

**Request for Proposal  
Elevator Cylinder Replacement  
NS-32-12**



**ISSUED March 5, 2012**

**BIDS DUE: March 26, 2012**

**Northern Kentucky University**  
Jeff Strunk, CPPO  
Director of Procurement Services  
Lucas Administrative Center, Suite 617  
1 Nunn Drive  
Highland Heights, KY 41099

**NORTHERN KENTUCKY UNIVERSITY  
ELEVATOR CYLINDER REPLACEMENT  
REQUEST FOR PROPOSAL, NS-32-12  
NOTICE OF RFP OPPORTUNITY**

**BRIEF SCOPE OF WORK:**

Provide a request for proposal for all labor, materials, services, and equipment necessary to complete the replacement of the cylinders on the hydraulic elevators as specified herein.

**PROJECT TIMETABLE:**

Invitation for Bid Issued	Monday, March 5, 2012
Mandatory Pre Bid Meeting	Wednesday, March 14, 2012 at 9:00 am
Last Date for Questions	Monday, March 19, 2012 at 12:00 Noon
<b>BIDS DUE</b>	<b>Monday, March 26, 2012 at 2:00 pm</b>
Project start date	Monday, April 9, 2012(subject to permit authorizations, weather, flooding, etc)

**PRE-PROPOSAL MEETING:**

**A onetime MANDATORY pre-bid site visit will be held at 9:00 A.M. on Wednesday, March 14th at NKU's Maintenance Building in room MA 117.** A tour of specified University elevators will immediately follow the meeting. Campus Map is available at the following web page:

[http://nku.edu/campusmaps/includes/pdf/NKU\\_2DMap.pdf](http://nku.edu/campusmaps/includes/pdf/NKU_2DMap.pdf)

Please contact Eli Baird by email (Bairde1@nku.edu) if you plan on attending pre-bid meeting.

This tour and inspection will allow potential Proposers to thoroughly familiarize themselves with all existing conditions likely to be encountered. Later claims for additional compensation for existing conditions that could have been foreseen had such a site examination been made will NOT be honored.

This will be the only date University personnel will be available to allow access to elevator equipment rooms and penthouses.

All contractors and subcontractors shall visit the site to check and verify existing conditions before submitting a bid. Any discrepancies discovered between existing conditions and those shown on drawings or noted in the specifications shall be reported immediately to NKU in writing, so all bidders can be given proper information as to existing conditions. Failure to make this required inspection before submitting a response will be taken as acceptance by the contractor of the conditions as they exist in the field, whether shown on the drawings or noted in the specifications, and as shown on the owner's drawings and noted in the specifications. No subsequent claims for extra compensation arising from existence of discrepancies between actual conditions and those shown on drawings and/or noted in specifications will be considered.

**BONDS:**

A 5% bid bond is required. Performance and payment bonds of 100% will be required of the successful bidder.

Performance and Payment Bonds will be required of the successful bidder.

**SUBMISSION:**

The bidder shall submit, by the time and date specified via US Postal Service, courier or other delivery service, its bid response in a **sealed package** addressed to:

Jeff Strunk, CPPO  
Director of Procurement Services  
Lucas Administrative Center, Suite 617  
1 Nunn Drive  
Northern Kentucky University  
Highland Heights, KY 41099

**CONTACT FOR PROPOSAL PACKAGE**

RFP Package and Drawing may be purchased (non-refundable) from American Reprographics Co.: 800.966.2260 or 513.326.2300 or [www.qcrepro.com](http://www.qcrepro.com)

If you have downloaded this Request for Proposal, please contact Eli Baird so that you can be added to the planholders list and notified if there are any addenda.

Eli Baird  
Procurement Services, Bid Specialist  
Northern Kentucky University  
Lucas Administrative Center, 617  
Highland Heights, KY 41099  
Phone: 859.572.5266  
FAX: 859.572.6995  
E-mail: [bairdel@nku.edu](mailto:bairdel@nku.edu)

*Information relative to this project obtained from other sources, including other university administration, faculty or staff may not be accurate, will not be considered binding and could adversely affect the potential for selection of your proposal. All requests for additional information and all questions should be directed to Jeff Strunk, Procurement Services: [strunk@nku.edu](mailto:strunk@nku.edu).*

Both inner and outer envelopes/packages should bear respondent's name and address, and clearly marked on package(s) as follows:

**RFP NS-32-12  
ELEVATOR CYLINDER REPLACEMENT**

Note: Proposals received after the closing date and time will not be considered.

**GENERAL SCOPE OF WORK  
ELEVATOR CYLINDER REPLACEMENT  
REQUEST FOR PROPOSAL, NS-32-12**

**SECTION 1 – GENERAL SCOPE**

**1.1. GENERAL NOTES**

- A. Provide all labor, materials, services, and equipment necessary to complete the replacement of the cylinders on the hydraulic elevators as specified herein.

**1.2. DESCRIPTION OF WORK**

- A. Extent of work is to replace the hydraulic cylinder on the north passenger elevator in the BAC building, the freight elevator in the Landrum Annex print shop, and four hydraulic passenger elevators in Callahan Hall.
- B. Provide all labor, materials, and services necessary to complete the elevator work as specified herein. Any work not mentioned in these specifications which is obviously necessary to complete the elevator work, within the limits established by specifications and codes, shall be performed by the contractor as a part of their work.

**1.3. ELEVATOR DESCRIPTIONS**

- A. BAC Building North Passenger Elevator.  
Manufacturer - Otis  
Capacity – 3500  
Speed- 125  
Openings - 3
- B. Landrum Annex freight Elevator.  
Manufacturer – Dover  
Capacity – 12,000  
Speed – 50  
Openings - 2
- C. Callahan Hall (3639) Passenger Elevator.  
Manufacturer - Dover  
Capacity – 2500  
Speed – 120  
Openings 4
- D. Callahan Hall (3640) Passenger Elevator.  
Manufacturer – Dover  
Capacity – 3500  
Speed – 125  
Openings – 4
- E. Callahan Hall (3641) Passenger Elevator.  
Manufacturer – Dover  
Capacity – 3500  
Speed – 125  
Openings – 4
- F. Callahan Hall (3642) Passenger Elevator.  
Manufacturer – Dover  
Capacity – 3500  
Speed – 125  
Openings - 4

#### **1.4. QUALITY ASSURANCE.**

- A. **Installer Qualifications:** The elevator Manufacturer or an experienced installer shall be licensed by the State of Kentucky, approved by the elevator manufacturer, and have a record of successfully replacing below ground cylinders on elevators similar in size and design. The Contractor shall provide documentation verifying these qualifications prior to award.
- B. **Regulatory Requirements:** In addition to local and state governing regulations, alterations shall comply with applicable requirements of the ASME A17.1 Safety Code for Elevators and Escalators.
- C. **NEC Code:** Comply with 2011 NEC Code and specifically with sections relating to any modifications of electrical work for the elevator.
- D. **Performance Requirements:** Upon completion of the below ground cylinder replacement, the elevator shall meet the performance requirements of the original installation.

#### **1.5. SUBMITTALS.**

- A. **Product Data:** Submit manufacture's technical product data and instructions for the replacement cylinder.
- B. **Maintenance Manuals:** Submit bound manuals for the newly provided components including operating and maintenance instructions.
- C. **Installer Qualifications:** Provide owner with installer qualifications as depicted in item 4.A
- D. **State of Kentucky Certificate of Inspection** upon completion of work.

#### **1.6. WARRANTY.**

- A. Provide special project warranty of material and labor for one year from the substantial completion date of the project.

### **SECTION 2 – MATERIALS AND COMPONENTS.**

#### **2.1. GENERAL.**

- A. Provide manufacturer's standard elevator components that will fulfill the requirements of the hydraulic cylinder replacement.

#### **2.2. ELEVATOR MACHINERY AND CONTROL EQUIPMENT**

- A. **Hydraulic Power Units:** The existing hydraulic power units shall be retained and the hydraulic control valve shall be adjusted for smooth transition in and out of the floors with the new cylinder.

Seal all leaks in the units.

- B. **Cylinders & Plungers:** Shall be constructed according to ASME 17.1 and be of sufficient size to lift the gross load to the height specified and suitable for the operating pressure per the Elevator Code. The tops of the cylinders shall be equipped with a cylinder head and a drip ring to collect any oil seepage as well as an internal guide ring and self adjusting packing.

1. The existing Plungers shall be disconnected, inspected for defects; if free of defects shall be retained and protected for reuse. Alternate pricing to replace defected plungers shall be listed for each elevator.
2. New plungers shall be constructed of heavy seamless steel tubing accurately turned and polished to an extremely smooth finish. The plungers shall be provided with a stop plate welded to the bottom to prevent the plunger from leaving its cylinder.
3. Packing seal shall be replaced before re-installing the plunger. The new packing seal for the cylinder unit shall be a pressure balanced design of a standard attainable size, provide positive sealing with low friction and provide internal spring action for positive sealing from zero to normal operating pressure.

4. The plungers and cylinders shall be installed plum within 1/8" tolerance and must operate freely with minimum friction.
  5. The plunger shall be securely mounted to the car frames and be isolated from the frame to eliminate any vibration from the jack unit to the car frame.
  6. The cylinder shall be the same I.D. and O.D. as existing cylinder.
  7. After installation of the cylinder assembly, the hydraulic system shall be filled with new hydraulic oil.
- C. Protective cylinder casings: PVC pipe casings complying with ASME A17.1, of sufficient size to provide not less than one inch clearance from cylinder, and 4" inches above the pit floor.
- D. Wells for Cylinders: The base bid shall assume the existing well does not substantially collapse with the removal of the old cylinder, all materials are able to be removed by an industrial vacuum truck, and that the hole is substantially plumb with enough space for the installation of the new cylinder with PVC protection.
1. Remove all debris, standing water, and oil from the elevator pits.
  2. Remove existing cylinders from well holes.
  3. Extract all loose materials and substantial oil spoils from the well holes and project site.
  4. Contractor shall remove and legally dispose of all demolished elevator materials. Provide to the owner documentation of legal disposal.
  5. Water blast bottom of well holes to achieve any minor additional depth required for the PVC protective casing.
  6. Upon completion of installing the cylinders, the area between the steel casing and the PVC casing shall be back filled with clean, washed sand. The void space created by the demolition area of the pit floor shall be filled with concrete up to the wall of the PVC casing.
- E. Unknown Underground Conditions: Should a well hole collapse during extraction of an existing cylinder, or the hole not be of the proper size, depth or plumbness to install the replacement cylinder with PVC protective casing, or any other unknown condition which would require setting up a drill rig and re-drilling the well hole, the contractor shall provide alternate pricing to complete the drilling of a new well hole and the installation of any additional steel casing that may be required. The contractor shall notify the Owner's Representative immediately should these conditions be found and shall not proceed further until authorized to do so by the Owner's Representative.

## **SECTION 3 – EXECUTION**

### **3.1. PREPERATIONS.**

- A. Examine elevator areas for compliance with requirements for installation tolerances and other conditions affecting performance. Examine hoist ways, hoist way openings, pits, and machine rooms as constructed. Verify critical dimensions, supporting structures and other conditions under which elevator work is to be installed. Proceed with installation only after unsatisfactory conditions have been corrected.
- B. Coordination: The building may be occupied during the course of work. Coordinate elevator work with the owner for proper time and sequence to avoid construction delays.
- C. Hoisting: all required hoisting and movement of the elevator equipment shall be the responsibility of the contractor.

### **3.2. DEMOLITION OF ELEVATOR EQUIPMENT**

- A. Disassemble and remove of all elevator equipment not being retained under the elevator work.
  1. Include all work necessary to protect the public, building employees, and building property during the removal of demolished materials.
  2. When barricades are required for protection of the hoist way they shall be provided by the contractor. Do not start demolition of an area until all temporary protection and temporary partitions are in place by as furnished by the contractor.

### **3.3. INSTALLATION OF NEW CYLINDERS.**

- A. General: comply with manufacturer's instructions and recommendations for work required for cylinder replacement, installation, code references, and specifications.
- B. Excavation for new cylinder: Drill excavation in elevator pit to accommodate installation of cylinders if cylinder is of different size than existing. The contractor shall be responsible for removing all excavated materials and spoils from the hole and from the site.
- C. Install min 3/8" wall casing if excavation is needed.
- D. Install cylinder in schedule 40 PVC protective casing. The PVC casing must be water tight at the bottom and all joints. Before installing the protective PVC casing remove the water and debris from the well hole.
- E. Install cylinders plumb and accurately centered for elevator car position and travel. Anchor securely in place, supported at pit floor. Seal between protective PVC casing, cylinder and pit floor with 4" inches of no shrink non metallic grout.
- F. Welded Construction: provide welded connections for installing elevator work where bolted connections are not required for subsequent removal or for normal operations, adjustment, inspection, maintenance, and replacement of worn parts. Comply with AWS standards for workmanship and for qualifications of welding operators. Provide an adequate means of exhausting all fumes and smoke that may occur from the welding operations.

### **3.4 FIELD QUALITY CONTROL.**

- A. Acceptance Testing: On completion of the elevator work, and before permitting use of the hydraulic passenger elevator, perform acceptance tests as required and recommended by ASME A17.1 and governing regulations and agencies.
- B. Operating Test: Load elevators to rated capacity and operate continuously for 30 minutes over full travel distance, stopping at each level and proceeding immediately to the next. Record temperature rise of elevator machines during 30 minute test period.
  - 1. Perform operating test specified above on each elevator, capacity, speed, and travel distance.
- C. Advise Owner and authorities having jurisdiction in advance of dates and times test are to be performed on elevators.

# **SPECIFICATIONS**

## **ELEVATOR CYLINDER REPLACEMENT**

### **REQUEST FOR PROPOSAL, NS-32-12**

If your proposal deviates from standards established herein, please so note and indicate how the issue/requirement is to be addressed under your proposed maintenance plan.

All equipment, material and installation shall conform to the most current editions of the following codes being enforced by the authority having jurisdiction:

- ANSI A17.1
- NEC
- OSHA
- Commonwealth of Kentucky Elevator Code

#### **ELEVATOR PERFORMANCE**

The Contractor must maintain at all times the standards of efficiency, safety, capacity and speeds of the elevators as designed and installed by the manufacturer including acceleration, retardation, contract speed in feet per minute, with or without full load, floor-to-floor time and door opening and closing time.

#### **PROPOSAL INSTRUCTIONS**

Vendors are to submit **THREE (3) bound complete copies** of their proposal and **ONE (1) unbound copy that is to be clearly marked as the original**, with original signatures on the required pages. Do not deliver your proposal to any other office. The University reserves the right to accept or reject any or all proposals and to waive informalities or technicalities.

The proposal should be prepared simply and economically, providing a straightforward and concise description of the offeror's capabilities to satisfy the requirements of the Request for Proposal. Emphasis should be on completeness and clarity of content. Attach copies of specification sheets, references, and other supporting documentation.

Any costs incurred by offeror in preparing or submitting offers are the offerors' sole responsibility. The University will not reimburse any offeror for any costs incurred prior to award.

Telegraphic or faxed proposals or modifications of RFP by FAX or e-mail are not acceptable.

#### **REQUIRED SUBMISSIONS**

These instructions describe the required format for the Proposal. Proposers may include any additional information deemed pertinent. An identifiable tab sheet must precede each Section for easy reference. All pages, except pre-printed technical inserts, shall be sequentially numbered.

Proposals must address each of the requirements listed below in the same order as listed to be considered responsive. Proposals should reference each identified requirement explaining how the proposer's solution meets the specified requirement.

Narratives should provide a concise description of capabilities to satisfy the requirements of this Request for Proposal.

Emphasis should be on clarity brevity and completeness of response.

All materials submitted in response to this Request for Proposal will become the property of NKU and will not be remitted.



The following list specifies the items to be included in your Proposal. The location of the various Sections must be referenced in the Proposal's Table of Contents, tabbed accordingly, and in the sequence listed:

### **Table of Contents**

- A. Cover Letter/Executive Summary
- B. Scope of Services
- C. Personnel Assigned to this Account
- D. Proposer References & Subcontractors
- E. List of Materials and Equipment
- F. Authentications and Certifications
- J. Bond

#### **A. Cover Letter/Executive Summary:**

The cover letter must be in the form of a standard business letter and must be signed by an individual authorized to legally bind the proposer. The letter must also have the following:

- Company history in Northern Kentucky/Greater Cincinnati
- A statement regarding the proposer's legal structure (e.g., a Kentucky corporation) and principal place of business.
- The name, phone number, and fax number of a contact person who has authority to answer questions regarding the Proposals.
- A statement that the proposer's proposed solution for the Project meets all the requirements of this Request for Proposal. Include a statement that all Terms and Conditions and Instructions to Proposers are agreed to, or state exceptions.
- A statement that the proposer meets all the legal requirements of the RFP and that all terms and conditions and instructions are acceptable to the proposer.

#### **B. Scope of Services:**

- The scope of services to be provided and highlight the contents of the technical portions of the proposal.
- A positive commitment to assure that the overall project implementation and operation will be successful should be made.
- State specifically your intended practices, setting forth the approach and methodology you will use to achieve a successful completion of the project
- Complete the attached Form of Proposal to furnish all labor, materials, supplies, supervision and services required for the Hydraulic Elevator Cylinder Replacement Project at Northern Kentucky University.

#### **C. Personnel Assigned to this Account:**

- Attach brief resume of each employee that will be working on this account
- Mechanics must have successfully completed a formal training and apprenticeship program such as the "National Elevator Industry Education Program" or equivalent.  
*Note: Copies of Certification must be provided with proposal.*
- QEI Certification of one employee assigned to this project.

