

## Northern Kentucky University Instructions to Proposers & General Terms and Conditions

### SECTION 1 – DEFINITIONS

1. **Addenda** – are written or graphic instructions issued by Northern Kentucky University (NKU) prior to the execution of the contract which modify or interpret the bidding documents by addition, deletions, clarification, or corrections.
2. **Bid** – is the sum stated in the Bid Proposal for which the Proposer offers to perform the work described in the specifications and detailed on the drawn plans.
3. **Bidder** – is one who submits a bid directly to the University for the work described in the Bidding Documents.
4. **Bidding Documents** – include the Notice of Bid Opportunity, Invitation for Bid or Request for Proposal, Instructions to Bidders, Bid Proposal forms, other sample bidding and contract forms and the proposed Contract Documents including General Conditions, Special Conditions, Plans and Specifications, any Addenda issued prior to receipt of Bids.
5. **Bid Proposal** – is a complete and properly signed document, proposing to do the work or designated portion thereof for the sums stipulated therein supported by data called for by the Bidding Documents.
6. **Consultant** – means the person or the entity, Architect, Engineer or other Consultant, who is identified as such in the Contract Documents.
7. **Foreign Corporation** – refers to a corporation for profit, organized under laws other than the laws of the Commonwealth of Kentucky.
8. **K.A.R.** – Kentucky Administrative Regulations; regulations that are promulgated by state agencies to enhance and clarify procedures that are authorized by a specific statute. After public review and acceptance by the agency, the regulations effectively become law until rescinded or revised by the agency.
9. **KRS References** – means the “Kentucky Revised Statutes” adopted by the Commonwealth of Kentucky including all laws and related regulatory that may have been revised, amended, supplemented or new laws enacted.
10. **NKU** – Northern Kentucky University
11. **Proposal** – is a response to a Request for Proposal for work on which award is based on other factors in addition to cost.
12. **Purchasing Agency** – is Northern Kentucky University (NKU) – Procurement Services, Lucas Administrative Center, Suite 617, 1 Nunn Drive, Highland Heights, KY, 41099
13. **Procurement Official** – is the University’s authorized representative to enter into and establish contracts. The Procurement Official for this RFP is Jeff Strunk.
14. **Responsible Bidder** – shall mean a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance. See KRS 45A.070(6).
15. **Responsive Bidder** – shall mean a person who has submitted a Bid which conforms in all material respects to the Invitation for Bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract. See KRS 45A.070(7).
16. **Work** – Includes the construction and/or services required by the Contract Documents, whether completed or partially completed, and includes all labor, supervision, materials, equipment, services, and things provided or to be provided by the Contractor to fulfill the Contractor’s obligations.

### SECTION 2 – 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.

### SECTION 3 – 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](http://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](http://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 4 – 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 5 – 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.
3. Request for Proposal responses are **due at 2:00 PM local time**.
4. 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.
5. 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.
6. 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.
7. 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. The time is always 2:00 pm local time.

Submit to:

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 6 – 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;

- 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 7 – 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 8 – 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 9 – BASIS 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 10 – 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 11 - 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. In the event the planholder elects not to submit a Bid, it is requested that notification of such fact be furnished to Northern Kentucky University Procurement Services prior to the closing date for receipt of RFP's.
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, 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 12 – 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

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 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 – PROTESTS**

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

**SECTION 15 – WEAPONS-FREE ZONE**

The possession of, use or storage of any firearm, ammunition, explosive device (including fireworks), or other deadly weapon in any form is prohibited on any Northern Kentucky University property or in any facility or on any property owned, leased, or operated by the University, except as permitted by law (K.R.S. 527.020).

“Weapons” include, but are not limited to, martial arts weapons, knives (other than those necessary for cooking or approved university activities, including ROTC), bows and arrows, air guns, shot guns, BB guns, and “deadly weapons” as defined by KRS 500.080(4).

**SECTION 16 - NKU CLEAN AIR ACT**

For the purpose of this policy: “smoking” is defined as burning any type of tobacco product including, but not limited to, cigarettes, cigars, cigarillos, bidis, and pipes; and “facility” is defined as any structure(s), building(s), area, site, place or property under the supervision and/or control of Northern Kentucky University.

