



**Kansas State University**

**Controller's Office**  
102 Anderson Hall  
Manhattan, KS 66506 -0108  
Fax: 785-532-6612

RECEIVED KSU  
MAY 17 2010  
PURCHASING

May 6, 2010

IFB # 40145R

ADDENDUM No. 1

Item: Refuse Collection Services

Department: Kansas State University - ARCH

Closing Date: NA

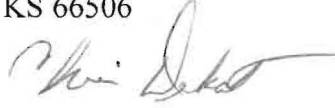
Conditions of Addendum:

Price per ton of Collected Refuse shall be the same price as charged by the local landfill (per ton). Vendor shall provide proof of pricing to ARCH as price changes occur.

There are no other changes at this time.

Please return a signed copy of this addendum with your bid.

Kansas State University  
Controllers / Purchasing Office  
Anderson Hall Rm. 21  
Manhattan, KS 66506

Chris Dekat  
Procurement Officer 

I (we) have read and understand this Addendum and agree it is a part of my (our) bid on the above Invitation for Bid.

Name of Company/Firm: Clem's Inc.

Signed by: Lois A. Schmidt

Title: Sec/Treasurer Date: 5-12-10

- Cashiers**  
211 Anderson Hall  
785-532-6317  
Fax: 785-532-6454
- Student Loans**  
211 Anderson Hall  
785-532-6204  
Fax: 785-532-6454
- Accounts Payable**  
220 Anderson Hall  
785-532-6202  
Fax: 785-532-1305
- Purchasing**  
21 Anderson Hall  
785-532-6214  
Fax: 785-532-5577
- Funds Management**  
206 Anderson Hall  
785-532-1838  
Fax: 785-532-1305
- Sponsored Projects Accounting**  
10 Anderson Hall  
785-532-6207  
Fax: 785-532-5577
- Systems**  
218 Anderson Hall  
785-532-2048  
Fax: 785-532-1305
- Financial Reporting/Inventory**  
21C Anderson Hall  
785-532-6525  
Fax: 785-532-5577
- Administration**  
102 Anderson Hall  
785-532-6210  
Fax: 785-532-6612

**KANSAS STATE UNIVERSITY  
PURCHASING OFFICE  
21 ANDERSON HALL  
MANHATTAN, KS 66506  
PHONE 785-532-6214 FAX 785-532-5577**

CONTRACT I.F.B. NO. 40145R  
P.R. NO. S101  
REPLACES CONTRACT NO. 40054  
DATE MAILED 1/10/07  
CLOSING DATE, 2:00 PM 1/29/07

PROCUREMENT OFFICER:  
Chris Dekat, CPPB

TELEPHONE: 785-532-5469  
E-MAIL: cidekat@ksu.edu

**NOTICE TO VENDORS**

Invitations are extended for bids on the attached Invitation for Bid.

ITEM: Refuse Collection Services

USING DEPARTMENT: Agricultural Research Center - Hays

PERIOD OF CONTRACT: 5 years (from 3/1/07 to 2/28/12)

GUARANTEE: NONE REQUIRED

Scope of Invitation:

To provide Refuse Collection Services per specifications of this Invitation for Bid.

**\* Web Viewers who would like a copy of the IFB may email the Procurement Officer above.**

**READ THIS INVITATION CAREFULLY**

Failure to abide by all of the conditions of this Invitation may result in the rejection of a bid. Inquiries about this Invitation should indicate the contract number and be directed to the procurement officer. Return in a sealed envelope or other container only the signature and bids forms not later than the closing date indicated above. Retain the remaining documents for reference.

MEMORANDUM OF AGREEMENT

This Agreement is entered into as of 1/30/07, at Manhattan, Kansas between Kansas State University hereinafter referred to as the "University", and Clem's Inc., 510 Sunflower Dr., Hays, KS 67601 hereinafter referred to as the "Contractor".

WITNESSETH THAT the purpose of this agreement is to outline and describe the responsibilities to be assumed by the contracting parties in connection with the below referenced Invitation for Bid.

Part 1. Duration:

This agreement is for a five (5) year period from 3/1/07 through 2/28/12.

Part 2. The Parties Hereto Agree That:

a. The University will provide:

(1) Payment for product/services received.

b. The Contractor will provide:

(1) Product/services as specified under Contract IFB 40145R.

