Procurement and Contracts
900 SW Jackson, Room 652 S
Topeka, KS 66612-1212

Kansas
Department of Administration

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chris.howe@da.ks.gov
www.da.ks.gov/purch

Dennis R. Taylor, Secretary
Chris Howe, Director

Sam Brownback, Governor

REQUEST FOR PROPOSAL (RFP)

Bid Event Number:	EVT0001843
Requisition ID:	0000000974
Document Number:	RFX0000325
Replaces Contract:	New
Date Mailed:	November 9, 2012
Closing Date:	December 18, 2012, 2:00 PM
Procurement Officer:	Tami Sherley **Telephone:** 785-296-3122 **E-Mail Address:** tami.sherley@da.ks.gov **Web Address:** http://da.ks.gov/purch
Item:	Survey Instrument and Data Collection Services
Agency:	65200 Kansas Department for Children and Families
Period of Contract:	Date of Award through June 30, 2013 (with the option to renew for one (1) additional one (1) year period)
Guarantee:	No Monetary Guarantee Required
Scope:	This Contract shall cover the procurement of Survey Instrument and Data Collection Services for the Kansas Department for Children and Families during the contract period referenced above.

Event Number EVT0001843 was recently posted to the Procurement and Contracts Internet website. The document can be downloaded by going to the following website:

http://www.da.ks.gov/purch/RFQ/

It shall be the bidder's responsibility to monitor this website on a regular basis for any changes/amendments.

SIGNATURE SHEET

Item: Survey Instrument and Data Collection Services

Agency: Kansas Department for Children and Families

Closing Date: December 18, 2012

By submission of a bid and the signatures affixed thereto, the bidder certifies all products and services proposed in the bid meet or exceed all requirements of this specification as set forth in the request and that all exceptions are clearly identified.

Legal Name of Person, Firm or Corporation_____

Mailing Address_____ City & State_____Zip _____

Toll Free Telephone_____Local_____ Cell: _____Fax_____

Tax Number_____
CAUTION: If your tax number is the same as your Social Security Number (SSN), you must leave this line blank. DO NOT enter your SSN on this signature sheet. If your SSN is required to process a contract award, including any tax clearance requirements, you will be contacted by an authorized representative of the Procurement and Contracts at a later date.

E-Mail _____

Signature_____Date_____

Typed Name _____Title_____

In the event the **contact for the bidding process** is different from above, indicate contact information below.

Bidding Process Contact Name_____

Mailing Address_____ City & State_____Zip _____

Toll Free Telephone_____Local_____ Cell: _____Fax_____

E-Mail_____

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

Award Contact Name_____

Mailing Address_____ City & State_____Zip _____

Toll Free Telephone_____Local_____ Cell: _____Fax_____

E-Mail_____

1. INSTRUCTIONS

1.1. Bid Event ID / Reference Number:

The Bid Event ID / RFP number, indicated in the header of this page, as well as on the first page of this proposal, has been assigned to this RFP and MUST be shown on all correspondence or other documents associated with this RFP and MUST be referred to in all verbal communications. All inquiries, written or verbal, shall be directed only to the procurement officer reflected on Page 1 of this proposal. There shall be no communication with any other State employee regarding this RFP except with designated state participants in attendance ONLY DURING:

- Negotiations
- Contract Signing
- as otherwise specified in this RFP.

Violations of this provision by bidder or state agency personnel may result in the rejection of the proposal.

1.2. Negotiated Procurement:

This is a negotiated procurement pursuant to K.S.A. 75-37,102. Final evaluation and award will be made by the Procurement Negotiation Committee (PNC) consisting of the following entities (or their designees):

- Secretary of Department of Administration;
- Director of Procurement and Contracts, Department of Administration; and
- Head of Using Agency

1.3. Appearance Before Committee:

Any, all or no bidders may be required to appear before the PNC to explain the bidder's understanding and approach to the project and/or respond to questions from the PNC concerning the proposal; or, the PNC may award without conducting negotiations, based on the initial proposal. The PNC reserves the right to request information from bidders as needed. If information is requested, the PNC is not required to request the information of all bidders.

Bidders selected to participate in negotiations may be given an opportunity to submit a revised technical and/or cost proposal/offer to the PNC, subject to a specified cut off time for submittal of revisions. Meetings before the PNC are not subject to the Open Meetings Act. Bidders are prohibited from electronically recording these meetings. All information received prior to the cut off time will be considered part of the bidder's revised offer.

No additional revisions shall be made after the specified cut off time unless requested by the PNC.

1.4. Cost of Preparing Proposal:

The cost of developing and submitting the proposal is entirely the responsibility of the bidder. This includes costs to determine the nature of the engagement, preparation of the proposal, submitting the proposal, negotiating for the contract and other costs associated with this RFP.

