

**REQUEST FOR PROPOSALS**

**NKU-14-2021**



**Financial Consulting Services**

**11/25/2020**

**ATTENTION: This is not an order. Read all instructions, terms and conditions carefully.**

**Proposal NO:** NKU-14-2021  
**Issue Date:** 11/25/2020  
**Purchasing Officer:** Blaine Gilmore  
**Phone:** 859.572.6449

**RETURN ORIGINAL COPY OF PROPOSAL TO:**

**Northern Kentucky University  
 Procurement Services  
 1 Nunn Drive  
 617 Lucas Administrative Center  
 Highland Heights, KY 41099**

**IMPORTANT: BIDS MUST BE RECEIVED BY: 12/15//2020 BEFORE 2:00 P.M. HIGHLAND HEIGHTS, KY time.**

**NOTICE OF REQUIREMENTS**

1. The University's General Terms and Conditions and Instructions to Bidders, viewable at the [NKU Procurement Website](#), apply to this Request for Proposal.
2. Contracts resulting from this RFP must be governed by and in accordance with the laws of the Commonwealth of Kentucky.
3. Any agreement or collusion among Offerors or prospective Offerors, which restrains, tends to restrain, or is reasonably calculated to restrain competition by agreement to bid at a fixed price or to refrain from offering, or otherwise, is prohibited.
4. Any person who violates any provisions of KRS 45A.325 shall be guilty of a felony and shall be punished by a fine of 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 who violates any of the provisions of KRS 45A.325 shall, upon conviction, may be fined not less than ten thousand dollars or more than twenty thousand dollars.

**AUTHENTICATION OF BID AND STATEMENT OF NON-COLLUSION AND NON-CONFLICT OF INTEREST**

I hereby swear (or affirm) under the penalty for false swearing as provided by KRS 523.040:

1. That I am the offeror (if the offeror is an individual), a partner, (if the offeror is a partnership), or an officer or employee of the bidding corporation having authority to sign on its behalf (if the offeror is a corporation);
2. That the attached proposal has been arrived at by the offeror independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other Contractor of materials, supplies, equipment or services described in the Request for Proposal, designed to limit independent bidding or competition;
3. That the contents of the proposal have not been communicated by the offeror or its employees or agents to any person not an employee or agent of the offeror or its surety on any bond furnished with the proposal and will not be communicated to any such person prior to the official closing of the RFP;
4. That the offeror is legally entitled to enter into contracts with the Northern Kentucky University and is not in violation of any prohibited conflict of interest, including those prohibited by the provisions of KRS 45A.330 to .340, 164.390, and
5. That the Offeror, and its affiliates, are duly registered with the Kentucky Department of Revenue to collect and remit the sale and use tax imposed by Chapter 139 to the extent required by Kentucky law and will remain registered for the duration of any contract award
6. That I have fully informed myself regarding the accuracy of the statement made above.

**SWORN STATEMENT OF COMPLIANCE WITH FINANCE LAWS**

In accordance with KRS45A.110 (2), the undersigned hereby swears under penalty of perjury that he/she has not knowingly violated any provision of the campaign finance laws of the Commonwealth of Kentucky and that the award of a contract to a bidder will not violate any provision of the campaign finance laws of the Commonwealth of Kentucky.

**CONTRACTOR REPORT OF PRIOR VIOLATIONS OF KRS CHAPTERS 136, 139, 141, 337, 338, 341 & 342**

The Contractor by signing and submitting a proposal agrees as required by 45A.485 to submit final determinations of any violations of the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that have occurred in the previous five (5) years prior to the award of a contract and agrees to remain in continuous compliance with the provisions of the statutes during the duration of any contract that may be established. Final determinations of violations of these statutes must be provided to the University by the successful Contractor prior to the award of a contract.

**CERTIFICATION OF NON-SEGREGATED FACILITIES**

The Contractor, by submitting a proposal, certifies that he/she is in compliance with the Code of Federal Regulations, No. 41 CFR 60-1.8(b) that prohibits the maintaining of segregated facilities.

