medium general service customer. The State of Kansas consumes 30,000,000 KWh of electricity per year on the Capital Complex. The buildings have individual service feeds from Westar Electric. The ESC will have its own independent feed from the other buildings. The annual estimated electrical usage for the ESC is 1,544,990 kWh at a cost of \$146,602. The annual cooling provided by the facility is estimated to be 2,344,355 gpm. The estimated cooling only costs are \$100,220. The total generating costs are \$0.204 per gpm of cooling.

5.5 State of Kansas Utilities – Natural Gas and Steam

The annual natural gas usage for the Capital Complex is approximately 27,000 MCF. The Docking State Office building has 3 – 300 BHP boilers and 1-400 BHP Boiler. It provides steam heat for the Capital Complex. Boilers in the ESC will replace the boilers in Docking. All heat for the complex will be out of the ESC; the other Capital Complex buildings do not have gas service. Eisenhower is the exception; it has its own boiler heating system and gas service to the building. The estimated annual gas usage for the ESC is 41,463 MCF at a cost of \$247,949.00. The annual steam production for the facility is estimated at 47,076,481 lbs. of steam, at an annual direct cost of \$392,343. The total generating costs per pound of steam is \$0.0217.

5.6 Option A – Construction of New Energy and Service Center

This option shall be strictly for the lump sum pricing to build the ESC. Technical proposals shall include contractor pre-qualifications, bonding and insurance. The plans, specifications, and any resulting addenda will be attached to this bid event and found at:

<http://admin.ks.gov/offices/procurement-and-contracts/bid-solicitations>

After accessing this link, scroll down and point and click on the Bid Number, and then scroll down and find the Bid Files that are attachments to the bid event.

This option will have Bond Requirements as described in the specifications. A Bid Bond will need to be submitted with the bid. The lump sum bid price shall be submitted on the Bid Form provided in the specifications. All bidding contractors must complete the prequalification process noted in the specifications.

In this option, the vendor is to provide an ESC according to the design documents provided by the State of Kansas. At the initial outset of the bid period, the documents will not be 95% complete. Prior to the final bid proposal, final bid documents will be provided on the link. Vendor is encouraged to ask any questions regarding the defined scope of work, clarifications, etc. during the questions and answer period, prior to the final bids being given.

The price will be a lump sum. The construction of the tunnel and plant is on the critical path of changes on the Capital Complex. Under the negotiated procurement process, the contractor may submit additional proposals with different costs and time schedules. The estimated costs of the Energy and Service Center is not to exceed \$11 million.

5.6.1 Contractor Pre-Qualification

- A. This project requires that all contractors wishing to bid as the prime must be pre-qualified by the Office of Facilities and Procurement Management.
- B. Plans will not be sent to prime contractors that are not pre-qualified.
- C. For more information on pre-qualification please visit our website at <http://www.da.ks.gov/fp/> and follow the links to contractor pre-qualification or call (785) 296-8899.
- D. Bids submitted by contractors not pre-qualified will be returned to the bidder unopened.

5.6.2 Bidder Qualifications:

- A. Any or all bidders may be required by the Director, Procurement and Contracts to furnish information to support the bidder's capability to comply with conditions for bidding and to fulfill the Contract if awarded the Contract. Such information may include, but not be limited to, the following:
 - 1. Proof of registration with the Kansas Director of Taxation by non-resident Bidders (K.S.A. 79-1009).
 - 2. Proof of registration with the Kansas Secretary of State by foreign corporations.
 - 3. List of projects of similar size and type the bidder has constructed or in which the bidder has been engaged in a responsible capacity.
 - 4. Evidence the bidder maintains a permanent place of business.
 - 5. A current financial statement.
 - 6. Contractor's Compliance Report and Plan of Action in accordance with provisions of the Kansas Act Against Discrimination (K.S.A. 1978, Supp. 44-1030 and 44-1031).
 - 7. When applicable, provide proof of bidder's authorization for removal, handling and disposal of friable asbestos containing material by attachment of a copy of the Kansas Department of Health and Environment's license to perform said activities. (Ref. K.S.A. 65-5301 et seq.)