The Northern Kentucky University Highland Heights campus shall be designated as non-smoking within all common pedestrian areas, such as the Loch Norse area, Norse Commons, University Plaza and other highly populated areas, unless otherwise stipulated in this policy. Further, the campus shall be designated as nonsmoking within a thirty-foot (30) perimeter of all campus facilities, unless otherwise stipulated as a smoking area in this policy. Smoking shall be prohibited in all campus buildings and outside in areas of the campus where non-smokers cannot avoid exposure to smoke.

This smoking ban also includes all tunnels, service areas, equipment rooms, mechanical rooms, electrical rooms, penthouses and building roofs

The six designated smoking areas are: 1) the south entrance of the lower level of Landrum Hall; 2) the north entrance of the Applied Science & Technology Building; 3) the east entrance of the University Center on the ground floor; 4) near the Sun Dial in the University Plaza; 5) the Herman Science Center plaza; 6) the south side of Health Center.

Effective January 1st, 2014, NKU will be a tobacco free campus. The use of all tobacco products shall be prohibited in all campus buildings and outside areas on campus.

**SECTION 17 – NKU – SAFETY**

The University strives to continuously maintain both a safe and secure work environment for its students, employees, and the employees of all Contractors assigned to our campus. Therefore, it is essential the following criteria be met by all Contractors (and all their subcontractors) working at NKU.

The Contractor shall furnish the University with written documentation that verifies each of their employees working on the property of the University has cleared a background check, has no felony convictions, is not a sex offender, and has the legal right to work in the United States.

**SECTION 18 - CONTRACTOR PRESENCE ON CAMPUS**

Contractor agrees that all persons working for or on behalf of the Contractor whose duties bring them on campus shall obey the rules and regulations that are established by the University and shall comply with the reasonable directions of the University's officers. Contractor's employees shall not use existing areas where not required to perform the work.

Contractor shall be responsible for the acts of his employees and agents while on campus. Accordingly, Contractor agrees to take all necessary measures to prevent injury and loss to persons or property located on campus. Contractor shall be responsible for all damages to persons or property caused by Contractor or any of his agents or employees. Contractor shall promptly repair any damage that he, or his employees or agents may cause to the campus or to University equipment.

#### **SECTION 19 -- INDEPENDENT CONTRACTOR**

The Contractor is engaged as an independent Contractor and shall be responsible for any federal, state and local taxes and fees applicable to payments hereunder.

#### **SECTION 20 -- USE OF FACILITIES**

Contractor or his employees shall have the right to use only those University facilities that are necessary to perform services under this contract.

#### **SECTION 21 --ASSIGNMENT:**

Neither party to the contract shall assign the contract, or any portion thereof without the written consent of the other, nor shall the Contractor assign any monies due or to become due to him hereunder without the previous written consent of the Owner.

#### **SECTION 22 --USE OF NAMES AND LOGOS IN ADVERTISING:**

Contractor agrees not to make reference to this Contract, use the University's name in any advertising or promotion, or use any University logos without the expressed written consent of the University.

#### **SECTION 23 --INDEMNIFICATION:**

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and their agents and employees from and against all claims, damages, losses and expenses, including attorney's work, provided that any such claim, loss, damage or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting there from, and (b) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not is caused in part by a party indemnified hereunder. This basic obligation to indemnify shall not be construed to nullify or reduce other indemnification rights which the Owner would otherwise have.

#### **SECTION 24 -- LAW, FORM AND FORUM:**

Terms and provisions of this contract shall be construed in accordance with the laws of the Commonwealth of Kentucky. Any legal action entered against the University on the Contract by the Contractor shall be brought in the Franklin County Circuit Court, Commonwealth of Kentucky, and shall be tried by the court sitting without a jury. All defenses in law or equity, except the defense of government immunity, shall be preserved to the University.

#### **SECTION 25 -- DRUG FREE WORKPLACE:**

Northern Kentucky University is a drug-free and alcohol-free workplace, and all employees of Contractors and subcontractors are subject to this policy while working on University property. If there is verifiable suspicion or probable cause that an employee of the Contractor or subcontractor is under the influence of drugs or alcohol, the University reserves the right to require the Contractor to have the employee tested immediately at no expense to the University. If the test results are positive, the employee will be prohibited from working on University property for a period of one (1) year from the positive test, or the duration of the project, whichever is longer. The banned employee of the Contractor must pass a drug and alcohol test before working again on university property.