#### **D. References & Subcontractors**

- At least three (3) references listing name, address and telephone number of contact person.
- Please list references for contracts similar in size and scope of these requirements.
- Describe the nature of service at each of these accounts.
- A list of subcontractors shall be proposed that will be used to complete the project. All subcontractors are subject to approval by Northern Kentucky University. Failure to submit this list completely filled out may invalidate bid

### **E. List of Materials and Equipment**

- A list of Materials and Equipment that will be used to complete this project should be provided.
- Every item listed must be clearly identified so that the Owner will know what the Bidder proposes to furnish.

### **F. Authentications and Certifications**

- A signed copy of the University's Authentication of Proposal and Statement of Non-Collusion and Non-Conflict of Interest form and Bidder Certifications form are to be included in this section.

*Note: This form needs to be notarized.*

### **G. Bond**

- Bid Bond in an amount no less than 5% of the proposed project price.
- Use the form provided.

## **PROPOSAL EVALUATION**

Proposals will be evaluated by a committee of University employees selected for the specific purpose of evaluating submitted proposals. This committee will determine each offeror's responsiveness to the RFP requirements. A proposal shall be determined unresponsive if required information is missing or the proposal deviates from requirements stated herein. The committee will evaluate all proposals objectively and uniformly on the basis of submission requirements, demonstrated ability to perform and the methodology proposed to achieve a successful maintenance program.

Although cost will be a major factor in award, primary consideration will be given to your proven capability to perform as described in this RFP.

Any Proposals failing to obtain the minimum points required in any single category may not be eligible for award of contract.

## **PROPOSAL SCORING AND AWARD OF CONTRACT**

Each proposal will be evaluated and scored on its individual merits. The University will negotiate a contract with the firm offering the greatest benefit to the University, as determined by committee scoring of each offer. The University reserves the right to make an award based solely on the proposals or to negotiate further with one or more Contractors.

If award cannot be made on the initial offers, oral presentations/interviews will be arranged to assist the committee in making the final selection. Only the top ranked firms will be invited to make a presentation. Firms susceptible of award may also be required to provide a best and final offer. After all presentations the committee will perform another round of scoring to select the successful Contractor. It is the intent of the University to perform an immediate evaluation and award.

*NOTE: This is not a bid. Review the RFP conditions and evaluation criteria carefully and design your maintenance plan accordingly. Price will not be the primary consideration in award of contract.*

The Proposal receiving the highest point total will be deemed the best value to the University and the University will enter into negotiations with that Proposer, to award the contract. However, the University reserves the right to enter into negotiations with more than one Proposer.

## **EVALUATION CRITERIA**

<b>Criteria</b>	<b>Score</b>
Demonstrated ability to provide the necessary knowledge, skills, qualifications and required services, including qualifications of assigned personnel. 30 points available (minimum 25)	
Approach and methodology. The proposal clearly defines what will be accomplished through measurable goals and objectives. The Contractor proposes a well-defined and clearly stated work plan (schedule of activities and scope of services offered) that is capable of achieving the goals and objectives of the University. 25 points available (minimum 20)	
Itemized proposal budget (price) to furnish all labor, materials, supplies, supervision and services required for the Hydraulic Elevator Cylinder Replacement Project. 30 points available. (minimum 25)	
Responsiveness, financial stability, geographic locations of technicians and warehouses, guaranteed response times and references 20 points available. (minimum 15)	

## **PROTECTION OF WORK & PROPERTY**

Contractor shall continuously maintain adequate protection of all work areas from damage and shall protect the owner's property from injury or loss arising in connection with this contract. Contractor shall provide and properly maintain protection as required by governing laws, rules, regulations and ordinances, together with such additional protection as may be required for the safety of workmen and the public. Contractor shall repair and/or replace damaged sections of existing utilities and structures caused by work performed under this contract.

## **PERMITS**

The Contractor shall obtain all permits necessary for any or all parts of the work from the authorities governing such work. The Contractor shall procure building permits, when required but no fee shall be applicable on projects for the Commonwealth. Evidence that such permits have been issued shall be furnished to the Owner before beginning work.

## **AVAILABILITY OF FUNDS**

Any and all payments to the Contractor are dependent upon and subject to the availability of funds to the University for the purpose set forth in this agreement.

## **HOURS OF WORK**

Because of the heavy use of all elevators on campus, it is imperative that they be operational during regular business hours; 8:00 a.m. – 5:00 p.m. If regular maintenance requires the elevator to be shut down more than two (2) consecutive hours, the Contractor will schedule the elevator to be shut down after 5:00 p.m. or on the weekend to do the repair work at no additional cost to the University.

# FORM OF PROPOSAL

## LUMP SUM BASE BID

The Bidder agrees to furnish all labor, materials, supplies, supervision and services required for the Hydraulic Elevator Cylinder Replacement Project at Northern Kentucky University. These services to be provided in accordance with Specifications and Contract Documents, and any duly issued Addenda for the LUMP SUM BASE BID set forth below:

### LUMP SUM BASE BID AMOUNT:

\_\_\_\_\_ Dollars \_\_\_\_\_ Cents  
(USE WORDS) (USE WORDS)  
\$ \_\_\_\_\_  
(USE NUMBERS)

This offer is for, at minimum, \_\_\_\_\_ calendar days from the date this offer is opened. In submitting the above it is expressly agreed that upon proper acceptance by Northern Kentucky University of any or all items offered, a contract shall thereby be created with respect to the items accepted.

### THIS BID SUBMITTED BY:

\_\_\_\_\_  
(Name and Address of Bidder)

DATE: \_\_\_\_\_ AUTHORIZED SIGNATURE: \_\_\_\_\_

**NOTE:** *The Authentication of Bid and Statement of Non-Collusion and Non-Conflict of Interest must be properly executed for this Bid to be valid.*

*This Bidder, in compliance with this Request for Bid, and having carefully examined the complete contract documents, as well as the specifications for the work as prepared by Northern Kentucky University, hereby proposes to furnish all labor, supervision, materials, supplies and services required to perform the specifics of the Contract Documents, within the time set forth herein and for the final negotiated price.*

The Bidder, hereby acknowledges receipt of the following Addenda:

ADDENDUM NO. _____	DATED _____	ADDENDUM NO. _____	DATE _____
ADDENDUM NO. _____	DATED _____	ADDENDUM NO. _____	DATE _____
ADDENDUM NO. _____	DATED _____	ADDENDUM NO. _____	DATE _____

## REFERENCES

**Bidder Qualifications:** The bidder is required to submit a list of completed projects where he has performed similar work to that specified herein.

**Organization:** \_\_\_\_\_

**Contact Name:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_

**Date Work Completed:** \_\_\_\_\_ **Value of Contract:** \_\_\_\_\_

**Project Manager assigned to this project:** \_\_\_\_\_

**Brief Project Description:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Organization:** \_\_\_\_\_

**Contact Name:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_

**Date Work Completed:** \_\_\_\_\_ **Value of Contract:** \_\_\_\_\_

**Project Manager assigned to this project:** \_\_\_\_\_

**Brief Project Description:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Organization:** \_\_\_\_\_

**Contact Name:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_

**Date Work Completed:** \_\_\_\_\_ **Value of Contract:** \_\_\_\_\_

**Project Manager assigned to this project:** \_\_\_\_\_

**Brief Project Description:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### **PROPOSED PROJECT SCHEDULE:**

Please include as part of your "Form of Proposal" a one page project schedule assuming that a contract is awarded immediately after bid opening.



## LIST OF MATERIALS AND EQUIPMENT

Every item listed must be clearly identified so that the Owner will know what the Bidder proposes to furnish. Failure to submit a proper list may result in rejection of the Bidder's Proposal.

The use of the manufacturer or dealer name only, or stating "as per plans and specifications", will not be considered as sufficient identification. No material or equipment will be considered which is not in every respect equal to that specified, or shown on the drawings.

Item Description	Brand Name,	Manufacturer,
_____		
_____		
_____		
_____		
_____		
_____		

Include cut sheets, installation instructions and operational instructions as an attachment to the end of the form of proposal.

Signed By: \_\_\_\_\_

Company Name: \_\_\_\_\_

Date: \_\_\_\_\_

## **AUTHENTICATION OF BID, STATEMENT OF NON-COLLUSION, NON-CONFLICT OF INTEREST AND BIDDER CERTIFICATIONS**

**By signing below the Contractor swears or affirms, under the penalty of false swearing as provided by KRS 523.040, that he/she is in compliance with all of the following:**

- 1.** That I am the bidder (if the bidder is an individual), a partner in the bidder (if the bidder is a partnership), or an officer or employee of the bidding corporation having authority to sign on its behalf (if the bidder is a corporation).
- 2.** That the submitted bid or bids covering the Bid Package indicated have been arrived at by the bidder independently and have been submitted without collusion with, and without any agreement, understanding or planned common course of action with any other contractor, vendor of materials, supplies, equipment or services described in the Invitation for Bid, designed to limit independent bidding or competition; as prohibited by provision KRS 45A.325;
  - 2A.** Any agreement or collusion among bidders or prospective bidders which restrains, tends to restrain, or is reasonably calculated to restrain competition by agreement to bid at a fixed price, or to refrain from bidding, or otherwise, is prohibited. The provisions of KRS 365.080 and 365.090, which permit the regulation of resale price by contract, do not apply to sales to the State.
  - 2B.** Any person who violates any provisions of Kentucky Revised Statute 45A.325 shall be guilty of a felony and shall be punished by a fine not less than five thousand dollars nor more than ten thousand dollars, or be imprisoned not less than one year nor more than five years, or both such fine and imprisonment. Any firm, corporation, or association which violates any of the provisions of KRS 45A.325 shall, upon conviction, be fined not less than ten thousand dollars nor more than twenty thousand dollars.
- 3.** That the content of the bid or bids have not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bid or bids and will not be communicated to any such person prior to the official opening of the bid or bids;
- 4.** That the bidder is legally entitled to enter into the contracts with the Commonwealth of Kentucky and is not in violation of any prohibited conflict of interest, including those prohibited by the provisions of KRS 45A.330 to .340 and 164.390; and
- 5.** That I have fully informed myself regarding the accuracy of the statements made, including Bid Amount.
- 6.** Unless otherwise exempted by KRS 45.590, the Bidder intends to comply in full with all requirements of the Kentucky Civil Rights Act and to submit data required by the Kentucky Equal Employment Act upon being designated the successful bidder.
- 7.** That the Bidder, if awarded a contract, would not be in violation of Executive Branch Code of Ethics established by KRS 11A.990.
- 8. Campaign Finance Laws** Pursuant to KRS 45A.110 and KRS 45A.115 the undersigned hereby swears or affirms, under penalty prescribed by law for perjury, that neither he/she, individually, nor, to the best of his/her knowledge and belief, the corporation, partnership, or other business entity which he/she represents in connection with this procurement, has knowingly violated any provisions of the campaign finance laws of the Commonwealth of Kentucky, and that the award of a contract to him/her, individually, or the corporation, partnership or other business entity which he/she represents, will not violate any campaign finance laws of the Commonwealth.
- 9. Worker's Compensation and Unemployment Insurance** Pursuant to KRS 45A.480, the undersigned hereby swears or affirms, under penalty of perjury, that all contractors and subcontractors employed, or that will be employed under the provisions of this contract shall be in compliance with the requirements for worker's compensation insurance under KRS Chapter 342 and unemployment insurance under established KRS Chapter 341.
- 10. Vendor Report of Prior Violations** The Bidder/Owner shall reveal to the University, prior to this award of a contract, any final determination of a violation by the Contractor within the previous five (5) year period of the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342. The Contractor is further notified this statute requires that for the duration of this contract, the Contractor shall be in continuous compliance and the Contractor's failure to reveal a final determination of a violation or failure to comply with the cited statutes for the duration of the contract, shall be grounds for the Contractor's disqualification by the University from eligibility to bid or submit proposals to the University for a period of two (2) years. Please list any final determination(s) of violation(s) including the date of determination and the state agency issuing the determination. If no violations have occurred, type **none** in the space below.



\* KRS Chapter 136 - Corporation and Utility Taxes; \* KRS Chapter 139 - Sales & Use Tax; \* KRS Chapter 141 - Income Taxes;  
\* KRS Chapter 337 - Wages & Hours; \* KRS Chapter 338 - Occupational Safety & Health of Employees; \* KRS Chapter 341 - Unemployment Compensation; \* KRS Chapter 342 - Worker's Compensation

<u>KRS VIOLATION</u>	<u>DATE</u>	<u>STATE AGENCY</u>
_____	_____	_____
_____	_____	_____

**READ CAREFULLY - SIGN IN SPACE BELOW - FAILURE TO SIGN INVALIDATES BID or OFFER**

AUTHORIZED SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

NAME (Please Print Legibly):

\_\_\_\_\_

FIRM: \_\_\_\_\_

FED ID. OR SSN#: \_\_\_\_\_

PERMANENT ADDRESS:

\_\_\_\_\_

STREET

CITY

STATE

ZIP

CONTACT PERSON: \_\_\_\_\_

TITLE: \_\_\_\_\_

TELEPHONE NO: \_\_\_\_\_ FAX NO: \_\_\_\_\_

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

\*\*\*\*\*

State of \_\_\_\_\_)

County of \_\_\_\_\_)

The foregoing statement was sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
(Notary Public)

My Commission expires: \_\_\_\_\_

***THIS DOCUMENT MUST BE NOTORIZED***

# Bid Bond

5% of Contract Price

**KNOW ALL MEN BY THESE PRESENTS**, that we \_\_\_\_\_ (here insert full name and address or legal title of Contractor)

as Principal, hereinafter called the Principal, and \_\_\_\_\_ (here insert full name and address or legal title of Surety)

a corporation duly organized under the laws of the State of Kentucky as Surety, hereinafter called Surety, are held and firmly bound unto **Northern Kentucky University** as Obligee, hereinafter called Obligee, in the sum of :

\_\_\_\_\_ Dollars (\$\_\_\_\_\_),

representing 5% of the Principal's total bid price and for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Principal has submitted a bid for \_\_\_\_\_ (Here insert full name, address and description of project)

NOW THEREFORE, if the Obligee shall accept the bid of the Principal within the period specified, or if no period is specified, within 45 days after its opening, and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bid or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bonds or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this day of \_\_\_\_\_ 2012

(Principal) \_\_\_\_\_ (Seal)

(Title)

(Surety) \_\_\_\_\_ (Seal)

(Title)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Witness)

***THIS DOCUMENT MUST BE NOTORIZED***

**NORTHERN KENTUCKY UNIVERSITY**  
**INSTRUCTIONS TO BIDDERS**  
**NS-24-12**

**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. **Alternate** – is an amount stated in the Bid Proposal to be added to or deducted from the amount of the base Bid if the corresponding change in project scope or materials or methods of construction described in the Bidding Documents is accepted. If the University designated Alternates are considered in the award, the Alternate(s) will be accepted in the sequence listed on the Bid form, and the lowest bid sum will be computed on the basis of the sum of the base bid and any Alternated accepted, within the budgeted amount.
3. **Bid** – is the sum stated in the Bid Proposal for which the bidder offers to perform the work described in the specifications and detailed on the drawn plans.
4. **Bidder** – is one who submits a bid directly to the Purchasing Agency for the work described in the Bidding Documents.
5. **Bidding Documents** – include the Notice of Advertisement, Invitation for Bid, 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.
6. **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.
7. **Construction Manager** – means the person or entity employed by the owner under a separate contract, to provide professional and managerial services to the project.
8. **Consultant** – means the person or the entity, either Architect, Engineer or other Consultant, who is identified as such in the Contract Documents.
9. **Foreign Corporation** – refers to a corporation for profit, organized under the laws other than the laws of the Commonwealth of Kentucky.
10. **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.
11. **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.
12. **NKU** – Northern Kentucky University
13. **Lump Sum** - Single total amount for Work; not consisting of several smaller amounts
14. **Notice of Intent to Award** – is a written letter issued to the apparent successful contractor after acceptance of bid price, unit prices, subcontractors and equipment and materials to inform them of such acceptance and request the required additional documentation to initiate the Contract. This is **not** an authorization to proceed.
15. **Owner** – is Northern Kentucky University, a statutory body corporate existing pursuant to Sections 164.100 et seq. of the Kentucky Revised Statutes.
16. **Prime Contract** - Contractor will have [full responsibility](#) for the Work.
17. **Project** – The total Construction, of which the Work performed under the Contract Documents, may be the whole or a part, and which may include Construction by the Owner or by separate Contractors.
18. **Project Manager** – The person designated by the University to oversee the design and construction processes associated with a Capital Construction Project.

19. **Purchasing Agency** – is Northern Kentucky University (NKU) – Procurement Services, Lucas Administrative Center, Suite 617, 1 Nunn Drive, Highland Heights, Greater Cincinnati, 41099
20. **Purchasing Official** – is the University’s authorized representative.
21. **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).
22. **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).
23. **Schedule of Values** – A zero-dollar Certification of Payment (i.e., invoices), completed shortly after the beginning of a Construction Contract, which outlines the labor and material components of the Contract amount, usually by specification division. When approved by the Contractor, Architect-Engineer and the Division of Contracting and Administration, this document becomes the basis for all Applications for Payment.
24. **Unit Price** – is an amount stated in the Bid as a price per unit of measurement for materials or services as described in the bidding documents.
25. **Work** – Includes the construction and 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 – BIDDER’S REPRESENTATIONS**

The Bidder by submitting a Bid, represents and warrants that:

1. The Bidding Documents have been read and understood and the Bid is made in accordance therewith.
2. The site of the proposed work has been visited and carefully examined and the Bidder is aware of and understands the local conditions under which the work is to be performed. Failure to make this required inspection before submitting a Bid will be taken as acceptance by the contractor of the conditions as they exist in the field, whether shown on the drawings or noted in the specifications, and as shown on NKU’s drawings and noted in the specifications. No subsequent claims for extra compensation arising from existence of discrepancies between actual conditions and those shown on drawings and/or noted in specifications will be considered.
3. The Bid submitted is premised upon furnishing the work required by the bidding documents without exception.
4. That the plans and specifications contained in the Bid Documents have been carefully examined and determined by the Bidder to be accurate as well as adequate and sufficient from which to submit a Bid and from which to perform the Work.

