



UNIVERSITY
OF KENTUCKY

Purchasing Division

Request for Proposal

UK-2345-23

Proposal Due Date - 05/10/2023

Job Order Contracting Software and Support



UNIVERSITY OF KENTUCKY

Purchasing Division

REQUEST FOR PROPOSAL (RFP)

ATTENTION: This is not an order. Read all instructions, terms and conditions carefully.

PROPOSAL NO.:	UK-2345-23	RETURN ORIGINAL COPY OF PROPOSAL TO:
Issue Date:	04/12/2023	UNIVERSITY OF KENTUCKY
Title:	Job Order Contracting Software and Support	PURCHASING DIVISION
Purchasing Officer:	Corey W. Leslie	411 S LIMESTONE
Contact:	corey.leslie@uky.edu	ROOM 322 PETERSON SERVICE BLDG.
		LEXINGTON, KY 40506-0005

IMPORTANT: PROPOSALS MUST BE RECEIVED BY: 05/10/2023 3 P.M. LEXINGTON, KY TIME.

NOTICE OF REQUIREMENTS

1. The University's General Terms and Conditions and Instructions to Bidders, viewable at <https://purchasing.uky.edu/bid-and-proposal-opportunities>, apply to this RFP. When the RFP includes construction services, the University's General Conditions and Special Conditions for Construction and Instructions to Bidders, viewable at <https://purchasing.uky.edu/bid-and-proposal-opportunities>, apply to the RFP.
2. Contracts resulting from this RFP must be governed by and in accordance with the laws of the Commonwealth of Kentucky.
3. Any agreement or collusion among offerors or prospective offerors, which restrains, tends to restrain, or is reasonably calculated to restrain competition by agreement to bid at a fixed price or to refrain from offering, or otherwise, is prohibited.
4. Any person who violates any provisions of KRS 45A.325 shall be guilty of a felony and shall be punished by a fine of not less than five thousand dollars nor more than ten thousand dollars, or be imprisoned not less than one year nor more than five years, or both such fine and imprisonment. Any firm, corporation, or association who violates any of the provisions of KRS 45A.325 shall, upon conviction, be fined not less than ten thousand dollars or more than twenty thousand dollars.

AUTHENTICATION OF BID AND STATEMENT OF NON-COLLUSION AND NON-CONFLICT OF INTEREST

I hereby swear (or affirm) under the penalty for false swearing as provided by KRS 523.040:

1. That I am the offeror (if the offeror is an individual), a partner, (if the offeror is a partnership), or an officer or employee of the bidding corporation having authority to sign on its behalf (if the offeror is a corporation);
2. That the attached proposal has been arrived at by the offeror independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other Contractor of materials, supplies, equipment or services described in the RFP, designed to limit independent bidding or competition;
3. That the contents of the proposal have not been communicated by the offeror or its employees or agents to any person not an employee or agent of the offeror or its surety on any bond furnished with the proposal and will not be communicated to any such person prior to the official closing of the RFP;
4. That the offeror is legally entitled to enter into contracts with the University of Kentucky and is not in violation of any prohibited conflict of interest, including, but not limited to, those prohibited by the provisions of KRS 45A.330 to .340, and 164.390;
5. That the offeror, and its affiliates, are duly registered with the Kentucky Department of Revenue to collect and remit the sale and use tax imposed by Chapter 139 to the extent required by Kentucky law and will remain registered for the duration of any contract award;
6. That I have fully informed myself regarding the accuracy of the statement made above.

SWORN STATEMENT OF COMPLIANCE WITH CAMPAIGN FINANCE LAWS

In accordance with KRS 45A.110 (2), the undersigned hereby swears under penalty of perjury that he/she has not knowingly violated any provision of the campaign finance laws of the Commonwealth of Kentucky and that the award of a contract to a bidder will not violate any provision of the campaign finance laws of the Commonwealth of Kentucky.

CONTRACTOR REPORT OF PRIOR VIOLATIONS OF KRS CHAPTERS 136, 139, 141, 337, 338, 341 & 342

The contractor by signing and submitting a proposal agrees as required by 45A.485 to submit final determinations of any violations of the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that have occurred in the previous five (5) years prior to the award of a contract and agrees to remain in continuous compliance with the provisions of the statutes during the duration of any contract that may be established. Final determinations of violations of these statutes must be provided to the University by the successful contractor prior to the award of a contract.

CERTIFICATION OF NON-SEGREGATED FACILITIES

The contractor, by submitting a proposal, certifies that he/she is in compliance with the Code of Federal Regulations, No. 41 CFR 60-1.8(b) that prohibits the maintaining of segregated facilities.

SIGNATURE REQUIRED: This proposal cannot be considered valid unless signed and dated by an authorized agent of the offeror. Type or print the signatory's name, title, address, phone number and fax number in the spaces provided. Offers signed by an agent are to be accompanied by evidence of his/her authority unless such evidence has been previously furnished to the issuing office.

DELIVERY TIME:	NAME OF COMPANY:	DUNS #
PROPOSAL FIRM THROUGH:	ADDRESS:	Phone/Fax:
PAYMENT TERMS:	CITY, STATE & ZIP CODE:	E-MAIL:
SHIPPING TERMS: F. O. B. DESTINATION PREPAID AND ALLOWED	TYPED OR PRINTED NAME:	WEB ADDRESS:
FEDERAL EMPLOYER ID NO.:	SIGNATURE:	DATE:

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1.0 DEFINITIONS

The term "addenda" means written or graphic instructions issued by the University of Kentucky prior to the receipt of proposals that modify or interpret the RFP documents by additions, deletions, clarifications and/or corrections.

The term "competitive negotiations" means the method authorized in the Kentucky Revised Statutes, Chapter 45A.085.

The terms "offer" or "proposal" mean the offeror's/offers' response to this RFP.

The term "offeror" means the entity or contractor group submitting the proposal.

The term "contractor" means the entity receiving a contract award.

The term "purchasing agency" means the University of Kentucky, Purchasing Division, Room 322 Peterson Service Building, Lexington, KY 40506-0005.

The term "purchasing official" means the University of Kentucky's appointed contracting representative.

The term "responsible offeror" means a person, company or corporation that has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will assure good faith performance. In determining whether an offeror is responsible, the University may evaluate various factors including (but not limited to): financial resources; experience; organization; technical qualifications; available resources; record of performance; integrity; judgment; ability to perform successfully under the terms and conditions of the contract; adversarial relationship between the offeror and the University that is so serious and compelling that it may negatively impact the work performed under this RFP; or any other cause determined to be so serious and compelling as to affect the responsibility of the offeror.

The term "solicitation" means RFP.

The term "University" means University of Kentucky.

2.0 GENERAL OVERVIEW

2.1 Intent and Scope

The University of Kentucky (“University”) is seeking Proposals from highly qualified firms (“Offerors”) to provide software, pricing database and support services to assist the University in managing its Job Order Contract Program (JOC Program), from the period beginning **at the effective date of executed contract** through **June 30, 2027**, with the option to renew for three (3) additional two-year periods at the same terms and conditions based on satisfactory performance, continuing need and availability of funds.

The University’s goal is to have a functional and fully operational system no later than **July 1, 2023**.

2.2 Background Information

A JOC Program contract is a competitively bid, indefinite quantity contract. It includes a collection of detailed new construction, renovation and repair tasks, and specifications with pre-established unit prices including a contractor bid mark-up. The contract is intended for new construction, renovation, and repairs at the University. Task ordering is accomplished through the issuance of a Job Order against the Contract.

JOC software resides in a secure, accessible, web-based system available to selected JOC Contractors and University-authorized personnel. The software required consists of, at a minimum, a report- and proposal-generating solution, task and price catalog, and coordinated technical specifications. Policies and procedures for this program are managed by the University of Kentucky Facilities Services Division.

The vendor will provide the software solution, pricing database, and subject matter and technical support services necessary to assist the University in managing the JOC Program.

2.3 University Information

Since his arrival, President Eli Capilouto has set forth an ambitious agenda to extend and enhance our role as Kentucky’s land-grant and flagship research university. By focusing on infrastructure growth and improvement; creating opportunities for innovative teaching, learning, and academic excellence; fostering a robust research and creative scholarship enterprise; providing life-saving subspecialty care; empowering communities through service and outreach; and encouraging a transparent and shared dialogue about institutional priorities; the University of Kentucky will ensure a new century of promise for the people we impact.

Founded in 1865 as a land-grant institution adjacent to downtown Lexington, UK is nestled in the scenic heart of the beautiful Bluegrass Region of Kentucky. From its early beginnings, with only 190 students and 10 professors, UK’s campus now covers more than 918 acres and is home to more than 30,000 students and approximately 14,500 employees, including more than 2,300 full-time faculty. UK is one of a small number of universities in the United States that has programs in agriculture, engineering, a full complement of health colleges including medicine and pharmacy, law

and fine arts on a single campus, leading to groundbreaking discoveries and unique interdisciplinary collaboration. The state's flagship university consists of 17 academic and professional colleges where students can choose from more than 200 majors and degree programs at the undergraduate and graduate levels. The colleges are Agriculture, Food and Environment; Arts and Sciences; Business and Economics; Communication and Information; Dentistry; Design; Education; Engineering; Fine Arts; Graduate School; Health Sciences; Law; Medicine; Nursing; Pharmacy; Public Health; and Social Work. These colleges are supported by a modern research library system.

Research at the University of Kentucky is a dynamic enterprise encompassing both traditional scholarship and emerging technologies, and UK's research faculty, staff and students are establishing UK as one of the nation's most prolific public research universities. UK's research enterprise attracted \$285 million in research grants and contracts from out-of-state sources, which generated a \$580 million impact on the Kentucky economy. Included in this portfolio is \$153 million in federal awards from the National Institutes of Health, non-NIH grants from the Department Health and Human Services, the National Science Foundation, Department of Energy, Department of Agriculture and NASA, among others. The National Science Foundation ranks UK's research enterprise 44th among public institutions.

With more than 50 research centers and institutes, UK researchers are discovering new knowledge, providing a rich training ground for current students and the next generation of researchers, and advancing the economic growth of the Commonwealth of Kentucky. Several centers excel in the services offered to the public. The Gluck Equine Research Center is one of only three facilities of its kind in the world, conducting research in equine diseases.

The Center for Applied Energy Research is pursuing groundbreaking discovery across the energy disciplines. CAER staff are pioneering new ways to sustainably utilize Kentucky natural resources through carbon-capture algae technology, biomass/coal to liquid products and the opening of UK's first LEED-certified research lab to support the development of Kentucky's growing alternative energy industry. Among the brightest examples of UK's investment in transformative research is the Markey Cancer Center. As a center of excellence and distinction at UK, Markey's robust research and clinical enterprise is the cornerstone of our commitment to Kentucky – fundamental to our success in uplifting lives through our endeavors and improving the general health and welfare of our state – burdened by the nation's highest rate of cancer deaths per 100,000 people. In 2013, Markey earned the prestigious National Cancer Institute-designation (NCI) – one of 68 nationally and the only one in Kentucky.

The University of Kentucky was awarded a \$20 million Clinical Translational Sciences Award (CTSA) from the National Institutes of Health (NIH). As one of only 60 institutions with this research distinction, UK was awarded the CTSA for its potential in moving research and discovery in the lab into practical field and community applications. The CTSA and NCI are part of a trifecta of federal research grants that includes an Alzheimer's Disease Center. UK is one of only 22 universities in the country to hold all three premier grants from NIH.