**RECIPROCAL PREFERENCE**

- (1) Prior to a contract being awarded to the lowest responsible and responsive bidder on a contract by a public agency, a resident bidder of the Commonwealth shall be given a preference against a nonresident bidder registered in any state that gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder.
- (2) A resident bidder is an individual, partnership, association, corporation, or other business entity that, on the date the contract is first advertised or announced as available for bidding:
  - (a) Is authorized to transact business in the Commonwealth; and
  - (b) Has for one (1) year prior to and through the date of the advertisement, filed Kentucky corporate income taxes, made payments to the Kentucky unemployment insurance fund established in KRS 341.490, and maintained a Kentucky workers' compensation policy in effect.
- (3) A nonresident bidder is an individual, partnership, association, corporation, or other business entity that does not meet the requirements of subsection (2) of this section.
- (4) If a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder.
- (5) This section shall apply to all contracts funded or controlled in whole or in part by a public agency.
- (6) The Finance and Administration Cabinet shall maintain a list of states that give to or require a preference for their own resident bidders, including details of the preference given to such bidders, to be used by public agencies in determining resident bidder preferences. The cabinet shall also promulgate administrative regulations in accordance with KRS Chapter 13A establishing the procedure by which the preferences required by this section shall be given.
- (7) The preference for resident bidders shall not be given if the preference conflicts with federal law.
- (8) Any public agency soliciting or advertising for bids for contracts shall make KRS 45A.490 to 45A.494 part of the solicitation or advertisement for bids

DEFINITIONS

As used in KRS 45A.490 to 45A.494: (1) "Contract" means any agreement of a public agency, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item; and  
 (2) "Public agency" has the same meaning as in KRS 61.805.

**SIGNATURE REQUIRED:** This proposal cannot be considered valid unless signed and dated by an authorized agent of the offeror. Type or print the signatory's name, title, address, phone number and fax number in the spaces provided. Offers signed by an agent are to be accompanied by evidence of his/her authority unless such evidence has been previously furnished to the issuing office. Your signature is acceptance to the Terms and conditions above.

<b>DELIVERY TIME:</b>	<b>NAME OF COMPANY:</b>	<b>DUNS #</b>
<b>PROPOSAL FIRM THROUGH:</b>	<b>ADDRESS:</b>	<b>Phone/Fax:</b>
<b>PAYMENT TERMS:</b>	<b>CITY, STATE &amp; ZIP CODE:</b>	<b>E-MAIL:</b>
<b>SHIPPING TERMS: F.O.B. DESTINATION - PREPAID AND ALLOWED</b>	<b>FEDERAL EMPLOYER ID NO.:</b>	<b>WEB ADDRESS:</b>

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

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

NAME (Please Print Legibly): \_\_\_\_\_

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

\*\*\*\*\*

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***

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## **1.0 DEFINITIONS**

The term "addenda" means written or graphic instructions issued by the Northern Kentucky University prior to the receipt of proposals that modify or interpret the RFP documents by additions, deletions, clarifications and/or corrections.

The term "competitive negotiations" means the method authorized in the Kentucky Revised Statutes, Chapter 45A.085.

The terms "offer" or "proposal" mean the offeror's/offers' response to this RFP.

The term "offeror" means the entity or contractor group submitting the proposal.

The term "contractor" means the entity receiving a contract award.

The term "purchasing agent" means Northern Kentucky University appointed contracting representative.

The term "responsible offeror" means a person, company or corporation that has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will assure good faith performance. In determining whether an offeror is responsible, the University may evaluate various factors including (but not limited to): financial resources; experience; organization; technical qualifications; available resources; record of performance; integrity; judgment; ability to perform successfully under the terms and conditions of the contract; adversarial relationship between the offeror and the University that is so serious and compelling that it may negatively impact the work performed under this RFP; or any other cause determined to be so serious and compelling as to affect the responsibility of the offeror.

The term "solicitation" means RFP.

The term "University" means Northern Kentucky University.