## **SECTION 3 – BIDDING DOCUMENTS**

1. Availability of Bidding Documents
  - A. Bidders, Sub-bidders, Subcontractors, and others may obtain Bidding Documents from American Reprographics Inc., 2860 Sharon Rd. Cincinnati, OH 45241, 800.966.2260, or [www.qcrepro.com](http://www.qcrepro.com) for a charge.
  - B. Complete sets of Bidding Documents shall be used in preparing Bids. The Purchasing Official assumes no responsibility for misinterpretations resulting from the use of incomplete sets of bidding documents.
  - C. The Purchasing Official, in making copies of the Biding Documents available on the above terms, does so only for the purpose of obtaining Bids on the work and does not confer a license or grant for any other use.
2. Accuracy of Bid Documents
  - A. The Bidding Documents are complementary and are issued for the convenience of the Bidders. NKU assumes no responsibility for the correctness of said documents. Each Bidder should review the documents for errors or inaccuracies that may affect the scope of work implied.
  - B. All Bidders shall, upon examination of Bidding Documents promptly notify the University’s Purchasing 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 Purchasing Official. Questions received less than ten (10) calendar days prior to the date for receipt of Bids may not be answered.
- B. Questions will be accepted from prospective Bidders 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 IFB.
- C. Any interpretation, correction or change of the Bidding Documents will be made by Addendum, issued by the Purchasing Official. Interpretations, corrections or changes of the Bidding Documents made in any other manner will not be binding and Bidders shall not rely upon such interpretations, corrections and changes.

4. Materials, Equipment

- A. The materials, products and equipment detailed, described or referenced to manufacturers' or vendors' names, trade names, catalogue numbers, etc., are intended to establish a standard of required function, dimension, appearance and quality.
- B. Material, article or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article or equipment so proposed is, in the sole opinion and judgment of the Consultant, of equal substance and function and approved by the Purchasing Official.

5. 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. Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose
- C. 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.
- D. Each Bidder shall ascertain, prior to submitting his Bid, that he has received all Addenda issued by Procurement Service for the particular bid invitation. The Bidder shall acknowledge receipt of all Addenda in the Form of Proposal, or by separate letter to the Purchasing Official which is received at or prior to the hour and date specified for receipt for Bids.
- E. It shall be the sole responsibility of the Bidder 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-BID CONFERENCE AND SITE VISIT**

- 1. A Mandatory pre-bid conference and tour of the project area will be held approximately ten (10) days prior to receipt of bids. (Actual date of Pre-Bid Conference will be stated in the Invitation for Bid.) All Contractors wishing to bid on this project should have a representative attend this conference. Items discussed at the Pre-Bid Conference may become part of the contract, and any questions asked at a pre-bid meeting must also be submitted in writing.
- 2. Bidders, before submitting proposals should visit and examine the site to satisfy themselves as to the nature and scope of the project and any difficulties attending the completion of the project.
- 3. The submission of a proposal will be construed as evidence that a visit and examination has been made. Later claims for labor, equipment, or materials required or difficulties encountered which could have been foreseen had such an examination been made, will not be recognized.

## **SECTION 5 – BIDDING PROCEDURES**

1. Form of Proposal. Bids shall be submitted by Bidders who have received Bidding Documents from American Reprographics Inc. and thereby listed on the Official Planholder's list and shall be made on the proposal form (Form of Proposal) provided.
  - A. Blanks. All blanks on the Form of Proposal shall be completed and all required support data shall be furnished.
  - B. Sums. Where so indicated by the makeup of the Form of Proposal, sums shall be expressed in both words and figures, and in case of discrepancy between the two, the amount indicated by words shall govern.
  - C. Modifications. Any interlineation, alteration, or erasure must be initialed in ink by the signer of the Bid or by an official designee of the signer of the Bid.
  - D. Alternates. All alternates specifically called for by the Form of Proposal shall be bid. Voluntary alternate proposals or an alternate to a lump sum proposal will not be considered unless specifically permitted by the conditions of the Notice of Advertisement or the Invitation for Bid.
  - E. Qualifications. The Bidder shall make no additional stipulations on the Bid Proposal form or qualify the Bid in any other manner.
  - F. Signatures. The Form of Proposal shall be signed by a person or persons legally authorized to bind the Bidder to a contract. The Form of Proposal shall include the legal name of Bidder and a statement indicating whether the Bidder is a sole proprietorship, a partnership, a corporation, or any other legal entity. A Bid by a corporation shall identify the state of incorporation including Federal I.D. number. A Bid submitted by an agent shall have a current signing authority attached certifying agent's authority to bind the Prime Bidder.
2. Bid Security. Where specified in the Notice of Advertisement or Invitation for Bid, the Bidder shall furnish a Bid guarantee in the required form of not less than five percent (5%) of the Bid amount. This Bid security secures the Bidder's promise (i) to enter into a contract on the terms stated in the Bid proposal, and (ii) if required, to furnish bonds covering the faithful performance of the contract and payment of all obligations thereunder. Should the Bidder refuse to enter into a contract or fail to furnish the required performance and payment bonds, the amount of the Bid security shall be forfeited to the Owner as liquidated damages, not as a penalty.
  - A. The Purchasing Official will retain the Bid security of Bidders until either (i) the contract has been executed and bonds have been furnished, or (ii) the specified time has elapsed so that Bids may be withdrawn, or (iii) all Bids have been rejected.
3. The completed University Official Bid Document, the Bid Security, and any support data required to be submitted with the Bid shall be enclosed in a sealed envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Bidder's name and address, the sealed Bid invitation number, closing date and hour. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "BID ENCLOSED" on the face thereof. NOTE: USPS Zip Code is 41099, other carriers should use Newport, 41076.
4. Timeliness of Bids. Bids shall be delivered to Suite 617, Lucas Administrative Center prior to the official time and date for receipt of Bids indicated in the advertisement of Invitation for Bid, 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.
5. 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 Bidder shall assume full responsibility for timely delivery at the location designated for receipt of bids.
6. Bids Not In Writing. Oral, e-mailed, telephonic, or telegraphic Bids or changes in Bids by such methods are not permitted and will not receive consideration.
7. Bids Withdrawn. Bids may be withdrawn prior to the closing time and date for receipt of Bids by: (i) a properly identified representative of the Bidder whose name appears on the Bid envelope, or (ii) by written request by an authorized representative of the Bidder, received by Procurement Services prior to the Bid closing date and time. Withdrawn Bids may be resubmitted up to the closing time designated for the receipt of Bids.

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

#### **SECTION 6 – CONSIDERATION OF BIDS**

1. Bid Opening. Unless stated otherwise in the Notice of Advertisement or Invitation for Bid, all properly identified timely Bids will be publicly opened, reviewed (for conformance with Bid submittal requirements) and if properly executed and complete, read aloud. All Bids opened and read will be listed on the official Bid tabulation which will be made available to all Bidders on the Procurement Services website.
2. Waiver of Irregularities/Rejection of Bids. The right to cancel the Invitation for Bid, to reject any and all Bids, and to waive technicalities and minor irregularities in Bids 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.
3. Grounds for Rejection. Grounds for the rejection of Bids include, but shall not be limited to:
  - A. Failure of a Bid to conform to the essential requirements of the Invitation for Bid;
  - B. Any bid which does not conform to the specifications contained or referenced in any Invitation for Bids 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 which 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 Bids, or limit the Bidder'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 Bid Opportunity or Invitation for Bid.
  - G. For other cause as documented by the Purchasing Official pursuant to a written determination and finding.
  - H. Bids received from Bidders determined by the Purchasing Official to be non-responsive bidders.
4. Minor Irregularities. Minor irregularities or technicalities in a Bid may be waived by the Purchasing Official on behalf of the University when all of the following circumstances are present:
  - A. The Purchasing 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 Bid;
  - 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 Bidders. If the University does not waive technical deficiencies and irregularities, the deficient Bid shall be rejected.
5. 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 Purchasing Official to award a contract in due course and after a reasonable Bid evaluation period to the Responsive and Responsible Bidder 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.
6. 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. Bidder Responsibility. All bidders may be required to supply the information requested on the Contractor/Bidder Determination of Responsibility Questionnaire. The apparent low Bidder will be supplied this document at the post Bid review of the Bid submittal document. The information required by this document must be completed by the Bidder and returned to the University Purchasing Official within a reasonable time as determined by the University. In most cases the information should be completed and returned in no more than five (5) working days after the Bid submittal. The information provided will be used to determine whether the Bidder is “responsible” as defined by KRS 45A.070(6), and verify that the Bidder has the experience, qualifications and resources required to provide the quality workmanship, materials and services necessary to complete the project being Bid. In addition to the information required by the Questionnaire, the Bidder agrees to provide any additional information that may be necessary for determination of contractor responsibility, as defined by the Kentucky Model Procurement Code. The determination of contractor responsibility will not be made until the Bidder has provided a sworn statement made under penalty of perjury that he has not knowingly violated any provision of the campaign laws of the Commonwealth and that the award of a contract to a Bidder or offeror will not violate any provision of the campaign finance laws of the Commonwealth. The sworn statement required is included in the Form of Proposal.
2. Inquiries. The Purchasing Official shall have the right to make any inquiry deemed necessary to determine the ability of the Bidder to perform the work in a prompt and efficient manner and in accordance with the contract Documents. The failure of a Bidder to promptly supply information in connection with the Purchasing Official’s inquiry may be grounds for a determination that such Bidder is nonresponsive.
3. Rejection. The right is reserved to reject any Bid where an investigation and evaluation of the Bidder’s qualifications would give reasonable doubt that the Bidder could perform prompt and efficient completion of the work in accordance with the requirements with the Contract Documents.

## **SECTION 8 – SUBCONTRACTOR AND MATERIAL LISTING**

1. List of Subcontractors. The Bidder will list the names of subcontractors proposed for each of the principal portions of the work (including those persons or entities who are to furnish material or equipment fabricated to a special design) in the designated place on the Form Of Proposal. The Bidder will be responsible for establishing to the satisfaction of the Purchasing Official, the reliability and responsibility of the listed subcontractors. The Bidder may be required by the Purchasing Official to provide additional information regarding listed subcontractors.
2. Objection and Required Substitution. If, after due investigation, there is reasonable objection to the qualifications of a listed subcontractor the Bidder shall, upon written direction from the Purchasing Official, submit the name of an acceptable substitute subcontractor with no change in Bid price. The failure of the Bidder to promptly comply with this requirement may be grounds for rejection of the bid.
3. No Objection Prior to Notice of Award. Any listed subcontractor to whom the Purchasing Official does not make written objection prior to the giving of the Notice of Award shall be deemed acceptable to the University.
4. Bidder Self Performed Work. The Bidder shall not list himself as a subcontractor on the Form of Proposal Subcontractors List unless it can be demonstrated that Bidder actively participates in the trades required and has the expertise to complete that portion of the work.
5. Substitutions Not Optional. The Bidder shall not substitute a subcontractor named on the Form of Proposal without prior notification and approval of the Purchasing Official. Any notification for a substitution of a listed subcontractor shall be in writing and the reason fully set forth therein. The reason shall demonstrate real cause and evidence good faith by the Bidder. This shall not be construed to waive the Bidder’s rights to later substitute a subcontractor for the failure of that proposed subcontractor to accept a contract from the Bidder, failure to perform in a satisfactory manner per the requirements of the contract or any other legal rights of the Bidder to manage and coordinate subcontractors.
6. Bid Documents Not a Contract. Nothing contained in the Bidding Documents shall be deemed to create a contractual relationship between the University and any subcontractor. However, it is the Bidder’s responsibility to assure that the subcontractor listed has the required expertise and financial stability to complete that portion of the work.
7. List of Materials and Equipment. The Bidder shall submit a list of major materials and equipment by the manufacturer’s name, brand and/or catalog number in the form and manner specified in the Bidding Documents.



8. Preliminary Acceptance of Materials and Equipment. Prior to the acceptance of a Bid, the Purchasing Official will make a preliminary review of the list of materials and equipment included with the Bid Proposal and advise the Bidder of the acceptance thereof, subject to satisfactory completion and approval of shop drawings, or direct other such action as may be necessary in order to meet the requirements of the Contract Documents. If any of the material or equipment named in the list are determined not to meet the requirements and standards of the specifications, the Bidder shall be required to furnish other material or equipment meeting the specifications at no change in Bid price. Preliminary review and acceptance of the submitted material and equipment list shall not relieve the Bidder from furnishing equipment and materials in complete accordance with the specifications, drawings, and Contract Documents.

#### **SECTION 9 – UNIT PRICES**

The Bidder shall submit with the Bid a list of Unit Prices as designated on Form of Proposal. Unit Prices are for the pricing of changes in the quantity from that indicated by the Contract drawings and specifications, where such changes have been authorized in writing by the University. The Unit Prices submitted shall include all necessary labor, materials, equipment, appliances, supplies, overhead and profit. Only a single Unit Price shall be quoted for each designated item of work. The Unit Price shall be used to calculate price adjustments for either increasing or decreasing the amount of Work. Unit Prices shall apply to all phases of the Work whether the Work be performed by the Bidder or by the Bidder's (contractor) Subcontractor. The University reserves the right, prior to an award of Contract, to evaluate the Unit Prices submitted and adjust and/or reject any Unit Price that is determined by the Purchasing Official to be unreasonable in amount.

#### **SECTION 10 – PERFORMANCE BOND, LABOR & MATERIAL PAYMENT BOND**

1. The successful Contractor shall furnish security bonds (form to be furnished) in an amount equal to one hundred percent (100%) of the Contract Price 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 Bidder. 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 Bidder shall procure the bonds and the University will reimburse the Bidder 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).
2. The Bidder shall execute the required performance and payment bonds for the University 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.
3. Bonds shall be issued by a surety company authorized to underwrite bonds in the Commonwealth of Kentucky. The Bidder shall require the Attorney-in-Fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of their Power of Attorney. The date of the Power of Attorney shall not precede the date of the bonds.

#### **SECTION 11 – AWARD OF CONTRACT**

1. The issuance of an award of the Contract is contingent upon (i) securing an acceptable Bid that is responsive and from a responsible Bidder 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 Bidder'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.
4. Final award of Contract will be made on the basis of the lowest, responsive and responsible bid which offers the best value.

5. The University reserves the right to negotiate and award Contracts as allowed under KRS 45A.090 should all responsive Bids exceed available funds.
6. Reciprocal Preference to be given by Public Agencies to Resident Bidders

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

#### **SECTION 12 – PUBLIC WORKS ACT**

1. Wage and Hour Acts. In performing the work, the Contractor and Subcontractors are required to comply with the wage and hour requirements prescribed by KRS 337.505-337.550, except where the contract meets exemption requirements as set forth under KRS 337.010.
2. Payment. On projects not exempted under KRS 337.010, the Contractor and Subcontractor shall pay all laborers, workmen and mechanics performing work under this contract not less than the wages set fourth in the prevailing wage schedule, incorporated as part of the Bid and Contract Documents, as determined by the Kentucky Department of Labor in accordance with provisions of KRS 337.505 through KRS 337.550. On covered contracts, the Contractor and subcontractor shall pay all workers employed on the site not less than the minimum hourly rates set fourth in the Department of Labor Wage Determination, Incorporated in the Bidding Documents. The designated wage rates represent minimum allowable rates of pay and shall not be construed to mean that higher rates may not have to be paid in order to secure labor. Thus, differences between designated wage rates and actual wage rates shall not be an appropriate basis for adjustment of the contract sum.
3. Prevailing Wage Rates. The prevailing wage rates, set forth in the wage determination, are determined by the Kentucky Department of Labor in accordance with provisions contained in KRS 337.505 through KRS 337. 550. Any Contractor or Subcontractor found to be in violation of any provisions of KRS 337.505 to 337.550 by the Commissioner of the Department of Labor and upon notification to the Senior Vice President for Administration and the Secretary of the Finance and Administration Cabinet, the Secretary of the Finance and Administration Cabinet shall declare the offending Contractor ineligible to bid on public works until such time the Contractor is in substantial compliance as determined by the Commissioner of Labor.

#### **SECTION 13 – BASIC LEGAL REQUIREMENTS**

1. Forms Required. An Authentication of Bid, Statement of Noncollusion and Nonconflict of Interest documents are bound with and included as part of the Form of Proposal. The Bidder is required to sign that document and submit it as part of the Bid. Failure to comply with these requirements shall invalidate the Bid.
2. Foreign Corporations.
  - A. Foreign Corporations are defined as corporations that are organized under the 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 Bidder, 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 14 – TAXES**

1. Not Tax-Exempt.
  - A. Bidders are informed that construction contracts for Northern Kentucky University are not exempt from the provisions of the Kentucky Sales and/or Use Tax. The Bidder 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 Bidders or Sub-bidders shall take this into consideration in their Bid.

2. Liability for Employee-Related Taxes. The Bidder 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 Bidder 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: [www.campbellcountyky.org/occllic.htm](http://www.campbellcountyky.org/occllic.htm)

### **SECTION 15 - PLANHOLDERS**

1. Intent to Submit a Bid. A request for Bid Proposal and Bid Documents by a General Contractor will be considered as intent to submit a Bid. The Bidder'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 Bids.
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 Bidder, Subcontractor, material or equipment supplier. If the Bidder 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 16 – POST BID REVIEW AND MATERIAL SUBMITTAL**

The Bidder should have a responsible authorized representative at the bid opening. The Bidder's representative shall have the authority and be qualified to respond to questions that may arise about the Bidder's Bid submittal. The representative of the apparent low Bidder may be required to participate in the post Bid review of the apparent low Bid proposal, and if required by the Bid proposal, the completion and submittal of the material and equipment listing, Schedule of Values, EEO-1:Employer Information Report and the subcontractor report form. The post Bid review may include representatives of the Consultant, representative of the apparent low Bidder and required University personnel. Preliminary review will be directed toward Subcontractor, material listing, Unit Prices, and qualifications of the Bidder.