Established in 1957, the medical center at UK is one of the nation's finest academic medical centers and includes the University's clinical enterprise, UK HealthCare. The 569-bed UK Albert B. Chandler Hospital and Kentucky Children's Hospital, along with 256 beds at UK Good Samaritan Hospital, are supported by a growing faculty and staff providing the most advanced subspecialty care for the most critically injured and ill patients throughout the Commonwealth and beyond. Over the last several years, the number of patients served by the medical enterprise has increased from roughly 19,000 discharges to more than 36,000 discharges in 2014.

UK Chandler Hospital includes the only Level 1 Trauma Center for both adult and pediatric patients in Central and Eastern Kentucky. In addition, UK HealthCare recently opened one of the country's largest robotic hybrid operating rooms and the first of its kind in the region. While our new patient care pavilion is the leading healthcare facility for advanced medical procedures in the region, our talented physicians consult with and travel to our network of affiliate hospitals so Kentucky citizens can receive the best health care available close to their home and never need to leave the Bluegrass for complex subspecialty care.

King's Daughters Medical Center based in Ashland Kentucky officially became part of the University of Kentucky. King's Daughters Medical Center serves a 16-county region across Kentucky, Ohio, and West Virginia. Its health system is comprised of two acute-care hospitals totaling 465 licensed beds, more than 50 ambulatory centers and practice locations, a long-term care facility, medical transport company, and six urgent care centers.

UK's agenda remains committed to accelerating the University's movement toward academic excellence in all areas and gain worldwide recognition for its outstanding academic programs, its commitment to students, its investment in pioneering research and discovery, its success in building a diverse community and its engagement with the larger society. It is all part of the University's fulfillment of our promise to Kentucky to position our state as a leader in American prosperity.

SUSTAINABILITY

Sustainability is an institution-wide priority for the University of Kentucky. We strive to ensure that all activities are ecologically sound, socially just, and economically viable, and that they will continue to be so for future generations. This commitment also prioritizes the integration of these principles in curricula, research, athletics, health care, creative works, and outreach. This principled approach to operational practices and intellectual pursuits is intended to prepare students and empower the campus community to support sustainable development in the Commonwealth and beyond. The UK Sustainability Strategic Plan guides these efforts (<https://www.uky.edu/sustainability/sustainability-strategic-plan>).

2.4 Supplier Diversity and Procurement

The University of Kentucky is committed to serve as an advocate for diverse businesses in their efforts to conduct business. Diverse Business Enterprises (DBE) consist of minority, women, disabled, veteran, and disabled veteran owned business firms that are at least fifty-one percent owned and operated by an individual(s) of the aforementioned categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled.

The University is committed to increasing the amount of goods and services acquired from businesses owned and controlled by diverse persons to 10% of all procurement expenditures. The University expects its suppliers to support and assist in this effort.

Among the University's goals for DBE participation in procurement are:

- To ensure the absence of barriers that reduce the participation of diverse suppliers
- Educate vendors on "how to" do business with the University

- Support diverse vendors seeking to do business with the University in the areas of goods, services, construction, and other areas of procurement
- Encourage participation of qualified diverse vendors by directing them to agencies that can benefit from their product or service
- Provide resources for diverse vendors
- Sponsor events to assist diverse vendors in becoming active, responsible, and responsive participants in the University's purchasing opportunities

For additional information regarding how diverse suppliers may participate in this Request for Proposal, submit any questions to the Purchasing Officer as indicated in Section 3.2 by the Deadline for Written Questions date.

3.0 PROPOSAL REQUIREMENTS

3.1 Key Event Dates

Release of RFP	04/12/2023
Pre-Proposal Conference (Optional)	04/19/2023
Deadline for Written Questions	3 p.m. Eastern Time on 04/26/2023
RFP Proposals Due	3 p.m. Eastern Time on 05/10/2023
Presentations*	05/17/2023

*projected date

3.2 Offeror Communication

To ensure that RFP documentation and subsequent information (modifications, clarifications, addenda, Written Questions and Answers, etc.) are directed to the appropriate persons within the offeror's firm, each offeror who intends to participate in this RFP is to provide the following information to the purchasing officer. Prompt, thorough compliance is in the best interest of the offeror. Failure to comply may result in incomplete or delayed communication of addenda or other vital information. Contact information is the responsibility of the offeror. Without the prompt information, any communication shortfall shall reside with the offeror.

- Name of primary contact
- Mailing address of primary contact
- Telephone number of primary contact
- Fax number of primary contact
- E-mail address of primary contact
- Additional contact persons with same information provided as primary contact

This information shall be transmitted via fax or e-mail to:

Mr. Corey W. Leslie
Purchasing Division
University of Kentucky
322 Peterson Service Building
Lexington, KY 40506-0005
Phone: (859) 257-9100
Fax: (859) 257-1951
E-mail: corey.leslie@uky.edu

All communication with the University regarding this RFP shall only be directed to the purchasing officer listed above.

3.3 Pre-Proposal Conference

A pre-proposal conference will be held via Zoom **on 04/19/2023 at 10:30 a.m.** Lexington, KY time to allow prospective contractors an opportunity to ask questions and clarify the University's expectations. This conference provides offerors an opportunity for oral questions.

Zoom Information:

Link: <https://uky.zoom.us/j/84566235372>

Meeting ID:845 662 5372

The following items should be noted in reference to the pre-proposal conference:

- Attendance at the pre-proposal conference is optional. At this conference, the scope of services will be discussed in detail.
- Offerors are encouraged to submit written questions after the conference by the date listed in Section 3.1.

The University will prepare written responses to all questions submitted and make them available to all offerors. The questions and answers will be made part of the RFP and may become part of the contract with the successful contractor. Answers given orally at the conference are not binding.

3.4 Offeror Presentations

All offerors whose proposals are judged acceptable for award may be required to make a presentation to the evaluation committee.

3.5 Preparation of Offers

The offeror is expected to follow all specifications, terms, conditions, and instructions in this RFP.

The offeror will furnish all information required by this solicitation.

Proposals should be prepared simply and economically, providing a description of the offeror's capabilities to satisfy the requirements of the solicitation. Emphasis should be on completeness and clarity of content. All documentation submitted with the proposal should be bound in the single volume except as otherwise specified.

An electronic version of the RFP, in .PDF format only, is available through the University of Kentucky Purchasing Division website at: <https://purchasing.uky.edu/bid-and-proposal-opportunities>.

3.6 Proposed Deviations from the RFP

The stated requirements appearing elsewhere in this RFP shall become a part of the terms and conditions of any resulting contract. Any deviations therefrom must be specifically defined in accordance with the transmittal letter, Section 4.3 (d). If accepted by the University, the deviations shall become part of the contract, but such deviations must not be in conflict with the basic nature of this RFP.

Note: Offerors shall not submit their standard terms and conditions as exceptions to the University's General Terms and Conditions. Each exception to the University's General Terms and Conditions shall be individually addressed.

3.7 Proposal Submission and Deadline

Offeror must provide the following materials prior to 3 p.m. (Lexington, KY time) on the date specified in Section 3.1 and addressed to the purchasing officer listed in Section 3.2:

- **Technical Proposal:** One (1) copy on electronic storage device (USB) clearly marked with the proposal number and name, firm name and what is included (Technical Proposal), one (1) original "purchasing" packet, and three (3) hard copies.
- **Financial Proposal:** One (1) copy on electronic storage device (USB) clearly marked with the proposal number and name, firm name and what is included (Financial Proposal), one (1) original "purchasing" packet, and three (3) hard copies.

Note: Proposals received after the closing date and time will not be considered. In addition, proposals received via fax or e-mail are not acceptable.

The University of Kentucky accepts deliveries of RFPs Monday through Friday from 8 a.m. to 5 p.m. Lexington, KY time. However, RFPs must be received by 3 p.m. Lexington, KY time on the date specified on the RFP in order to be considered.

Proposals shall be enclosed in sealed envelopes to the above referenced address and shall show on the face of the envelope: the closing time and date specified, the solicitation number and the name and address of the offeror. The technical proposal shall be submitted in a sealed envelope and the financial proposal shall be submitted in a sealed envelope under separate cover. Both sealed envelopes shall have identical information on the cover, with the addition that one will state "Technical Proposal," and the other, "Financial Proposal."

Note: In accordance with the Kentucky Revised Statute 45A.085, there will be no public opening.

3.8 Modification or Withdrawal of Offer

An offer and/or modification of offer received at the office designated in the solicitation after the exact hour and date specified for receipt will not be considered.

An offer may be modified or withdrawn by written notice before the exact hour and date specified for receipt of offers. An offer also may be withdrawn in person by an offeror or an authorized representative, provided the identity of the person is made known and the person signs a receipt for the offer, but only if the withdrawal is made prior to the exact hour and date set for receipt of offers.

3.9 Acceptance or Rejection and Award of Proposal

The University reserves the right to accept or reject any or all proposals (or parts of proposals), to waive any informalities or technicalities, to clarify any ambiguities in proposals and (unless otherwise specified) to accept any item in the proposal. In case of error in extension or prices or other errors in calculation, the unit price shall govern. Further, the University reserves the right to make a single award, split awards, multiple awards, or no award, whichever is in the best interest of the University.

3.10 Rejection

Grounds for the rejection of proposals include (but shall not be limited to):

- Failure of a proposal to conform to the essential requirements of the RFP.
- Imposition of conditions that would significantly modify the terms and conditions of the solicitation or limit the offeror's liability to the University on the contract awarded on the basis of such solicitation.
- Failure of the offeror to sign the University RFP. This includes the Authentication of Proposal and Statement of Non-Collusion and Non-Conflict of Interest statements.
- Receipt of proposal after the closing date and time specified in the RFP.

3.11 Addenda

Any addenda or instructions issued by the purchasing agency prior to the time for receiving proposals shall become a part of this RFP. Such addenda shall be acknowledged in the proposal. No instructions or changes shall be binding unless documented by a proper and duly issued addendum.

3.12 Disclosure of Offeror's Response

The RFP specifies the format, required information and general content of proposals submitted in response to this RFP. The purchasing agency will not disclose any portions of the proposals prior to contract award to anyone outside the Purchasing Division, the University's administrative staff, representatives of the state or federal government (if required) and the members of the committee evaluating the proposals. After a contract is awarded in whole or in part, the University shall have the right to duplicate, use or disclose all proposal data submitted by offerors in response to this RFP as a matter of public record.

Any submitted proposal shall remain valid six (6) months after the proposal due date.

The University shall have the right to use all system ideas, or adaptations of those ideas, contained in any proposal received in response to this RFP. Selection or rejection of the proposal will not affect this right.

3.13 Restrictions on Communications with University Staff

From the issue date of this RFP until a contractor is selected and a contract award is made, offerors are not allowed to communicate about the subject of the RFP with any University administrator, faculty, staff or members of the board of trustees except: the purchasing office representative, any University purchasing official representing the University administration, others authorized in writing by the purchasing office and University representatives during offeror presentations. If violation of this provision occurs, the University reserves the right to reject the offeror's proposal.