## **2.0 GENERAL OVERVIEW**

For several years now, with a funded rate of 13%, the Kentucky Employees Retirement System's (KERS) pension crisis has been the cause of much anxiety around campus and across the Commonwealth. During the last legislative session, NKU worked with legislators to advocate for employee choice and educated them about the impact on our employees. While we felt we were making progress, we were left with House Bill 1 as the only recourse. Kentucky Legislature passed House Bill 1 (HB1) and presented the following options for agencies participating in the Kentucky Employee Retirement System (KERS):

1. Exit the system, pay off the employee liability in a lump sum, and move all Tier 1, 2, and 3 employees to a defined contribution plan (Hard Freeze Lump Sum); or
2. The same as above but pay off the employee liability in installments (Hard Freeze Installment Payment);
3. Exit the system, but allow all Tier 1 and Tier 2 employees to remain in the system and pay off employee liability in a lump sum and move Tier 3 employees to the defined contribution plan (Soft Freeze Lump Sum); or
4. The same as above but pay off employee liability in installments (Soft Freeze Installment Payment);
5. Stay in the system with no changes and be subject to future contribution rate increases (Status Quo).

### **2.1 Intent and Scope**

Northern Kentucky University is seeking proposals for financial counseling services for participants in the plan once a decision is made relative to the options under HB 1. Those services would be in the form of one-on-one meetings with the participants.

### **2.2 University Information**

Additional information regarding Northern Kentucky University can be found at <https://inside.nku.edu/>

Also see:

[https://www.bizjournals.com/cincinnati/news/2020/11/11/nku-enrollment-tops-key-metric.html?cx\\_testId=6&cx\\_testVariant=cx\\_1&cx\\_artPos=2#cxrecs\\_s](https://www.bizjournals.com/cincinnati/news/2020/11/11/nku-enrollment-tops-key-metric.html?cx_testId=6&cx_testVariant=cx_1&cx_artPos=2#cxrecs_s)

## **3.0 PROPOSAL REQUIREMENTS**

**3.1 Key Event Dates**

Release of RFP	<b>11/25/2020</b>
Pre-Proposal Conference (Optional)	None
Deadline for Written Questions	Noon Eastern Time on <b>12/4/2020</b>
RFP Proposals Due	2 p.m. Eastern Time on <b>12/15/2020</b>
Contract Award*	<b>01/04/2021</b>

\*projected dates

**3.2 Offeror Communication**

To ensure that RFP documentation and subsequent information (modifications, clarifications, addenda, Written Questions and Answers, etc.) are directed to the appropriate persons within the offeror's firm, each offeror who intends to participate in this RFP is to provide the following information to the purchasing officer. Prompt, thorough compliance is in the best interest of the offeror. Failure to comply may result in incomplete or delayed communication of addenda or other vital information. Contact information is the responsibility of the offeror. Without the prompt information, any communication shortfall shall reside with the offeror.

- Name of primary contact
- Mailing address of primary contact
- Telephone number of primary contact
- Fax number of primary contact
- E-mail address of primary contact
- Additional contact persons with same information provided as primary contact

This information shall be transmitted via fax or e-mail to:

Ryan Straus  
 Coordinator, Contracts & Bidding  
 Northern Kentucky University  
 617 Lucas Administrative Center  
 Highland Heights, KY 41099  
 Phone: 859-572-6605  
 Fax: 859-572-6995  
 E-mail: [strausr2@nku.edu](mailto:strausr2@nku.edu)

All communication with the University regarding this RFP shall only be directed to the purchasing agent listed above.

**3.3 Pre-Proposal Conference**

No pre-proposal conference will be held for this RFP. If applicable, add date, location.

**3.4 Offeror Presentations**

All offerors whose proposals are judged acceptable for award may be asked to make a presentation to the evaluation committee.

**3.5 Preparation of Offers**

The offeror is expected to follow all specifications, terms, conditions and instructions in this RFP.

The offeror will furnish all information required by this solicitation.

Proposals should be prepared simply and economically, providing a description of the offeror's capabilities to satisfy the requirements of the solicitation. Emphasis should be on completeness and clarity of content. All documentation submitted with the proposal should be bound in the single volume except as otherwise specified.

An electronic version of the RFP, in .PDF format only, is available through Northern Kentucky University's Plan Room at <https://www.nkuplanroom.com/purchasing/View/Login>.

