

CONTRACT AWARD

Date of Award: January 22, 2014
Contract ID: 0000000000000000000038930
Event ID: EVT0002684
Replace Contract: New

Procurement Officer: Tamarenid X Sherley
Telephone: 785/296-3122
E-Mail Address: tami.sherley@da.ks.gov
Web Address: <http://admin.ks.gov/offices/procurement-and-contracts/>

Item: Software, Field Collection
Agency/Business Unit: 046 - Kansas Dept. of Agriculture
Period of Contract: February 01, 2014 through January 31, 2015
(With the option to renew for five (5) additional 12 month periods)

Contractor: BURNS & MCDONNELL ENGINEERING CO INC
9400 WARD PARKWAY
KANSAS CITY, MO 64114-3319

Vendor ID: 0000036430
FEIN: 43-1393692
Contact Person: Bryan Claxton
E-Mail: bclaxton@burnsmcd.com
Local Telephone: 816-822-4364
Cell Phone Number: 816-289-8641
Fax: 816-333-9400

Payment Terms: Net 30 days

Political Subdivisions: Pricing is not available to the political subdivisions of the State of Kansas.

Procurement Cards: Agencies may not use a P-Card for purchases from this contract.

Administrative Fee: No Administrative Fee will be assessed against purchases from this contract.

The above referenced contract award was recently posted to Procurement and Contracts website. The document can be downloaded by going to the following website: <http://www.da.ks.gov/purch/Contracts/>

1. All the information and data (including individual or other information identified by the State) of the State shall be considered confidential and private. All electronic data shall be secured through encryption or other comparable security measure.
 2. Contractor agrees that it and its employees will not, during the performance of or after the termination of this Agreement, disseminate or disclose at any time to any person, firm, corporation, or other entity, or use for its own business or benefit any information or data (including but not limited to use of names, home addresses, phone numbers of employees or citizens; or any other information obtained about employees, citizens, or vendors) obtained by it while in the performance of this Agreement.
 3. Contractor shall not remove Confidential Information from State's site without State's prior written approval. Notwithstanding the foregoing, email and similar communications contained on Contractor laptops shall not be considered Confidential Information and approval is granted, subject to compliance with applicable security policies, for Contractor laptops to be removed from the State's site.
 4. Contractor shall limit access to Confidential Information solely to staff of Contractor who has a business need to know for purposes of fulfilling Contractor's obligations under this Agreement. Any staff, individual or entity assigned to work for Contractor under this Agreement shall separately sign a non-disclosure agreement(s) and be bound by the requirements of this Article and any Kansas Department of Administration computer security policy and user agreement, which shall be incorporated by reference herein.
 5. Contractor agrees to comply and shall be fully responsible for providing adequate supervision and training to its agents and employees to ensure Contractor's (and subcontractors of Contractor) compliance with all applicable State and Federal Acts regarding confidentiality and the Kansas Open Records Act, K.S.A. 45-215 et seq.
 6. The State is a covered entity under the Health Insurance Portability and Accountability Act (1996) ("HIPAA"). Contractor warrants that it will not use or disclose protected health information ("PHI") in ways that are prohibited to the State. Contractor shall establish and maintain procedures and controls acceptable to the State to protect the privacy of individuals' PHI in accordance with the HIPAA requirements. Contractor shall not use or disclose any PHI or other personally identifiable information obtained from the State for any reason.
- B. Return. Upon termination or expiration of this Agreement, or at the State's request, Contractor and each of the persons and entities working for the Contractor, including any subcontractors, shall promptly destroy or return to the State all Confidential Information, including all data, information electronic, written, or descriptive materials or any related matter of any type, including but not limited to drawings, blueprints, descriptions, or other papers or documents which contain any such Confidential Information and shall not make, retain or distribute any copies thereof.
- C. Press Releases, Public Statements, and/or Communications. Contractor agrees that no public statement, release, or communication acknowledging or implying that the State is a customer of Contractor is allowed under this Agreement. Any approval by the State for such public statement, release, or communication shall only be provided in writing by State to Contractor's contact for receiving Notice as described in this Agreement. The State may refuse such a request for any reason.
- D. Contractor's Confidential Information. The State will ensure that Contractor's properly marked and designated "confidential information", or information that should by its nature be obviously understood to be confidential, including without limitation social security numbers and personal private information, is not disclosed to others except as required by the Kansas Open Records Act. Contractor acknowledges and agrees that the State may be required to disclose certain information of Contractor pursuant to the Kansas Open Records Act.
- E. Failure to Secure Confidential Information. Contractor shall develop and maintain a security plan for the Project pursuant to its internal Client Data Protection Policies. Such plan shall be subject to review and approval by the State. Upon approval, Contractor shall implement and comply with such plan to secure and protect all personal and private information or personal health information. Contractor shall hold State harmless and indemnify the State for expenses or damages, of any kind, incurred or suffered by the State as a result of any failure by Contractor to comply with such plan. Contractor shall notify the State of any loss or breach of confidential information or data within twenty-four (24) hours of such knowledge. Contractor shall also be responsible and liable for any and all damages to individuals due to such breaches. In the event of any failure to comply with the security

2.3.2. **Testing.** The Contractor shall work with KDA to perform acceptance testing. All items that will be tested will be included in a mutual agreed upon acceptance test plan. The goal of this acceptance test process is to confirm that all systems function as agreed to. If system abnormalities or deficiencies are found, the Contractor shall implement a process to immediately fix the problem(s). KDA will then retest the system to confirm proper operation.

2.3.3. **Training.** The contractor will provide needed training to KDA staff. Training will take place at a location or locations determined by KDA.

2.4. **Dispute Resolution:** Any dispute arising under the contract which is not disposed of by agreement by KDA and the Contractor will be decided by the Director of Procurement and Contracts, who will commit his or her decision to writing and will serve a copy to the Contractor. The decision of the Director of Procurement and Contracts shall be final and conclusive.

2.5. **Additional Contract Requirements:**

2.5.1 The Contractor shall notify KDA within thirty (30) days prior to termination or transfer of assigned staff, and the position must be filled within fifteen (15) days of becoming vacant, with a qualified individual approved by KDA.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

4.6. Acceptance Of Contract

This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

4.7. Arbitration, Damages, Warranties

Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

4.8. Representative's Authority To Contract

By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

4.9. Responsibility For Taxes

The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

4.10. Insurance

The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.

4.11. Information

No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.

4.12. The Eleventh Amendment

"The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

4.13. Campaign Contributions / Lobbying

Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