Part 3. Payment for Services:

Payment will be made in regular routine upon receipt by the University of the Contractor's invoice in duplicate.

Part 4. Kansas Contractual Provisions:


The provisions found in Contractual Provisions Attachment (form DA-146a), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

In witness whereof the parties hereto have signed this agreement as of the day and year first above written.

Contractor: Clem's Inc.  
510 Sunflower Dr.  
Hays, KS 67601

Kansas State University  
Controller/Purchasing  
Manhattan, KS 66506

  
\_\_\_\_\_  
(Signature)

  
\_\_\_\_\_  
Carla K. Bishop  
Director of Purchasing

Scott A. Schmidt  
(Print Name)

1000-10-10  
1000-10-10

**BID INSTRUCTIONS**

**PREPARATION OF BID:** Each bid must be legible and signed. Prices are to be entered in spaces provided on the bid form. Computations and totals shall be indicated where required. In case of error in computations or totals, the unit price shall govern.

**SIGNATURE OF BIDS:** Each bid shall give the complete mailing address of the vendor and be signed by an authorized representative by original signature with his or her name and legal title typed below the signature line. Each bid shall include the vendor's social security number or Federal Employer's Identification Number.

**ACKNOWLEDGMENT OF ADDENDA:** All vendors shall acknowledge receipt of any addenda to this Invitation. Failure to acknowledge receipt of any addenda may render the bid to be non-responsive. Changes to this Invitation shall be issued only by KSU Purchasing in writing.

**MARKING AND MAILING BIDS:** Bids shall be sealed securely in an envelope or other container addressed and marked on the outside as follows:

KANSAS STATE UNIVERSITY  
PURCHASING OFFICE  
21 ANDERSON HALL  
MANHATTAN, KS 66506

CONTRACT IFB # 40145R  
CLOSING DATE 1/29/07

Faxed or telephone bids are not acceptable unless this Bid is for an amount less than \$25,000.00.

The University shall not be responsible for the premature opening of a bid or for the rejection of a bid that was not received prior to the closing date because it was not properly identified on the outside of the envelope or container.

**CLOSING DATE FOR BIDS:** All bids shall be received promptly at 2:00 pm Central Standard or Daylight Savings Time on 1/29/07 whichever is in effect, at the following location:

KANSAS STATE UNIVERSITY  
PURCHASING OFFICE  
21 ANDERSON HALL  
MANHATTAN, KS 66506

Bids received prior to the closing date shall be kept secured and sealed until closing. Bids received after the closing date will not receive consideration and will remain sealed in the bid file.

**MODIFICATION OF BIDS:** A vendor may modify a bid by letter or FAX transmission **any time** prior to the deadline for receipt of bids, and the Director of Purchasing is satisfied that a **written confirmation** of the modification signed by the vendor was mailed prior to the deadline as **evidenced** by the postmark on the envelope or container.

**WITHDRAWAL OF BIDS:** A bid may be withdrawn on written request from the vendor to the **procurement officer** at the KSU Purchasing Office prior to the closing date.

**BID DISCLOSURE:** At the time of closing, bid prices shall be made public information. **Interested vendors** or their representatives may be present at the opening of the sealed bids at the **following location:**

KANSAS STATE UNIVERSITY  
PURCHASING OFFICE  
21 ANDERSON HALL  
MANHATTAN, KS 66506

The low vendor shall not be construed as meeting all specifications set out in the Invitation at the bid disclosure.

Bid results will not be given to individuals over the telephone, by fax, or e-mail. Results **may be** obtained by attending the public bid opening or by obtaining a bid tabulation from KSU Purchasing Office. Bid results can be obtained by sending:

1. A self-addressed stamped envelope;
2. Quotation Number or Contract Number for each tab requested; and
3. A check for \$3.00, payable to Kansas State University

to the above address. Copies of individual bids may be obtained under the Kansas Open Records Act. Information in bid files will not be released until a bid has been awarded or all bids **have been** rejected.

Should a check be returned to Kansas State University for insufficient funds, the vendor will be suspended from all bidding until such time as the vendor makes good on payment.