### **SECTION 17 – EQUAL EMPLOYMENT**

1. Equal Employment Opportunity.
  - A. Bidders and subcontractors are required to comply with Federal Executive Order 11246 entitled "Equal Employment Opportunity" as amended.
  - B. The provisions of KRS 45.560 through 45.640, known as the Kentucky Equal Employment Act of 1978, hereinafter referred to as the Act, shall be binding upon the declared successful Bidder and any subsequent contract awarded to the Bidder, except that a Contractor or subcontractor otherwise subject to the provisions of KRS 45.570 is exempt as to any affirmative action or reporting requirements if:
    - 1) The contract or subcontract awarded is in the amount of \$500,000.00 or less, and the amount of the contract is not a subterfuge to avoid compliance with the provisions of this Act.
    - 2) The contractor or subcontractor utilizes the services of fewer than eight (8) employees during the course of the contract.
    - 3) The contractor or subcontractor employs only family members or relatives.
    - 4) The contractor or subcontractor employs only persons having a direct ownership interest in the business, and such interest is not a subterfuge to avoid compliance with the provisions of this Act.
  - C. All compliance reporting shall be directed to the University's representative a.k.a. project manager. It shall be the responsibility of the Contractor or subcontractor to comply with the provisions of KRS 45.560 through 45.640 unless exempted through the compliance officer.

2. Affirmative Action.

- A. The Bidder not otherwise exempted from the affirmative action or reporting requirements of the Act, shall within five (5) calendar days after being declared the successful low Bidder, submit to the University Official:
- 1) Form EEO-1
  - 2) Employee Data Sheet
  - 3) Subcontractor Reporting Form
- B. The above reporting shall be on forms provided in the Project Manual Appendix and submitted in the manner prescribed on the forms.

3. Equal Opportunity Compliance.

- A. Within ten (10) days after the receipt of this report, the Office of EEO and Contract Compliance will determine whether the Bidder's work force is reflective of the percentage of available minorities in the areas from which the Bidder's employees are drawn. If a determination is made that the Bidder's work force is reflective of the percentage of available minorities in this drawn area, the Bidder shall be "certified" and be thereby qualified for the contract and to Bid on any contract covered by this Act without filing additional data for a period of six (6) months.
- B. If it is determined by the Official that the Bidder's work force reflects an under utilization of minorities, the Bidder shall be so notified and no certification be granted. The Bidder shall then have the option of filing with the Office of EEO and Contract Compliance an affirmative action plan, indicating goals and timetables for recruiting and hiring minorities throughout the contractor's work force. The Official shall be available, upon request of any contractor, to furnish technical assistance in fulfilling the requirements of the Act.
- C. If the Bidder is subsequently awarded the Contract being sought, failure to comply with the goals and timetables set forth in the affirmative action plan shall be an unlawful practice under the Act and shall constitute a material breach of contract.
- D. If the Official determines that the submitted affirmative action program does not fulfill the provisions of the Act, the Bidder shall be so notified and no certification shall be granted.
- E. If the Bidder's work force is not reflective of the percentage of minorities in the drawing area and he has complied with all other affirmative action requirements in the Act, he may certify by verified affidavit that he has made every reasonable effort to comply with said percentage requirements and he shall thereafter be entitled to all benefits of the Act.
- F. Failure to comply with the requirements of the Act after contract award may result in payments being withheld pending satisfactory fulfillment of contractual obligations.

**SECTION 18 – ANTI-KICK BACK**

All Bidders 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 Bidder, 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 19 – COMPLIANCE WITH KENTUCKY'S COMPENSATION AND 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 20 – PROTESTS**

Any Bidder 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 21 – 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 22 - 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.

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.

**End - Instructions to Bidders**

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**BID # NS-32-12**

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**GENERAL TERMS AND CONDITIONS  
OF THE CONTRACT FOR CONSTRUCTION  
BID #NS-24-12**

These General Terms and Conditions are binding upon the Contractor and all Subcontractors as each are subject to the provisions contained herein.

**ARTICLE 1 – DEFINITIONS**

Wherever used in these General Conditions or in other Contract Documents, the following terms have the meaning indicated which are applicable to both the singular and plural thereof:

1. **CONSULTANT** - The term "Consultant" means the person and/or entity, either Architect, Engineer or other Consultant, who is identified as such in the Contract Documents.
2. **CALENDAR DAY** - The term "Calendar Day" means a day of twenty-four hours measured from midnight to the next midnight.
3. **CHANGE ORDER** - The term "Change Order" means a written order to the Contractor signed by the Owner, issued after the execution of the Contract, directing a change in the Work or an adjustment in the Contract Amount or the Contract Time. A Change Order may be an agreed change by the Contractor and the Owner or it may be an unilateral change by the Owner.
4. **CONSTRUCTION MANAGER** - The term "Construction Manager" means the person or entity employed by the Owner under a separate contract to provide professional and managerial services to the Project.
5. **CONTRACT** - The "Contract" consists of all Contract Documents as defined in this Article 1 of the General Conditions.
6. **CONTRACT AMOUNT** - The term "Contract Amount" means the sum stated in the Agreement which represents the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents, plus or minus adjustments as provided for in the Contract Documents.
7. **CONTRACT TIME** - The term "Contract Time," unless otherwise provided, means the period of time, including authorized adjustments, for the Substantial Completion of the Work. The time begins as directed in the Work Order and continues for the time specified in the Agreement.
8. **CONTRACT DOCUMENTS** - The "Contract Documents" include the Invitation for Bid, the General Conditions, the Special Conditions, the Contractor's Form of Proposal, the Contractor's Bonds, the Specifications, Drawings and Addenda issued prior to Execution of the Contract, together with any Change Orders subsequently issued and Notice of Award. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Owner and any Subcontractor, or any person or entity other than the Contractor. The Contract Documents do not include the Notice of Advertisement, instructions to bidders, sample forms or portions of bid addenda relating to bidding requirements.
9. **CONTRACTOR** - The term "Contractor" means the person, company, corporation, joint venture or other legal entity with whom the Owner has executed the Contract.
10. **FIELD ORDER** - The term "Field Order" means a written order issued by the Consultant which clarifies or interprets the Contract Documents, or orders minor changes in the Work and which does not require a Change Order.
11. **KRS REFERENCES** - "KRS References" means the "Kentucky Revised Statutes" adopted by the Commonwealth of Kentucky, including all laws that may have been revised, amended, supplemented or new laws enacted.
12. **OWNER** - The term "Owner" means Northern Kentucky University, a statutory body corporate existing pursuant to Sections 164.100 et seq. of the Kentucky Revised Statutes.
13. **PROGRESS MEETINGS** – Scheduled on-site meetings for the progress review of a Construction Contract.
14. **PROJECT** - The term "Project" means the total construction of the Work performed under the Contract Documents, which may be the whole or a part, and which may include construction by the Owner or by separate contracts.



15. **PROJECT MANAGER** - The term "Project Manager" means the Owner's representative responsible for administration and management of the Project.
16. **PROVIDE** - The term "Provide," as used throughout the specifications, shall mean furnish, install and pay for.
17. **SHOP DRAWINGS** - The term "Shop Drawings" means drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.
18. **SUBCONTRACTOR** - The term "Subcontractor" means a person, company, corporation, joint venture or other legal entity having a direct contract with the Contractor for the performance of a part of the Work.
19. **SUBSTANTIAL COMPLETION** - The term "Substantial Completion" means the stage or progress of the Work whereby the Project or a designated portion thereof is sufficiently complete in accordance with the Contract Documents, including, but not limited to, the provisions of ARTICLE 28 of these General Conditions, so that the Owner can occupy or utilize the Project or the designated portion for its intended use or purpose without interruptions.
20. **WORK** - The term "Work" means the scope of construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to perform and complete the Contractor's obligations under the Contract in an expeditious, orderly and workmanlike manner. The Work may constitute the whole or a part of the Project.
21. **WORK ORDER** - The term "Work Order" means a written notice by the Owner to the Contractor authorizing the Contractor to commence Work under the Contract and establishing the beginning date from which the time for Substantial and Final Completion shall be established.
22. **UNIT PRICE** - The term "Unit Price" means the amount per unit of measurement for materials or services as described in the bid documents.

## **ARTICLE 2 – CONSULTANT**

1. The Consultant will be the Owner's representative during construction and until the Work is complete. The Consultant will advise and consult with the Owner. The Owner's instructions to the Contractor may be forwarded through the Consultant.
2. The Consultant will periodically visit the site to become familiar with the progress of the Work, the quality of the Work being provided and to determine if the Work is proceeding in accordance with the Contract Documents. On the basis of these on-site inspections, the Consultant will keep the Owner informed of the progress of the Work, and will guard the Owner against defects and deficiencies in the Work by the Contractor and will certify to the Owner that the Work in place equals or exceeds the amount requested by the Contractor on all applications for progress payments.
3. The Consultant will be the interpreter of the requirements of the drawings and specifications and any changes made to the drawings and specifications.
4. Claims, disputes, and other matters in question that arise relating to the execution or the progress of the Work shall be referred in writing to the Consultant. The Consultant will provide a response and decision in writing within a reasonable time.
5. The Consultant will have the authority to reject Work which does not conform to the Contract Documents or to the required level of quality and performance.
6. The Consultant will review and take appropriate action upon receipt of the Contractor's submittals, such as Shop Drawings, product data, and samples. The review of submittals will be for conformance with the design concept of the work, and for compliance with the information provided by the Contract Documents.
7. The Consultant's review and response will be completed with reasonable promptness. The Consultant's review of a specific item shall not indicate approval of an assembly of which the item is a component.
8. The Consultant will prepare Change Orders for the Owner to direct changes in the Work. Minor changes in the Work, not involving modifications to the contract cost or completion times and that are consistent with the purpose of Work may be directed by the Consultant through Field Orders.

9. The Consultant will conduct inspections to determine the dates of Substantial Completion and Final Completion and will receive and forward to the Owner for the Owner's review, written warranties and related documents required by the Contract and assembled by the Contractor.
10. The Contractor will accept direction for the Work on the Project only from the Owner's Project Manager or Consultant. Requests for information from the Contractor shall be directed to the Consultant.

### **ARTICLE 3 – 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 of Work, investigated and understands all conditions which can affect the Work or its cost, including but not limited to, availability of labor, materials, supplies, water, electrical power, roads, access to the site, uncertainties of weather, water tables, the character of equipment and facilities needed to perform the Work, local conditions under which the Work is to be performed, and further, that 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 which might affect those engaged in the Work, and to be familiar with the materials, equipment, or procedures used in the Work, or which 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 which are necessary to produce the desired result, even though not specifically mentioned in the Contract Documents, shall be included in the Work.
3. In the event a question arises regarding the meaning or intent of the Contract Documents, the Contractor shall report it at once to the Consultant. The Consultant shall furnish, with reasonable promptness by whatever means as may be appropriate, additional instructions necessary for the proper execution of the Work. All such drawings and instructions shall be consistent with the Contract Documents, true developments thereof and reasonably inferable there from. The Work shall be executed in conformity therewith and the Contractor shall do no Work without proper drawings and instructions. Items indicated on drawings as "N.I.C." or "Not In Contract" are shown for explanation purposes only and are not to be included in this Contract.
4. 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.
5. Any notice to the Contractor from the Owner regarding this Contract shall be in writing and delivery and service of such notice shall be considered complete when sent by registered mail to the Contractor at Contractor's last known address. Such notice may also, at the Owner's election, be hand-delivered to the Contractor or his authorized representative.

### **ARTICLE 4 – PRE-CONSTRUCTION CONFERENCE**

Following the execution of the Contract, a pre-construction conference will be held. Representatives of the University Department of Architecture, Design and Construction Management, Consultant, Contractor, and all major Subcontractors will be present to discuss the time for construction, methods and plan of operation, authority of the Consultant, procedures for handling shop drawings, progress estimates and requests for payments, and other relevant issues. The time and location of this meeting will be the responsibility of the Consultant in consultation with other interested parties.

### **ARTICLE 5 – SHOP DRAWINGS**

1. The Contractor shall submit a shop drawing and product sample submittal schedule to the Consultant establishing dates for the submission of Shop Drawings and product samples prior to the submittal of the Contractor's first application for payment. The schedule shall have been coordinated with all Subcontractors and material suppliers as well as the construction schedule and shall allow for adequate and reasonable time for review of the samples and submittals by the Consultant. The Contractor shall be responsible for compliance with the submittal schedule and shall insure that the Submittal Schedule is maintained in order to accurately reflect the status of processing all required submittals.
2. The Contractor shall review, approve, and submit product samples and shop drawings to the Consultant, in accordance with submittal procedure and schedule established. The Contractor's stamp of approval on any shop drawing or sample

shall constitute a representation to the Owner and Consultant that the Contractor has determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data, or assumes full responsibility for doing so, and that each shop drawing or sample has been reviewed or coordinated with the requirements of the Work and the Contract Documents. Shop drawings and submittal requirements shall not be deemed satisfied until approvable documents are received by the Consultant. Incorrect or incomplete submittals will be returned to the Contractor without action. No claim for additional time or extension of the contract will be considered if such claim is the result of failure by the Contractor to provide correct, accurate, complete and approvable submittals.

3. The Consultant will review submittals with reasonable promptness, and take appropriate action or return submittals to the Contractor for corrections as may be required. The Contractor shall make any corrections required by the Consultant for compliance with the Contract and shall return the required number of corrected copies of shop drawings and resubmit new samples until approved. The Contractor shall direct specific attention, in writing, or on resubmitted shop drawings, to revisions other than the corrections called for by the Consultant on previous submissions.
4. Where a shop drawing or sample submission is required by the specifications, no related Work shall be commenced until the submission has been accepted by the Consultant. The review and acceptance shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents. The acceptance of a separate item will not indicate acceptance of the assembly in which the item functions. A copy of each accepted shop drawing and product sample shall be kept in good order by the Contractor at the site and shall be made available to the Consultant on request.
5. The Consultant's acceptance of Shop Drawings or samples shall not relieve the Contractor from the responsibility for any deviations from the requirements of the Contract Documents unless the Contractor has in writing called the Consultant's attention to such deviation at the time of submission and the Consultant has given written approval to the specific deviation. Any acceptance by the Consultant does not relieve the Contractor from responsibility for errors or omissions in the Shop Drawings.

#### **ARTICLE 6 – LAYING OUT WORK**

1. The Contractor shall be responsible for all lines, levels and measurements of all Work executed under the Contract. The Contractor shall verify the figures before laying out the Work and will be held responsible for any error resulting from failure to do so. Working from lines and levels established by the property survey or by other Contract Documents, and as shown in relation to the Work, the Contractor will establish and maintain bench marks and other dependable markers to set lines and levels for Work at each area of construction and elsewhere on the site as needed to properly locate each element of the entire Project. The Contractor shall calculate and measure from the bench marks and dependable markers required dimensions as shown (within recognized tolerances if not otherwise indicated), and shall not scale drawings to determine dimensions. The Contractor shall advise Subcontractors and trades persons performing Work of marked lines and levels provided for their use in layout Work. The Contractor shall verify layout information shown on drawings as required for the Work.
2. The Contractor shall be responsible for coordination of the installation of all elements of the Work, including preparation of coordination drawings if required by the Contract Documents or deemed necessary by the Contractor for performance of the Work.

#### **ARTICLE 7 – PLANS, DRAWINGS, SPECIFICATIONS AND RECORD DRAWINGS**

Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, copies of drawings and specifications reasonably necessary for the execution of the Work. The Contractor shall keep one copy of all Contract Documents, including Drawings, Specifications and Shop Drawings on the site, in good order, and a qualified representative of the Contractor shall record on these documents, from day to day as Work progresses all changes and deviations from the Contract Documents. Prior to Substantial Completion, the Contractor shall complete and turn over to the Consultant the As-Built drawings. The As-Built drawings shall consist of a set of drawings which indicate all field changes that were made to adapt to field conditions, changes resulting from Change Orders and all concealed and buried installations of piping, conduit and utility services. All buried and concealed items, both inside and outside the facility, shall be accurately located on the As-Built drawings as to depth and in relationship to not less than two permanent features such as interior or exterior wall faces. The As-Built drawings shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in a contrasting color. For any changes or corrections in the Work which are made subsequent to the Substantial Completion Inspection, revisions shall be made to the As-Built drawings and submitted to the Consultant prior to final payment. Approval of the final payment request shall be contingent upon compliance with these provisions.

1. All drawings, specifications and copies thereof, furnished by the Consultant to the Contractor are the property of Northern Kentucky University. They shall not be used by the Consultant, Contractor, or any Subcontractor on any other Project.

#### **ARTICLE 8 – TEMPORARY UTILITIES**

1. The Contractor shall provide and pay for, unless modified in the Special Conditions, all temporary conveniences including, but not limited to, wiring, lighting, power and electrical outlets, heat, water, and sanitary facilities required for construction. In the event the Owner elects to make available, at no cost to the Contractor, the electric power required for construction activities, the electric power supplied shall not be utilized as a means to provide temporary heat or for welding.
2. The Contractor is responsible for paying all utility costs, whether the costs are from an outside utility company or from the University, for utility services used in the course of completing the Work. The Contractor shall provide temporary heating, ventilation, telephones, water, electricity, portable gas, lighting for the Work, safety lighting, security lighting, trash removal/dumpster service for both Contractor and Subcontractor use during the Project. Work and safety lighting shall be provided continuously during working hours. Security lighting shall be provided at all hours of darkness.