1.5. Preparation of Proposal:

Prices are to be entered in spaces provided on the cost proposal form if provided herein. Computations and totals shall be indicated where required. In case of error in computations or totals, the unit price

shall govern. The PNC has the right to rely on any prices provided by bidders. The bidder shall be responsible for any mathematical errors. The PNC reserves the right to reject proposals which contain errors.

All copies of cost proposals shall be submitted in a separate sealed envelope or container separate from the technical proposal. The outside shall be identified clearly as "Cost Proposal" or "Technical Proposal" with the Bid Event ID / RFP number and closing date.

A proposal shall not be considered for award if the price in the proposal was not arrived at independently and without collusion, consultation, communication or agreement as to any matter related to price with any other bidder, competitor or public officer/employee.

Technical proposals shall contain a concise description of bidder's capabilities to satisfy the requirements of this RFP with emphasis on completeness and clarity of content. Repetition of terms and conditions of the RFP without additional clarification shall not be considered responsive.

1.6. Signature of Proposals:

Each proposal shall give the complete legal name and mailing address of the bidder and be signed by an authorized representative by original signature with his or her name and legal title typed below the signature line. If the contract's contact will be a different entity, indicate that individual's contact information for communication purposes. Each proposal shall include the bidder's tax number.

1.7. Acknowledgment of Amendments:

All bidders shall acknowledge receipt of any amendments to this RFP by returning a signed hard copy with the bid. Failure to acknowledge receipt of any amendments may render the proposal to be non-responsive. Changes to this RFP shall be issued only by the Procurement and Contracts in writing.

1.8. Modification of Proposals:

A bidder may modify a proposal by letter or by FAX transmission at any time prior to the closing date and time for receipt of proposals.

1.9. Withdrawal of Proposals:

A proposal may be withdrawn on written request from the bidder to the Procurement Officer at the Procurement and Contracts prior to the closing date.

1.10. Competition:

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

1.11. Evaluation of Proposals:

Award shall be made in the best interest of the State as determined by the PNC or their designees. Although no weighted value is assigned, consideration may focus toward but is not limited to:

- Cost. Bidders are not to inflate prices in the initial proposal as cost is a factor in determining who may receive an award or be invited to formal negotiations. The State reserves the right to award to the lowest responsive bid without conducting formal negotiations, if authorized by the PNC.
- Adequacy and completeness of proposal

- Bidder's understanding of the project
- Compliance with the terms and conditions of the RFP
- Experience in providing like services
- Qualified staff
- Methodology to accomplish tasks
- Response format as required by this RFP

1.12. Acceptance or Rejection:

The Committee reserves the right to accept or reject any or all proposals or part of a proposal; to waive any informalities or technicalities; clarify any ambiguities in proposals; modify any criteria in this RFP; and unless otherwise specified, to accept any item in a proposal.

1.13. Proposal Disclosures:

At the time of closing, only the names of those who submitted proposals shall be made public information. No price information will be released. Interested bidders or their representatives may be present at the announcement at the following location:

Kansas Procurement and Contracts

800 Jackson Street, Ste. 600

Topeka, KS 66612 1286

Bid results will not be given to individuals over the telephone or email. Results may be obtained after contract finalization by obtaining a bid tabulation from the Procurement and Contracts by sending (do not include with bid):

- A check for $3.00, payable to the State of Kansas
- A self -addressed, stamped envelope
- Bid Event ID Number

Send to:

Kansas Procurement and Contracts

Attention: Bid Results/Copies

800 Jackson Street, Ste. 600

Topeka, KS 66612 1286

Copies of individual proposals may be obtained under the Kansas Open Records Act by sending an email to janet.miller@da.ks.gov or calling 785-296-0002 to request an estimate of the cost to reproduce the documents and remitting that amount with a written request to the above address or a vendor may make an appointment by calling the above number to view the proposal file. Upon receipt of the funds, the documents will be mailed. Information in proposal files shall not be released until a contract has been executed or all proposals have been rejected.

1.14. Disclosure of Proposal Content and Proprietary Information:

All proposals become the property of the State of Kansas. The Open Records Act (K.S.A. 45-215 et seq) of the State of Kansas requires public information be placed in the public domain at the conclusion of the selection process, and be available for examination by all interested parties. (http://da.ks.gov/purch/KSOpenRecAct.doc) No proposals shall be disclosed until after a contract award

has been issued. The State reserves the right to destroy all proposals if the RFP is withdrawn, a contract award is withdrawn, or in accordance with Kansas law. Late Technical and/or Cost proposals will be retained unopened in the file and not receive consideration or may be returned to the bidder.