#### **GENERAL CONDITIONS**

**Contract.** The successful vendor will be required to enter into a written contract with **Kansas State University**. The vendor agrees to accept the provisions of form DA-146a, **Contractual Provisions Attachment**, which is incorporated into all contracts with the State and is attached to this Invitation.

**Contract Documents.** This Invitation and any amendments and the response and any amendments of the successful vendor shall be incorporated along with the DA-146a into the written contract which shall compose the complete understanding of the parties.

**Contract Formation.** No contract shall be considered to have been entered into by KSU until all statutorily required signatures and certifications have been rendered; funds for the contract have been encumbered with the Division of Accounts and Reports; and a purchase order, signed by the Director of Purchasing, has been deposited in the mail OR a written contract has been signed by the successful vendor.

**Federal, State and Local Taxes-Governmental Entity.** Unless otherwise specified, the bid price shall include all applicable federal, state and local taxes. The successful vendor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Invitation. The State of Kansas is exempt from state sales or use taxes and federal excise taxes. These taxes shall not be included in the vendor's price quotations.

**Evaluation of Bids.** Award shall be to the lowest responsible bidder taking into consideration conformity with the specifications, terms of delivery and other conditions imposed by this Invitation.

**Competition.** The purpose of this Invitation is to seek competition. The vendor shall advise the Purchasing Office if any specification, language or other requirement inadvertently restricts or limits bidding to a single source. Notification shall be in writing and must be received by the Purchasing Office no later than five (5) business days prior to the bid closing date. The Director of Purchasing reserves the right to waive minor deviations in the specifications which do not hinder the intent of this Invitation.

**New Materials, Supplies or Equipment.** Unless otherwise specified, all materials, supplies or equipment offered by a vendor shall be new, unused in any regard and of most current design. All materials, supplies and equipment shall be first class in all respects. Seconds or flawed items will not be acceptable. All materials, supplies or equipment shall be suitable for their intended purpose and, unless otherwise specified, fully assembled and ready for use on delivery.

**Equivalent Items.** Whenever a material, article or piece of equipment is identified in the specifications by reference to a manufacturer's or vendor's name, trade name, catalog number, etc., it is intended to establish a standard, unless otherwise specifically stated. Any material, article or equipment of other manufacturers or vendors shall perform to the standard of the item specified. Equivalent bids must be accompanied by sufficient descriptive literature and/or specifications to provide for detailed comparison. Samples of items, if required, shall be furnished at no expense to the State and if not destroyed in the evaluation process, shall be returned at vendor's expense, if requested.

**Acceptance or Rejection.** The State reserves the right to accept or reject any or all bids or part of a bid; to waive any informalities or technicalities, clarify any ambiguities in bids; and unless otherwise specified, to accept any item in the bid.

**Default on Delivery.** Any vendor who defaults on delivery as defined in this Invitation may, at the discretion of the KSU Director of Purchasing, be barred from bidding on any subsequent Invitation for a period to be determined by the Director.

**Insurance.** The State shall not be required to purchase any insurance against loss or damage to any personal property nor shall the State establish a "self-insurance" fund to protect against any loss or damage. Subject to the provisions of the Kansas Tort Claims Act, the vendor shall bear the risk of any loss or damage to any personal property.

**Inspection.** The State reserves the right to reject, on arrival at destination without cost to the State, any items which do not conform with the specifications of this Invitation.

**Termination.** The KSU Director of Purchasing may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:

- (1) The Contractor fails to make delivery of goods or services as specified in this contract; or
- (2) The Contractor fails to perform any of the provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms.

The using department or the KSU Director of Purchasing shall provide the Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within 10 days from the receipt of the notice (or such longer period as may be authorized in writing), the Director of Purchasing shall issue the Contractor an order to stop work immediately. Receipt of this notice shall be presumed to have occurred within three (3) days of the date of the notice.

The KSU Director of Purchasing may terminate performance of work under this contract in whole or in part whenever, for any reason, it is determined that the termination is in the best interest of the State of Kansas. In the event that the KSU Director of Purchasing elects to terminate this contract pursuant to this provision, he/she shall provide the Contractor written notice at least 30 days prior to the termination date. The termination shall be effective as of the date specified in the notice. The contractor shall continue to perform any part of the work that may have not been terminated by the notice.