#### **ARTICLE 9 – MATERIALS, EQUIPMENT, APPLIANCES, AND EMPLOYEES**

1. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all materials, labor and personnel, tools, equipment, construction equipment and machinery, utilities, supplies, appliances, transportation, taxes, temporary facilities, licenses, permits and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and the proper execution and completion of the Work safely and without damage to persons and property. The Contractor shall furnish, erect, maintain, and remove at the completion of the Contract, all temporary plants as may be required during the construction period.
2. Immediately following the execution of the Contract Documents, the Contractor shall determine the source of supply for all materials and the length of time required for their delivery, including materials of all subcontractors, and order for all materials shall be placed for such materials in sufficient time for delivery to the site and incorporated into the Work when needed to comply with the schedule of Work.
3. The Contractor shall immediately notify the Consultant in writing of any problems with the fabrication or ordering of any materials. Unless changes are approved by the Consultant, the Contractor will not be excused for delays in securing materials specified.
4. The Contractor or Subcontractors shall not place purchase orders or issue contracts for materials, supplies, equipment and services necessary to complete this Project using the name of Northern Kentucky University. All orders placed by the Contractor that are related to this Project must use the name of the Contractor placing the order. The use of Northern Kentucky University's name for ordering purposes is strictly prohibited. Payment for all goods and services required for the completion of the Work is the sole responsibility of the Contractor. Any invoices received at the University that are related to this Project will be immediately forwarded to the Contractor. Copies of these invoices will be made and placed in the Contractor's file and proof must be provided that these invoices have been paid in full prior to the processing of the next scheduled application for progress payment.
5. The route for delivery of all materials to the Project shall be coordinated with the Owner's Project Manager.
6. The Contractor shall be responsible for the proper and adequate storage of materials and equipment. Unless otherwise provided in the Contract Documents, all materials shall be of good quality and new. Workmanship and materials supplied and incorporated into this Work shall be of first quality. The Contractor, if required, shall furnish satisfactory evidence as to the kind and quality of materials.
7. The Contractor shall at all times enforce strict discipline and good order among all employees and Subcontractors. The conduct of all individuals performing Work or operations related to the Work is the responsibility of the Contractor. The consumption of alcohol or drugs on the job by any workers is strictly prohibited. Any individual apprehended under the influence of alcohol or drugs on the premises at any time shall be subject to automatic removal from the Project by the Contractor, the Consultant or the Owner. Improper conduct of any kind will not be permitted and may result in the offending individual, Subcontractor or Contractor being barred from the Owner's premises. The Contractor shall not permit the employment on the Project of any person unfit or not skilled in the Work assigned.

8. Smoking is prohibited on the campus of Northern Kentucky University except in certain designated smoking areas. A smoking area will be designated at the Pre-Construction Conference. The Contractor's employees or Subcontractors violating this prohibition will be subject to dismissal from the Project.

#### **ARTICLE 10 – ROYALTIES AND PATENTS**

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

#### **ARTICLE 11 – SURVEYS, PERMITS, REGULATIONS, AND STANDARD CODES**

1. The Owner will furnish only such surveys that are specifically required by the Contract Documents. Approvals, assessments, and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified. All required utility tap-on fees payable to **nongovernmental agencies** (electric, gas, water, communications systems, etc.) shall be secured and paid for by the Contractor. **As a State agency, the University is generally exempt from utility tap-on fee assessments levied by local governmental agencies, and any such cost should not be included in the Contractor's bid.** In the event such charges are imposed, the University will reimburse the contractor for that cost by Change Order to the Contract. All construction permits, where required by local ordinances, shall be obtained by the Contractor, but no fee shall be charged to or paid by the Contractor as the Owner is exempt from such charges. A Contractor's license fee for doing business in the locale, if applicable, shall be paid for by the Contractor.
2. All branches of Work shown on the plans and specifications shall be executed in strict compliance with all state and federal regulations and codes, and shall be in compliance with all national codes when applicable.
3. Reference to standards, codes, specifications, and regulations refer to the latest edition of printing in effect at the date of issue shown in the Contract Documents unless another date is implied by the suffix number of the standard. The Contractor shall furnish a final occupancy permit from the proper agency or agencies as required.
4. The Contractor 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.

#### **ARTICLE 12 – PROTECTION OF WORK, PROPERTY, AND PUBLIC**

1. The Contractor shall continuously maintain adequate protection of all Work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. The Contractor shall pay for any such damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner. The Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.
2. In an emergency affecting the safety of life, or of the Work, or of adjoining property, the Contractor, without special instruction or authorization from the Consultant or Owner, is obligated to act to prevent such threatened damage, loss or injury.
3. Contractors shall maintain fire protection as required by the Kentucky Building Code. Access to the Project site and surrounding buildings must be maintained during construction for local fire truck access. Contractor shall maintain construction to allow access to new, existing or temporarily relocated standpipe, fire hydrant connections and fire alarm communication panels pursuant to Section 3018.8 of the Kentucky Building Code. If the Contractor utilizes the Owner's fire protection equipment during the Contract period, lost, consumed or misplaced during the Contract period. The Contractor is responsible for any false alarms caused by dust created in the Work area or dust traveling to areas beyond the Work area due to inadequate dust protection barriers. Should there be a need for any existing or newly installed fire alarm system or parts of a system that requires service to be removed from service or disconnected, prior approval must be obtained from the Owner and the Contractor shall provide alternate protection such as a fire watch until such systems are returned to full normal operations. When work or service is completed on a disabled fire alarm system the Owner shall be immediately notified so the system can be placed in service.
4. Contractor and subcontractors are responsible for the security of their own materials, tools and equipment at the Project site.

5. Contractor shall provide to the Owner's Project Manager a key to Contractor's field office or job trailer.

### **ARTICLE 13 – BLASTING**

Blasting is not allowed unless permission is granted in the Special Conditions. Should blasting be allowed by the Special Conditions it shall be completed in accordance with all laws, regulations, ordinances and instructions contained in the Special Conditions.

### **ARTICLE 14 – CONSTRUCTION AND SAFETY DEVICES**

1. The Contractor shall provide safety controls for protection of the life and health of employees and visitors. The Contractor will utilize precautionary methods for the prevention of damage to property, materials, supplies, and equipment, and for avoidance of work interruptions in the performance of this Contract. In order to provide such safety control, the Contractor shall comply with all pertinent provisions of the Kentucky Fire Prevention Code, Kentucky Building Code, Kentucky Labor Cabinet's Division of Occupational Safety and Health Program Construction Standards (29 CFR 1926 as adopted by 803 KAR 2:400 through 2:425) and Federal Occupational Safety and Health (Construction) Standards that are in effect at the time the Contract is entered into and during the period in which the Contract is to be performed.
2. The Contractor shall provide a written safety program which includes all pertinent written specialty standards such as, but not limited to, Control of Hazardous Energy Sources (Lockout/Tagout), Hazard Communications Program, First Aid, Blood Borne Pathogen Program, Respirator Use Program and Hearing Conservation Program. The Contractor shall require all Subcontractors to have an effective written safety program or be required to follow the Contractor's written safety program.
3. The Contractor shall maintain an accurate record of and shall report to Kentucky Labor Cabinet's Division of Occupational Safety and Health in the manner and on the forms prescribed by that Division, exposure data and all accidents resulting in death, traumatic injury, occupational disease. The Contractor shall maintain an accurate record of and shall report to the Owner's Project Manager, any damage to property, materials, supplies, and equipment incident to Work under this Contract.
4. The Kentucky Labor Cabinet's Division of Occupational Safety and Health or the Owner's Environmental Health and Safety Division may notify the Contractor of any noncompliance with the foregoing provisions and the corrective actions to be taken. The Contractor shall after receipt of such notice immediately correct conditions.

Notice delivered to the Contractor or the Contractor's representative at the site of the Work shall be deemed sufficient for this purpose. If the Contractor fails or refuses to comply promptly, the Owner may issue an order stopping all or part of the Work until satisfactory or corrective action has been taken. Failure or refusal to comply with the order will be grounds for stopping all payments due under the Contract to the Contractor. No part of the construction time lost due to any such stop order shall be cause for, or the subject of a claim for, extension of time or for additional costs or damages by the Contractor.

5. The Contractor or any Subcontractor shall immediately contact the University of Kentucky's Department of Occupational Health and Safety should they be selected for an inspection by the Kentucky Occupational Safety and Health Compliance Division.
6. Compliance with the provisions of the foregoing sections by Subcontractors shall be the responsibility of the Contractor.
7. Nothing in the provisions of this ARTICLE 14 shall prohibit the U.S. Department of Labor or the Kentucky Department of Labor Division of Occupational Safety and Health from enforcing pertinent occupational safety and health standards as authorized under Federal or State Occupational Safety and Health Standards.
8. The Contractor shall take all necessary precautions for the safety of employees on the Work, and shall comply with all applicable provisions of federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the Work is being performed. If the Contractor or any Subcontractor has questions related to the health or safety required by their written safety program, they should contact the Kentucky Labor Cabinet Occupational Safety and Health Program Division of Education and Training. The Contractor shall designate a responsible member of the on site Work force as the safety officer and shall report to the Consultant the name of the person selected. The duties of the safety officer include the enforcement of safety regulations.

## **ARTICLE 15 – HAZARDOUS MATERIALS**

1. If the Contractor encounters material reasonably believed to be or suspected to be asbestos containing material, lead, polychlorinated biphenyls (PCBs), or other hazardous material, the following procedures must be followed:
  - A. The Contractor shall immediately stop Work in the affected area and notify the Owner's Project Manager. The Project Manager will contact the Owner's Environmental Health and Safety unit to arrange for collection of samples, review of existing data, or other testing necessary to confirm the presence of hazardous materials. The Project Manager will notify the Contractor in writing of the results. Until that notification is received, the Work must not continue in the affected area.
  - B. If the material is confirmed to be asbestos, lead, polychlorinated biphenyls (PCBs), or other hazardous material, the Owner will take appropriate action to remove the material before the Contractor can continue Work in the affected area.
  - C. Unless specified otherwise in the bid documents, the Contractor shall not be required to perform any Work related to asbestos, lead, polychlorinated biphenyls, or other hazardous material. Contractors are advised that certain classes of building materials (thermal system insulation, sprayed or troweled surfacing materials, and resilient flooring) installed before 1981 are required by law to be treated as asbestos containing until proven otherwise. These presumed asbestos containing materials must not be disturbed without confirmation from the Owner that asbestos is not present.
2. The Owner, the Contractor, and Subcontractors will be under the requirements of the OSHA Hazard Communication Standard (29) CFR 1910.1200. The Contractor and Subcontractors must provide their own written Hazard Communication Program. The Hazard Communication Standard must include: (1) A list of the hazardous chemicals to which the Contractor's employees may be exposed; (2) Statement of the measures that Contractor's employees and Subcontractors may take to lessen the possibility of exposure to the hazardous materials; (3) The location of and access to the MSDSs related to the hazardous chemicals located in the Work area; (4) Procedures that the Contractor's employees and Subcontractors are to follow if they are exposed to hazardous chemicals above the Permissible Exposure Limit (PEL). Material Safety Data Sheets (MSDS) may be reviewed upon request by the Contractor or any subcontractor as they pertain to the Work areas of the Project. Photocopies of the MSDSs may be made by Contractor at its expense.
3. The Contractor and Subcontractors shall provide the Owner with a list of any hazardous materials that will be used on the job site that may be exposed to the Owner's employees. The Contractor and Subcontractors shall provide the Owner with copies of Material Data Sheets for materials to be used.
4. It is the policy of the Owner that PCB containing equipment will be treated by the Contractor and the Owner in a manner that conforms to the intent of all applicable laws and regulations (primarily 40 CFR Part 761). The following procedures shall be followed by the Contractor and Subcontractors while present on the Owner's Project or other property: (1) Only authorized, trained personnel may inspect, repair, or maintain PCB transformers; and (2) No combustible materials may be stored within a PCB transformer room or within five meters of a PCB transformer. Such materials include, but are not limited to, paints, solvents, plastic, paper, and wood. The Contractor shall not use rooms containing PCB transformers for storage rooms, staging areas, job site offices or break rooms. Violation of this policy may be grounds for dismissal of the offending Contractor from the Project. All PCB transformers at the University of Kentucky are identified by a PCB label as defined in federal regulations. If the Contractor should have a question as to the location of a PCB transformer, it should contact the Owner's Project Manager.
5. The contractor shall ensure that NO asbestos-containing materials (including but not limited to: drywall, joint compound, roof mastic and floor tile adhesive) will be install on any University project without prior written approval of the University's Environmental Health and Safety Division. Additionally, the contractor shall submit MSDS sheets and have prior approval before installing any materials that contains hazardous substances or could pose an environmental hazard. If any environmental hazardous materials are installed without written approval of the University, the contractor will be responsible for all material replacement cost, all removal and all other associated damages. Any materials removed shall be taken out in accordance with all applicable federal, state and local regulations.

## **ARTICLE 16 – INSPECTION OF WORK**

1. Inspections, tests, measurements or other acts of the Consultant are for the sole purpose of assisting the Consultant determine if the Work, materials, rate of progress, and quantities comply with the Contract Documents. These acts or

functions shall not relieve the Contractor from performing the Work in full compliance with the Contract Documents nor relieve the Contractor from any of the responsibility for the Work assigned to it by the Contract Documents. No inspection by the Consultant shall constitute or imply acceptance. Approval of material is general and shall not constitute waiver of the Owner's right to demand full compliance with Contract Documents.

2. All Work completed and all materials incorporated for the Project are subject to inspection by the Owner, the Consultant or their representatives to determine conformance with the Contract Documents. The Owner, Consultant and their representatives shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide any facilities necessary for sufficient and safe access to the Work to complete any inspections required. The Consultant shall be given timely notification in order to arrange for the proper inspections to be performed on any Work outside of the normal working day or week.
3. If the Specifications, the Consultant's instructions, laws, ordinances, or any public authority require any Work to be specially tested or approved, the Contractor shall give the Consultant timely notice of the readiness of the Work for inspection. The Consultant shall promptly make all required inspections. If any portion of the Work should be covered contrary to the request of the Consultant, or to the requirements specifically expressed in the Contract Documents, the Work must be uncovered for inspection and observation and shall be uncovered and replaced at the Contractor's expense.
4. If any other portion of the Work has been covered, which the Consultant has not specifically requested to observe prior to being covered, the Consultant, with the Owner's approval, may request to see such Work and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such uncovered Work is not in accordance with the Contract Documents, the Contractor shall pay all costs for uncovering and replacement of such Work.

#### **ARTICLE 17 – SUPERINTENDENT – SUPERVISION**

1. The Contractor shall completely and thoroughly direct and superintend the Work in accordance with the highest standard of care for the Contractor's profession so as to ensure expeditious, workmanlike performance in accordance with requirements of the Contract Documents. The Contractor shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures. The Contractor shall be responsible for the acts and omissions of all Subcontractors and persons directly or indirectly employed by the Contractor in the completion of the Work. The Contractor shall be responsible for coordinating and scheduling all portions of the Work unless the Contract Documents give other specific instructions. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by the activities of the Consultant in the administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.
2. The Contractor shall have a competent superintendent on the Project site at all times during the process of the Work. The superintendent shall have authority to act on the Contractor's behalf with regard to all aspects of performance of this Contract. The superintendent shall have such assistants with individual specialized competencies as may be necessary to fully understand and oversee all aspects of the Work. The Contractor shall also provide administrative, supervisory and coordinating personnel required to fully perform the Work and for interfacing the Work with other work of the Project. The superintendent and all assistants shall be physically fit for their work and capable of going to all locations where Work is being performed. A communication given to the superintendent shall be binding on the Contractor. Immediately after the award of Contract, the Contractor shall submit to the Consultant a list of Contractor's employees and consultants, including names, positions held, addresses, telephone numbers, cell phone numbers and emergency contact numbers.
3. The superintendent assigned shall not be changed except under the following circumstances: (1) Where the superintendent ceases to be employed by the Contractor, in which case the Contractor shall give timely written notice to the Owner of the impending change of the superintendent and a reasonable explanation for the change; or (2) Where the Owner or the Consultant have reasonable grounds for dissatisfaction with the performance of the superintendent and give written notice to the Contractor of the grounds. In either case, the Contractor shall receive approval from the Owner of the qualifications of the proposed replacement superintendent.
4. If the Owner or Consultant determines that the superintendent is not performing, or is incompetent to perform the required Work, the Owner may direct the Contractor to remove the superintendent from the Project and replace the superintendent with an employee who has the necessary expertise and skills to satisfactory perform the Work.