3.14 Cost of Preparing Proposal

Costs for developing the proposals and any subsequent activities prior to contract award are solely the responsibility of the offerors. The University will provide no reimbursement for such costs.

3.15 Disposition of Proposals

All proposals become the property of the University. The successful proposal will be incorporated into the resulting contract by reference.

3.16 Alternate Proposals

Offerors may submit alternate proposals. If more than one proposal is submitted, all must be complete (separate) and comply with the instructions set forth within this document. Each proposal will be evaluated on its own merits.

3.17 Questions

All questions should be submitted by either fax or e-mail to the purchasing officer listed in Section 3.2 no later than the date listed in Section 3.1.

3.18 Section Titles in the RFP

Section titles used herein are for the purpose of facilitating ease of reference only and shall not be construed to infer the construction of contractual language.

3.19 No Contingent Fees

No person or selling agency shall be employed or retained or given anything of monetary value to solicit or secure this contract, except bona fide employees of the offeror or bona fide established commercial or selling agencies maintained by the offeror for the purpose of securing business. For breach or violation of this provision, the University shall have the right to reject the proposal, annul the contract without liability, or, at its discretion, deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee or other benefit.

3.20 Proposal Addenda and Rules for Withdrawal

Prior to the date specified for receipt of offers, a submitted proposal may be withdrawn by submitting a written request for its withdrawal to the University purchasing office, signed by the offeror. Unless requested by the University, the University will not accept revisions or alterations to proposals after the proposal due date.

3.21 Requirement To Perform Vendor Onboarding and Registration

As a condition of award, and for any renewals performed during the life of the contract, successful Contractor agrees to register their company with PaymentWorks, Inc., the University's vendor onboarding application. Registration information will be provided by the Purchasing Division as part of the award process. During the vendor registration process, successful Contractor agrees to provide any applicable information pertaining to diversity demographics for their company. Further, should any company or diversity information change during the life of the contract, successful Contractor agrees to update this information in PaymentWorks as applicable.

4.0 PROPOSAL FORMAT AND CONTENT

4.1 Proposal Information and Criteria

The following list specifies the items to be addressed in the proposal. Offerors should read it carefully and address it completely, and in the order listed to facilitate the University's review of the proposal.

Proposals shall be organized into the sections identified below. The content of each section is detailed in the following pages. It is strongly suggested that offerors use the same numbers for the following content that are used in the RFP.

- Signed Authentication of Proposal and Statement of Non-Collusion and Non-Conflict of Interest Form
- Transmittal Letter
- Executive Summary and Proposal Overview
- Criteria 1 - Offeror Qualifications
- Criteria 2 - Services Defined
- Criteria 3 - Financial Proposal
- Criteria 4 - Evidence of Successful Performance and Implementation Schedule
- Criteria 5 - Other Additional Information

4.2 Signed Authentication of Proposal and Statements of Non-Collusion and Non-Conflict of Interest Form

The Offeror will sign and return the proposal cover sheet and print or type their name, firm, address, telephone number and date. The person signing the offer must initial erasures or other changes. An offer signed by an agent is to be accompanied by evidence of their authority unless such evidence has been previously furnished to the purchasing agency. The signer shall further certify that the proposal is made without collusion with any other person, persons, company or parties submitting a proposal; that it is in all respects fair and in good faith without collusion or fraud; and that the signer is authorized to bind the principal offeror.

4.3 Transmittal Letter

The Transmittal Letter accompanying the RFP shall be in the form of a standard business letter and shall be signed by an individual authorized to legally bind the offeror. It shall include:

- A statement referencing all addenda and written questions, the answers and any clarifications to this RFP issued by the University and received by the offeror (If no addenda have been received, a statement to that effect should be included.).
- A statement that the offeror's proposal shall remain valid for six (6) months after the closing date of the receipt of the proposals.
- A statement that the offeror will accept financial responsibility for all travel expenses incurred for oral presentations (if required) and candidate interviews.

- A statement that summarizes any deviations or exceptions to the RFP requirements and includes a detailed justification for the deviation or exception.
- A statement that identifies the confidential information as described in Section 6.23.

4.4 Executive Summary and Proposal Overview

The Executive Summary and Proposal Overview shall condense and highlight the contents of the technical proposal in such a way as to provide the evaluation committee with a broad understanding of the entire proposal.

As part of the Executive Summary and Proposal Overview, Offeror shall submit with their response a summarized profile describing the demographic nature of their company or organization:

1. When was your organization established and/or incorporated?
2. Indicate whether your organization is classified as local, regional, national, or international.
3. Describe the size of your company in terms of number of employees, gross sales, etc.
4. Is your company certified as small business, minority-owned, women-owned, veteran-owned, disabled-owned, or similar classification?
5. Include other demographic information that you feel may be applicable to the Request for Proposal submission.
6. Describe in detail your company's commitment to diversity, equity, and inclusion. Information should be provided as to the number of diverse individuals that the vendor employees as well as a description of vendors efforts to do business with Diverse Business Enterprises as they conduct their own business. In additional, please indicate the diverse nature of your company as well as ownership race/ethnicity.

Diverse Business Description	Check All That Apply
Minority-Owned	
Woman-Owned	
Small Business	
Veteran-Owned	
LGBTQ-Owned	
Disability-Owned Business Entity (DOBE)	
Diversity not indicated	

Race/Ethnicity	Check One
Asian	
Black/African American	
Hispanic or Latino	
Native American	
Native Hawaiian/Pacific Islander	
White	
Other	
Prefer not to say	

4.5 Criteria 1 - Offeror Qualifications

The purpose of the Offeror Qualifications section is to determine the ability of the offeror to respond to this RFP. Offerors should describe and offer evidence of their ability to meet each of the qualifications listed below.

1. Provide a list of relevant services the company provides.
2. Identify the offeror's branch office addresses, telephone numbers, fax numbers, and contact persons, noting the branch office that would be used to provide the services outlined in this RFP.

3. Key Personnel - The Offeror should identify the key personnel who will be committed to the University's JOC Program. The University reserves the right to reject JOC software vendor's key person(s) if the University, at its sole discretion, determines that doing so is in the JOC Program or the University's best interest. The JOC software vendor shall replace rejected personnel with staff of equal or greater authority and experience. The evaluation of the proposal includes the qualifications of the key personnel identified therein. Therefore, the JOC software vendor shall not replace key personnel without the prior approval of the University, except in situations where the key personnel end their employment with the JOC software vendor's firm. In such cases, key personnel replacements must possess equal or greater authority and experience. Though the University does not require or desire exclusive staffing from the JOC software vendor, it does require priority treatment where staffing resource conflicts arise.

Key Personnel include, but are not limited to:

- ≡ The JOC software vendor's University of Kentucky Account Manager or primary point of contact.
- ≡ The JOC Implementation and Training Teams.
- ≡ The JOC Program Technical Assistance and Support Teams.
- ≡ The JOC Bidding and Contracting Team.

For each Key Person identified above, Offerors should provide: Names, titles, email addresses, and telephone numbers, resumes and/or background information and experience of the key personnel who will be assigned to provide the services outlined in this RFP, including but not limited to:

- ≡ Technical training and education, including applicable certifications.
- ≡ Experience with services being requested for entities of similar size and complexity to the University.
- ≡ Qualifications to perform the services being requested.

4. Provide any other information the Offeror deems pertinent to demonstrating its qualifications to perform the services being requested.

Our supply chains and business partnerships are an important aspect of this work. In your proposal, please (A) provide your company's mission and vision relative to sustainability, and (B) how your company, through services, products, and partnerships, will help the University of Kentucky advance specific elements of the Sustainability Strategic Plan.

4.6 Criteria 2 – Services Defined

Complete the following questions by providing clear and concise answers and supporting details where appropriate. The University regards these clarifications and explanations as important and may disqualify an offeror that does not fully respond. The University is the sole authority for determining if a proposal meets the criteria, requirements, and specifications documented in this RFP.

1. JOC Management Software Solution

The University strongly prefers a solution that is web-based, and that neither any University or JOC Contractor be required to install the JOC software vendor's software. If the JOC software vendor's software solution requires local installation on any machine, the JOC software vendor will be responsible for deployment, testing, troubleshooting, and technical support as required by the JOC Contractor for performance under the JOC Program.

If the JOC management software solution requires -or its performance significantly benefits from- local installation, the JOC software vendor will be responsible for coordinating with University IT staff for deployment, testing, troubleshooting, and technical support as required by the University for performance under the JOC Program.

The solution must comply with all applicable security and accessibility requirements established by law or University Policy. Complete **Appendix A: Accessibility and Appendix B: Security** within the spreadsheet attached to this solicitation and submit with the technical proposal.

The JOC software vendor will be responsible for customizing its solution to adapt to the University's needs and is responsible for ensuring continued mutual compatibility of its solution with the University's existing network.

The University has several performance and user-experience preferences for the functions, operation, maintenance, and support of the solution. **Complete Appendix C: Functional** within the spreadsheet attached to this solicitation and submit with the proposal.

2. JOC Program Implementation and Training

The University has several preferences for the implementation of this solution and training on its use, both for University staff and for future JOC Contractors selected for the JOC Program. Complete **Appendix D: Implementation and Training** within the attached spreadsheet and submit with the proposal.

3. JOC Program Job Order Documentation

The JOC software vendor will provide a full and complete set of customized bid and contract JOC documents including a Unit Price Book, Technical Drawings and Specifications, and the Contractual Terms and Conditions. The successful JOC documentation will include without limitation:

- a. Customized Unit Price Book for contractor proposal generation. The Unit Price Book shall be an up-to-date compilation of unit priced tasks covering all Construction Specifications Institute (CSI) divisions required to complete interior building remodeling, exterior envelope work, and exterior site work around buildings, including voice and data systems, parking facilities, and asbestos abatement. The Unit Price Book shall contain no less than 90,000 individual construction tasks along with associated unit price. Unit prices shall be developed based on the prevailing equipment, material, and labor costs in each project location. The JOC software vendor will be required to identify recurring non-pre-priced items and incorporate them into localized and updated Unit Price Books.
- b. Customized Technical Specifications Book that incorporates University Official Design Standards (Located on the World Wide Web at <https://www.uky.edu/cpmd/official-design-standards>). The Technical Specifications shall be prepared in conjunction with the Unit Price Book and University standards will be incorporated.
- c. Maintain and update the Technical Specification book, as necessary or as requested by the University, and ensure that any changes in the University Facilities Standards are incorporated. *For evaluation purposes, assume a minimum of annual updates.*
- d. Customized JOC Program execution procedures and policies for University, updated as required. Current step-by- step procedures are:

Part 1: Develop Scope of Work

1. University JOC Specialist (JS) receives a request for construction.
2. JS develops preliminary scope of work (SOW) and budgetary estimate.
3. JS selects JOC Contractor.
4. JS schedules and conducts joint scope meeting with the Contractor and Design Services Provider as required.

Part 2: Develop Price Proposal

5. JS issues request for proposal (RFP) to the Contractor.
6. Contractor prepares price proposal using the Unit Price Book and sends it to the PM.
7. JS reviews proposal, makes comments, and sends comments to Contractor.
8. JS schedules and conducts the Proposal Review Meeting with Contractor and agree on changes to the price proposal and final SOW.
9. Contractor revises the price proposal, signed proposal summary, and proposal detail; and sends to JS.
10. JS presents contract and final SOW to customer for approval.

