

Northern Kentucky University (NKU or University)
Instructions to Proposers

SECTION 1 – PROPOSER’S REPRESENTATIONS

The Proposer by submitting a Response to an RFP, represents and warrants that:

1. The RFP Documents have been read and understood and the Proposal is made in accordance therewith.
2. The Proposal submitted is premised upon furnishing the work required by the RFP documents without exception.
3. The plans and specifications contained in the RFP Documents have been carefully examined and determined by the Proposer to be accurate as well as adequate and sufficient from which to submit a response to an RFP and from which to perform the Work.
4. Proposer understands that all solicitations are subject to the provisions and requirements of any applicable Kentucky Revised Statutes, including but not limited to the Kentucky Model Procurement Code, Open Records Requests, and the rules, regulations and policies of NKU including [NKU’s General Terms and Conditions](#).

SECTION 2 – BIDDING DOCUMENTS

1. Availability of Bidding Documents

A. Proposers, Sub-Proposers, Subcontractors, and others may obtain Proposal Documents from Procurement Services or by downloading from the NKU Planroom at www.nkuplanroom.com

B. Complete sets of Proposal Documents shall be used in preparing Proposals. The University assumes no responsibility for misinterpretations resulting from the use of incomplete sets of proposal documents.

C. The University, in making copies of the Proposal Documents available on the above terms, does so only for the purpose of obtaining Proposals on the work and does not confer a license or grant for any other use.

2. Accuracy of RFP Documents

A. The RFP Documents are complementary and are issued for the convenience of the Proposers. NKU assumes no responsibility for the correctness of said documents. Each

Proposer should review the documents for errors or inaccuracies that may affect the scope of work implied.

B. All Proposers shall, upon examination of bidding Documents promptly notify the University's Procurement Official of any ambiguity, inconsistency or error that they may discover upon examination of the Bidding Documents and/or of the site and local conditions.

3. Questions, Interpretations

A. All questions regarding the meaning or interpretation of the Bidding Documents shall be directed in writing to the Procurement Official. Questions received less than seven (7) calendar days prior to the date for receipt of Bids may not be answered.

B. Questions will be accepted from prospective Proposers and should be submitted in a timely manner to the Procurement Officer only. E-mail submission of questions is preferable, but questions will also be accepted by mail or facsimile to the Procurement Officer. The Procurement Officer will decide whether an answer can be given before the closing date, based on the availability of time to research and communicate an answer. Answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors who are known to have received a copy of this RFP.

C. Any interpretation, correction or change of the Bidding Documents will be made by Addendum, issued by the Procurement Official. Interpretations, corrections or changes of the Bidding Documents made in any other manner will not be binding and Proposers shall not rely upon such interpretations, corrections and changes.

4. Addenda

A. Addenda will be mailed or delivered to all who are known by NKU Procurement Services to have requested and were furnished Bidding Documents.

B. Addenda are always posted on the NKU Planroom website: www.nkuplanroom.com

C. Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

D. No Addenda of a material nature will be issued later than five (5) working days prior to the date for receipt of bids, except for postponing the date for receipt of bids or withdrawing the invitation for Bid or Proposal.

E. Each Proposer shall ascertain, prior to submitting his Bid or Proposal that he has received all Addenda issued by Procurement Service for the particular bid invitation. The Proposer shall acknowledge receipt of all Addenda in the Form of Proposal, or by separate letter to the Procurement Official which is received at or prior to the hour and date specified for receipt for Bids.

F. It shall be the sole responsibility of the Proposer who received the Addendum, to insure that all of the appropriate Sub-bidders and Sub-contractors are notified in respect to the information contained in the Addendum.

SECTION 3 – PRE-PROPOSAL CONFERENCE AND SITE VISIT

If this RFP warrants a pre-proposal conference then it shall be held at the date and time listed under the Notice of Advertisement.

SECTION 4 – BIDDING PROCEDURES

1. Timeliness of Proposals. RFP's shall be delivered to Suite 617, Lucas Administrative Center prior to the official time and date for receipt of Proposal indicated in the advertisement of Request for Proposal, or any extension thereof made by Addendum. The "official time" refers to the time as indicated by the time date clock located in the reception area of Suite 617.

2. Late Bids. Bids received after the official closing time and date for receipt of Bids may be considered for evaluation and award only if: (i) no other Bids were received within the legal advertisement period; and (ii) the re-advertisement time delay would seriously affect the operations of the Owner; and (iii) in the judgment of the Purchasing Official, the Bid was finalized prior to the official closing time and date for receipt of bids. The Proposer shall assume full responsibility for timely delivery at the location designated for receipt of bids.

3. RFP's Not In Writing. Oral, e-mailed, telephonic, or telegraphic RFP's or changes in RFP's by such methods are not permitted and will not receive consideration.