#### **ARTICLE 18 – CHANGES IN THE WORK**



1. The Owner, at any time after execution of the Contract, may make changes within the general scope of the Contract or issue additional instructions, require additional Work or direct the deletion of Work. The Owner's right to make changes shall not invalidate the Contract or relieve the Contractor of any obligations under the Contract Documents. All such changes to the Work shall be authorized in writing by Change Order and shall be executed under the conditions of the Contract Document. Any adjustment of the Contract Amount or Time of completion shall be made at the time of ordering such change.
2. The cost or credit to the Owner resulting from a change in Work shall be determined in one or more of the following ways:
  - A. By unit prices named in the Contract or additional unit prices subsequently agreed upon;
  - B. By agreement on a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
  - C. By an amount agreed upon by the Contractor and the Owner as a mutually acceptable fixed or percentage fee.
3. All lump sum proposals shall include a detailed cost breakdown satisfactory to the Consultant for each component of Work indicating both labor and material costs. In addition, there may be added an amount agreed upon, but not to exceed fifteen percent (15%) of the actual cost, for overhead and profit. This cost breakdown shall be submitted to the Consultant within seven (7) calendar days after receipt of the proposal request.
4. If none of the above methods are mutually agreed upon or if the Contractor does not respond promptly, a change may be made by unilateral determination by the Consultant of reasonable costs or savings attributable to the change, including a reasonable allowance for overhead and profit. If this method is utilized, the Contractor shall promptly proceed with the Work involved in the change, upon receipt of a written order signed by the Owner. In such case, the Contractor shall keep and present an itemized accounting of labor, equipment, material and other costs, in such form as may be prescribed by the Consultant.
5. In determining the cost or credit to the Owner resulting from a change, the allowances for all overhead (including home office and field overhead) and profit combined, shall be negotiated and shall not exceed (15%) fifteen percent.
6. In all cases where Change Orders are covered by unit prices set forth in the Contract, the value of such changes shall be determined only upon the basis of such unit prices and no additional amount is to be added for extended overhead and profit.
7. The Contractor shall keep and present in such form as the Consultant may direct, a correct account of all items comprising the net cost of such Work, together with vouchers. The determination of the Consultant shall be final upon all questions of the amount and cost of extra Work and changes in the Work, and it shall include in such cost, the cost to the Contractor of all materials used, the cost of all labor (including social security, old age and unemployment insurance, fringe benefits to which the employee is entitled, and Worker's compensation insurance), and the fair rental of all machinery used upon the extra Work, for the period of such use, which was upon the Work before or which shall be otherwise required by or used upon the Work before or after the extra Work is done. If the extra Work requires the use of machinery not already on the Project site, or to be otherwise used upon the Work, then the cost of transportation of such machinery to and from the Project site shall be added to the fair rental value. Transportation costs shall not be allowable for distances exceeding one hundred (100) miles.
8. The Contractor shall not include in the cost of change of Work any cost or rental of small tools, or any portion of the time of the Contractor or the superintendent, or any allowance for the use of capital, insurance or bond premium or any actual or anticipated profit, or job or office overhead not previously mentioned. These items are considered as being covered under the added amount for general overhead.
9. Pending final determination of value, partial payments on account of changes in the Work may be made on recommendation of the Consultant. All Change Orders shall be in full payment and final settlement of all claims for direct, indirect and consequential costs, including costs for delays and time extensions related to items covered and affected. Any such claim not presented by the Contractor for inclusion in the Change Order shall be waived.
10. The Consultant may authorize minor changes in the Work which do not involve additional cost or extension of the Contract Time, and which are not inconsistent with the intent of the Contract Documents. Such changes shall be made by a Field Order issued by the Consultant, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such orders promptly. If the Contractor should claim that a Field Order involves additional cost or delay to the completion of the Work, the Contractor shall give the Consultant written notice thereof within ten (10) calendar days

after receipt of the written Field Order. If this notification does not occur, the Contractor shall be deemed to have waived any right to claim or adjustment to the contract sum or to the contract completion time.

A. If the Contractor claims that any instructions by the Consultant involve additional cost or time extension, the Contractor shall give the Consultant written notice thereof within ten (10) calendar days after the receipt of such instructions and before proceeding to execute the change in Work. The written notice shall state the date, circumstances, whether a time extension will be requested, and the source of the order that the Contractor regards as a Change Order. Unless the Contractor acts in accordance with this procedure, any oral order shall not be treated as a change and the Contractor hereby waives any claim for an increase of the Contract amount or extension of the contract time.

11. Requests for extension of time related to changes in the Work shall be submitted in accordance with the requirements of ARTICLE 21-8.

#### **ARTICLE 19 – RULES AND MEASUREMENTS FOR EXCAVATION**

If applicable, the following Rules and Measurements shall apply to the use of Unit Prices for the excavation portion of the Work:

- A. Except as provided in this ARTICLE 19 for arbitrary measurements, the quantity of excavation shall be its in-place volume before removal.
- B. No allowance will be made for excavating additional material of any nature taken out for the convenience of the Contractor beyond the quantity computed under these "Rules and Measurements."
- C. The quantities of excavation shall be computed from instrument readings taken by the Owner Representative in vertical cross sections located at such intervals that will assure accuracy.
- D. "Trench Excavation" for pipes shall arbitrarily be assumed to be two feet (2') wider than the outside diameter of the pipe barrel and with sides vertical.
- E. The quantities shall be computed from plan size, or if there are no drawings, from actual measurements of the Work in place.
- F. Each unit price shall cover, among other things, engineering (surveying) costs and keeping excavating dry.
- G. Earth excavation for structures will be measured between the vertical planes passing 18 inches beyond the outside of the footings and from the surface of the ground to the neat lines of the bottom of the structure.
- H. Rock excavation for structures will be measured between the vertical planes passing 18 inches beyond the outside of the footings and from the surfaces of the rock to the neat lines of the bottoms of the structures or the actual elevation of the rock ledge.
- I. Rock excavation for pipelines trenches, unless otherwise provided for in the Specifications, shall be measured as follows: An arbitrary width of 18 inches plus the nominal diameter of the pipe multiplied by the depth from the surface the rock to six (6) inches below the invert for pipe 24 inches in diameter or less and eight (8) inches below the invert for all pipe greater than 24 inches in diameter. No additional compensation will be allowed for excavation for bell holes, gates or other purposes. The measurement of rock excavation for manholes shall be in accordance with ARTICLE 19-H above.
- J. Unclassified excavation shall be measured in the same manner as earth excavation.

#### **ARTICLE 20 – CONCEALED CONDITIONS**

1. The Contract Drawings show the approximate location of the existing and new utility lines. These lines have been identified and located as accurately as possible using available information. However, the Contractor is responsible for verifying all actual locations. If utilities require relocation or rerouting that is not shown or indicated to be relocated or rerouted, the Contractor shall contact and cooperate with the Consultant to make the required adjustments. Any request for change in the Contract Amount by the Contractor shall be made pursuant to ARTICLE 18 of the General Conditions.
2. If any charted, uncharted or miss located Utility service is interrupted for any reason, the Contractor will work continuously to restore service to the satisfaction of the Owner at no additional cost to the Owner. Should the Contractor fail to proceed with appropriate repairs in an expedient manner, the Owner reserves the right to have the

work/repairs completed and the cost of such work/repairs deducted from the monies due or to become due to the Contractor pursuant to ARTICLE 22 of the General Conditions.

- A. If any charted Utility Service, or any uncharted or miss located Utility Service the existence of which could have been discovered by careful examination and investigation of the site of the Work by the Contractor, is interrupted for any reason, the entire cost to restore service to the satisfaction of the Owner shall be paid by the Contractor.
3. The Contractor shall promptly, but in no case more than ten (10) days from the time of discovery, and before the conditions are disturbed, notify Consultant in writing of:
  - A. Subsurface or latent physical conditions or any condition encountered at the site which differ materially from those indicated in the Contract Documents and which were not known by Contractor or could not have been discovered by careful examination and investigation of the site of the proposed Work;
  - B. Unknown and unexpected physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered in the locale or generally recognized as inherent in the Work provided for in this Contractor.
  - C. Concealed or unknown conditions in an existing structure which are at variance with the conditions indicated by the Contract Documents, which are of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in this Contract, and which were not known by the Contractor and could not have been discovered by careful examination and investigation of the site of the Work.
4. The Consultant shall promptly investigate the conditions discovered. If the Consultant finds that conditions, which are materially different from those ordinarily encountered and generally recognized as inherent in the Work provided for in this Contract, were not known by the Contractor, and could not have discovered by careful examination and investigation of the site of the Work, have caused or would cause a material increase or decrease in the Contractor's cost of construction or the time required for performance of any part of the Work under this contract, the Consultant will recommend and the Owner will make an equitable adjustment in the Contract Amount or the time allotted for performance in the Contract Documents. Failure by the Contractor to provide written notice to the Owner of such claims for additional compensation or time for performance within 10 days of discovery of such conditions shall constitute a waiver by the Contractor of the right to make such claims. The Owner will not pay claims made for lost opportunities, claims made for lost production or production inefficiencies or claims made that are formula based.
5. If the Consultant determines that changed conditions do not exist or are not materially different and no adjustment in the Contract Amount or time is warranted, the Contractor shall continue performance of the Contract as directed by the Consultant. No claim of the Contractor under this clause shall be allowed unless the required written notice is given and the Consultant is given adequate opportunity to investigate the conditions encountered prior to disturbance. The failure of the Contractor to give the Consultant proper notice of a differing site condition shall not affect the Owner's right to an equitable adjustment of the contract price or time if there is a decrease in the Contract Amount or time required to perform the Work.

#### **ARTICLE 21 – DELAYS AND EXTENSION OF TIME**

1. It is agreed that time is of essence for each and every portion of this Contract and where additional time is allowed for the completion of any part of the Work under this Contract, the new time limit fixed by such extension shall be of the essence of this Contract. An extension of time shall not be cause for extra compensation under this Contract.
2. The Contractor may be granted an extension of time and/or relief from liquidated damages when the delay in completion of the Work is due to:
  - A. Any preference, priority, or allocation order duly issued by the government;
  - B. Unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not limited to, acts of God, or of the public enemy, acts of the Owner, acts of another contractor in the performance of a contract with the Owner, floods, epidemics, quarantine restrictions, strikes, and freight embargoes.
3. Claims for extensions of time and/or relief from liquidated damages, except for weather related claims, must be made in writing not later than ten (10) Calendar Days after the beginning of the delay. Claims for extension of time due to unusual inclement weather shall be made in writing not later than the tenth day of the month following the month in which the delay occurred. Claims for extension of time or relief from liquidated damages shall be stated in numbers of whole or half Calendar Days. The actual dates on which the delay(s) occurred must be stated. In case of weather related

claims for extension of time, time extensions shall be granted only because such unusual inclement weather prevented the execution of critical items of the Work.

4. The Contract completion time will not be extended for inclement weather or weather claims on Projects where the completion time exceeds (365) three hundred and sixty five calendar days. Extensions of the completion time may be granted for abnormal inclement weather on Projects that have completion times of (365) three hundred and sixty five calendar days or less. Unusual inclement weather as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality and/or the season or seasons of the year. Normal weather for the location of the Project shall be determined by records maintained by the United States Environmental Data Service. For the purpose of this Contract, "Unusual Inclement Weather" will be interpreted as those days in excess of the average number of days on which rainfall is 0.01 inch or more or those days in excess of the average number of days on which the maximum temperature is 32 degrees F or below.
5. Any claim for extension of time for strikes or lockouts shall be supported by a written statement of facts concerning the strike, including, but not limited to, the dates, the craft concerned, the reason for the strike, efforts to resolve the dispute, and efforts to minimize the impact of the strike on progress.
6. Any claim for extension of time for delays in transportation or for failures of suppliers shall be supported by a written statement of facts demonstrating that the delays are beyond the Contractor's control, including, but not limited to, the Contractor's efforts to overcome such delays.
7. The time extensions for changes in the Work will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The Change Order granting the time extension may provide the Contract Completion Date may be extended only for those specific elements so delayed and that the remaining Work will not be altered or may further provide for an equitable readjustment of liquidated damages pursuant to the new Contract completion dates.
8. The Contract time will only be adjusted for causes specified above. Extension of time will only be approved by the Consultant if the Contractor can prove such justification supported by CPM data if applicable, and other supporting data that such changes, in fact, are on the critical path and extend the contract completion, and that the Contractor has expended all reasonable effort to minimize its effect on the construction schedule. No additional extension of time will be granted subsequently for claims having the basis in previously approved extensions of time.
  - A. In support of requests for an extension of time, the contractor shall submit to the University a written time impact analysis showing the influence of each such request on the project substantial completion date as shown in the most recent updated and approved project CPM schedule. The analysis shall include a partial network diagram ("fragnet") showing the critical path tasks for the project which are impacted by the event giving rise to the request and showing the schedule both prior to and after the event. This "fragnet" shall include the new activities and/or activity revisions proposed to be added to the existing schedule and shall demonstrate the claimed impact on critical path and the project substantial completion date. Time extensions will not be considered in the event such adjustments do not exceed the total or remaining "float" associated with the impacted activities at the time of delay. Requests for an extension of time which are not supported by this information shall not be considered for approval.
9. No Change Orders will be approved unless they are incorporated in a revised schedule at the time of Work. All changes and/or additions to the schedule must meet the approval of the Consultant.
10. Extensions of time shall be the Contractor's sole remedy for any and all delays. No payment or compensation of any kind shall be made to the Contractor for damages because of impacts, hindrance in the orderly progress of the Work or delay from any cause in the progress of the Work, whether such hindrances or delays be avoidable or unavoidable. The Contractor expressly agrees not to make, and hereby waives, any claim for damages on account of any delay, obstruction, or hindrance for any cause whatsoever, including but not limited to the aforesaid causes. The Contractor agrees that the sole right and remedy in the case of any delay shall be an extension of the time fixed for completion of the Contract. Without limitation, the Owner's exercise of its rights under the changes clause, regardless of the extent or number of such changes, shall not under any circumstances be construed as compensable delays. The Contractor acknowledges that the Contract Amount includes and anticipates any and all delays whatsoever from any cause, whether such delays be avoidable or unavoidable.

#### **ARTICLE 22 – CORRECTION OF WORK BEFORE FINAL PAYMENT**

1. The Contractor shall promptly remove from the site and replace any material or correct any Work found by the Consultant to be defective or that fails to conform to the requirements of the Contract, whether incorporated in the

Work or not, and whether observed before or after Substantial or Final Completion. The Contractor shall bear all costs of correcting such Work or material including the cost of additional professional services necessary, and the cost of repairing or replacing all Work of separate contractors damaged by such removal or replacement.

2. The Consultant will notify the Contractor and the Owner immediately upon its knowledge that additional services will be necessary. The Owner may consent to accept such non conforming Work and materials with an appropriate adjustment in the Contract Amount. Otherwise, the Contractor shall promptly replace and re-execute the Work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement. If the Contractor fails to correct non conforming Work within a reasonable time, the Owner may take any necessary action to make the necessary corrections. If the Owner makes required corrections for non conforming Work or materials, a Change Order will be issued reflecting an equitable deduction from the Contract Amount. This amount will be deducted from payments due to the Contractor or, if no additional payments are due, Contractor or the Contractor's surety will be responsible for payment of this amount.

#### **ARTICLE 23 – CORRECTION OF WORK AFTER FINAL PAYMENT**

1. Neither the final certificate of payment nor any provisions in the Contract Documents shall relieve the Contractor of responsibility for materials and equipment incorporated into the Work that fail to meet specification requirements, or for use of faulty materials or poor quality workmanship. If within one year after the date of Substantial Completion of the Work or designated portion thereof, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so. The Contractor shall correct any defects due to these conditions and pay for any damage to other Work resulting from their use. Nothing contained in this clause shall be construed to establish a period of limitation with respect to any obligation of the Contractor under the Contract. The obligation of the Contractor under this ARTICLE shall be in addition to and not in limitation of any obligations imposed by special guarantees or warranty required by the Contract, given by the Contractor, or otherwise recognized or prescribed by law.
2. In addition to being responsible for correcting the Work and removing any non conforming Work or materials from the job site, the Contractor shall bear all other costs of bringing the affected Work into compliance with the Contract requirements. This includes costs of any required additional testing and inspection services, Consultant's services and any resulting damages to other property or to work of other Contractors or of the Owner.
3. If the Contractor fails to correct non conforming Work within a reasonable time, the Owner may take necessary actions to make the necessary corrections. If the Owner makes required corrections for non conforming Work or materials after Final Payment to the Contractor the Owner shall be entitled to recover all amounts for such corrections including costs and attorney's fees from Contractor or surety.

#### **ARTICLE 24 – TERMINATION OF CONTRACT FOR CONVENIENCE OF OWNER**

The Owner, by written notice to the Contractor, may terminate this Contract in whole or in part when it is in the interest of the Owner, in the sole discretion of the Owner. In such case, the Contractor shall be paid for all Work in place and a reasonable allowance for profit and overhead on Work done, provided that such payments shall not exceed the total Contract price as reduced by the value of the Work as yet not completed. The Contractor shall not be entitled to profit and overhead on Work not performed

#### **ARTICLE 25 – OWNER'S RIGHT TO STOP WORK**

If the Contractor fails to correct defective Work as required, or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner by written notice, may order the Contractor to stop the Work or any portion of the Work, until the cause for the order has been eliminated to the satisfaction of the Owner. The Consultant may stop Work without written notice for 24 hours whenever in its professional opinion such action is necessary or advisable to insure conformity with the Contract Documents. The Contractor shall not be entitled to an adjustment in the Contract Time or Amount under this clause since such stoppages are considered to be the fault of the Contractor. The right of the Owner or Consultant to stop Work shall not give rise to a duty on the part of the Owner or Consultant to exercise this right for the benefit of the Contractor or others.

#### **ARTICLE 26 – TERMINATION OF CONTRACT FOR DEFAULT ACTION OF CONTRACTOR**

1. In addition to its rights under ARTICLE's 24 and 25, the Owner 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 a 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 Owner may terminate the Contract without prejudice to any other right or remedy the Owner 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 Owner's right to terminate the contract.
3. In the event that the Contract is terminated, the Owner may demand that the contractor's Surety take over and complete the Work on the Contract. The Owner may require that in so doing, the Contractor's Surety not utilize the Contractor in performing the Work. Upon the failure or refusal of the Contractor's Surety to take over and begin completion of the Work within twenty days after the demand, the Owner may take over the Work and prosecute it to completion as provided below.
- A. In the event that the Contract is terminated and the Contractor's Surety fails or refuses to complete the Work, the Owner may take over the Work and prosecute it to completion in accordance with the laws of the Commonwealth, by contract or otherwise, and may exclude the Contractor from the site. The Owner may take possession of the Work and of all of the Contractor's tools, appliances, construction equipment, machinery, materials, and plant which may be on the site of the Work, and use the same to the full extent they could be used by the Contractor, without liability to the Contractor. In exercising the Owner's right to prosecute the completion of the Work, the Owner may also take possession of all materials and equipment stored at the site or for which the Owner has paid the Contractor but which are stored elsewhere, and finish the Work as the Owner deems expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.
  - B. 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.
  - C. 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.