Part 3: Issuance of Job Order Release

11. JS issues Job Order Release upon customer acceptance of the SOW and budget.
12. Contractor delivers provides supporting document as required by University, (i.e. insurance, bonds, subcontractor list), prior to commencing work.

Part 4: Conclusion

13. JS conducts the pre-construction meeting and contractor begins construction.

- e. **Contractual Terms and Conditions.** The Contractual Terms and Conditions shall be developed in conjunction with the University's staff and shall include the University's contract documents and forms.

Describe how the proposal addresses this criterion, ***providing examples, samples, screenshots, etc.:***

4. Technical Assistance and Support.

The University has several requirements and preferences for the technical assistance and support of the JOC Management Software Solution, both for University staff and for future JOC Contractors selected for the JOC Program. Complete **Appendix E: Technical Support and Assistance** within the attached spreadsheet and submit with the proposal.

5. Milestones and Deliverables:**a. Schedule:**

The University prefers the successful JOC software vendor to implement their solution and provide adequate training to University staff no later than **July 1, 2023**

b. Procurement support:

The University prefers to advertise, evaluate, select, and execute contracts with JOC Contractors no later than **October 1, 2023**

- i. The University's goal is to only rebid when required or when the program will benefit. The JOC software vendor shall provide new, updated JOC document sets to the University for bidding purposes upon request throughout the life of the contract at no additional fee.
- ii. The JOC software vendor shall develop appropriate bidding documents ("front ends") and contract language and/or documents for project initiation, development, regulatory compliance, review and approval, job order preparation and execution, inspection, payment, and project close-out procedures for incorporation into the bidding and contract documents in compliance with the University's standard documents for unit price construction contracts. Such contract language and documents shall provide appropriate safeguards against fraud, waste, and abuse.
- iii. The JOC software vendor shall participate in University outreach efforts and will conduct **two** pre-bid conferences. The first pre-bid conference shall focus on all explanation of the JOC concept, in-depth discussion of the University's expectations of the JOC contractor, critical bid information and distribution of the bidding and contract documents to potential bidders. The second pre-bid conference shall focus on the explanation of JOC from the contractor's point of view and shall deal with such topics as JOC risks and rewards, how to bid, evaluating the Unit Price Book, calculating the adjustment factor, and staffing.

- iv. The JOC software vendor shall provide all prospective bidders with all the necessary documents required to submit a bid for the JOC Program and prepare any addendum that may be required during bidding for the University's issuance. The JOC software vendor shall assist the University in advertising the project and will perform outreach with vendors, trade associations, publications, and other organizations that may be interested in this work. The JOC software vendor will assist in the preparation of appropriate bid tabulation forms for bidding; and be present at the bid opening and assist the University's representative in the opening of bids.
- v. Assist with the review and evaluations of the bids received, provide written report of the bid results, submit written bid analysis, as well as recommendations for award of the contracts.

6. Documents and Revisions

The JOC software vendor will be required to provide a Customized Unit Price Book for contractor proposal generation. The Unit Price Book should be an up-to-date compilation of unit priced tasks covering all Construction Specifications Institute (CSI) divisions required to complete interior building remodeling, exterior envelope work, and exterior site work around buildings, including voice and data systems, parking facilities, asbestos abatement, and utilities work for campus and healthcare settings. The Unit Price Book should contain no less than 90,000 individual construction tasks along with associated unit price. Unit prices should be developed based on the prevailing equipment, material, and labor costs in the project locations. The JOC software vendor will be required to identify recurring non-pre-priced items and incorporate them into localized and updated Unit Price Books.

Customized Technical Specifications Book that incorporates University Official Design Standards (Located on the World Wide Web at <https://www.uky.edu/cpmd/official-design-standards>). The Technical Specifications shall be prepared in conjunction with the Unit Price Book and University standards will be incorporated.

7. Reports and Other Deliverables:

JOC software vendor is expected to provide JOC Management Software Solution documentation, including user reference manuals, system administrator's manuals, system technical manuals, training guides, and any other documentation necessary to learn, understand, operate, and troubleshoot the system.

JOC software vendor is expected to generate reports in response to University audits, performance reviews, and to assist with University response to applicable Open Records Act requests.

4.7 Criteria 3 – Financial Proposal

The Financial Summary Form shall contain the complete financial offer made to the University using the format contained in Section 7.0. All financial information must be submitted in a sealed envelope under separate cover.

4.8 Criteria 4 – Evidence of Successful Performance and Implementation Schedule

Provide an implementation schedule including training on the system for University users, as well as a procurement schedule for JOC contractor selection, vendor outreach events, prebid meetings, and other key dates. Identify the critical path for meeting a fully functional system at our desired target of July 1, 2023, with JOC contractors selected and ready to perform work using the system on October 1, 2023.

4.9 Criteria 5 – Other Additional Information

The offeror may present any creative approaches that might be appropriate. The offeror may also provide supporting documentation that would be pertinent to this RFP.

Offeror should describe in detail their company's commitment to diversity, equity, and inclusion. Information should be provided as to the number of diverse individuals that the vendor employees as well as a description of vendors efforts to do business with Diverse Business Enterprises as they conduct their own business.

5.0 EVALUATION CRITERIA PROCESS

A committee of University officials appointed by the Chief Procurement Officer will evaluate proposals and make a recommendation to the Chief Procurement Officer. The evaluation will be based upon the information provided in the proposal, additional information requested by the University for clarification, information obtained from references and independent sources and oral presentations (if requested).

The evaluation of responsive proposals will then be completed by an evaluation team, which will determine the ranking of proposals. Proposals will be evaluated strictly in accordance with the requirements set forth in this solicitation, including any addenda that are issued. The University will award the contract to the responsible offeror whose proposal is determined to be the most advantageous to the University, taking into consideration the evaluation factors set forth in this RFP.

The evaluation of proposals will include consideration of responses to the list of criteria in Section 4.0. Offerors must specifically address all criteria in their response. Any deviations or exceptions to the specifications or requirements must be described and justified in a transmittal letter. Failure to list such exceptions or deviations in the transmittal letter may be considered sufficient reason to reject the proposal.

The relative importance of the criteria is defined below:

Primary Criteria

- Offeror Qualifications
- Services Defined
- Financial Proposal
- Evidence of Successful Performance and Implementation

Secondary Criteria

- Other Additional Services

The University will evaluate proposals as submitted and may not notify offerors of deficiencies in their responses.

Proposals must contain responses to each of the criteria listed in Section 4 even if the offeror's response cannot satisfy those criteria. A proposal may be rejected if it is conditional or incomplete in the judgment of the University.

6.0 SPECIAL CONDITIONS

The University of Kentucky's Data Privacy and Security Addendum applies to this agreement. See Attachment B – DSA.

6.1 Contract Term

The contract resulting from this RFP is effective upon execution of both parties through June 30, 2027, and is renewable for up to three additional two-year renewal periods. The total contract period is not anticipated to exceed ten years. Renewals shall be contingent upon the University's satisfaction with the vendor's services, continuing need, and availability of funds.

6.2 Effective Date

The effective date of the contract shall be the date upon which the parties execute it and all appropriate approvals, including that of the Commonwealth of Kentucky Government Contracts Review Committee, have been received.

6.3 Competitive Negotiation

It is the intent of the RFP to enter into competitive negotiation as authorized by KRS 45A.085.

The University will review all proposals properly submitted. However, the University reserves the right to request necessary modifications, reject all proposals, reject any proposal that does not meet mandatory requirement(s) or cancel this RFP, according to the best interests of the University.

Offeror(s) selected to participate in negotiations may be given an opportunity to submit a Best and Final Offer to the purchasing agency. All information received prior to the cut-off time will be considered part of the offeror's Best and Final Offer.

The University also reserves the right to waive minor technicalities or irregularities in proposals providing such action is in the best interest of the University. Such waiver shall in no way modify the RFP requirements or excuse the offeror from full compliance with the RFP specifications and other contract requirements if the offeror is awarded the contract.

6.4 Appearance Before Committee

Any, all or no offerors may be requested to appear before the evaluation committee to explain their proposal and/or to respond to questions from the committee concerning the proposal. Offerors are prohibited from electronically recording these meetings. The committee reserves the right to request additional information.

6.5 Additions, Deletions or Contract Changes

The University reserves the right to add, delete, or change related items or services to the contract established from this RFP. No modification or change of any provision in the resulting contract shall be made unless such modification is mutually agreed to in writing by the contractor and the Chief Procurement Officer and incorporated as a written modification to the contract. Memoranda of understanding and correspondence shall not be interpreted as a modification to the contract.

6.6 Contractor Cooperation in Related Efforts

The University reserves the right to undertake or award other contracts for additional or related work to other entities. The contractor shall fully cooperate with such other contractors and University employees and carefully fit its work to such additional work. The contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by University employees. This clause shall be included in the contracts of all contractors with whom this contractor will be required to cooperate. The University shall equitably enforce this clause to all contractors to prevent the imposition of unreasonable burdens on any contractor.

6.7 Entire Agreement

The RFP shall be incorporated into any resulting contract. The resulting contract, including the RFP and those portions of the offeror's response accepted by the University, shall be the entire agreement between the parties.

6.8 Governing Law

The contractor shall conform to and observe all laws, ordinances, rules and regulations of the United States of America, Commonwealth of Kentucky and all other local governments, public authorities, boards or offices relating to the property or the improvements upon same (or the use thereof) and will not permit the same to be used for any illegal or immoral purposes, business or occupation. The resulting contract shall be governed by Kentucky law and any claim relating to this contract shall only be brought in the Franklin Circuit Court in accordance with KRS 45A.245.

6.9 Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act

To the extent Company receives Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, 61.932 and 61.933 (the "Act"), Company shall secure and protect the Personal Information by, without limitation: (i) complying with all requirements applicable to non-affiliated third parties set forth in the Act; (ii) utilizing security and breach investigation procedures that are appropriate to the nature of the Personal Information disclosed, at least as stringent as University's and reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction; (iii) notifying University of a security breach relating to Personal Information in the possession of Company or its agents or subcontractors within seventy-two (72) hours of discovery of an actual or suspected breach unless the exception set forth in KRS 61.932(2)(b)2 applies and Company abides by the requirements set forth in that exception;

(iv) cooperating with University in complying with the response, mitigation, correction, investigation, and notification requirements of the Act , (v) paying all costs of notification, investigation and mitigation in the event of a security breach of Personal Information suffered by Company; and (vi) at University's discretion and direction, handling all administrative functions associated with notification, investigation and mitigation.

6.10 Termination for Convenience

The University of Kentucky, Purchasing Division, reserves the right to terminate the resulting contract without cause with a thirty (30) day written notice. Upon receipt by the contractor of a "notice of termination," the contractor shall discontinue all services with respect to the applicable contract. The cost of any agreed upon services provided by the contractor will be calculated at the agreed upon rate prior to a "notice of termination" and a fixed fee contract will be pro-rated (as appropriate).