Trade secrets or proprietary information legally recognized as such and protected by law may be requested to be withheld if clearly labeled "Proprietary" on each individual page and provided as separate from the main proposal. Pricing information is not considered proprietary and the bidder's entire proposal response package will not be considered proprietary.

All information requested to be handled as "Proprietary" shall be submitted separately from the main proposal and clearly labeled, in a separate envelope or clipped apart from all other documentation. The bidder shall provide detailed written documentation justifying why this material should be considered "Proprietary". The Procurement and Contracts reserves the right to accept, amend or deny such requests for maintaining information as proprietary in accordance with Kansas law.

The State of Kansas does not guarantee protection of any information which is not submitted as required.

1.15. Exceptions:

By submission of a response, the bidder acknowledges and accepts all terms and conditions of the RFP unless clearly avowed and wholly documented in a separate section of the Technical Proposal to be entitled: "Exceptions".

1.16. Notice of Award:

An award is made on execution of the written contract by all parties.

2. PROPOSAL RESPONSE

2.1. Submission of Proposals:

Bidder's proposal shall consist of:

- One (1) original and three (3) copies of the Technical Proposal, including the signed Event Details document, applicable literature and other supporting documents;
- One (1) original and three (3) copies of the cost proposal including the signed Event Details document,
- Two (2) electronic / software version(s) of the technical and cost proposals are required. This shall be provided on CD or flash drive, in Microsoft® Word or Excel. Technical and cost responses shall be submitted on separate media.

All copies of cost proposals shall be submitted in a separate sealed envelope or container separate from the technical proposal. The outside shall be identified clearly as "Cost Proposal" or "Technical Proposal" with the Bid Event ID number and closing date.

Bidder's proposal, sealed securely in an envelope or other container, shall be received no later than 2:00 p.m., Central Time, on the closing date, addressed as follows:

Kansas Procurement and Contracts

Bid Event ID: EVT0001843

Closing Date: December 18, 2012

800 Jackson Street, Ste. 600

Topeka, KS 66612 1286

It is the bidder's responsibility to ensure bids are received by the closing date and time. Delays in mail delivery or any other means of transmittal, including couriers or agents of the issuing entity shall not excuse late bid submissions.

Faxed, e-mailed or telephoned proposals are not acceptable unless otherwise specified.

Proposals received prior to the closing date shall be kept secured and sealed until closing. The State shall not be responsible for the premature opening of a proposal or for the rejection of a proposal that was not received prior to the closing date because it was not properly identified on the outside of the envelope or container. Late Technical and/or Cost proposals will be retained unopened in the file and not receive consideration or may be returned to the bidder.

2.2. Proposal Format:

Bidders are instructed to prepare their Technical Proposal following the same sequence as this RFP.

2.3. Transmittal Letter:

All bidders shall respond to the following statements:

(a) the bidder is the prime contractor and identifying all subcontractors;

(b) the bidder is a corporation or other legal entity;

(c) no attempt has been made or will be made to induce any other person or firm to submit or not to submit a proposal;

(d) the bidder does not discriminate in employment practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin or disability;

(e) no cost or pricing information has been included in the transmittal letter or the Technical Proposal;

(f) the bidder presently has no interest, direct or indirect, which would conflict with the performance of services under this contract and shall not employ, in the performance of this contract, any person having a conflict;

(g) the person signing the proposal is authorized to make decisions as to pricing quoted and has not participated, and will not participate, in any action contrary to the above statements;

(h) whether there is a reasonable probability that the bidder is or will be associated with any parent, affiliate or subsidiary organization, either formally or informally, in supplying any service or furnishing any supplies or equipment to the bidder which would relate to the performance of this contract. If the statement is in the affirmative, the bidder is required to submit with the proposal, written certification and authorization from the parent, affiliate or subsidiary organization granting the State and/or the federal government the right to examine any directly pertinent books, documents, papers and records involving such transactions related to the contract. Further, if at any time after a proposal is submitted, such an association arises, the bidder will obtain a similar certification and authorization and failure to do so will constitute grounds for termination for cause of the contract at the option of the State;

(i) bidder agrees that any lost or reduced federal matching money resulting from unacceptable performance in a contractor task or responsibility defined in the RFP, contract or modification shall be accompanied by reductions in state payments to Contractor; and

(j) the bidder has not been retained, nor has it retained a person to solicit or secure a state contract on an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the bidder for the purpose of securing business. For breach of this provision, the Committee shall have the right to reject the proposal, terminate the contract for cause and/or deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee or other benefit.

2.4. Bidder Information:

The bidder must include a narrative of the bidder's corporation and each subcontractor if any. The narrative shall include the following:

(a) date established;

(b) ownership (public, partnership, subsidiary, etc.);

(c) number of personnel, full and part time, assigned to this project by function and job title;

(d) resources assigned to this project and the extent they are dedicated to other matters;

(e) organizational chart;

(f) financial statement may be required.