5.7 Option B – Lease To Own And Operate the New Energy and Service Center

In this option, the vendor is to provide an ESC according to the design documents provided by the State of Kansas. At the initial outset of the bid period, the documents will not be 95% complete. Prior to the final bid proposal, final bid documents will be provided on the link. Vendor is encouraged to ask any questions regarding the defined scope of work, clarifications, etc. during the questions and answer period, prior to the final bids being given.

The construction of the tunnel and plant is on the critical path of changes on the Capital Complex. Under the negotiated procurement process, the contractor may submit additional proposals with different costs and time schedules.

This option includes 2 (two) phases. Phase I will be the “Proposal Phase” and Phase II will be the “Implementation Phase”. (This Option shall include Technical Proposals and Cost Proposals.)

5.7.1 Phase I – Proposal Phase

State of Kansas plans to lease to own and operate the Energy and Service Center. Vendors should include the option for the Vendor to Own and Operate the ESC. The State of Kansas will make the lease payments of the project financing from State budgets, with annual energy savings that become available with the installation of the ESC, or other financial benefits as identified by the Vendors. The State of Kansas will continue to do maintenance, operation, and management of the facility. Under the Vendor Operation option, the maintenance, operation and management of the facility will be by the Vendor. The proposals shall provide the projected cost of maintenance, operations and management of the ESC.

The vendor may propose changes to the design of the ESC. Cost savings changes will be considered when awarding the bid. If the Vendor proposes to increase the scope of work, the increase must be approved by the State of Kansas. The additional scope of work and costs must be reflected in their proposal.

ESCOs that will require additional monitoring, data collection, connection to the Outside internet will have to be identified by the vendor. The responsibility and expenses of this must be identified in the proposal.

The State of Kansas will negotiate mutually acceptable contract terms and conditions with the selected vendor.

The goal of this Phase is to present the project structure, perform an economic life cycle analysis, identify how performance will be monitored, and provide the payment schedule for the State. In this proposal Phase, the vendor will present their financial solution to fund the construction of the energy and service center project. The solutions may be limited to the project itself, or to also include the buildings connected to the distribution system supplied by the center.

The State of Kansas has developed a proposed schedule for the project. The vendor will work with the State of Kansas to keep the project on schedule and not delay the construction of the building and tunnels.

The Project Vendor will work with State of Kansas to: (if necessary for the Vendor’s proposal)

1. Evaluate and determine the best combination of options for the center.
2. Evaluate the feasibility and perform payback analysis
3. Identify operation and maintenance service costs, metering requirements, and compliance criteria.
4. Develop project and payback schedule(s).

5. Prepare a plan for early buyout by the State, listing any fees and penalties.

5.7.2 Phase II – Project Implementation Phase

Upon the completion of Phase 1, State of Kansas will determine whether to proceed with Phase II. Phase II will be the determination and negotiation of the terms and conditions of the “Lease to Own” contract.

For ESCOs, in Phase II implementation of the energy conservation measure will be reviewed for additional construction, metering, equipment and other improvements that will need to be completed. Evaluations of your proposal will utilize as guidelines and methodology the requirements under the Kansas Corporation Commission for Energy Service Companies, if applicable.

5.8 RFP Response Requirements

The following information should be included in the RFP response in the following order:

5.8.1 Executive Summary

Provide a summary of the scope of services that your organization plans to provide. Specify your understanding of State of Kansas's objectives, anticipated challenges, and the level of effort that is required to successfully deliver the financing and the implementation of the project.

5.8.2 Team/Company Qualifications

Describe your firm's organizational structure including any limited partnerships and how they are applied to this proposed project.

List all the intended sub-contractors for this project and their respective scopes of work. Identify the point of contact individual with their title, phone number, email address, and full mailing address.

Describe your company's experience and qualifications in the following areas:

1. Experience with completing projects on State of Kansas facilities or similar facilities.
2. Experience with projects with State of Kansas.
3. Describe your project management skills and approach to quality, budget, schedule and risk mitigation.
4. Describe your skills and approach to commissioning, start up and training of State of Kansas staff related to a complex utility plant project.
5. Describe your qualifications and approach with financing large capital projects in the energy industry.
6. Provide evidence of ability to secure the financing requirements outlined in this RFP.
7. Identify your bonding agent, current maximum bonding capacity and rate.
8. Provide proof of licensure in the State of Kansas.
9. Provide information on any current or prior litigation going back 10 years or less.
10. Provide information on any law suits your company is involved in with regards to performance based contracts.