6.11 Termination for Non-Performance

Default

The University may terminate the resulting contract for non-performance, as determined by the University, for such causes as:

- Failing to provide satisfactory quality of service, including, failure to maintain adequate personnel, whether arising from labor disputes, or otherwise any substantial change in ownership or proprietorship of the Contractor, which in the opinion of the University is not in its best interest, or failure to comply with the terms of this contract;
- Failing to keep or perform, within the time period set forth herein, or violation of, any of the covenants, conditions, provisions or agreements herein contained;
- Adjudicating as a voluntarily bankrupt, making a transfer in fraud of its creditors, filing a petition under any section from time to time, or under any similar law or statute of the United States or any state thereof, or if an order for relief shall be entered against the Contractor in any proceeding filed by or against contractor thereunder. In the event of any such involuntary bankruptcy proceeding being instituted against the Contractor, the fact of such an involuntary petition being filed shall not be considered an event of default until sixty (60) days after filing of said petition in order that Contractor might during that sixty (60) day period have the opportunity to seek dismissal of the involuntary petition or otherwise cure said potential default; or
- Making a general assignment for the benefit of its creditors, or taking the benefit of any insolvency act, or if a permanent receiver or trustee in bankruptcy shall be appointed for the Contractor.

Demand for Assurances

In the event the University has reason to believe Contractor will be unable to perform under the Contract, it may make a demand for reasonable assurances that Contractor will be able to timely perform all obligations under the Contract. If Contractor is unable to provide such adequate

assurances, then such failure shall be an event of default and grounds for termination of the Contract.

Notification

The University will provide ten (10) calendar days written notice of default. Unless arrangements are made to correct the non-performance issues to the University's satisfaction within ten (10) calendar days, the University may terminate the contract by giving forty-five (45) days notice, by registered or certified mail, of its intent to cancel this contract.

6.12 Funding Out

The University may terminate this contract if funds are not appropriated or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The University shall provide the contractor thirty (30) calendar days' written notice of termination under this provision.

6.13 Prime Contractor Responsibility

Any contracts that may result from the RFP shall specify that the contractor(s) is/are solely responsible for fulfillment of the contract with the University.

6.14 Assignment and Subcontracting

The Contractor(s) may not assign or delegate its rights and obligations under any contract in whole or in part without the prior written consent of the University. Any attempted assignment or subcontracting shall be void.

6.15 Permits, Licenses, Taxes

The contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations and ordinances of all federal, state and local governments in which work under this contract is performed.

The contractor must furnish certification of authority to conduct business in the Commonwealth of Kentucky as a condition of contract award. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. However, the contractor need not be registered as a prerequisite for responding to the RFP.

The contractor shall pay any sales, use, personal property and other tax arising out of this contract and the transaction contemplated hereby. Any other taxes levied upon this contract, the transaction or the equipment or services delivered pursuant hereto shall be the responsibility of the contractor.

The contractor will be required to accept liability for payment of all payroll taxes or deductions required by local and federal law including (but not limited to) old age pension, social security or annuities.

6.16 **Attorneys' Fees**

In the event that either party deems it necessary to take legal action to enforce any provision of the contract and in the event that the University prevails, the contractor agrees to pay all expenses of such action including attorneys' fees and costs at all stages of litigation.

6.17 **Royalties, Patents, Copyrights and Trademarks**

The Contractor shall pay all applicable royalties and license fees. If a particular process, products or device is specified in the contract documents and it is known to be subject to patent rights or copyrights, the existence of such rights shall be disclosed in the contract documents and the Contractor is responsible for payment of all associated royalties. To the fullest extent permitted by law the Contractor shall indemnify, hold the University harmless, and defend all suits, claims, losses, damages or liability resulting from any infringement of patent, copyright, and trademark rights resulting from the incorporation in the Work or device specified in the Contract Documents.

Unless provided otherwise in the contract, the Contractor shall not use the University's name nor any of its trademarks or copyrights, although it may state that it has a Contract with the University.

6.18 **Indemnification**

The contractor shall indemnify, hold and save harmless the University, its affiliates and subsidiaries and their officers, agents and employees from losses, claims, suits, actions, expenses, damages, costs (including court costs and attorneys' fees of the University's attorneys), all liability of any nature or kind arising out of or relating to the Contractor's response to this RFP or its performance or failure to perform under the contract awarded from this RFP. This clause shall survive termination for as long as necessary to protect the University.

6.19 **Insurance**

The successful Contractor shall procure and maintain, at its expense, the following minimum insurance coverages insuring all services, work activities and contractual obligations undertaken in this contract. All policies must be by insurers acceptable to the University.

COVERAGES

Workers' Compensation
Employer's Liability
Commercial General Liability including operations/completed operations, products and contractual liability (including defense and investigation costs), and this contract
Business Automobile Liability covering owned, leased, or non-owned autos
Cybersecurity

LIMITS

Statutory Requirements (Kentucky)
\$500,000/\$500,000/\$500,000
\$1,000,000 each occurrence
(BI & PD combined) \$2,000,000 Products and Completed Operations Aggregate
\$1,000,000 each occurrence
(BI & PD combined)
See Attachment B - DSA

The successful contractor agrees to furnish Certificates of Insurance for the above-described coverages and limits to the University of Kentucky, Purchasing Division. The University, its trustees and employees must be added as additional insured on the Commercial General Liability policy with regard to the scope of this solicitation. Any deductibles or self-insured retention in the above-

described policies must be paid and are the sole responsibility of the contractor. Coverage is to be primary and non-contributory with other coverage (if any) purchased by the University. All of these required policies must include a Waiver of Subrogation (except Workers' Compensation) in favor of the University, its trustees and employees.

6.20 Method of Award

It is the intent of the University to award a contract to the qualified offeror whose offer, conforming to the conditions and requirements of the RFP, is determined to be the most advantageous to the University, cost and other factors considered.

Notwithstanding the above, this RFP does not commit the University to award a contract from this solicitation. The University reserves the right to reject any or all offers and to waive formalities and minor irregularities in the proposal received.

6.21 Reciprocal Preference

In accordance with KRS 45A.494, a resident offeror of the Commonwealth of Kentucky shall be given a preference against a nonresident offeror. In evaluating proposals, the University will apply a reciprocal preference against an offeror submitting a proposal from a state that grants residency preference equal to the preference given by the state of the nonresident offeror. Residency and non-residency shall be defined in accordance with KRS 45A.494(2) and 45A.494(3), respectively. Any offeror claiming Kentucky residency status shall submit with its proposal a notarized affidavit affirming that it meets the criteria as set forth in the above reference statute.

6.22 Reports and Auditing

Contractor shall provide a quarterly report to the University of all product(s) and/or service(s) based on an Excel template provided by the Purchasing Division. The template will require basic line-item order information to include, but not limited to: purchase transaction date, purchase order number, product/catalog number, description, UOM, price each, extended price, invoice number, etc. The Excel reporting template is available upon request from the Purchasing Division and is subject to change. The Excel template provided by the Purchasing Division is the only reporting format that may be used; Contractor-submitted reports based on internal reporting or templates will not be accepted. The reporting date structure shall follow the below outline and begin with the quarter in which the contract is executed. The date of the purchase order (or other transaction type that may be used with the Contractor (e.g., procurement card)) shall determine the quarter in which the transaction is to be reported.

In addition to the aforementioned quarterly reporting of goods and services, contractors are also required to report summary dollar amounts of goods and services sold to the University via the resulting contract and originating from diversity Tier 2 or subcontractors affiliated with company. Quarterly reports for Tier 2 diverse suppliers/subcontractors must accompany the standard quarterly report requirement. Due to the broad array of diversity reporting utilized, the University does not require specific classifications of diverse purchases; the successful contractor may report Tier 2 purchase amounts as produced by their information systems and with sub-classifications as they are available. If the successful contractor does not have any Tier 2 reporting for diverse suppliers to accompany their quarterly report submissions, they must indicate this when submitting their standard quarterly reports.

FY Quarter 1 report for purchases dated July 1 through September 30	Quarterly report due October 20
FY Quarter 2 report for purchases dated October 1 through December 31	Quarterly report due January 20
FY Quarter 3 report for purchases dated January 1 through March 31	Quarterly report due April 20
FY Quarter 4 report for purchases dated April 1 through June 30	Quarterly report due July 20

Report headers shall also be completed with the Contractor's name, contract number, and reporting period.

Reports can be submitted via email to UKPurchasing@uky.edu based by the deadline(s) listed herein.

The University, or its duly authorized representatives, shall also have access to any books, documents, papers, records or other evidence which are directly pertinent to this contract for the purpose of financial audit or program review.

In the event that successful Contractor(s) does not meet the reporting requirements based on the terms and conditions herein, the contract is subject to cancellation or termination.

6.23 Confidentiality

The University recognizes an offeror's possible interest in preserving selected information and data included in the proposal; however, the University must treat such information and data as required by the Kentucky Open Records Act, KRS 61.870, et seq.

Information areas which normally might be considered proprietary, and therefore confidential, shall be limited to individual personnel data, customer references, formulae and company financial audits which, if disclosed, would permit an unfair advantage to competitors. If a proposal contains information in these areas and the offeror declares them to be proprietary in nature and not available for public disclosure, the offeror shall declare in the Transmittal Letter the inclusion of proprietary information and shall noticeably label as confidential or proprietary each sheet containing such information. Proposals containing information declared by the offeror to be proprietary or confidential, either wholly or in part, outside the areas listed above may be deemed non-responsive and may be rejected.

The University's General Counsel shall review each offeror's information claimed to be confidential and, in consultation with the offeror (if needed), make a final determination as to whether or not the confidential or proprietary nature of the information or data complies with the Kentucky Open Records Act.

6.24 Conflict of Interest

This Request for Proposal and resulting Contract are subject to provisions of the Kentucky Revised Statutes regarding conflict of interest and the University of Kentucky's Ethical Principles and Code of Conduct (www.uky.edu/Legal/ethicscode.htm). When submitting and signing a proposal, an offeror certifies that no actual, apparent or potential conflict of interest exists between the interests of the University and the interests of the offeror. A conflict of interest (whether contractual, financial, organizational or otherwise) exists when any individual, contractor or subcontractor has a direct or indirect interest because of a financial or pecuniary interest, gift or other activities or relationships with other persons (including business, familial or household relationships) and is thus unable to render or is impeded from rendering impartial assistance or advice, has impaired objectivity in performing the proposed work or has an unfair competitive advantage.

Questions concerning this section or interpretation of this section should be directed to the University purchasing officer identified in this RFP.

6.25 Personal Service Contract Policies

Not applicable to this RFP.

6.26 Copyright Ownership and Title to Designs and Copy

The contractor and University intend this RFP to result in a contract for services, and both consider the products and results of the services to be rendered by the contractor hereunder to be a work made for hire. The contractor acknowledges and agrees that the work and all rights therein, including (without limitation) copyright, belong to and shall be the sole and exclusive property of the University. For any work that is not considered a work made for hire under applicable law, title and copyright ownership shall be assigned to the University.

6.27 University Brand Standards

The contractor must adhere to all University of Kentucky Brand Standards. University Brand Standards are maintained by the University Public Relations Office (UKPR) and can be viewed at <http://www.uky.edu/prmarketing/brand-standards>. Non-adherence to the standards can have a penalty up to and including contract cancellation. Only the UKPR Director or designee can approve exceptions to the University standards.

Graphics standards for the UK HealthCare areas are governed by UK HealthCare Clinical Enterprise Graphic Standards, found at: <https://ukhealthcare.uky.edu/staff/brand-strategy>.