2.5. Qualifications:

A description of the bidder's qualifications and experience providing the requested or similar service, including resumes of personnel assigned to the project stating their education and work experience, shall be submitted with the Technical Proposal. The bidder must be an established firm recognized for its capacity to perform. The bidder must have sufficient personnel to meet the deadlines specified in the RFP.

2.6. Timeline:

A timeline for implementing services must be submitted with the bid.

2.7. Methodology:

Bidders shall submit with the bid, a detailed explanation of the methodology for implementing services.

2.8. References:

Provide three (3) references who have purchased similar items or services from the bidder in the last three (3) year(s). References shall show firm name, contact person, address, e-mail address and phone number. Bidder's employees and the buying agency shall not be shown as references.

3. TERMS AND CONDITIONS

3.1. Contract Documents:

This RFP, any amendments, the response and any response amendments of the Contractor, and the State of Kansas DA-146a (Contractual Provision Attachment) shall be incorporated into the written contract, which shall compose the complete understanding of the parties.

In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:

- Form DA 146a;
- written modifications to the executed contract;
- written contract signed by the parties;
- the RFP, including any and all amendments;
- and Contractor's written proposal submitted in response to the RFP as finalized.

3.2. Contract:

The successful bidder will be required to enter into a written contract with the State. The contractor agrees to accept the provisions of Form DA 146a (Contractual Provisions Attachment), which is incorporated into all contracts with the State and is incorporated into this RFP.

3.3. Contract Formation:

No contract shall be considered to have been entered into by the State until all statutorily required signatures and certifications have been rendered and a written contract has been signed by the successful bidder.

3.4. Notices:

All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") that may be required or desired to be given by either party to the other shall be IN WRITING and addressed as follows:

Kansas Procurement and Contracts

800 Jackson Street, Ste. 600

Topeka, Kansas 66612-1286

RE: Bid Event ID Number _____

or to any other persons or addresses as may be designated by notice from one party to the other.

3.5. Termination for Cause:

The Director of Procurement and Contracts may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:

- the Contractor fails to make delivery of goods or services as specified in this contract;
- the Contractor provides substandard quality or workmanship;
- the Contractor fails to perform any of the provisions of this contract, or

- the Contractor fails to make progress as to endanger performance of this contract in accordance with its terms.

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

3.6. Termination for Convenience:

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

3.7. Rights and Remedies:

If this contract is terminated, the State, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to the State in the manner and to the extent directed, any completed materials. The State shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

In the event of termination, the Contractor shall receive payment prorated for that portion of the contract period services were provided to or goods were accepted by State subject to any offset by State for actual damages including loss of federal matching funds.

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

3.8. Force Majeure:

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

3.9. Waiver:

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

3.10. Independent Contractor:

Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation, social security, income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

3.11. Staff Qualifications:

The Contractor shall warrant that all persons assigned by it to the performance of this contract shall be employees of the Contractor (or specified Subcontractor) and shall be fully qualified to perform the work required. The Contractor shall include a similar provision in any contract with any Subcontractor selected to perform work under this contract.

Failure of the Contractor to provide qualified staffing at the level required by the contract specifications may result in termination of this contract or damages.

3.12. Subcontractors:

The Contractor shall be the sole source of contact for the contract. The State will not subcontract any work under the contract to any other firm and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of the contract shall apply without qualification to any services performed or goods provided by any subcontractor.

The State of Kansas requires tax clearance certificates for all subcontractors be submitted with the technical proposal, and that the bidder additionally provide subcontractor(s) legal company name, contact information and tax ID number (FEIN/TIN) as well.

3.13. Proof of Insurance:

Upon request, the Contractor shall present an affidavit of Worker's Compensation, Public Liability, and Property Damage Insurance to the Procurement and Contracts.

3.14. Conflict of Interest:

The Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are also in the employ of the State and providing services involving this contract or services similar in nature to the scope of this contract to the State. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any state employee who has participated in the making of this contract until at least two years after his/her termination of employment with the State.

3.15. Confidentiality:

The Contractor may have access to private or confidential data maintained by State to the extent necessary to carry out its responsibilities under this contract. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq*.)in providing services under this contract. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this contract shall be disseminated by either party except as authorized by statute, either during the period of the contract or thereafter. Contractor must agree to return any or all data furnished by the State promptly at the request of State in whatever form it is maintained by Contractor. On the termination or expiration of this contract, Contractor will not use any of such data or any material derived from the data for any purpose and, where so instructed by State, will destroy or render it unreadable.