**3.6 Proposal Submission and Deadline**

Submit one electronic copy of your submittal via email to:

Ryan Straus  
[Strausr2@nku.edu](mailto:Strausr2@nku.edu)

**Note: Proposals received after the closing date and time will not be considered.  
In accordance with the Kentucky Revised Statute 45A.085, there will be no public opening.**

**3.7 Modification or Withdrawal of Offer**

An offer and/or modification of offer received at the office designated in the solicitation after the exact hour and date specified for receipt will not be considered.

An offer may be modified or withdrawn by written notice before the exact hour and date specified for receipt of offers. An offer also may be withdrawn in person by an offeror or an authorized representative, provided the identity of the person is made known and the person signs a receipt for the offer, but only if the withdrawal is made prior to the exact hour and date set for receipt of offers.



### **3.8 Acceptance or Rejection and Award of Proposal**

The University reserves the right to accept or reject any or all proposals (or parts of proposals), to waive any informalities or technicalities, to clarify any ambiguities in proposals and (unless otherwise specified) to accept any item in the proposal. In case of error in extension or prices or other errors in calculation, the unit price shall govern. Further, the University reserves the right to make a single award, split awards, multiple awards or no award, whichever is in the best interest of the University.

### **3.9 Rejection**

Grounds for the rejection of proposals include (but shall not be limited to):

- Failure of a proposal to conform to the essential requirements of the RFP.
- Imposition of conditions that would significantly modify the terms and conditions of the solicitation or limit the offeror's liability to the University on the contract awarded on the basis of such solicitation.
- Failure of the offeror to sign the University RFP. This includes the Authentication of Proposal and Statement of Non-Collusion and Non-Conflict of Interest statements.
- Receipt of proposal after the closing date and time specified in the RFP.

### **3.10 Addenda**

Any addenda or instructions issued by the purchasing agent prior to the time for receiving proposals shall become a part of this RFP. Such addenda shall be acknowledged in the proposal. No instructions or changes shall be binding unless documented by a proper and duly issued addendum.

### **3.11 Disclosure of Offeror's Response**

The RFP specifies the format, required information and general content of proposals submitted in response to this RFP. The purchasing agent will not disclose any portions of the proposals prior to contract award to anyone outside the Office of Procurement Services, the University's administrative staff, representatives of the state or federal government (if required) and the members of the committee evaluating the proposals. After a contract is awarded in whole or in part, the University shall have the right to duplicate, use or disclose all proposal data submitted by offerors in response to this RFP as a matter of public record.

Any submitted proposal shall remain valid for 90 days after the proposal due date.

### **3.12 Restrictions on Communications with University Staff**

From the issue date of this RFP until a contractor is selected and a contract award is made, offerors are not allowed to communicate about the subject of the RFP with any University administrator, faculty, staff or members of the board of regents except: the purchasing agent representative, any

University purchasing official representing the University administration, others authorized in writing by the Office of Procurement Services and University representatives during offeror presentations. If violation of this provision occurs, the University reserves the right to reject the offeror's proposal.

### **3.13 Cost of Preparing Proposal**

Costs for developing the proposals and any subsequent activities prior to contract award are solely the responsibility of the offerors. The University will provide no reimbursement for such costs.

### **3.14 Disposition of Proposals**

All proposals become the property of the University. The successful proposal will be incorporated into the resulting contract by reference.

### **3.15 Alternate Proposals**

Alternate proposals will not be accepted.

### **3.16 Questions**

All questions should be submitted by either fax or e-mail to the purchasing agent listed in Section 3.2 no later than the date listed in Section 3.1.

### **3.17 Section Titles in the RFP**

Section titles used herein are for the purpose of facilitating ease of reference only and shall not be construed to infer the construction of contractual language.

### **3.18 No Contingent Fees**

No person or selling agency shall be employed or retained or given anything of monetary value to solicit or secure this contract, except bona fide employees of the offeror or bona fide established commercial or selling agencies maintained by the offeror for the purpose of securing business. For breach or violation of this provision, the University shall have the right to reject the proposal, annul the contract without liability, or, at its discretion, deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee or other benefit.