Contractor warrants that its products or services provided hereunder will be in compliance with all applicable Federal disabilities' laws and regulations, including without limitation the accessibility requirements of Section 255 of the Federal Telecommunications Act of 1996 (47 U.S.C. § 255) and Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194. For purposes of clarity, updated regulations under Section 508 standards now incorporate WCAG 2.0, and for purposes of this agreement WCAG 2.0 Level AA compliance is expressly included. Contractor agrees to promptly respond to, resolve and remediate any complaint regarding accessibility of products or

services in a timely manner and provide an updated version to University at no cost. If deficiencies are identified, University reserves the right to request from Contractor, a timeline by which accessibility standards will be incorporated into the products or services provided by Contractor and shall provide such a timeline within a commercially reasonable duration of time. Failure to comply with these requirements shall constitute a material breach of this Agreement and shall be grounds for termination of this Agreement.

Where any customized web services are provided, Contractor represents that it has reviewed the University's Web Policy and all products or services will comply with its published standards.

Contractor will provide University with a current Voluntary Product Accessibility Template (VPAT) for any deliverable(s). If none is available, Vendor will provide sufficient information to reasonably assure the University that the products or services are fully compliant with current requirements.

6.28 Printing Statutes

Not applicable to this RFP.

6.29 Requirement for Contract Administration Fee

As a condition of award, successful Contractor(s) shall provide a contract administration fee to the University for all goods and/or services provided under the resultant contract. The fee shall be on a quarterly basis and shall be equivalent to 2% of the aggregate net value of goods/services sold to the University, exclusive of freight charges.

The fee shall be reported and paid within 30 calendar days of the end of conventional calendar quarters ending March 31, June 30, September 30, and December 31 of each year. The fee applies to orders which have been successfully delivered/installed and invoiced in the previous quarter. Fees shall be paid in the form of a check made payable to the University of Kentucky and shall be delivered to the Purchasing Division, Room 322 Peterson Service Building, 411 S. Limestone, Lexington, Kentucky 40506-0005. Each fee payment must be accompanied by a statement indicating the referenced University price contract to which it applies and indicate the aggregate value of goods/services provided and invoiced during the quarter, the fee percentage applied, and the net amount of the quarterly payment. If any errors are found in the report or calculations as determined by University, the successful Contractor shall correct immediately upon notification.

The successful Contractor(s) may extend the pricing, terms, and/or conditions of this contract to other universities, state agencies, and public and private institutions, with prior approval of the University of Kentucky. The successful Contractor(s) will pay the University of Kentucky a contract administration fee of two (2) % of goods/services provided and invoiced during the quarter. The fee shall be reported and paid within 30 calendar days of the end of conventional calendar quarters ending March 31, June 30, September 30, and December 31 of each year. The fees shall be in the form of a check made payable to the University of Kentucky and shall be delivered to the Purchasing Division, Room 322 Peterson Service Building, 411 S. Limestone, Lexington, Kentucky 40506-0005.

The successful Contractor must notify the Contracting Officer when the resultant contract is utilized by other universities, state agencies, and public and private institutions in Kentucky.

In the event that successful Contractor(s) does not provide the quarterly payment based on the terms and conditions herein, the contract is subject to cancellation or termination.

6.30 Payment Terms

The University adheres to a strategic approach regarding payables management based on risk minimization, processing costs, and industry best practices. As such, suppliers and individuals doing business with the University will be paid based on the following protocol:

1. The University utilizes Payment Plus (e-payables) as its primary default form of payment. By enrolling in Payment Plus, suppliers can receive payments immediately (all invoices will be paid immediately upon confirmation of goods receipt and invoice). The process is electronic and the supplier receives real-time payment notices. Additional information regarding Payment Plus (and enrollment form) can be found at: <https://www.uky.edu/ufs/payment-plus-supplier-enrollment-form>.
2. Payments by check. Payment terms for check payments are Net-30.
3. Individuals receiving payments from the University that require ACH direct payments will only be processed under special circumstances as approved by the Controller's office. Payment terms for ACH are Net-40.

7.0 FINANCIAL OFFER SUMMARY

Offerors are to provide a fixed price for the services offered.

7.1 **Mandatory Services (Section 4.6: Services Defined)**

FEE AS A PERCENTAGE	
%	of all construction procured using the JOC Program.

7.2 **Optional Services**

The University shall, at its sole discretion, make the determination as to whether the optional service will be undertaken.

As identified in the Appendices, options for limited or per-use may result in a lower fee. Provide the fee schedule for these services.

As identified in the Appendices, provide the fee schedule for modules or services that are not required by the University to respond to this RFP, but may be preferred depending on ongoing need and funding. Acknowledge that these modules or services are held at a fixed price through the initial contract term.

7.3 **Alternate Pricing**

In addition to the above financial offer, the offeror may submit alternative financial proposals, however the information requested above must be supplied and will be used for proposal evaluation purposes.

Additional Financial Commitment

In addition to the financial offers, please propose a financial commitment to assist the University. Options may include a signing bonus, scholarships, internships, commitment to hire University Graduates or a (%) percentage rebate.

UK-2345-23 Job Order Contracting software vendor and Software Solution Appendices:		Does the proposed solution address this specification?		
		Yes	No	Explain here, or reference the section of the proposal that addresses this item in detail
Appendix A: Accessibility				
	Provide your firm's most recent Accessibility Conformance Report based on Voluntary Product Accessibility Template (VPAT) version 2.1+ or a comparable report.			
Appendix B: Security				
	Acknowledge that the University's Data Security Addendum will be incorporated into the awarded JOC Software and Support agreement.			
	Acknowledge and agree that your firm will maintain University and JOC Contractor confidentiality, and shall not re-disclose proprietary information or personally Identifiable Information except as authorized by the University in writing.			
	Provide your firm's breach notification process and timeline.			
	The University prefers that its data is stored in the United States. If data is not stored in the US, provide the location where it is stored.			
	Data is backed up no less frequently than every 24 hours.			
	The University requests 90 days to access and retrieve data after the service period of the contract terminates.			
	Only front end servers should be accessible and all other servers be firewalled and only accessible by support personnel at your organization or the University.			
	Describe the process your firm uses for encrypting data at rest and in transit.			
	Describe your firm's process of returning the University's data at the termination of a contract.			
	Provide your disaster recovery plan, detailing how your firm will minimize disruptions in the event of a disaster, whether human-made or natural.			

UK-2345-23 Job Order Contracting software vendor and Software Solution Appendices:		Does the proposed solution address this specification?		
		Yes	No	Explain here, or reference the section of the proposal that addresses this item in detail
Appendix C: Functional				
	Comprehensive task catalog/unit price database, customized to meet University standards and requirements.			
	Task catalog modules included to address typical construction needs (e.g., structural, mechanical, site work, etc.).			
	If modules are not included in the solution being offered, provide the pricing in section 6: Pricing only . Acknowledge that modules offered to the University that are not selected at time of award will be held at a fixed price during the initial term of the contract.			
	Complete (identification of need through warranty) project tracking, including expected vs. actual milestone dates. Examples: job request creation date, quotation due date, submittal due date, construction start date, warranty start/end date, etc.			
	Generates cost proposals with minimal user input.			
	Generates comprehensive project documentation.			
	Provides project schedules.			
	A comprehensive set of standard project reports, including cost and budget.			
	Significant customization of reports.			
	Project queries can be saved as templates or published for other users.			
	Customizable user dashboard (multiple project view, common metrics, etc.).			
	The University strongly prefers that the solution is fully web-based and accessible by any computer, including mobile devices.			
	<i>If the recommended configuration of the solution requires local server and/or client installation, describe the advantages over a fully web-based configuration.</i> <i>Provide minimum and recommended system requirements for desktops or laptops.</i> <i>Provide minimum and recommended system requirements for mobile devices.</i> <i>Provide minimum and recommended connection speed for access to online resources.</i>			
	The University prefers unlimited licenses for University staff and approved JOC Contractors, with appropriate differing roles (e.g., requestor, reviewer, approver). <i>If there are cost savings to be realized by limiting licenses, explain the number and composition of licenses being offered, and the discount, in the sealed Alternative Pricing section only.</i>			
	The University prefers unlimited storage space on the JOC software vendor's servers for project-related files (e.g., drawings, renderings, photos, scans, submittals, etc.). <i>If there are cost savings to be realized by limiting data storage, provide the limit, and the discount, in the sealed Alternative Pricing section only.</i>			

UK-2345-23 Job Order Contracting software vendor and Software Solution Appendices:		Does the proposed solution address this specification?		
		Yes	No	Explain here, or reference the section of the proposal that addresses this item in detail
Appendix D: Implementation and Training				
	Provide your firm's JOC Program implementation schedule. At a minimum, the schedule should address: customizing the Solution to University needs, installation, systems integration, training, testing, and Program documentation.			
	Provide hybrid (on-site with remote access) training of University Staff and JOC Contractors on solution use.			
	Provide specialized training based on organization and role.			
	Contractor Training and Mobilization. The JOC software vendor will conduct contractor training and shall assist the University in the mobilization of the JOC system, job order project procedures, quality control procedures, job order initiation and payment procedures and documentation, etc. The JOC software vendor will make recommendations to the JOC contractors regarding staffing and organization issues and shall fully train the contractors' personnel in JOC Program performance.			
	Provide a JOC Program Overview Course to familiarize University Staff with the JOC Program concept, its role in project delivery at the University, and how JOC Contractors will access and interact with the solution.			
	Provide a JOC Terms and Conditions Course to explain the General Conditions, Special Conditions, and review of the lessons learned in the JOC market, including a question and answer period.			

UK-2345-23 Job Order Contracting software vendor and Software Solution Appendices:		Does the proposed solution address this specification?		
		Yes	No	Explain here, or reference the section of the proposal that addresses this item in detail
Appendix D: Implementation and Training <i>(continued)</i>				
	Provide a JOC Procedures Course to University staff, with a comprehensive review of the JOC execution procedures and procedures flowchart, including the hands-on development of actual job orders and related practical exercises. The JOC software vendor will also supervise and oversee the preparation and implementation of Job Orders by individual University staff.			
	Provide a JOC Software Solution Course to familiarize the University's staff and JOC contractors with the JOC software solution and the procedures for its use. The course shall include proposal management, searches for specific JOC items, direct item lookup, adding of non-priced items, proposal development and review, and practical exercises. A software-specific utilities class shall be provided, covering such topics as database loading, data verification, database recovery, proposal recovery, proposal printing, and report generation.			
	Provide a JOC Refresher Course to review and discuss the preceding modules, procedures, and lessons learned.			
	Provide a training environment of the Solution.			
	Maintain the training environment version of the Solution for ongoing training of University staff and JOC Contractors. Describe the frequency with which the training environment will be updated to accurately reflect the production build of the solution.			
	Detail your firm's staffing plan for implementation and training of the University JOC Program, including the names, experience, and references of key personnel who will be assigned to the University account.			
	Explain how your firm determines when an implementation is fully and successfully complete.			
	Does your company have a user group for this product? Please indicate the level of membership (number of institutions, businesses represented) and give an indication of the types of interactions with the group and among group membership.			