3.16. Nondiscrimination and Workplace Safety:

The Contractor agrees to abide by all federal, state and local laws, and rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws or rules or regulations may result in termination of this contract.

3.17. Environmental Protection:

The Contractor shall abide by all federal, state and local laws, and rules and regulations regarding the protection of the environment. The Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws or rule or regulations may result in termination of this contract for cause.

3.18. Hold Harmless:

The Contractor shall indemnify the State against any and all loss or damage to the extent arising out of the Contractor's negligence in the performance of services under this contract and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

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

3.19. Care of State Property:

The Contractor shall be responsible for the proper care and custody of any state owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this contract. The Contractor shall reimburse State for such property's loss or damage caused by Contractor, normal wear and tear excepted.

3.20. Prohibition of Gratuities:

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

3.21. Retention of Records:

Unless the State specifies in writing a different period of time, the Contractor agrees to preserve and make available at reasonable times all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of five (5) years from the date of the expiration or termination of this contract.

Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

The Contractor agrees that authorized federal and state representatives, including but not limited to, personnel of the using agency; independent auditors acting on behalf of state and/or federal agencies shall have access to and the right to examine records during the contract period and during the five (5) year post contract period. Delivery of and access to the records shall be within five (5) business days at no cost to the state.

3.22. Antitrust:

If the Contractor elects not to proceed with performance under any such contract with the State, the Contractor assigns to the State all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and the State of Kansas relating to the particular products or services purchased or acquired by the State pursuant to this contract.

3.23. Modification:

This contract shall be modified only by the written agreement and approval of the parties. No alteration or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.

3.24. Assignment:

The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of the State. State may reasonably withhold consent for any reason.

This contract may terminate for cause in the event of its assignment, conveyance, encumbrance or other transfer by the Contractor without the prior written consent of the State.

3.25. Third Party Beneficiaries:

This contract shall not be construed as providing an enforceable right to any third party.

3.26. Captions:

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

3.27. Severability:

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

3.28. Governing Law:

This contract shall be governed by the laws of the State of Kansas and shall be deemed executed in Topeka, Shawnee County, Kansas.

3.29. Jurisdiction:

The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas District Court of Shawnee County, unless otherwise specified and agreed upon by the State of Kansas. Contractor waives personal service of process, all defenses of lack of personal jurisdiction and forum non conveniens. The Eleventh Amendment of the United States Constitution 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 Agreement shall be deemed a waiver of the Eleventh Amendment.

3.30. Mandatory Provisions:

The provisions found in Contractual Provisions Attachment (DA-146a) are incorporated by reference and made a part of this contract.

3.31. Integration:

This contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This Agreement between the parties shall be independent of and have no effect on any other contracts of either party.

3.32. Debarment of State Contractors:

Any Contractor who defaults on delivery or does not perform in a satisfactory manner as defined in this Agreement may be barred for up to a period of three (3) years, pursuant to K.S.A. 75-37,103, or have its work evaluated for pre-qualification purposes. Contractor shall disclose any conviction or judgment for a criminal or civil offense of any employee, individual or entity which controls a company or organization or will perform work under this Agreement that indicates a lack of business integrity or business honesty. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in disqualification of the bid or termination of the contract.

3.33. Immigration and Reform Control Act of 1986 (IRCA):

All contractors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the contractor as well as any subcontractor or sub-contractors. The usual method of verification is through the Employment Verification (I-9) Form.

With the submission of this bid, the contractor hereby certifies without exception that such contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at the State's option, may subject the contract to termination for cause and any applicable damages.

Unless provided otherwise herein, all contractors are expected to be able to produce for the State any documentation or other such evidence to verify Contractor's IRCA compliance with any provision, duty, certification or like item under the contract.

Contractor will provide a copy of a signed Certification Regarding Immigration Reform and Control Form (http://da.ks.gov/purch/CertificationImmigrationForm.doc) with the technical proposal.

3.34. Worker Misclassification:

The contractor and all lower tiered subcontractors under the contractor shall properly classify workers as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes, and income tax withholding. Failure to do so may result in contract termination.

3.35. Injunctions:

Should Kansas be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of the State, Contractor shall not be entitled to make or assert claim for damage by reason of said delay.

3.36. Statutes:

Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included

herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the application of either party the contract shall be amended to make such insertion or correction.

3.37. Federal, State and Local Taxes:

Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. The Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Contract. The State of Kansas is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the bidder's price quotation. Upon request, the State shall provide to the Contractor a certificate of tax exemption.

The State makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

3.38. Accounts Receivable Set-Off Program:

If, during the course of this contract the Contractor is found to owe a debt to the State of Kansas, agency payments to the Contractor may be intercepted / setoff by the State of Kansas. Notice of the setoff action will be provided to the Contractor. Pursuant to K.S.A. 75-6201 et seq, Contractor shall have the opportunity to challenge the validity of the debt. If the debt is undisputed, the Contractor shall credit the account of the agency making the payment in an amount equal to the funds intercepted.