### **3.19 Proposal Addenda and Rules for Withdrawal**

Prior to the date specified for receipt of offers, a submitted proposal may be withdrawn by submitting a written request for its withdrawal to the University purchasing office, signed by the offeror. Unless requested by the University, the University will not accept revisions or alterations to proposals after the proposal due date.

## **4.0 PROPOSAL FORMAT AND CONTENT**

### **4.1 Proposal Information and Criteria**

The following list specifies the items to be addressed in the proposal. Offerors should read it carefully and address it completely and in the order listed to facilitate the University's review of the proposal.

Proposals shall be organized into the sections identified below. The content of each section is detailed in the following pages. It is strongly suggested that offerors use the same numbers for the following content that are used in the RFP.

- Table of Contents
- Signed Authentication of Proposal and Statement of Non-Collusion and Non-Conflict of Interest Form
- Executive Summary and Proposal Overview
- Proposal
- Addenda Acknowledgement (if applicable)

### **4.2 Signed Authentication of Proposal and Statements of Non-Collusion and Non-Conflict of Interest Form**

The Offeror will sign and return the proposal cover sheet and print or type their name, firm, address, telephone number and date. The person signing the offer must initial erasures or other changes. An offer signed by an agent is to be accompanied by evidence of their authority unless such evidence has been previously furnished to the purchasing agency. The signer shall further certify that the proposal is made without collusion with any other person, persons, company or parties submitting a proposal; that it is in all respects fair and in good faith without collusion or fraud; and that the signer is authorized to bind the principal offeror.

Non-Collusion and Non-Conflict of Interest form is attached to this RFP.

### **4.3 Executive Summary and Proposal Overview**

The Executive Summary and Proposal Overview shall condense and highlight the contents of the technical proposal in such a way as to provide the evaluation committee with a broad understanding of the entire proposal. NKU would like to use an outside source to meet with the participants from Tier 1 & 2 about what the impact of the decision of a Hard or Soft Freeze means to them. The participant will be provide information on their account and a tool for calculating their benefit. We would be providing this information in November 2020 and with counseling sessions beginning Q1 2021.

### **4.4 Project Scope**

**Offerors shall provide financial expertise and work plans for:**

- **Explanation of Options for Hard & Soft Freeze**
- **Communication Plan**
  - **Q1 Timeline**
  - **Seminars**
- **Frequency & type**
  - **Individual Consultations**
    - **method & certification of counselor**
    - **number of counselors available**
- **Pricing of Services**
  - **Option I Hard Freeze**
  - **Option II Soft Freeze**
- **References or Examples of Prior Work**

**5.0 EVALUATION CRITERIA PROCESS**

<b>Criteria</b>	<b>Weighting</b>
Pricing (Hard & Soft Freeze)	45%
Communication Plan	25%
Counselor Qualifications	15%
Past Experience	15%

A committee of University officials will evaluate proposals and make a recommendation to the purchasing agent. The evaluation will be based upon the information provided in the proposal, additional information requested by the University for clarification, information obtained from references and independent sources and oral presentations (if requested).

Proposals will be evaluated strictly in accordance with the requirements set forth in this solicitation, including any addenda that are issued. The University will award the contract to the responsible offeror whose proposal is determined to be the most advantageous to the University, taking into consideration the evaluation factors set forth in this RFP.

The evaluation of proposals will include consideration of responses to the list of criteria in Section 4.0. Offerors must specifically address all criteria in their response.

The University will evaluate proposals as submitted and may not notify offerors of deficiencies in their responses.

A proposal may be rejected if it is conditional or incomplete in the judgment of the University.

## **6.0 SPECIAL CONDITIONS**

### **6.1 Contract Term**

The contract resulting from this RFP shall be effective through December 31, 2021, and is renewable for up to 3 additional one-year renewal periods with the written agreement of both parties.

### **6.2 Effective Date**

The effective date of the contract shall be the date upon which the parties execute it and all appropriate approvals, including that of the Commonwealth of Kentucky Government Contracts Review Committee, have been received.

### **6.3 Competitive Negotiation**

It is the intent of the RFP to enter into competitive negotiation as authorized by KRS 45A.085.