UK-2345-23 Job Order Contracting software vendor and Software Solution Appendices:		Does the proposed solution address this specification?		
		Yes	No	Explain here, or reference the section of the proposal that addresses this item in detail
Appendix E - Technical Assistance and Support				
	Provide full time execution assistance, including on-site assistance if required, to the University and to JOC Contractors for at least 30 days after the notice-to-proceed is issued to the JOC Contractor.			
	Detail your firm's staffing plan for technical assistance and support of the University JOC Program, including the names, experience, and references of key personnel who will be assigned to the University account.			
	Provide the University with continuous document maintenance support. This support will include the periodic updating of construction tasks, unit prices, technical specifications, execution procedures, and training materials.			
	Provide assistance in bidding/rebidding of JOC Program construction contractors including marketing and technical support and integration of JOC Program contract language to standard University bidding documents.			
	Provide updated versions of the software as developed. The JOC software vendor will be responsible for providing, installing, testing, and debugging the software on all University and JOC contractor computers if local client software is required.			
	Provide continuous telephonic systems support to the University. This support will include debugging and other system-related support.			
	Assist the University in conducting periodic reviews of the concepts, performance, and effectiveness. Develop documentation and statistics regarding essential elements of the concepts' execution. Document this information for senior management review and evaluation.			
	Assist the University in the execution of the JOC Program by providing experienced, on-site project managers to periodically work with University's staff in the development and execution of job orders. During these periodic work sessions, the JOC software vendor shall review on-going project development and execution and shall recommend any improvements if necessary.			
	Describe your firm's incident response process, including ticket escalation.			
	Provide a current (within the last five years) 12 month audit of tickets for an organization of similar size and complexity as the University, as well as an incident log of planned and unplanned solution downtimes.			

UNIVERSITY OF KENTUCKY
Data Privacy and Security Addendum

This Addendum ("**Addendum**"), dated _____, is entered into by and between the UNIVERSITY OF KENTUCKY ("**University**") and _____ ("**Contractor**"). University and Contractor are individually referred to herein as a "**Party**," and together referred to as the "**Parties**."

In consideration of the terms and conditions and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties expressly agree as follows:

1. Definitions.

- a. "**Underlying Agreement**" means any contract or agreement into which the Parties have entered or are entering, involving University Data (defined below). This Addendum supplements and is hereby incorporated by reference into the Underlying Agreement.
- b. "**University Data**" means any information, in an electronic, written, or oral form, that Contractor may create, obtain, access, transmit, maintain, use, process, store, host and/or dispose of for or on behalf of the University pursuant to the Underlying Agreement. University Data includes, but is not limited to, intellectual property, personal, business, health, financial, and student information, which may include personally identifiable information requiring certain privacy and security protections under federal, state, and/or international law.

- 2. Term.** This Addendum shall remain in effect for the term of any attached Underlying Agreement, or any extended term thereto, and any associated scope of work, or for so long as Contractor receives, transmits, processes, stores or otherwise maintains University Data, whichever is longer.

- 3. Compliance.** Contractor shall handle University Data in accordance with all applicable state, federal, and international laws, rules, regulations and standards, including without limitation and to the extent applicable, Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, 61.932, and 61.933 ("**Kentucky's Data Security Law**"), Section 255 of the Federal Telecommunications Act of 1996 (47 U.S.C. § 255) and Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194, the Family Educational Rights and Privacy Act ("**FERPA**"), 20 U.S.C. § 1232(g) and 34 CFR Part 99, the Gramm Leach Bliley Act ("**GLBA**"), 5 U.S.C. § 6801 et seq. and the Payment Card Industry Data Security Standard ("**PCI DSS**") (collectively, "**Applicable Law**").

- a. **Kentucky's Data Security Law.** To the extent Contractor receives "Personal Information" as defined by KRS 61.931(6), Contractor shall secure and protect the Personal Information in accordance with Kentucky's Data Security Law by, without limitation: (i) complying with all requirements applicable to non-affiliated third parties set forth in Kentucky's Data Security Law; (ii) utilizing security and breach investigation procedures that are appropriate to the nature of the Personal Information disclosed, at least as stringent as the standards set forth in Section 7(b) below and reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction; (iii) notifying University of a security breach relating to Personal Information in the possession of Contractor or its agents or subcontractors within

seventy-two (72) hours of discovery of an actual or suspected breach unless the exception set forth in KRS 61.932(2)(b)2 applies and Contractor abides by the requirements set forth in that exception; (iv) cooperating with Customer in complying with the response, mitigation, correction, investigation, and notification requirements of Kentucky's Data Security Law, (v) paying all costs of notification, investigation and mitigation in the event of a security breach of Personal Information suffered by Contractor; and (vi) at Customer's discretion and direction, handling all administrative functions associated with such notification, investigation and mitigation.

- b. **FERPA.** If Contractor will have access to, store or generate "educational records" as defined by 34 C.F.R. § 99.3, Contractor shall comply with the confidentiality and disclosure restrictions required by FERPA. Contractor agrees that it shall fully comply with all FERPA use and access restrictions applicable to the Underlying Agreement, including but not limited to the restrictions set out in 34 CFR §§ 99.31 and 99.33. Specifically, in performance of its duties, Contractor shall protect data and ensure it is not subject to further disclosure or use. Access shall be strictly restricted to its employees who require access to perform the duties described herein. Contractor shall employ technological access controls to both secure the data from third parties and ensure that it employs effective internal restrictions for access to the records to ensure access and use is limited to the duties described in the Underlying Agreement.
- c. **Federal Disabilities Laws.** Contractor warrants that its products or services provided hereunder will be in compliance with all applicable Federal disabilities laws and regulations, including without limitation the accessibility requirements of Section 255 of the Federal Telecommunications Act of 1996 (47 U.S.C. § 255) and Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194. For purposes of clarity, updated regulations under Section 508 standards now incorporate WCAG 2.0 and, for purposes of this Addendum, WCAG 2.0 Level AA compliance is expressly included. Contractor agrees to promptly respond to, resolve and remediate any complaint regarding accessibility of products or services in a timely manner and provide an updated version to University at no cost. If deficiencies are identified, University reserves the right to request from Contractor a timeline by which accessibility standards will be incorporated into the products or services provided by Contractor, and Contractor shall provide such a timeline within a commercially reasonable duration of time. Failure to comply with these requirements shall constitute a material breach of contract and shall be grounds for termination of the Underlying Agreement.

Contractor will provide University with a current Voluntary Product Accessibility Template (VPAT) for any deliverable(s). If none is available, Contractor will provide sufficient information to reasonably assure the University that the products or services are fully compliant with current requirements.

- d. **GLBA.** If Contractor shall receive, maintain, process or otherwise be permitted access to "customer information", as that term is defined in § 314.2(b) of the FTC Safeguard Rule, 16 C.F.R. § 314, and therefore is a "service provider" as defined by 16 C.F.R. § 314.2(d), then Contractor agrees to the following additional terms and conditions:

- (a) Throughout the term of the Underlying Agreement, Contractor shall implement and maintain "appropriate safeguards", as that term is used in § 314.4(d) of the FTC Safeguard Rule, 16 C.F.R. § 314, for all customer

information received, maintained, processed, or otherwise accessed by Contractor pursuant to the Underlying Agreement.

(b) Contractor shall notify the University, in writing, of each instance of (i) unauthorized access to or use of any customer information that could result in substantial harm or inconvenience to a customer of the University or (ii) unauthorized disclosure, misuse, alteration, destruction or other compromise of any customer information, within seventy-two (72) hours of occurrence or discovery. Within 30 days of the termination or expiration of the Underlying Agreement, Service Provider shall destroy all records, electronic or otherwise, in its or its agents' possession that contains such customer information and shall deliver a written certification of the destruction to the University.

(c) Contractor consents, upon reasonable advance notice, to University's right to conduct an on-site audit of Contractor's security program.

(d) Notwithstanding any other provisions of this Addendum, University may terminate the Underlying Agreement for cause if Contractor has allowed a material breach of its security program, if Contractor has lost or materially altered customer information, or if the University reasonably determines that Contractor's security program is inadequate.

(e) Contractor shall defend, indemnify, and hold harmless University, its agents, officers, board members, and employees from and against any and all claims, damages, losses, and expenses, including reasonable attorney's fees, for any claims arising out of or in any way relating to any allegations of security breaches, violations of the Safeguard Rule caused by Contractor's negligence, intentional acts or omissions, or any loss or material alteration of customer information.

(f) Contractor shall reimburse the University for any damages, including but not limited to any costs required to reconstruct lost or altered information, resulting from any security breach, loss, or alteration of customer information.

e. **PCI-DSS.** Contractor hereby agrees as follows:

(a) Contractor shall be responsible for the security of cardholder data that it possesses, even temporarily, including any functions relating to storing, processing and transmitting of cardholder data on behalf of the University. For clarity, these functions include the redirection of customers to a third-party service provider website for transaction processing.

(b) Contractor warrants and represents that, as of the effective date of this Addendum, it has complied with all applicable requirements for validation and compliance with the PCI DSS (Payment Card Industry Data Security Standard), as appropriate for its Service Provider level. Contractor agrees to supply the current status of its PCI DSS compliance, and evidence of its most recent validation of compliance, upon execution of the Underlying Agreement. Further, Contractor must supply to the University a new status report and evidence of validation of compliance at least annually and upon request by the University. Contractor will immediately notify the University if it learns that it is no longer

PCI DSS compliant and will immediately report to the University the steps being taken to remediate the non-compliance status. In no event should Contractor's notification to the University be later than seven (7) calendar days after Contractor learns it is no longer PCI DSS compliant. Failure to maintain PCI DSS compliance shall be a breach of contract and the University may, at its sole discretion, terminate the Underlying Agreement if Contractor does not become compliant within thirty (30) days, with any prepaid amounts refunded to University on a pro-rata basis.

(c) If Contractor is providing University with a payment processing system and/or equipment covered by PA DSS (Payment Application Data Security Standard), Contractor warrants and represents that, as of the effective date of the Underlying Agreement, it has complied with all applicable requirements for PA DSS validation for its payment processing system and/or equipment. Contractor agrees to supply evidence of its most recent validation upon execution of this Addendum. Further, Contractor agrees to maintain PA DSS validation for the installed payment processing system version throughout the term of any maintenance agreement with the University. If the PA DSS validation deadline for the payment system lapses, Contractor acknowledges that it shall be in breach of contract and the University may, at its sole discretion, terminate the underlying Agreement if Contractor does not become compliant within thirty (30) days, with any prepaid amounts refunded to University on a pro-rata basis.

(d) While doing business in University facilities or on its property, if credit card payments will be processed over the internet via the Contractor's own system and/or equipment and through its own merchant account, Contractor will provide its own internet connection to process such payments, and will not be permitted to use the University network and equipment.

- f. **HIPAA.** The Parties shall enter into a separate Business Associate Agreement ("**BAA**") governing the use or disclosure of any "Protected Health Information" as defined by 45 C.F.R. 160.103, pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA).

- 4. Rights and License in and to University Data.** The Parties agree all rights including all intellectual property rights in and to University Data shall remain the exclusive property of the University, and Contractor has a limited, nonexclusive license to use this data as provided in this Addendum solely for the purpose of performing its obligations pursuant to the Underlying Agreement.