K.S.A. 75-6201 et seq. allows the Director of Accounts & Reports to setoff funds the State of Kansas owes Contractors against debts owed by the Contractors to the State of Kansas. Payments setoff in this manner constitute lawful payment for services or goods received. The Contractor benefits fully from the payment because its obligation to the State is reduced by the amount subject to setoff.

3.39. Definitions:

A glossary of common procurement terms is available at http://da.ks.gov/purch, under "Purchasing Forms".

3.40. Definite Quantity Contract:

This Request is for a close-ended contract between the Contractor and the State to furnish a predetermined quantity of a good or service in a given period of time.

3.41. HIPAA Confidentiality:

Per the Health Insurance Portability and Accountability Act (1996) (HIPAA), the agency is a covered entity under the act and therefore Contractor is not permitted to use or disclose health information in ways that the agency could not. This protection continues as long as the data is in the hands of the Contractor.

The Contractor shall establish and maintain procedures and controls acceptable to the agency to protect the privacy of members' information. Unless the Contractor has the member's written consent, the Contractor shall not use any personally identifiable information obtained for any reason other than that mandated by this agreement

3.42. Off-Shore Sourcing:

Bidders shall disclose in their bid response the location where the contracted services will be performed and whether or not any of the work necessary to provide the contracted services will be performed at a site outside the United States.

If, during the term of the contract, the Contractor or subcontractor plans to move work previously performed in the United States to a location outside of the United States, the Contractor shall immediately notify the Procurement and Contracts and the respective agency in writing, indicating the desired new location, the nature of the work to be moved and the percentage of work that would be relocated. The Director of Procurement and Contracts, with the advice of the respective agency, must approve any changes prior to work being relocated. Failure to obtain the Director's approval may be grounds to terminate the contract for cause.

3.43. Experience:

All bidders are preferred to have continuous active participation in the applicable industry, providing equipment/services comparable in size and complexity to those specified herein.

Bidders may be required to furnish information supporting the capability to comply with conditions for bidding and fulfill the contract if receiving an award of contract. Such information may include, but not be limited to, a list of similar size and type projects the bidder has completed.

3.44. Prices:

Prices shall remain firm for the entire contract period and subsequent renewals. Prices shall be net delivered, including all trade, quantity and cash discounts. Any price reductions available during the contract period shall be offered to the State of Kansas. Failure to provide available price reductions may result in termination of the contract for cause.

3.45. Payment:

Payment Terms are Net 30 days. Payment date and receipt of order date shall be based upon K.S.A. 75-6403(b). This Statute requires state agencies to pay the full amount due for goods or services on or before the 30th calendar day after the date the agency receives such goods or services or the bill for the goods and services, whichever is later, unless other provisions for payment are agreed to in writing by the Contractor and the state agency. NOTE: If the 30th calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following workday will become the required payment date.

Payments shall not be made for costs or items not listed in the Contractor's response.

3.46. Unit Pricing:

Each item required by the bid must be individually priced (i.e. priced per single unit) and be able to be ordered individually.

3.47. Upgrades:

Bidders shall indicate the upgrade price and policy for any software, firmware, or hardware upgrades anticipated for the equipment bid. If the upgrades are provided without cost, this should be indicated.

3.48. Demonstration Requirements:

A demonstration of the selected devices/equipment/solution for the using agencies may be required before final contract approval. The State of Kansas reserves the right to request said devices/equipment/solution fully configured/operational for testing, which shall be furnished at no expense to the State within ten (10) days after receipt of request. Devices/equipment will be returned at the bidder's expense if not consumed during the evaluation process.

3.49. Materials and Workmanship:

The Contractor shall perform all work and furnish all supplies and materials, machinery, equipment, facilities, and means, necessary to complete all the work required by this Contract, within the time specified, in accordance with the provisions as specified.

The contractor shall be responsible for all work put in under these specifications and shall make good, repair and/or replace, at the contractor's own expense, as may be necessary, any defective work, material, etc., if in the opinion of agency and/or Procurement and Contracts said issue is due to imperfection in material, design, workmanship or contractor fault.

3.50. Industry Standards:

If not otherwise provided, materials or work called for in this contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.

3.51. Equipment:

All proposed equipment, equipment options, and hardware expansions must be identified by manufacturer and model number and descriptive literature of such equipment must be submitted with the bid response.

3.52. Implied Requirements:

All products and services not specifically mentioned in this RFP, but which are necessary to provide the functional capabilities described by the specifications, shall be included. Other products required to make the described software functional shall be identified in the bidder's response.