4. RFP's Withdrawn. RFP's may be withdrawn prior to the closing time and date for receipt of RFP's by: (i) a properly identified representative of the Proposer whose name appears on the RFP envelope, or (ii) by written request by an authorized representative of the Proposer, received by Procurement Services prior to the RFP closing date and time. Withdrawn RFP's may be resubmitted up to the closing time designated for the receipt of RFP's.

5. RFP's Remain Open. During the stipulated time period following the time and date designated for the receipt of RFP's an RFP shall remain open for the Owner's acceptance. During this period the RFP may not be modified, withdrawn or canceled by the Proposer, without the Bid security being subject to forfeiture and the suspension of the Proposer's future bidding privileges.

BID SUBMISSION

Proposals are to be submitted by the date and time specified in the Project Timetable.

Submit to:

Purchasing Official
Procurement Services Northern Kentucky
University 617 Lucas Administrative Center
Highland Heights, KY 41099

NOTE: USPS Zip Code is 41099, other carriers should use Newport, 41076.

SECTION 5 – CONSIDERATION OF BIDS

1. Bid Opening. Unless stated otherwise in the Notice of RFP Opportunity or Request for Proposal, all properly identified timely RFP's WILL NOT be opened publicly.
2. Request for Proposal responses are due at the appointed time but are not opened and read. They are first checked for responsiveness and then forwarded to the evaluation committee.
3. Waiver of Irregularities/Rejection of Bids. The right to cancel the Request for Proposal, to reject any and all Proposals, and to waive technicalities and minor irregularities in RFP's is maintained and preserved in all Invitations for Bids issued by NKU when such action is determined to be in the best interest of NKU.
4. Grounds for Rejection. Grounds for the rejection of Bids or RFP's include, but shall not be limited to:
 - A. Failure of a Bid to conform to the essential requirements of the Invitation for Bid/Request for Proposal;
 - B. Any bid that does not conform to the specifications contained or referenced in any Invitation for Bid/Request for Proposal shall be rejected unless the invitation authorized the submission of alternate Bids and the items offered as alternates meet the requirements specified in the invitation;

C. Any Bid that fails to conform to the delivery or completion schedule established in the Bidding Documents; Procurement Services Instruction to Bidders & General Terms and Conditions

D. A Bid imposing conditions or qualifications which would modify the terms and conditions of the Invitation for Bid/Request for Proposal, or limit the Proposer's liability to the Owner in a manner inconsistent with the provisions of the Bidding Documents;

E. Any Bid determined by Procurement Services in excess of funds available;

F. Failure to furnish a Bid security in accordance with the requirements of the Notice of RFP Opportunity or Request for Proposal;

G. For other cause as documented by the Procurement Official pursuant to a written determination and finding;

H. Bids received from Proposers determined by the Procurement Official to be non-responsive Proposers.

5. Minor Irregularities. Minor irregularities or technicalities in a Proposal may be waived by the Procurement Official on behalf of the University when all of the following circumstances are present:

A. The Procurement Official determines that it will be in the University's best interest to do so; and the technicalities or irregularities are mere matters of form not affecting the material substance of a Proposal;

B. Represent an immaterial deviation from, or variation in the precise requirements of the advertisement for Bids or Invitation for Bid, and have no effect on price, quality, quantity or delivery of supplies or performance of services being procured; and, the correction or waiver of the technicality or irregularity will not affect the relative standing of, or prejudice, other Proposers. If the University does not waive technical deficiencies and irregularities, the deficient Bid shall be rejected.

6. Competitive Negotiation. The University reserves the right to exercise the provisions of KRS 45A.090 regarding competitive negotiation when it is considered to be in the best interest of the University. It is the intent of the Procurement Official to award a contract, in due course and after a reasonable Bid evaluation period to the Responsive and Responsible Proposer offering the best value to the University, provided the acceptable Bid sum is within budgeted funds. In the event

that all bids submitted result in prices in excess of funds available, NKU may enter into competitive negotiations subject to the guidelines and restrictions of KRS 45A.090.

7. Rejection of Alternate Bids. The University reserves the right to accept or reject any or all alternate Bids if provided for in the Bid Documents. If alternates designated by the University are considered in the award, the alternate(s) will be accepted in the sequence in which they are listed on the Bid proposal form and the lowest Bid sum will be computed on the basis of the sum of the base Bid plus and/or minus any alternates accepted.

SECTION 6 – QUALIFICATION OF BIDDING CONTRACTOR

1. Inquiries. The Procurement Official shall have the right to make any inquiry deemed necessary to determine the ability of the Proposer to perform the work in a prompt and efficient manner and in accordance with the contract Documents. The failure of a Proposer to promptly supply information in connection with the Procurement Official's inquiry may be grounds for a determination that such Proposer is nonresponsive.