**Right and Remedies.** If this contract is terminated, the State, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to the State in the manner

and to the extent directed, any completed materials. The State may be obligated only for those services and materials rendered and accepted prior to the date of termination. Subject to proof of market price, the measure of damages for nondelivery or repudiation by the Contractor shall be the difference between the market price at the time when the State learned of the breach and the contract price together with any incidental and consequential damages less expenses saved in consequence of the contractor's breach. Market price shall be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

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

The Contractor shall not be liable if the failure to perform this contract arises out of causes beyond the control of or negligence of the Contractor. Causes may include, but are not limited to, acts of nature, fires, quarantine, strikes other than by the Contractor's employees, and freight embargoes.

In event of termination, the Contractor shall receive payment prorated for that portion of the contract period services were provided to and/or goods were accepted by the State.

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

**Waiver.** Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by the State shall not constitute a waiver.

**Hold Harmless.** The Contractor shall indemnify the State against any and all claims for injury to or death of any persons; for loss or damage to any property; and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

The State shall not be precluded from receiving the benefits of any insurance the contractor may carry which provides for indemnification for any loss or damage to property in the contractor's custody and control, where such loss or destruction is to State property. The contractor shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction or damage to State property.

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

**Federal, State and Local Taxes-Contractor.** The State makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

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

**Modification.** This contract shall be modified only by the written agreement of the parties with the approval of the Director of Purchasing.

**Assignment.** The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of the State which consent will not be unreasonably withheld or delayed. This contract shall immediately terminate in the event of its assignment, conveyance, encumbrance or other transfer by the Contractor without the prior written consent of the State.

**Third Party Beneficiaries.** This Contract shall not be construed as providing an enforceable right to any third party.

**Captions.** The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.

**Severability.** If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected, and each provision of this contract shall be enforced to the fullest extent permitted by law.

**Governing Law.** This agreement shall be governed by the laws of the State of Kansas.

**NOTICE OF AWARD.** The KSU Purchasing Office shall issue either a purchase order or a written contract to the successful vendor.

### **SPECIAL CONDITIONS**

**TERM OF CONTRACT.** The term of this contract is for 5 years.

**OPEN-ENDED CONTRACT.** This Invitation is for a contract between a vendor and the State to furnish an undetermined quantity of a good or service in a given period of time.

**QUALITY.** Materials used and workmanship shall be of the highest quality. Failure to produce and/or supply materials of the highest quality may result in rejection of an order entirely at the contractor's expense.

The decision of the KSU Director of Purchasing shall be final in all instances of dispute herein. The proof of accuracy or manufacture and quality of material rests with the contractor.

**PRICE.** Prices shall remain firm throughout the contract period.

**ORDERS.** Orders will be placed by the using departments throughout the contract period on an Agency Purchase Order (Form Da-103).

**DELIVERIES.** All orders shall be shipped FOB destination, prepaid and included, unless stated otherwise. Deliveries must be clearly marked with the purchase order number. If delays in delivery are anticipated, the Contractor shall notify the ordering department of the expected delivery date or partial delivery date. The order may be canceled if delivery time is unsatisfactory. The Contractor shall inform the KSU Purchasing Office of any supply or delivery problems.

**INVOICES.** Each purchase order must be individually invoiced. Invoices shall be forwarded to the using department in duplicate and shall state the following:

- (1) Date of invoice;
- (2) Date of shipment (or completion of work);
- (3) Purchase Order number and contract number;
- (4) Itemization of all applicable charges; and
- (5) Net amount due.

**PAYMENT.** Payments will be made in regular routine per K.S.A. 75-6403 upon receipt by the ordering department of the contractor's invoice in duplicate.