5.8.3 Project References

Provide references of installation projects in the United States, preferably similar to the proposed system for State of Kansas.

1. Client Name: _____
2. Contact Person and Phone Number: _____
3. Installation Date: _____
4. Project Cost: _____

5. Source of Project Funding: _____
6. Project duration in months: _____
7. Team Members who worked on the project: _____

5.8.4 Team Members Qualifications and Experience

Provide resumes of the team members referenced in the organizational chart and their respective role and experience with the referenced projects. For each team member, provides evidence of experience with energy, utility or other facilities on a centralized complex.

5.8.5 Summary Table

Based on your firm's experience as a project developer please provide the following:

Financial Interest Rate for a 10 year term, a 15 year term, and 20 year term, if the project is being implemented today:

10 year term:	_____ %
15 year term:	_____ %
20 year term:	_____ %

If necessary, as part of the Vendor's proposal:

Engineering Fees:	_____ % of Project Cost
Project Management Fees:	_____ % of Project Cost
Legal / Bonding Fees:	_____ % of Project Cost
Overhead General Fees:	_____ % of Project Cost

5.8.6 Partnership Value to State of Kansas/Terms and Conditions

What additional value can your firm bring to State of Kansas with the design and construction of this project, such as educational tools, presentation seminars, dashboards, grants, rebates, price discounts, ability to fix prices for a predetermined period of time, etc.

The Parties will mutually negotiate the terms and conditions of the Lease to Own agreement..

5.9 Additional Requirements

Insurance Requirements

Firms must provide an insurance certificate as part of their proposal submittal showing evidence of the below, if they propose to be working on site. If you cannot meet these requirements currently, then proposals must include a statement agreeing to meet these requirements at no additional cost by the time of contract signing. Failure to meet this requirement in your RFP response may eliminate your company's proposal.

- A. The Vendor shall not commence work under this Contract until the Vendor has obtained all the insurance required under this Article and such insurance has been approved by the State of Kansas under the terms of this agreement. The Vendor shall not allow any subcontractor to commence work on the subcontract until the insurance required of the subcontractor has been so obtained and approved. Companies providing insurance coverage must be authorized to transact the business of insurance in Kansas as an authorized insurer or eligible "non-admitted" insurer in accordance with K.S.A. 40-214 and K.S.A. 40-246e, respectively. Automobile liability and workers compensation insurance coverage must be obtained from insurers

that are "authorized" to transact the business of insurance in Kansas pursuant to K.S.A. 40-3103 and K.S.A. 44-532, respectively.

- B. The Vendor shall procure and maintain at its expense, from the date of the Vendor's receipt of a Notice to Proceed until acceptance of the entire work by the State of Kansas, the following insurance:
 - 1. Worker's compensation insurance for the Vendor, all partners and employees working on the project. The Vendor shall require all subcontractors to provide workmen's compensation for themselves, their partners and employees to be engaged in such work unless the subcontractor's employees are covered by the Vendor's workers' compensation coverage. The Vendor and all subcontractors shall include employer's liability coverage with a one hundred thousand dollars (\$100,000) limit for each accident; disease-policy limit; and disease-each employee limit.
 - 2. Commercial general liability insurance, in an amount not less than five hundred thousand dollars (\$500,000) each occurrence for bodily injury and property damage, a general aggregate of one million dollars and a products-completed operations aggregate of one million dollars (\$1,000,000). Commercial general liability shall include the following coverages: operations; broad form property damage; completed operations; independent contractors and contractual.
 - 3. Automobile liability insurance in an amount not less than five hundred thousand dollars (\$500,000) for bodily injury and for property damage combined. Said coverage shall cover all owned, non-owned or hired vehicles of the vendor.
 - 4. If asbestos abatement coverage is not included in commercial general liability policy, provide a separate policy which does provide coverage for asbestos abatement. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:
 - a. Asbestos abatement liability coverage \$1,000,000 each occurrence/\$1,000,000 aggregate.
 - b. Insurance carrier and policy type (claims made/occurrence) are subject to acceptability by State of Kansas. Claims made policies are acceptable if there is an unlimited extended reporting period endorsement purchased upon discontinuance of the claims made policy.
 - 5. Automobile liability insurance in an amount not less than \$500,000 for bodily injury and for property damage combined. Said coverage shall cover all owned, non-owned or hired vehicles of the vendor.
 - a. Vehicles used for hauling of asbestos waste - asbestos abatement liability coverage \$500,000 for bodily injury and for property damage combined/\$1,000,000 aggregate.
 - b. In lieu of the General Vendor providing the insurance required in paragraphs B(4) and B(5), the General Vendor's abatement subcontractor may provide this coverage.
- C. Scope of insurance and special hazards: The insurance provided under paragraph B above shall provide protection for the Vendor and his subcontractors against damage claims which may arise from operations under this Contract, whether such operations be by the insured or by anyone directly or indirectly employed by him, and also against any of the following special hazards which may be encountered in the performance of work under this Contract such as but not limited to: blasting, explosion, collapse, underground, rigging and hoisting, railroad protective, elevators and hoists.
- D. Special form builder's risk: For this project, the principal contractor shall procure and maintain special form builder's risk insurance to include theft to protect the mutual interest of the owner and the contractor in an amount of one hundred percent (100%) of the contract price. No other contractor is required to carry the special form builder's insurance on this project. The insurance is to apply from the contractor's receipt of a Notice to Proceed until acceptance of the entire work by the owner.