3.53. Acceptance:

No contract provision or use of items by the State shall constitute acceptance or relieve the Contractor of liability in respect to any expressed or implied warranties.

3.54. Ownership:

All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by the Contractor under this contract shall be owned by the using agency. The Contractor may not release any materials without the written approval of the using agency.

3.55. Data:

Any and all data required to be provided at any time during the bid process or contract term shall be made available in a format as requested and/or approved by the State.

3.56. Inspection:

The State reserves the right to reject, on arrival at destination, any items which do not conform with specification of the Contract.

3.57. New Materials, Supplies or Equipment:

Unless otherwise specified, all materials, supplies or equipment offered by the Contractor shall be new, unused in any regard and of most current design. All materials, supplies and equipment shall be first class in all respects. Seconds or flawed items will not be acceptable. All materials, supplies or

equipment shall be suitable for their intended purpose and, unless otherwise specified, fully assembled and ready for use on delivery.

3.58. Bidder Contracts:

Bidders must include with their RFP response, a copy of any contracts, agreements, licenses, warranties, etc. that the bidder would propose to incorporate into the any contract generated from this Bid Event. (State of Kansas form DA-146a remains a mandatory requirement in all contracts.)

3.59. Transition Assistance:

In the event of contract termination or expiration, Contractor shall provide all reasonable and necessary assistance to State to allow for a functional transition to another vendor.

3.60. Award:

Award will be by line item or group total, whichever is in the best interest of the State of Kansas.

4. SPECIFICATIONS

The Kansas State Department of Education is issuing this Request for Proposals to obtain competitive responses from vendors able to conduct learning community surveys designed to complement the Kansas Employee Evaluation Protocol (KEEP) system.

4.1. **Term of Contract:** The term of this contract from the date of award through June 30, 2013, with one (1) additional one (1) year renewal by written agreement of the parties, provided there is appropriate funding available.

4.2. **Background/History:** Principle 3 of the Elementary and Secondary Education Act (ESEA) Flexibility waiver requires the State Education Agency (SEA) to develop and adopt guidelines for teacher and principal evaluation systems which include student growth as a significant factor. Meeting the first part of the Principle 3 of "developing and adopting guidelines for teacher and principal evaluation" is well underway with the Kansas Educator Evaluation Protocol (KEEP). The Kansas State Department of Education (KSDE) began the process of developing a statewide model evaluation system in 2010 with the assistance of Educational Testing Services (ETS). KEEP was piloted in 34 schools (17 districts) in the 2011-2012 school year. Pilot 2 began in August 2012 with additional districts and schools.

Additionally, Principle 3 requires the evaluation system to include student growth as a significant factor. Multiple valid measures will be examined including achievement on state assessments, observations, peer observations, professional growth, self-reflection, student voice, parent voice, and others. In order to ensure fidelity to the KEEP Constructs and Components, as described in the Flexibility Waiver, such a survey tool is being considered. Principal 3 of the Flexibility Waiver begins on page 202 of the document found at the following link.
http://www.ksde.org/LinkClick.aspx?fileticket=yLJEmW7Vhvw%3d&tabid=5075&mid=12390

The Kansas ESEA Flexibility Waiver further specifically requires teacher and principal evaluation and support systems that:

- Are used for continual improvement of instruction.
- Use at least three (3) performance levels.
- Use multiple measures including student growth as a factor.
- Are used to evaluate on a regular basis.
- Provide clear, timely, and useful feedback.
- Are used to form personnel decisions.

4.3. **Scope of Work:** The Kansas State Department of Education (KSDE) seeks to identify a vendor with the capacity to develop a survey instrument capable of providing effective and timely feedback for use and application at the teacher, building, and district level. Educators will use the survey results to improve instruction and foster healthy relationships with students in grades K-12.

4.4. **Services to be provided:** The successful bidder shall submit a proposal specifying a delivery model for the following services:

4.4.1. Development of Survey Instrument (for Parent, Student and Staff)

4.4.1.2 Vendor products must allow for reasonable modifications in process and language consistent with those in KEEP. KEEP is an employee evaluation

protocol designed to include four (4) primary target areas called Constructs. Each Construct contains detailed elements called components.

http://www.ksde.org/LinkClick.aspx?fileticket=gq8pxCkzqaM%3d&tabid=4400&mid=11646

4.4.1.3. The survey systems being solicited in this RFP must maintain a fidelity to the foundations of teaching and learning within the KEEP system.

4.4.1.4. Vendor surveys shall provide research based, reliable, detailed and validated perspective regarding teaching and learning in the classroom. All grade levels shall be included.