**SPECIAL PROVISIONS FOR REFUSE SERVICES**

- 1) This proposal is intended to provide for the establishment of a contract to furnish Refuse Collection Services for Kansas State University, Agricultural Research Center, Hays, KS.
- 2) All correspondence and invoices must show the contract number.
- 3) **METHOD OF PAYMENT**: Payment will be made monthly, in arrears, upon presentation of the contractor's invoice to the agency receiving service for approval and payment.
- 4) **EMPLOYEES**: All persons employed to perform these services shall be employees of the contractor and the contractor shall pay all salaries and expenses, and all federal, social security taxes, federal and state unemployment taxes and any other payroll taxes relating to such employees.
- 5) **INSURANCE RESPONSIBILITY & LIABILITY**: The contractor's interest in all property herein described, if any, or any personal liability to him arising from this agreement to whatever extent shall be considered to be covered by applicable insurance by the contractor to the extent required. Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State of Kansas or any of its agencies responsible for loss or damage to personal property no to hold contractors harmless from any such occurrences. Contractor shall possess Workman's Compensation Insurance in the amount required by law.
  - a) **PROOF OF INSURANCE** – The successful bidder shall submit proof of Public Liability Insurance as well as Workers Compensation Insurance to the agency prior to beginning the service.
- 6) **PRICING**: The fee for service shall remain firm for the period of the contract.
  - a) Pricing must be submitted as price per ton. The successful contractor must have scales on board the collection truck for purposes of documenting and verifying the actual total weight of each collection at the Ag Research Center. Scales used must have passed the NTEP Certificate of Conformance. See K.S.A. 83-304 that requires that scales used commercially must be tested for accuracy and bear such seal of conformance.
  - b) Average monthly volume is 2.1 tons. This is an approximation and will vary by season and activity at the center.
- 7) **AVAILABILITY**: The contractor must provide the office representative a list of regular established office hours and telephone numbers of the contractor.
- 8) The work covered by this contract will consist of furnishing all labor, equipment, materials and performing all operations necessary to collect and remove refuse. Refuse as referred to in this contract shall consist of any weight such as paper, cans, food wastes, packing crates, etc., or any other material which can be placed in the container. Periodic cleaning and deodorizing of the container to be included in this service.
  - a) The successful contractor will make twice weekly collections from three locations at the Ag Research Center. Containers currently on-site are two (2) 3-cubic yard and one (1) 4-cubic yard capacity dumpsters that are furnished and owned by the Ag Research Center.
  - b) Additional locations must be provided within 24 hours of such request. This will only occur during periods of unusually heavy accumulation. Additional collections must be billed as a separate line item at the unit price per ton bid.

- 9) Contractor's handling methods must not permit refuse and scrap paper to blow or drop from containers during pickup and removal. The contractor must prevent littering of premises or streets.
- 10) The contractors shall be responsible for instructing his/her employees in all traffic conditions and safety practices at the designated area.
- 11) **LOCATION:** Location of pick-up site or change of pick-up site to be determined by mutual agreements between the agency and the contractor.
- 12) **SANITARY CONDITIONS:** Complaints in regard to service will be corrected within 24 hours after notification. The contractor will be required to dispose of miscellaneous trash in such a manner as not to cause conditions detrimental to public nuisance. Due care must be exercised to prevent scattering of waste on grounds and pick-up area must always be left clean.
- 13) Vendors shall provide the names of at least three (3) persons for whom they have provided refuse services in the past. Failure to provide the information may lead to disqualification.

Closing Date 1/29/07

Item Refuse Collection Services

Kansas State University

SIGNATURE SHEET

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

LEGAL NAME OF PERSON, FIRM OR CORPORATION Clem's Inc.

TELEPHONE (TOLL FREE) NUMBER 785-625-2412 FAX NUMBER —

ADDRESS P.O. Box 1501 510 Sunflower Dr.

CITY & STATE Hays, KS ZIP CODE 67601

SS OR FEIN NUMBER 48-0935585

SIGNATURE *Scott A. Schmidt*

TYPED NAME OF SIGNATURE Scott A. Schmidt

TITLE President

DATE 1-23-07

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

ADDRESS \_\_\_\_\_

CITY & STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

TELEPHONE (TOLL FREE) NUMBER \_\_\_\_\_ FAX NUMBER \_\_\_\_\_

E-MAIL \_\_\_\_\_

**Bid Sheet**

Estimated Monthly Volume: 2.1 Tons

Containers: Two (2) three yard and One (1) four yard container

<u>Description:</u>	<u>Price</u>
Price Per Ton of Collected Refuse	<u>55.00</u>
3 Yard Dumpster per pickup	<u>3.50</u>
4 Yard Dumpster per pickup	<u>4.00</u>

State of Kansas  
 Department of Administration  
 DA-146a (Rev. 1-01)

CONTRACTUAL PROVISIONS ATTACHMENT

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

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

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

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration. Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-8403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss of damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."