2. Rejection. The right is reserved to reject any Bid where an investigation and evaluation of the Proposer's qualifications would give reasonable doubt that the Proposer could perform prompt and efficient completion of the work in accordance with the requirements with the Contract Documents.

SECTION 7 – AWARD OF CONTRACT

1. The issuance of an award of the Contract is contingent upon (i) securing an acceptable Response that is responsive and from a responsible Proposer and is within the amount of budgeted funds and (ii) determining that the award of Contract will be in the best interest of Northern Kentucky University.

2. Unless otherwise provided in the Bidding Documents, the resulting contract will consist of the Invitation for Bid with any issued addenda, drawings, specifications, the Proposer's submitted Form of Proposal and the Notice of Award letter.

3. The Contract between Northern Kentucky University and the Contractor will be final and binding when the parties have executed the Agreement between the Owner and Contractor.

SECTION 8 – BASIC LEGAL REQUIREMENTS

1. Forms Required. An Authentication of Bid, Statement of Non-collusion and Non-conflict of Interest documents are bound with and included as part of the Form of Proposal. The Proposer is required to sign that document and submit it as part of the Bid. Failure to comply with these requirements shall invalidate the Bid. *Note: This form must be notarized.*

2. Foreign Corporations.

A. Foreign Corporations are defined as corporations that are organized under laws other than the laws of the Commonwealth of Kentucky. Foreign Corporations doing business within the Commonwealth of Kentucky are required to be registered with the Secretary of State, New Capitol Building, Frankfort, Kentucky and must be in good standing.

B. The Foreign Corporate Proposer, if not registered with the Secretary of State at the time of the Bid submittal, shall be required to become registered and be declared in good standing prior to the issuance or receipt of a contract.

C. Domestic Corporations. Domestic corporations are required to be in good standing with the requirements and provisions of the Office of the Secretary of State.

SECTION 9 - PLANHOLDERS

1. Intent to Submit a Proposal. A request for RFP Proposal and RFP Documents by a vendor will be considered as intent to submit a Response. The Proposer's name will appear on the planholder's list showing all planholders and will be forwarded all Addenda issued.

2. Planholder and Addenda Listing. The published planholder and Addenda listing is for general information purposes and the exclusion or inclusion of any firm in no way constitutes and/or implies approval or disapproval of the qualifications of any Proposer, Subcontractor, and material or equipment supplier. If the Proposer or planholder notes non-receipt of any of the listed Addenda, it shall be their responsibility to obtain missing copies from Procurement Services or review same at any of the designated reporting agencies offering the Bid Documents for review.

SECTION 10 – ANTI-KICK BACK

All Proposers shall comply with the Copeland “Anti-Kick Back” Act (18 USC 874) as supplemented in the Department of Labor Regulations (29 CFR, Part 3). This Act provides that each Proposer, subcontractor or Procurement Services Instruction to Bidders & General Terms and Conditions subgrantee is prohibited from inducing, by any means, any person employed in the construction, completion or repair of public work to give up any part of the compensation to which he is otherwise entitled.

SECTION 11 – PROTESTS

Any Proposer who wishes to protest or object to any award made or other decisions Pursuant to this Invitation for Bid may do so only in writing to the Director of Procurement Services.

SECTION 12 – TAXES

1. Not Tax-Exempt.

A. Proposers are informed that construction contracts for Northern Kentucky University are not exempt from the provisions of the Kentucky Sales and/or Use Tax. The Proposer shall include in the lump sum bid and the Contractor shall pay sales, consumer, use and similar taxes for materials, equipment and supplies incorporated into the Work unless otherwise specified in the Bid Documents.

B. Northern Kentucky University, through the Commonwealth of Kentucky, is entitled to exemption from Federal Excise Tax. All Prime Proposers or Sub-Proposers shall take this into consideration in their Bid.

2. Liability for Employee-Related Taxes. The Proposer and Subcontractors will be required to accept liability for payment of all payroll taxes or deductions required by local, state and federal law, including but not limited to old age pension, social security, or annuities. Worker’s Compensation Insurance shall be carried to the full amount as required by Kentucky Statutes. The Proposer shall be in full compliance with KRS Chapters 341 and 342.

Note: Northern Kentucky University was annexed by the City of Highland Heights in 2008. All contractors performing work for NKU must possess a Campbell County Occupational License and a City of Highland Heights Occupational License (administered by Campbell County) and must also pay applicable payroll taxes. For further information call 859.292.3884 or log onto:

<http://www.campbellcountky.org/home/services/occupational-license.htm>.