- D. If liquidated damages are provided in the Contract and the Owner terminates the Contract, the Contractor shall be liable for such liquidated damages until final completion of the Work is achieved.
- E. In the event the Contract is terminated, the termination shall not affect any rights of the Owner against the Contractor. The rights and remedies of the Owner under this ARTICLE are in addition to any other rights and remedies provided by law or under this Contract. Any retention or payment of monies to the Contractor by the Owner will not release the Contractor from liability.
- F. In the event the Contract is terminated under this Article, and it is determined for any reason that the Contractor was not in default under the provisions of this ARTICLE, the termination shall be deemed a Termination for Convenience of the Owner pursuant to ARTICLE 24 and the rights and obligations of the parties shall be determined in accordance with ARTICLE 24.

#### **ARTICLE 27 – SUSPENSION OF WORK**

The Owner or the Consultant may, at any time and without cause, order the Contractor in writing or cause the Contractor to suspend, delay or interrupt all or any part of the Work for such period of time as the Owner may determine to be appropriate for its convenience. Adjustment may be made for any increase in the Contract time necessarily caused by such suspension or delay, in accordance with ARTICLE 21.

#### **ARTICLE 28 – TIME OF COMPLETION**

1. The Contract Time is the specified number of consecutive calendar days following the stipulated commencement of the Work as stated in the Work Order within which the Contractor has to complete the Contract. The Contractor shall begin the Work on the date of commencement as specified in the Work Order. All time limits stated in the Contract Documents are of the essence of the Contract. The end of the Contract Time shall be the date specified by the Consultant on the certificate of Substantial Completion. The time for completion set forth in the Contract is a binding part of the Contract upon which the Owner may rely in planning the use of the facilities to be constructed and for all other purposes.
2. Substantial Completion shall mean when the stage of Work is reached that all Work is complete, accessible, operable and usable for its intended use by the Owner; all parts, systems and site Work is 100% complete and cleaned for the Owners full use. Only incidental corrective Work under punch lists and final cleaning (if required) for Owner's full use may remain for Final Completion. The ability to occupy or utilize shall include regulatory authority approval. When the Owner accepts and occupies a portion of the Project, the operation, maintenance, utilities, and insurance of that portion of the Project become the responsibility of the Owner.
3. The date of Substantial Completion shall be that date certified by the Consultant in accordance with the following procedures that the Work is sufficiently complete to occupy or utilize as defined above.
  - A. When the Contractor considers the entire Work ready for its intended use, the Contractor shall notify the Consultant in writing and request an inspection. The declaration and request shall be accompanied by a list prepared by the Contractor of those items of Work still to be completed or corrected. The failure of the Contractor or Consultant to include any item or items on such list not completed or needing correction shall not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.
  - B. The Consultant shall, within a reasonable time after receipt of notification from the Contractor of a declaration of Substantial Completion and request for inspection, make such inspection. Prior to the Substantial Completion Inspection and within sufficient time to allow the Consultant's review, the Contractor shall submit all record drawings, catalog data, complete operating and maintenance instructions, manufacturer specifications, certificates, warranties, written guarantees and related documents required by the contract. The Consultant shall review said documents for accuracy and compliance with the Contract Documents and incorporate them into complete operating instructions and deliver them to the Owner.
  - C. If the Consultant considers the Work substantially complete, the Consultant shall prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion and the responsibilities between the Owner and Contractor for security, maintenance, heat, utilities and insurance, if not otherwise provided for in the Contract Documents, and a tentative list of items to be completed or corrected, and shall fix the time within which the Contractor shall complete the items listed therein. This time shall not exceed thirty (30) calendar days. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of the responsibilities assigned to them in the certificate. The Project shall not be deemed substantially complete until

the certificate is issued. If, after making the inspection, the Consultant does not consider the Work substantially complete, he will notify the Contractor in writing, giving the reasons therefore.

4. The Consultant, upon receipt of written notice from the Contractor that the Work is complete and is ready for final inspection and acceptance, will promptly make such inspection and when the Consultant finds the Work completed and acceptable under the Contract Documents and the Contract fully performed, the Consultant will so notify the Contractor in writing and promptly certify a final Certificate for Payment to the Owner. If the Contractor does not complete the punch items within the time designated, the Owner retains the right to have these items corrected at the expense of the Contractor including all architectural, engineering and inspection costs and expenses incurred by the Consultant and the Owner, and to deduct such costs and expenses from the funds being held in retainage. The Owner shall not be required to release the retainage until such items have been completed.

#### **ARTICLE 29 – LIQUIDATED DAMAGES**

1. The Owner and the Contractor recognize and agree that time is of the essence of this Contract and that the Owner will suffer financial loss if the Work is not completed within the time specified in the Contract plus any extensions that may be allowed. The parties further recognize the delays, expense and difficulties involved in proving the actual loss suffered by the Owner should the Work not be completed on time. The Owner and the Contractor agree on the amounts stated as liquidated damages in the Agreement. The Owner and Contractor agree that the amount stated as liquidated damages are not intended to be penalties.
2. Should the Contractor fail to satisfactorily complete the Work under Contract on or before the date stipulated for Substantial Completion, the Contractor will be required to pay liquidated damages to the Owner for each consecutive Calendar Day that the Owner is deprived of full use of the area beyond the date specified unless otherwise stipulated elsewhere by Owner. After the date for Substantial Completion has been certified by the Consultant the Contractor shall cease to owe liquidated damages until the date established for Final Completion.
3. If Final Completion is not achieved by the date established for Final Completion, liquidated damages in the amount stipulated in the Agreement will become due and collectable. The Contract will be considered complete when all Work has been completed and the Certificate of Final Completion has been issued by the Consultant. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire Contract. Permitting the Contractor to continue and finish the Work, or any part of it, after expiration of the Contract Time, shall in no way constitute a waiver on the part of the Owner of any liquidated damages due under the Contract.

#### **ARTICLE 30 – PAYMENT TO THE CONTRACTOR**

1. Payments on account of this Contract shall be made monthly as Work progresses. The Contractor shall submit to the Consultant, in the manner and form prescribed, an application for each payment, and, if required, receipts or other vouchers showing payments made for materials and labor, including payments to Subcontractors. All payments shall be subject to any withholding or retainage provisions of this contract. All pay request documents, except the final payment, shall be submitted in whole dollar amounts. All payment applications from the Contractor shall include line items for overhead, profit and general condition costs.
2. The Consultant shall, within ten (10) working days after receipt of each application for payment, certify approval of payment in writing to the Owner and present the application to the Owner, or return the application to the Contractor indicating in writing its reasons for refusing to approve payment. The Owner, provided no exception is taken to the application for payment submitted by the Consultant, will generally issue payment on or within twenty (20) working days from the date received from the Consultant. A reasonable delay on the part of the Owner in making payment to the Contractor for any given payment shall not be grounds for breach of Contract. The Consultant may refuse to approve the whole or any part of any payment if it would be incorrect to make such presentation to the Owner.
3. Neither the final payment nor any part of the remaining retained percentage shall become due until the Contractor delivers to the Owner an affidavit that all payrolls, bills for materials, supplies and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied.
4. If payment is requested on the basis of materials and equipment not incorporated in the Work, but delivered and suitably stored at the site or at another location agreed to in writing, the Contractor must furnish the following:
  - A. A list of the materials consigned to the Project (which shall be clearly identified), giving the place of storage, together with copies of invoices.



- B. Certification that all items have been tagged for delivery to the Project and that they will not be used for any other purpose.
  - C. A letter from the Surety indicating that the Surety agrees to the arrangements and that payment to the Contractor shall not relieve either the Contractor or its Surety of their responsibility to complete the Work.
  - D. Evidence of adequate insurance listing the Owner as an additional insured covering the material in storage.
  - E. Evidence that representatives of the Consultant have visited the Contractor's place of storage and checked all items listed on the Contractor's certificate. They shall certify, insofar as possible, that the items are in Agreement with the Specifications and approve their incorporation into the Project.
5. The Owner will pay 80% of the invoiced value less retainage for materials stored off site providing the above conditions are met.
  6. The Contractor's signature on each subsequent application for payment shall certify that all previous progress payments received on account of the Work have been applied to discharge in full all of the Contractor's obligations reflected in prior applications for payment.
  7. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor and the Contractor warrants and guarantees that the title to all materials, equipment and Work covered by the paid partial payment shall become the sole property of Owner free and clear of all encumbrances. Nothing in this Article shall be construed as relieving Contractor from the sole responsibility for care and protection of materials, equipment and Work upon which payments have been made or restoration of any damaged Work or as a waiver of the right of Owner to require fulfillment of all terms of the Contract Documents.
  8. Within thirty (30) days of the award of the Contract, and prior to submitting the first application for payment, the Contractor shall submit to the Consultant and the Owner for approval a detailed breakdown of the Contract Amount pursuant to CSI 2004 specification divisions divided so as to facilitate payment and correlated to the schedule required by the Contract Documents. The total value of all activities shall add up to the Contract Amount. When approved by the Consultant and the Owner this schedule shall be used as a basis for Contractor's applications for payment and may be used by the Owner to determine costs or credits resulting from changes in the Work. Failure to obtain the approval of the Schedules of Values shall be a basis for withholding payment to the Contractor.
  9. Payments Withheld - The Owner may withhold any payment in whole or in part or back charge the Contractor to such extent as it may deem advisable to protect the Owner on account of:
    - A. Defective Work not remedied;
    - B. Failure of the Contractor to make payment properly to Subcontractors for material or labor;
    - C. Claims filed or reasonable evidence indicating probable filing of claims by Subcontractors, laborers, suppliers, or others;
    - D. A reasonable doubt that the Contract can be completed for the balance then unpaid;
    - E. The Contractor's failure to perform any of its contractual obligations, default under Contract Documents, or failure to maintain the agreed upon time schedule; or
    - F. Failure to present pay requests in the prescribed form. When the Owner is satisfied that the Contractor has remedied any such deficiency, payment of the amount withheld will be paid.
  10. Final Payment - When all Work is complete and acceptable and the Contract is fully performed, the Contractor will be directed to submit a final payment application for certification and the entire balance shall be due and payable upon a certification of completion by the Consultant that the Work is in accordance with the Contract Documents.
  11. Retainage - The Owner will retain 10% of the Contractor's progress payments until Final Completion and acceptance of all Work covered by this Contract as collateral security to insure successful completion of the Work. In no event shall any reduction to retainage be permitted prior to the issuance of the Consultant's Certificate of Substantial Completion. Subsequent to the issuance of such certificate and depending upon the cost involved for the completion and/or correction of punch list items the Consultant may recommend to the Owner, and if so approved by Owner, the amount of retainage might then be reduced and a sufficient sum retained by Owner to cover the uncompleted Work.

- A. Upon issuance of the Certificate of Final Completion by the Consultant and submittal by the Contractor of all required documents and releases, all retained amounts shall be paid to the Contractor as part of the Final Payment.
- B. In addition to the retainage set forth above, the Owner may withhold from any monthly progress payments or nullify any progress payments in whole or in part as necessary to protect the Owner from loss on account of:
- 1) Defective Work which has not been remedied or completed Work which has been damaged requiring correction or replacement;
  - 2) If the Owner has been required to correct Defective Work or complete Work which the Contractor has failed or refused to correct or complete;
  - 3) If the Contractor has failed to perform any of its obligations under the Contract;
  - 4) If the Contractor has failed to make payment properly to Subcontractors, suppliers, material suppliers, or laborers.
  - 5) Amounts to be withheld as liquidated damages for failure to complete the Project in the allotted contract time. When the Owner is satisfied that the Contractor has remedied any such deficiency, payments shall be made of the amount being withheld on the next scheduled application for payment.

#### **ARTICLE 31 – CONTRACTOR’S PAYMENT TO SUBCONTRACTOR**

1. The Contractor shall promptly pay each Subcontractor upon receipt of payment from the Owner the amount to which said Subcontractor is entitled, reflecting the percentage actually retained from payments to the Contractor on account of such Subcontractor's work. The Contractor shall, by an appropriate Agreement with each Subcontractor, require each Subcontractor to make payments to their Subcontractors, vendors and suppliers in similar manner.
2. The Consultant may, on request, furnish to any Subcontractor information regarding the percentages of completion applied for by the Contractor and the action thereon by the Consultant.
3. Neither the Owner nor the Consultant shall have any obligation to make payment to any Subcontractor except as may otherwise be required by law.

#### **ARTICLE 32 – PROGRESS & SCHEDULING**

1. Within ten days after the award of the Contract, the Contractor shall prepare and submit to the Owner and the Consultant a construction schedule for the Work. The schedule shall not exceed time limits current under the Contract. Schedules which reflect a duration less than the Contract Time are for the convenience of the Contractor and shall not be the basis of any claim for delay or extension of time. Documents shall be revised at appropriate intervals as required by the condition of the Work and the Project, shall be related to the entire Project to the extent required by the Contract Documents and shall provide for expeditious and practicable execution of the Work. The Contractor shall also submit a payment schedule indicating the percentage of the Contract Amount and the anticipated monthly payments the Owner may make during the Project. The Owner may withhold approval of progress payments until the progress payment schedule and construction schedule have been submitted by the Contractor.
2. The Contractor shall prepare and keep current, for the Consultant's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Consultant reasonable time to review submittals.
3. The Contractor shall conform to the most recent schedules.

#### **ARTICLE 33 – USE OF COMPLETED PORTIONS**

Upon mutual Agreement between the Owner, Contractor, and Consultant, the Owner may use a completed portion of the Project after an inspection is made. Such possession and use shall not be deemed as acceptance of any Work not completed in accordance with the Contract Documents nor shall such possession and use be considered to alter warranty obligations.

#### **ARTICLE 34 – INDEMNIFICATION**

1. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, the Consultant and their agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, 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 therefrom,

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 it 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.

2. In any and all claims against the Owner, the Consultant or any of their agents or employees, by any employee of the Contractor, any Subcontractor, any one directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Worker's Compensation acts, disability benefit acts or other employee acts.
3. The obligations of the Contractor under this Article shall not extend to the liability of the Consultant, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Consultant, his agents or employees, provided such giving or failure to give is the primary cause of injury or damage.

### **ARTICLE 35 – 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. Each policy of insurance, except Workers Compensation, shall name 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. Waiver of subrogation in favor of the Northern Kentucky University shall apply to all policies.
2. 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. 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.

6. 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.

7. 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.

8. 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.

**ARTICLE 36 – PERFORMANCE AND PAYMENT BONDS**

1. The Contractor shall furnish a Performance Bond in the form provided in the Contract Documents in the full amount of the Contract Amount as security for the faithful performance of the Contract. The Contractor shall also furnish a Payment Bond in the form provided in the Contract Documents in the full amount of the Contract Amount for the protection of all persons performing labor or furnishing materials, equipment or supplies for the Contractor or its Subcontractors for the performance of the Work provided for in the Contract, including security for payment of all unemployment contributions which become due and payable under Kentucky Unemployment Insurance Law. The Performance and Payment Bonds shall be executed by the Contractor and a surety company authorized to conduct business in this Commonwealth.
2. Unless the Project is exempt from the prevailing wage requirements of KRS 337.505 through 337.550, the Contractor's bonds shall include a provision to guarantee the faithful performance and payment of the prevailing hourly wage as set forth in the schedule incorporated in the bid documents.

**ARTICLE 37 – DAMAGED FACILITIES**

1. The Contractor shall repair or replace, at no expense to the Owner, any damaged section of existing buildings, paving, landscaping, streets, drives, utilities, etc. caused by Work performed under the Contract or incidental thereto, whether by the Contractor's own forces, Subcontractors or by material suppliers. Such repair or replacement shall be performed by craftsmen skilled and experienced in the trade or craft for the original Work.
2. Water damage to the interior of any building, whether a new or existing building, shall be repaired and any materials damaged inside the building, including personal property, shall be repaired or replaced at the full replacement cost.
3. For existing buildings, the Contractor, along with the Owner's Representative and Consultant, will tour the Project site to evaluate existing conditions and determine any existing damage before any Work on this Contract is done.
4. Should the Contractor fail to proceed with appropriate repairs in an expedient manner, the Owner reserves the right to have the Work/repairs completed and deduct the cost of such Work/repairs from amounts due or to become due to the Contractor. If the Owner deems it not expedient to repair the damaged Work, or if repairs are not done in accordance with the Contract, an equitable deduction from the Contract price shall be made.

**ARTICLE 38 – DISPUTE RESOLUTION**

1. All Contractor's claims and disputes shall first be referred to the Consultant for review and decision. All claims shall be made in writing to the Consultant and Owner, not more than ten days from the occurrence of the event which gives rise

to the claim or dispute, or not more than ten days from the date that the Contractor knew or should have known of the claim or dispute. Unless the claim is made in accordance with these requirements, it shall be waived. Any claim not submitted before Final Payment shall be waived. The Consultant shall render a written decision within fifteen days following receipt of a written demand for the resolution of a claim or dispute.