5. Permissible Use and Disclosure of University Data.

- a. Contractor shall comply with the terms and conditions set forth in this Addendum and the BAA, if any, in its collection, receipt, transmission, access, storage, disposal, use and disclosure of University Data.
- b. Contractor agrees to hold University Data in strict confidence and ensure appropriate privacy and security safeguards are in place to prevent the unauthorized use or disclosure of, or unauthorized access to University Data. University Data will not be stored outside the United States without prior written consent from the University. Contractor shall be

responsible for and remain liable to the University for the unauthorized collection, receipt, transmission, access, storage, disposal, use and disclosure of University Data under Contractor's control or in its possession.

- c. Contractor may use and disclose University Data to those within its organization, any affiliates, subcontractors and agents only to the extent necessary to carry out its obligations to the University under the Underlying Agreement. Contractor will not share University Data with or disclose it to any other third party without the prior written consent of the University, except and to the extent required by law. Contractor shall not disclose University Data to any third party unless and until such third party agrees in writing to be bound by the same restrictions, conditions, and requirements that apply to Contractor under this Addendum and the BAA, if any. Contractor shall be responsible for and remain liable to the University for the actions and omissions of any third parties to whom Contractor discloses University Data as if such were Contractor's own actions and omissions.

6. Security.

- a. Contractor will store and process University Data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than Contractor uses or would use in good faith to secure its own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved.
- b. Contractor agrees to maintain network security that, at a minimum conforms to one of the following:
 - i. Current standards set forth and maintained by the National Institute of Standards and Technology, as found at <https://nvd.nist.gov>; or
 - ii. Any generally recognized, comparable standard that Contractor then applies to its own network (*e.g.* ISO 27002) and which has been approved in writing by the University.

Contractor shall develop, implement, maintain, update, test annually, and use appropriate administrative, technical and physical security, breach investigation and disaster recovery measures to preserve the confidentiality, integrity and availability of all transmitted and stored University Data received from or on behalf of University. Contractor shall impose these measures on all affiliates and subcontractors used by Contractor.

- c. Contractor will be responsible for safekeeping all keys, access codes, combinations, access cards, personal identifying numbers and similar security codes, identifiers, passwords or authenticators issued to Contractor's employees, agents, contractors or subcontractors working with University Data and accounts. Contractor agrees to report a lost or stolen device or information of these employees within 24 hours of such device or information being lost or stolen.

7. Requests for Data, Response to Legal Orders or Demands for Data.

Except as otherwise expressly prohibited by law, Contractor will:

- a. immediately notify the University of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking University Data; and
- b. before making any disclosure of University Data, cooperate with the University's requests in connection with efforts by the University to intervene and quash or modify the legal order, demand or request.

8. University's Rights to Information; Audit.

- a. Upon University's request, Contractor agrees to provide reasonable documentation to University substantiating compliance by Contractor, its affiliates, subcontractors, and/or agents with Applicable Law, including but not limited to those referenced in Sections 3 of this Addendum.
- b. The University may request and obtain access to University Data and related logs at any time for any reason and at no extra cost. The University reserves the right in its sole discretion to perform audits of Contractor at the University's expense to ensure compliance with the terms of the Underlying Agreement and this Addendum. Contractor shall reasonably cooperate in the performance of such audits.
- c. Contractor will make itself and any employees, affiliates, subcontractors, and/or agents assisting in the performance of its obligations under the Underlying Agreement, available to the University at no cost to the University. This shall include, without limitation, any data preservation or eDiscovery required by the University or testimony, or otherwise, in the event of litigation or administrative proceedings against University, its directors, officers, agents or employees.
- d. Contractor represents and warrants that it maintains adequate internal audit functions to annually assess internal controls in its environment, and to protect the security and confidentiality of University Data. Contractor agrees to provide documentation regarding its internal controls to the University upon request including all internal or external audit reports, certifications, information, documentation, electronic records and data regarding Contractor's internal controls. If requested by University, Contractor will grant University and its University agents or subcontractors, the right to audit Contractor's operations, systems and software to confirm internal controls are present and operating.
- e. If the information presented to University regarding Contractor's internal controls is not acceptable to University in its reasonable discretion, Contractor agrees that it will undertake, at its sole cost and expense, an independent SSAE 18 Type II audit or comparable independent attestation to confirm Contractor's controls over its processes. Contractor shall present an action plan acceptable to the University, to correct any and all portions of the systems, software, products, documentation, or internal controls. Contractor shall undertake all activities relating to its preparation of the action plan, and to its correction of any inadequate controls or mitigation of risks revealed by deficiencies in its internal controls at Contractor's sole cost and expense and within a reasonable time period as agreed upon by the University. Should Contractor fail to provide adequate internal controls as described in this Addendum, or to present an action plan acceptable to the University within the mutually agreed upon time frame, University shall be entitled, in its sole discretion, to terminate the Underlying Agreement with no liability whatsoever to Contractor upon written notice to the Contractor.

9. Security Breach or Incident /Unauthorized Disclosure.

- a. Contractor shall immediately and no later than seventy-two (72) hours upon discovery report to University any data breach as defined under any Applicable Law, including without limitation Kentucky's Data Security Law, or any use or disclosure of University Data not authorized by the Underlying Agreement as supplemented by this Addendum or in writing by University ("**Data Incident**"). Contractor's report shall identify: (1) the nature of the unauthorized use or disclosure, (2) the University Data used or disclosed, including a full description of all breached data fields and number of breached records, (3) the identity of the individual(s) or entity that received the unauthorized disclosure, (4) the action(s) that Contractor has taken or shall take to mitigate any potentially negative effects of the Data Incident, and (5) the corrective action(s) Contractor has taken or shall take to prevent future similar unauthorized uses or disclosures.
- b. Contractor agrees to cooperate with University and provide reasonable information in its possession or in the possession of any of its affiliates and subcontractors to assist the University in meeting its obligations to investigate and respond to the Data Incident, including allowing University staff to access log information and other pertinent information related to any investigation related to such Data Incident.
- c. In the event of a Data Incident within the control of Contractor (or its employees, affiliates, subcontractors, and/or agents involved in performance of Contractor's obligations under the Underlying Agreement) and covered under Kentucky's Data Security Law or other Applicable Law, Contractor shall bear all responsibility and expense for complying with the disclosure and notification requirements under that Applicable Law, except to the extent otherwise authorized in writing by University.

10. Breach of Contract by Contractor. If Contractor has violated a material term of this Addendum and/or the Underlying Agreement or committed gross negligence of its responsibilities to University, the Underlying Agreement may be terminated by the University in accordance with the procedures set forth in the Underlying Agreement.

11. Effect of Termination of Underlying Agreement. Within 30 days upon the termination of the Underlying Agreement for any reason, Contractor shall:

- a. Provide University staff with the ability to download and/or export the University Data for records retention purposes.
- b. Return or with University's permission destroy all University Data received from University and/or any retained by any of Contractor's affiliates, agents, representatives, or subcontractors, in any form, and Contractor shall retain no copies of such information except and to the extent required by the Underlying Agreement and/or applicable law. If Contractor determines that such return or destruction is not feasible, the protections of this Addendum shall extend to such information and limit further uses and disclosures to those purposes that make the return or destruction of the University Data infeasible, in which case Contractor's obligations under this Addendum shall survive the termination of the Underlying Agreement;
- c. Contractor agrees that all paper, film, or other hard copy media shall be shredded or

destroyed such that it may not be reconstructed, and University Data shall be purged or destroyed in accordance with NIST Guidelines for media sanitization at <http://www.csrc.nist.gov/>; and

- d. Provide written certification to the University that these actions have been completed.

12. Remedies/Indemnification/Limit of Liability/Insurance.

- a. Injunctive Relief. In the event of any breach or violation, or threatened breach or violation, of this Addendum, each Party shall have the right, in addition to any other rights or remedies available, at law or in equity, to seek injunctive relief against the other Party.
- b. Indemnification. In addition to any other remedies available to the University under law or equity, Contractor shall indemnify, defend (to the extent permitted by applicable law), reimburse, and hold University, its affiliates, directors, officers, employees, agents and, if applicable, students (the “Indemnified Parties”) harmless from and against all claims, actions, causes of action, demands, liabilities, judgments, fines, assessments, penalties, awards, or other costs and/or expenses, of any kind or nature, including without limitation; those associated with: (i) providing notice to the individuals whose personal information may be impacted by a Data Incident (as described in Section 10 above); (ii) providing any applicable credit monitoring that University may elect in its sole discretion, depending upon the severity of the Data Incident, to provide to the affected individuals or entities, and (iii) legal fees, audit costs, fines and other fees imposed upon any of the Indemnified Parties by regulatory agencies or contracting partners, relating to or arising out of any breach or alleged breach of this Addendum by Contractor, its affiliates or subcontractors.
- c. Insurance. Contractor shall maintain sufficient insurance or financial resources to cover any claims arising from the unauthorized use, disclosure, or breach of, and/or or access to University Data, including without limitation cyber liability insurance in the minimum amount of \$1,000,000 and such additional coverages and amounts as expressly agreed to by the Parties in the Underlying Agreement.

13. Conflicts. Any agreements or understandings, whether electronic, click through, verbal or in writing, between (a) Contractor and (b) University (or University employees or other end users) that conflict with the terms of the Underlying Agreement or this Addendum, shall not be valid or binding on the University or any such end users. If there is any direct conflict between this Addendum and the Underlying Agreement, the terms and conditions of this Addendum shall control, unless expressly agreed to in writing by the Parties and signed by an authorized representative of the University.

14. Miscellaneous.

- a. Immunity. Nothing in the Underlying Agreement or this Addendum shall be deemed to be a waiver, express or implied, of the privileges and immunities of the University of Kentucky as an agency and instrumentality of the Commonwealth of Kentucky in the United States of America.
- b. Changes in the Law. This Addendum shall be deemed amended to conform to any new or revised legislation, rules and regulations to which a Party is subject now or in the future

to the extent the new or revised legislation rules and regulations provide more protection to University Data.

c. Waiver. Waiver by University of a breach or violation of any provision of this Addendum will only be effective if done in writing and signed by an authorized representative of the University, and in each case, it will not operate as a waiver of any subsequent or similar breach or violation.

d. Assignment. Neither party may assign this Addendum without the other Party's prior written consent.

e. Survival. Termination or expiration of the Underlying Agreement or this Addendum will not affect the Parties' rights or obligations that, by their nature and context, are intended to survive termination or expiration, including but not limited to those set forth in Section 10, 12 and 13 of this Addendum.

f. Captions. The headings and captions in this Addendum are for reference only and do not and shall not be implied to limit or expand the construction, content and intent of the provisions.

g. Binding Addendum. This Addendum is binding and shall inure to the benefits of the Parties and their respective successors and assigns.

h. Execution and Counterparts. This Addendum may be executed in one or more counterparts, including by fax or by transmission of signed and electronically scanned copies, or via the use of electronic signatures, each of which will constitute an original but all of which together will constitute one and the same Addendum. The Parties acknowledge and agree that this Addendum has been mutually discussed, negotiated, and drafted by the Parties.

This Data Privacy and Security Addendum is executed to be effective as of the date first written above.

UNIVERSITY

By: _____

Printed: _____

Date: _____

CONTRACTOR

By: _____

Printed: _____

Date: _____