#### **SECTION 26 --FORCE MAJEURE:**

Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil

insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

#### **SECTION 27 – CORRELATION AND INTENT OF CONTRACT DOCUMENTS**

1. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly and carefully examined the site of the Work, investigated and understands all conditions which can affect the Contractor has inspected all documents and finds the documents to be adequate to complete the Work. It is the responsibility of the Contractor to be familiar with and comply with all Federal, State, and local laws, ordinances, and regulations that might affect those engaged in the Work, and to be familiar with the materials, equipment, or procedures used in the Work, or that in any other way could affect the completion of the Work. Any failure by the Contractor or any Subcontractor or material supplier to properly familiarize themselves with the proposed Work shall not relieve the Contractor from the responsibility for completing the Work in accordance with the Contract Documents.
2. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. Labor or materials that are necessary to produce the desired result, even though not specifically mentioned in the Contract Documents, shall be included in the Work.
3. The Contract Documents are complementary, and what is required by one shall be binding as if required by all. In case of conflicts between the various documents, the order of precedence will be as follows: (1) Addenda, (2) Special Conditions, (3) General Conditions, (4) Technical provisions of the Specifications and (5) Drawings and exhibits.

#### **SECTION 28 – TERMINATION OF CONTRACT FOR DEFAULT ACTION OF CONTRACTOR**

1. The University may terminate the contract upon the occurrence of any one or more of the following events:
  - A. If the Contractor refuses or fails to prosecute the Work (or any separable part) with such diligence as will insure its completion within the agreed upon time; or if the Contractor fails to complete the Work within such time;
  - B. If the Contractor is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if the Contractor or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws concerning the Contractor, or if a trustee or receiver is appointed for the Contractor or for any of the Contractor's property on account of the Contractor's insolvency, and the Contractor or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract within 10 days of receipt of a request for assurance from the Owner;
  - C. If the Contractor repeatedly fails to supply sufficient skilled Workmen or suitable materials or equipment;
  - D. If the Contractor repeatedly fails to make prompt payments to Subcontractors or suppliers at any tier, or for labor, materials or equipment;
  - E. If the Contractor disregards laws, ordinances, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction;
  - F. If the Contractor disregards the authority of the Consultant or the Owner;
  - G. If the Contractor performs Work which deviates from the Contract Documents, and neglects or refuses to correct rejected Work; or
  - H. If the Contractor otherwise violates in any material way any provisions or requirements of the Contract Documents.
2. Once the Owner determines that sufficient cause exists to justify the action, the University may terminate the Contract without prejudice to any other right or remedy the University may have, after giving the Contractor and its Surety three days notice by issuing a written Declaration of Default. The Owner shall have the sole discretion to permit the Contractor to remedy the cause for the contemplated termination without waiving the University's right to terminate the contract.
  - A. In the event that the Contract is terminated, the University may contract with another to take over and complete the Work on the Contract. If the unpaid balance of the Contract Price exceeds the direct and indirect costs and expenses of completing the Work including compensation for additional professional and

Consultant services, such excess shall be used to pay the Contractor for the cost of the Work it performed and a reasonable allowance for overhead and profit. If such costs exceed the unpaid balance, the Contractor or the Contractor's Surety shall pay the difference to the Owner. In exercising the Owner's right to prosecute the completion of the Work, the Owner shall have the right to exercise its sole discretion as to the manner, methods, and reasonableness of the costs of completing the Work and the Owner shall not be required to obtain the lowest figure for Work performed in completing the Contract. In the event that the Owner takes bids for remedial Work or completion of the Project, the Contractor shall not be eligible for the award of such Contract.

- B. The Contractor shall be liable for any damage to the Owner resulting from the termination or the Contractor's refusal or failure to complete the Work, and for all costs necessary for repair and completion of the Project above the amount of the Contract. The Contractor shall be liable for all attorney's fees, costs and expenses incurred by the Owner to enforce the provisions of the Contract.
- C. In the event the Contract is terminated under this Section, and it is determined for any reason that the Contractor was not in default under the provisions of this SECTION, the termination shall be deemed a Termination for Convenience of the Owner.

### **SECTION 29 --INSURANCE:**

- 1. The Contractor shall furnish the Owner the Certificates of Insurance or other acceptable evidence that insurance is effective, and guarantee the maintenance of such coverage during the term of the Contract. The Contractor shall provide an original policy endorsement of its CGL insurance naming Northern Kentucky University and the directors, officers, trustees and employees of the University as additional insureds on a primary and non-contributory basis as their interest appears. Additionally, the Contractor shall provide an original policy endorsement for Waiver of subrogation in favor of the Northern Kentucky University it's directors, officers, trustees and employees as additional insured.
- 2. The Contractor shall provide all certificates of insurance and endorsements to the Owner with the bidding documents, failure to provide these documents may nullify the Contractor's bid. The Contractor shall not commence, nor allow any Subcontractor to commence Work under this Contract, until the Owner has reviewed the certificates and approved coverages and limits as satisfying the requirements of the bidding process.