SECTION 13 – COMPLIANCE WITH KENTUCKY’S COMPENSATION & UNEMPLOYMENT INSURANCE LAWS KRS 45A.480

The successful contractor will be required to assure, by affidavit, that all contractors and subcontractors employed, or will be employed, under the provisions of the contract shall be in compliance with Kentucky requirements for Worker’s Compensation Insurance according to KRS Chapter 342 and Unemployment Insurance according to KRS Chapter 341.

SECTION 14 – COMPLIANCE WITH KENTUCKY’S EEO ACT, KRS 45.560A5.640

Kentucky’s EEO Act, KRS 45.560A5.640 requires non-exempt parties to submit information about employment and hiring practices for any contract award which exceeds \$500,000. Bidders are required to submit reports to the Contracting Agency in accordance with the requirements of the solicitation. The Contracting Agency will send copies of the reports to the Finance and Administration Cabinet, Office of EEO and Contract Compliance (EEO/CC) for review and approval. A list of REQUIRED EEO reports follows.

EEO I. Employer Information

EEO II. Report Affidavit of Intent to Comply

EEO III. Subcontractor Report Form

The employment provisions of the EEO Act may also be met, in part, by subcontracting to a minority-owned and/ or a female-owned company (as appropriate).

EEO/CC will review and evaluate your employment data and, if applicable, the minority-owned and/ or female-owned company documentation. Thereafter, EEO/CC will determine whether your workforce reflects the percentage of available minorities and females in the area from which your employees are drawn. No award will become effective until all forms are satisfactorily submitted

and EEO/CC has certified compliance. Thereafter, EEO/ CC will recertify your company at one (1) year intervals. All required forms are available at <http://finance.ky.gov/services/eprocurement/Pages/vendorservices.aspx>

Contracts between the Successful Bidder and Subcontractors that exceed \$500,000 shall include a provision which requires the Subcontractor(s) to comply with the EEO Act and its reporting requirements. The Successful Bidder is responsible for submitting the subcontractor's forms to EEO/CC. (Note: contracts below the second tier are exempt from EEO reporting.)

SECTION 15 --PERSONAL SERVICES CONTRACT

If this RFP is for consulting or other personal services, then Kentucky law requires a Personal Services Contract to be signed by the vendor and filed with the Legislative Research Commission in Frankfort prior to any work beginning. KRS 45A.690 defines a Personal Service Contract as “an agreement whereby an individual, firm, partnership, or corporation is to perform certain services requiring professional skill or professional judgment for a specified period of time at a price agreed upon.”

After Determination but prior to award, a Personal Services Contract will be sent to the winning offeror for signature. Please be sure to sign and return the original contract promptly to Northern Kentucky University. A Notice of Award will not be issued until the signed Personal Services Contract has been received by Procurement Services and filed with the Legislative Research Commission in Frankfort, KY.

REGARDING PERSONAL SERVICE CONTRACT INVOICING

House Bill 387 has now amended Kentucky Revised Statute 45A.695(10)(A) with the following language, “No payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee”. The Personal Service Contract Invoice Form shall be used for this purpose and for your convenience we have added fields so that it can be completed online and printed. This form can be located on NKU’s Procurement Services website at:

<https://inside.nku.edu/procurement.html>

SECTION 16 - PAYMENT AND PERFORMANCE BONDING REQUIREMENTS

The successful Contractor shall furnish security bonds in an amount equal to one hundred percent (100%) of the Contract amount as security for the performance of the Contract established and for payment of all persons performing labor, including payment of all unemployment contributions which become due and payable under Kentucky Unemployment Insurance Law, and furnishing materials, equipment, supplies, taxes, and other proper charges and expenses incurred or to be incurred in the performance of the contract. All bonds shall be executed by a surety company authorized to do business in the Commonwealth of Kentucky. The bonds shall be valid after the final payment has been made on the Contract during the guaranty period and other periods limited only by statutes of limitation. If the furnishing of performance and payment bonds is required by the Bidding Documents, the bond premiums shall be paid by the Proposer. If the furnishing of bonds is not required by the Bid Documents, but required by the Purchasing Officer subsequent to the award of Contract, the successful Proposer shall procure the bonds and the University will reimburse the Proposer for the premium cost. The University reserves the right to require all bonds be provided by a surety company with a rating of "A" or better as listed in the A. M. Best-Key Rating Guide for Property and Casualty (current edition).

The Proposer shall execute the required performance and payment bonds for NKU on the date of execution of the Contract Documents between the Owner and the Contractor, or, with the approval of the Purchasing Official, within ten (10) calendar days after that date. Unless otherwise specified in the Bidding Documents, the bonds shall be written on the bond form bound in the bidding documents and in the number of counterparts specified by the Purchasing Official.