2. The Consultant's decision shall be final and binding on the Contractor unless the Contractor submits to the Owner a written notice of appeal within fifteen calendar days of the Consultant's decision. The Contractor must present within fifteen calendar days of the notice to appeal a narrative claim in writing with complete supporting documentation. After receiving the written claim, the Owner will review the materials relating to the claim and may meet with the Contractor to discuss the merits of the claim. The Owner will render a decision within 30 calendar days after receiving the written claim and supporting documentation. The decision of the Owner shall be final and binding. Any failure of the Consultant or Owner to make a decision within the time limit set forth shall not result in the granting of the Contractor's claim.
3. If the Owner does not agree with the Consultant's decision on a claim by the Contractor, the Owner shall notify the Contractor and the Consultant and direct the Contractor to perform the Work about which the claim was made and the Contractor shall proceed with such Work in accordance with the Owner's instruction. If the Contractor disagrees with a decision of the Owner concerning a Contractor's claim, the Contractor shall proceed with the Work as indicated by the Owner's decision.
4. The Contractor shall continue to diligently pursue Work under the Contract pending resolution of any dispute.

#### **ARTICLE 39 - CLAIMS FOR DAMAGE**

1. Should either party to the Contract suffer damage because of wrongful act or neglect of the other party, or of anyone employed by them, or others for whose act they are legally liable, or other controversy arising under the Contract, such claim or controversy shall be made in writing to the other party within 30 days after the first occurrence of the event. Prior to the institution of any action in court, the claim or controversy (together with supporting data) shall be presented in writing to the Vice President for Finance and Administration for Northern Kentucky University. The Vice President is authorized, subject to any limitations or conditions imposed by regulations, to settle, comprise, pay, or otherwise adjust the claim or controversy with the Contractor. The Vice President, or designee, shall promptly issue a decision in writing. A copy of the decision shall be mailed or otherwise furnished to the Contractor. The decision rendered shall be final and conclusive unless the Contractor files suit pursuant to KRS 45A.245. If the Vice President does not issue a written decision within one hundred and twenty (120) days after written request for a final decision, or within a longer period as may be established by the parties to the Contract in writing, then the Contractor may proceed as if an adverse decision had been received.
2. Any legal action on the Contract shall be brought in the Campbell County Circuit Court 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 Owner. The Owner shall recover from the Contractor all attorney's fees, costs and expenses incurred if the Owner prevails in the litigation of disputes under the Contract. The Contractor shall be liable to the Owner for all attorney's fees, costs and expenses incurred by the Owner to enforce the provisions of the Contract.

#### **ARTICLE 40 – LIENS**

1. The filing and perfection of liens for labor, materials, supplies, and rental equipment supplied on the Work are governed by KRS 376.195 et seq.
2. Statements of lien shall be filed with the Campbell County Clerk and any action to enforce the same must be instituted in the Campbell County Circuit Court, pursuant to KRS 376.250 (2).
3. The lien shall attach only to any unpaid balance due the Contractor for the improvement from the time a copy of statement of lien, attested by the Campbell County Clerk, is delivered to the Owner, pursuant to the provisions of KRS 376.240.

#### **ARTICLE 41 – ASSIGNMENT**

Neither party to the Contract shall assign the Contract, or any portion thereof without the written consent of the other. The Contractor shall not assign any amount or part of the Contract or any of the funds to be received under the Contract unless the Contractor has the prior written approval of the Owner and the Surety on the Contractor's bond has given written consent to any such assignment.

#### **ARTICLE 42 – SEPARATE CONTRACTS**

1. The Owner reserves the right to enter into other Contracts in connection with the Project or to perform any work with the Owner's forces. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate its Work with theirs in such manner as the Consultant may direct.
2. Upon request of the Contractor, the Consultant or the Owner will provide the Contractor a copy of all available plans, specifications, and other data relating to other contracts or work related to this Work. The Contractor shall examine these documents and shall promptly notify the Consultant or the Owner of any work conflicting with Work to be performed by the Contractor.
3. Should the Contractor sustain any damage through any act or omission of any other contractor having a contract with the Owner, the Contractor shall have no claim or cause of action against the Owner for such damage and hereby waives such claim. The Contractor does not waive any claim or cause of action against the other contractor to recover any and all damages sustained by reason of the acts or omissions of such separate contractor. The phrase "acts or omissions" as used in this Article shall be defined to include, but not limited to, any unreasonable delay on the part of any such separate contractor.
4. Should the Contractor cause damage to any separate contractor on the Work, and the separate contractor sues the Owner on account of any damage alleged to have been so sustained, the Contractor shall be responsible for all costs, fees and expenses incurred by the Owner for defending such proceedings and if any judgment against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall pay all costs, fees and expenses incurred by the Owner.
5. If any part of the Contractor's Work depends upon the work of any other contractor, the Contractor shall promptly report to the Consultant any observed defects in such work that render it unsuitable for proper execution connection. The failure to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of the work, except as to defects which may develop in the other contractor's work after the execution of the work.
6. Whenever work being done by the Owner's forces or by other contractors is contiguous to work covered by this Contract, the respective rights of the various parties involved shall be established by the Consultant to secure the completion of the various portions of the Work in general harmony.

#### **ARTICLE 43 – CONTRACTOR/SUBCONTRACTOR RELATIONSHIP**

1. The Contractor is fully responsible to the Owner for the acts and omissions of the Subcontractors and of persons either directly or indirectly employed by them. The Contractor is responsible for the acts and omissions of persons employed directly by the Contractor and for the coordination of the Work, including placement and fittings of the various component parts. No claims for extra costs as a result of the failure to coordinate the Work, or by acts or omissions of the various Subcontractors will be paid by the Owner.
2. The Contractor agrees to bind every Subcontractor by the terms and conditions of the Contract Documents as far as applicable to their portion of the Work. Upon request, the Contractor shall provide copies of any subcontracts and purchase orders to the Owner or Consultant.
3. The Contractor shall make no substitution or change in any Subcontractor listed and accepted by the Consultant or Owner except as approved in writing by the Owner. The Contractor shall not employ any Subcontractor or supplier against whom the Owner or the Consultant has made reasonable and timely objection.
4. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner and any Subcontractor. The Contractor is hereby notified that it is the Contractor's contractual obligation to settle disputes between Subcontractors. Neither the Owner nor the Consultant will settle disputes between the Contractor and the Subcontractors or suppliers or between Subcontractors or suppliers.

#### **ARTICLE 44 – CASH ALLOWANCE**

The Contractor shall have included in the Contract Amount all allowances stated in the Contract Documents and shall cause the Work so covered to be done as the Consultant may direct. If the actual price for purchasing the "allowed materials" is more or less than the "cash allowance", the Contract Amount shall be adjusted by Change Order accordingly. The adjustment in Contract Amount shall be made on the basis of the purchase price without additional charges for overhead, profit, insurance or any other incidental expenses. The cost of installation of the "allowed

materials", unless specifically provided for in the allowance, shall be included in the Contract Amount and not in the allowance.

#### **ARTICLE 45 – PROJECT SITE LIMITS**

The Contractor shall confine the apparatus, the storage of materials, and the operations of Workmen to Project site limits indicated in and permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials and equipment.

#### **ARTICLE 46 – CLEAN UP**

The Contractor shall at all times keep the premises free from accumulation of waste material or rubbish caused by the operations in connection with the Work. At the completion of the Work, and prior to final inspection and acceptance, the Contractor shall remove all remaining waste materials, rubbish, Contractor's construction equipment, tools, machinery, and surplus materials and shall leave the Work in a clean and usable condition, satisfactory to the Consultant and the Owner. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may perform the cleaning tasks and charge the cost to the Contractor.

#### **ARTICLE 47 – POINTS OF REFERENCE**

The Contractor shall carefully preserve bench marks, reference points and stakes, and in case of willful or careless destruction, the Contractor shall be charged with the resulting expense of replacement and shall be responsible for any mistake that may be caused by their loss or disturbance.

#### **ARTICLE 48 – SUBSTITUTION – MATERIALS AND EQUIPMENT**

1. Specific references in the Contract Documents to any article, device, equipment, product, material, fixture, patented process, form, method or type of construction, by name, make, trade name, or catalog number, with or without the words "or equal" shall be interpreted as establishing a minimum standard of quality, and shall not be construed as limiting competition.
2. Substitution of equipment and materials previously submitted by the Contractor and approved by the Consultant will be considered only for the following reasons:
  - A. Unavailability of the materials or equipment due to conditions beyond the control of the supplier.
  - B. Inability of the supplier to meet Contract Schedule.
  - C. Technical noncompliance to specifications.
3. Substitution of other equipment and materials named in the specifications will be allowed provided the proposed substitution will perform the functions called for by the general design, be similar and of equal quality to that specified and be suited to the same use and capable of performing the same function of that specified. The Contractor has burden to prove equality of any substitution requested.
4. Inclusion of a certain make or type of materials or equipment in the Contractor's bid proposal shall not obligate the Owner to accept such materials or equipment if they do not meet the requirements of the plans and specifications.

#### **ARTICLE 49 – TEST AND INSPECTION**

1. Regulatory agencies of the government having jurisdiction may require any Work to be inspected, tested or approved. The Contractor shall assume full responsibility therefore, pay all costs in connection therewith, and furnish the Consultant the required certificates of inspection, testing or approval.
2. The Contractor shall give the Consultant timely notice of readiness of the Work for all inspections, tests or approvals.
3. The technical specifications may indicate specific testing requirements to be performed by the Contractor. The cost of all such testing shall be the responsibility of the Contractor. Testing shall be completed using a testing facility or laboratory approved by the Owner.
4. The costs of all inspection fees as may be required to construct and occupy the Work shall be the responsibility of the Contractor.

## **ARTICLE 50 – WARRANTY**

1. The Contractor warrants to the Owner and the Consultant that all materials and equipment furnished under this Contract shall be new and of the most suitable grade for the purpose intended and that all Work shall be of good quality, free from faults and defects and in conformance with the Contract Documents. If required by the Consultant or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Where there is an approved substitution of material or equipment, the Contractor warrants that such installation, construction, material, or equipment will equally perform the function for which the original material or equipment was specified. The Contractor explicitly warrants the merchantability, the fitness for a particular purpose, and quality of all substituted items in addition to any warranty given by the manufacturer and/or supplier. Prior to the Substantial Completion inspection, the Contractor shall deliver to the Consultant all warranties and operating instructions required under the Contract or to which the Contractor is entitled from manufacturers, suppliers, and Subcontractors. All warranties for products and materials incorporated into the Work shall begin on the date of Substantial Completion.
2. Neither the final payment, any provision in the Contract Documents nor partial or entire use or occupancy of the premises by the Owner shall constitute an acceptance of Work not done in accordance with Contract Documents or relieve the Contractor or its Sureties of liability with respect to any warranties or responsibilities for faulty materials and workmanship. The Contractor or its sureties shall remedy any defects in Work and any resulting damage to Work at its own expense. The Contractor shall be liable for correction of all damage resulting from defective Work. If the Contractor fails to remedy any defects or damage, the Owner may correct Work or repair damages and the cost and expense incurred in such event shall be paid by or be recoverable from the Contractor or the surety. The Owner will give notice of observed defects with reasonable promptness.
3. The Contractor shall guarantee that labor, material, and equipment will be free of defects for a period of one (1) year from the date shown on the Certificate of Substantial Completion unless special conditions or additional warranty periods are required by the contract. The Owner will give notice of observed defects with reasonable promptness. Expendable items and wear from ordinary use are excluded from this warranty.
4. Should the Contractor be required to perform tests that must be delayed due to climate conditions, it is understood that such tests will be accomplished by the Contractor at the earliest possible date with provisions of the general warranty beginning upon satisfactory completion of said test. The responsibility of the Contractor under this Article will not be abrogated if the Owner should elect to initiate final payment. If the Owner initiates final payment, consent of Contractor's surety acknowledging that Work not yet tested is excepted is required. The Contractor shall warrant that the entire Project will conform to the Contract Documents.
5. All costs, attorney's fees and expenses incurred by the Owner as a result of the Contractor's failure to honor any warranty for the Work shall be paid by or recoverable from the Contractor.

## **ARTICLE 51 – PREVAILING WAGE LAW REQUIREMENTS**

1. In performing the Work, the Contractor and Subcontractors are required to comply with the wage and hour requirements of KRS 337.505- 337.550, except where the contract meets exemption requirements of KRS 337.010.
2. On Projects not exempted under KRS 337.010, the Contractor and Subcontractor shall pay all laborers, workers and mechanics performing Work under this Contract not less than the wages set fourth in the prevailing wage schedule, incorporated as part of the bid and Contract Documents, as determined by the Kentucky Department of Labor in accordance with provisions of KRS 337.505 through KRS 337.550.
3. On covered Projects, the Contractor shall post and keep posted in a conspicuous place or places at the site of the Work a copy or copies of the prevailing rates of wages and the working hours as prescribed in the Contract Documents. Any laborer, worker, or mechanic working in excess of eight (8) hours per day or forty (40) hours per week, except in cases of emergency caused by fire, flood, or damage to life or property, shall be paid not less than one and one-half (1 1/2) times the basic hourly rate of pay fixed by law for all overtime worked. The determination of when an emergency exists shall be made by the Consultant or Owner as provided by law. Overtime is to be computed at not less than one and one-half (1 1/2) times the indicated base rate for all hours worked in excess of eight (8) per day, or in excess of forty (40) hours per week. KRS 337.540 permits an employee and employer to agree in writing that the employee will be compensated at a straight time base rate for hours worked in excess of eight (8) hours in any one workday but not more than ten (10) hours worked in any one workday; if such written Agreement is prior to the over actual work or



where provided for a collective bargaining agreement. The fringe benefit rate is to be paid for each hour worked at a straight time rate for all hours worked. This applies to all prevailing wage determinations issued by the Labor Cabinet. As a point of clarification, if no collective bargaining agreement exists, employers must have a signed agreement with each employee on the Project. These agreements must be maintained at the employer's office along with the payroll records.

4. The Contractor and all Subcontractors shall keep full and accurate payroll records covering all disbursements of wages to their employees to whom they are required to pay not less than prevailing rate of wages. Records shall indicate the hours worked each day by each employee in each classification of Work and amount paid each employee for his work in each classification. Payroll records are to be maintained within the state for one year after completion of the Contract. These records are to be open for inspection and transcript by the Department of Labor at any reasonable time.

#### **ARTICLE 52 – APPRENTICES**

Apprentices (for all classifications of work) shall be permitted to work only under an apprenticeship agreement approved by the Kentucky Supervisor of Apprenticeship and by the Kentucky Apprenticeship and Training, United States Department of Labor.

#### **ARTICLE 53 – GOVERNING LAW**

This Contract shall be governed by the laws of the Commonwealth of Kentucky.

#### **ARTICLE 54 – NONDISCRIMINATION IN EMPLOYMENT**

1. During the performance of the Contract, the Contractor agrees as follows:
  - A. Northern Kentucky University is committed to equal employment opportunity, affirmative action, and eliminating discrimination. The university is also committed to providing equal job opportunities on public contracts and prohibiting discrimination based upon protected status, which is defined as age, color, disability, gender, national origin, race, religion, sexual orientation, or veteran status. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
  - B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to protected status as detailed in paragraph A.
  - C. The Contractor will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representatives of the Contractor's commitments under this Article, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - D. Use of Minority and Women Owned Business Enterprises. The utilization of minority and women owned business enterprises is encouraged in all construction and renovation projects at Northern Kentucky University. All Contractors should make full efforts to locate and use minority and women owned business enterprises in the bidding of this project. For assistance in identifying minority and women vendors and subcontractors, the contractors may contact the Office of EEO and Contract Compliance, Room 395, New Capitol Annex, Frankfort, KY 40601, phone 502-564-2874.
2. Failure to comply with the above nondiscrimination clause constitutes a material breach of Contract.

#### **ARTICLE 55 – AFFIRMATIVE ACTION; REPORTING REQUIREMENTS**

1. The Contractor and any Subcontractor is exempt from any affirmative action or reporting requirements, under the Kentucky Equal Employment Act of 1978, KRS 45.550 to KRS 45.640 "The Act", if any of the following conditions are applicable:
  - A. The Contract or subcontract awarded is in the amount of five hundred thousand dollars (\$500,000.00) or less, and the amount of the Contract is not a subterfuge to avoid compliance with the provisions of the Act;
  - B. The Contractor or Subcontractor utilizes the services of fewer than eight (8) employees during the course of the Contract;

- C. The Contractor or Subcontractor employs only family members or relatives;
  - D. The Contractor or Subcontractor employs only persons having a direct ownership interest in the business and such interest is not a subterfuge to avoid compliance with the provisions of The Act.
2. The Contractor and any Subcontractor, not otherwise exempted, shall:
    - A. For the length of the Contract, hire minorities from within the drawing area to satisfy the agreed upon goals and timetables. Should the union with which the Contractor has collective bargaining agreements be unwilling to provide sufficient minorities to satisfy the agreed upon goals and timetables, the Contractor shall hire minorities from other sources within the drawing area;
    - B. The equal employment provisions of The Act may be met in part by the Contractor subcontracting to a minority contractor or Subcontractor. A minority Contractor or subcontractor shall mean a business that is owned and controlled by one or more persons disadvantaged by racial or ethnic circumstances.
    - C. Each Contractor shall, for the length of the Contract, furnish such information as required by The Act and by such rules, regulations and orders issued pursuant thereto and will permit access to all books and records pertaining to its employment practices and Work sites by the contracting agency and the department for purposes of investigation to ascertain compliance with The Act and such rules, regulations and orders issued pursuant thereto.
  3. If the Contractor is found to have committed an unlawful practice against a provision of The Act during the course of performing under this Contract or subcontract covered under The Act, the Owner may cancel or terminate the Contract, conditioned upon a program for future compliance approved by the Owner. The Owner may also declare such Contractor ineligible to bid on further contracts until such time as the Contractor complies in full with the requirements of The Act.
  4. Any provisions of The Act notwithstanding, no Contractor shall be required to terminate an existing employee, upon proof that employee was employed prior to the date of the Contract nor hire anyone who fails to demonstrate the minimum skills required to perform a particular job.

End of General Terms & Conditions