4.4.1.5. The survey shall meet Family Educational Rights and Privacy Act (FERPA) compliance to protect the privacy interests of students in their education records. FERPA generally prohibits the disclosure of a student's personally identifiable information from education records without the consent of the parent or eligible student.

4.4.1.6. The survey shall be reviewed, approved and accepted by the KSDE prior to release.

4.4.2. The Contractor shall be available to provide technical support and professional development training services to USDs in implementing the survey instrument, as needed.

4.4.2.1. Technical support may be required to install or access vendor provided software, data repository or other as specified in this bid.

4.4.2.2. The Contractor shall assume responsibility for ensuring all districts (using this service) have continual access to purchased services. It is anticipated that *approximately* 200 Kansas school districts will utilize these services. T***his is not an exact number at the time of the release of this RFP and will need to be redefined prior to a contractual agreement.***

4.4.2.3 Training may required throughout the process, please include in your proposal the following:

4.4.2.3.1. Length of Training

4.4.2.3.2 Methodology

4.4.2.3.3 Content of Session

4.4.2.4 The Contractor shall provide data access for appropriate SEA and LEA staff.

4.4.2.5 All related, documented data accumulated within the prescribed technical services of this RFP shall be maintained by the Contractor and made available as requested allowing SEA and LEAs to make summative and formative conclusions based on the data stored.

4.4.2.5 Upon completion of the first contract year, the Contractor shall provide a written detailed summarization of the results contained within the data repository in addition to a qualitative narrative to include recommendations for next steps in this process.

4.4.2.5.1. Include in your proposal a description of the methodology used for analyzing data and information the type of software used.

4.5. Bidders shall address the following in the proposal:

4.5.1 KSDE owning the survey created for this Contract.

4.5.2 Will purchased resources be available in electronic and paper formats?

4.5.3 In what format will the final data be provided to KSDE?

4.5.4 Are surveys available in both English and Spanish?

4.5.5. Provide samples of surveys.

4.6. Deliverables/Milestones: Provide a high-level project plan on how the Contractor shall fulfill the requirements of this contract with an end date of May 31, 2014. The Contractor shall also be required to provide a detailed work plan after signing which fulfills the remaining requirements of this Contract.

4.6.1 Development of Survey Instrument (Parent, Student, Staff)

4.6.2 Delivery of Survey Instrument

4.6.2.1 Provide Scoring of survey instruments, electronic and (if applicable) paper for each USD

4.6.2.2 Provide onsite trainings for implementing survey instrument

4.6.3 Provide technical support to USDs implementing survey instrument

4.6.4 Provide ongoing access to services and data

4.6.5 Final report

4.7 Qualifications:

Successful bidder (a) will have resources to be flexible in (a) scheduling training; (b) have extensive experience and documented research spanning a minimum of 10 years; (c) have age appropriate strategies and materials for grades K-12

4.8 State Resources to be provided: The KSDE agrees to provide the following resources to the bidder in support of the contract:

4.8.1 Access to Kansas Educator Evaluation Protocol. (KEEP)

4.8.2 State employee evaluation statutes.

4.8.3 Consultation with Director of Licensure and Accreditation or designee as needed.

5.0 Cost Sheet

• **Bidder Company Name**	•
• **Contact Person & Phone Number**	•
• **Bidder FEIN**	•

The Contractor certifies by it's representative's signature hereon, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this competitive bid process by any Federal or State department or agency.

Bidder will provide detailed costs for each category listed below. Costs listed are to include all services, products, travel, fees and other expenses related to the category. Travel and expenses of the vendor in providing support are to be estimated at or comparable to state rates.

• **Deliverables**	• **Related cost**
• Development of Survey Instrument (Parent, Student, and Staff)	• $
• Delivery and scoring of electronic surveys	• $
• Delivery, return and scoring of paper surveys (if applicable)	• $
• Cost associated with providing any onsite training event (Price per Event)	• $
• Cost associated with providing any publications, manuals or professional development resources (if applicable)	• $
• Cost associated with any needed technical support	• $
• Other as determined by Bidder	• $

Comments or additional related information:

•

State of Kansas
Department of Administration
DA-146a (Rev. 06-12)

CONTRACTUAL PROVISIONS ATTACHMENT

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

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

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

1. **Terms Herein Controlling Provisions**: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. **Kansas Law and Venue**: This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.

3. **Termination Due To Lack Of Funding Appropriation**: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges–hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. **Disclaimer Of Liability**: No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

5. **Anti-Discrimination Clause**: The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

   Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

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

6. **Acceptance Of Contract**: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. **Arbitration, Damages, Warranties**: Notwithstanding any language to the contrary, no interpretation 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.

8. **Representative's Authority To Contract**: By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes**: The State of Kansas 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.

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.

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

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

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.