Bonds

- A. A Performance Bond shall be furnished to the State of Kansas by the Vendor in an amount equal to one hundred percent (100%) of the Contract price as security for the faithful performance of this Contract and as security for the payment of all persons performing labor and furnishing materials in connection with this Contract. Bonds are to cover all claims discovered during construction or prior to the end of the warranty period.
- B. A Public Works Bond as required by K.S.A. 60-1111 shall be furnished to the State of Kansas by the Vendor in the amount of one hundred percent (100%) of the contract price and shall be filed with the Clerk of the District

Court in the county where the Project is being constructed. A Public Works Bond is not required for projects with a contract price below \$100,000.

- C. Bonds shall be issued by a surety company authorized by Kansas law and returned within 15 calendar days.

Assignments

- A. The Vendor shall not assign the whole or any part of this Contract or any moneys due or to become due hereunder without written consent of the State of Kansas; Office of Facilities and Procurement Management; Director of Procurement and Contracts and the Director of Accounts and Reports. In case the Vendor assigns all or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Vendor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the work called for in this Contract.
- B. Such assignment shall not be made without the consent of the surety unless the surety has waived its right to notice of assignment.

6. PRICING INFORMATION

Technical Proposals are to be separated from Cost Proposals. See Section 2 for details.

Option A

This option requires the use of the Bid Form provided in the specifications.

A Bid Bond will be required as detailed in the specifications.

Certificates of Tax Clearance are required for the General Contractor and the named major subcontractors.

Technical Proposals are required for this option. The technical proposals will include proof of contractor prequalification, bid bond, and insurance information as outlined in 5.6.

Option B

See Section 5 for complete details.

Technical and Cost Proposals are required.

State of Kansas
Department of Administration
DA-146a (Rev. 06-12)

CONTRACTUAL PROVISIONS ATTACHMENT

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

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

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.

Office of the Secretary
1000 SW Jackson, Suite 500
Topeka, KS 66612



Phone: 785-296-3011
Fax: 785-296-2702
www.admin.ks.gov

Sarah L. Shipman, Acting Secretary

Sam Brownback, Governor

January 27, 2016

McCarthy Building Companies, Inc.
10601 Mission Road, Suite 220
Leawood, Kansas 66206

Re: EVT0003634
New Energy and Service Center
Topeka, Kansas

Dear Sir,

Pursuant to Article 24 of Document D, the General Conditions of the Contract, I am hereby ordering you suspend and delay all work pursuant to our Construction Contract on the above project. At this point the suspension is indefinite, but we expect to be able to get back to you in the near future with more specific information on how we will proceed on the project. Please do not expend any additional funds on the project at this time.

I deeply regret this action, but am in hopes we will be able to restart the project soon. If you have any questions, please contact me or our Office of Facilities and Property Management.

Sincerely,

Sarah L. Shipman
Acting Secretary
Kansas Department of Administration

SLS:mls