#### 3. Worker's Compensation and Employers' Liability Insurance

The Contractor shall acquire and maintain Workers' Compensation insurance with Kentucky's statutory limits and Employers' Liability insurance with at least \$100,000 limits of liability for all employees who will be working at the Project site. In the event any Work is sublet, the Contractor shall require any Subcontractor to provide proof of this insurance for the Subcontractors' employees, unless such employees are covered by insurance provided by the Contractor.

#### 4. Public Liability Insurance

The Contractor shall acquire and maintain a Broad Form Comprehensive General Liability (CGL) Insurance Policy including premises - operations, products/completed operations, blanket contractual, broad form property damage, real property fire legal liability and personal injury liability coverage. The Insurance Policy must be on an "occurrence" form only, unless approved by the Owner. Contractual liability must be endorsed to include defense costs. Products and completed operations insurance must be carried for two years following completion of the Work. Policies which contain Absolute Pollution Exclusion endorsements are not acceptable. Coverage must include pollution from "hostile fires". Where required by the risks involved, Explosion, Collapse and Underground (XCU) coverages shall be added by endorsement. If the Work involved requires the use of aircraft or helicopters, a separate aviation liability policy with limits of liability of at least \$10,000,000 will be required.

- A. The limits of liability shall not be less than \$500,000 each occurrence combined single limits for bodily injury and property damage. If split limits are used, they shall not be less than \$500,000 for each person and each occurrence for bodily injury and \$250,000 for each occurrence for property damage.
- B. The Contractor shall either:
  - 1) Require each Subcontractor to procure and maintain insurance of the type and limits stated during the

terms of the Contract, or,

- 2) insure the activities of such Subcontractors under a blanket form as shown above.
5. Riggers Liability Extension Endorsement

Should Subcontractor's work involve the moving, lifting, lowering, rigging or hoisting of property or equipment, Subcontractor shall carry Rigger's Liability Insurance to insure against physical loss or damage to the property or equipment.

6. Comprehensive Automobile Liability Insurance

The Contractor shall show proof and guarantee the maintenance of insurance to cover all owned, hired, leased or non-owned vehicles used on the Project. Coverage shall be for all vehicles including off the road tractors, cranes and rigging equipment and include pollution liability from vehicle upset or overturn. Policy limits shall not be less than \$500,000 for combined single limits for bodily injury and property damage for each occurrence. As an alternative, split limits of not less than \$500,000 for bodily injury and \$100,000 for property damage for each occurrence shall be maintained.

7. Excess Liability Insurance

The Contractor shall acquire and maintain a policy of excess liability insurance in an umbrella form for excess coverages over the required primary policies of broad form comprehensive general liability insurance, comprehensive automobile liability insurance and employers' liability insurance. This policy shall have a minimum of \$1,000,000 combined single limits for bodily injury and property damage for each occurrence in excess of the applicable limits in the primary policies. The excess liability policy shall not contain an absolute pollution exclusion and shall include coverages for pollution that may occur due to hostile fires and vehicle upset and overturn. The limits shall be increased as appropriate to cover any anticipated special exposures.

8. Builders Risk Insurance

Contractor shall procure and maintain builders risk insurance to cover "all risk" perils on a completed value form in an amount of protection of not less than 100% of the Contract amount. Builders Risk Insurance shall include coverage for the perils of earth movement and flood and the coverage shall not be voided in the event of partial occupancy. The testing exclusion must be deleted from the policy.

9. Insurance Agent and Company Insurance as required in the bidding process of the Project, shall be written according to applicable state law in Kentucky. The policies shall be written by an insurer duly authorized to do business in Kentucky in compliance with KRS:304.1-110.

### **SECTION 30 --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 filled in online and printed. This form can be located on NKU's Procurement Services website at:

<http://procurement.nku.edu/Personalservicecontracts.html>

**SECTION 31 – PCI COMPLIANCE**

It is the sole responsibility of the Contractor to be responsible for the security of cardholder data that it possesses or otherwise stores, processes, or transmits on behalf of its customers, or to the extent that they could impact the security of its customer's cardholder data environment.