The University will review all proposals properly submitted. However, the University reserves the right to request necessary modifications, reject all proposals, reject any proposal that does not meet mandatory requirement(s) or cancel this RFP, according to the best interests of the University.

Offeror(s) selected to participate in negotiations may be given an opportunity to submit a Best and Final Offer to the purchasing agent. All information-received prior to the cut-off time will be considered part of the offeror's Best and Final Offer.

The University also reserves the right to waive minor technicalities or irregularities in proposals providing such action is in the best interest of the University. Such waiver shall in no way modify the RFP requirements or excuse the offeror from full compliance with the RFP specifications and other contract requirements if the offeror is awarded the contract.

### **6.4 Appearance Before Committee**

Any, all or no offerors may be requested to appear before the evaluation committee to explain their proposal and/or to respond to questions from the committee concerning the proposal. Offerors are prohibited from electronically recording these meetings. The committee reserves the right to request additional information.

### **6.5 Additions, Deletions or Contract Changes**

The University reserves the right to add, delete, or change related items or services to the contract established from this RFP. No modification or change of any provision in the resulting contract shall be made unless such modification is mutually agreed to in writing by the contractor and the Purchasing agent and incorporated as a written modification to the contract. Memoranda of understanding and correspondence shall not be interpreted as a modification to the contract.

**6.6 Contractor Cooperation in Related Efforts**

The University reserves the right to undertake or award other contracts for additional or related work to other entities. The contractor shall fully cooperate with such other contractors and University employees and carefully fit its work to such additional work. The contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by University employees. This clause shall be included in the contracts of all contractors with whom this contractor will be required to cooperate. The University shall equitably enforce this clause to all contractors to prevent the imposition of unreasonable burdens on any contractor.

**6.7 Entire Agreement**

The RFP shall be incorporated into any resulting contract. The resulting contract, including the RFP and those portions of the offeror's response accepted by the University, shall be the entire agreement between the parties.

**6.8 Governing Law**

The contractor shall conform to and observe all laws, ordinances, rules and regulations of the United States of America, Commonwealth of Kentucky and all other local governments, public authorities, boards or offices relating to the property or the improvements upon same (or the use thereof) and will not permit the same to be used for any illegal or immoral purposes, business or occupation. The resulting contract shall be governed by Kentucky law and any claim relating to this contract shall only be brought in the Franklin Circuit Court in accordance with KRS 45A.245.

**6.9 Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act**

To the extent Company receives Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, 61.932 and 61.933 (the "Act"), Company shall secure and protect the Personal Information by, without limitation: (i) complying with all requirements applicable to non-affiliated third parties set forth in the Act; (ii) utilizing security and breach investigation procedures that are appropriate to the nature of the Personal Information disclosed, at least as stringent as University's and reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction; (iii) notifying University of a security breach relating to Personal Information in the possession of Company or its agents or subcontractors within seventy-two (72) hours of discovery of an actual or suspected breach unless the exception set forth in KRS 61.932(2)(b)2 applies and Company abides by the requirements set forth in that exception; (iv) cooperating with University in complying with the response, mitigation, correction, investigation, and notification requirements of the Act, (v) paying all costs of notification, investigation and mitigation in the event of a security breach of Personal Information suffered by Company; and (vi) at University's discretion and direction, handling all administrative functions associated with notification, investigation and mitigation.

## **6.10 Termination for Convenience**

Northern Kentucky University, Office of Procurement Services, reserves the right to terminate the resulting contract without cause with a thirty (30) day written notice. Upon receipt by the contractor of a "notice of termination," the contractor shall discontinue all services with respect to the applicable contract. The cost of any agreed upon services provided by the contractor will be calculated at the agreed upon rate prior to a "notice of termination" and a fixed fee contract will be pro-rated (as appropriate).

## **6.11 Termination for Non-Performance**

### Default

The University may terminate the resulting contract for non-performance, as determined by the University, for such causes as:

- Failing to provide satisfactory quality of service, including, failure to maintain adequate personnel, whether arising from labor disputes, or otherwise any substantial change in ownership or proprietorship of the Contractor, which in the opinion of the University is not in its best interest, or failure to comply with the terms of this contract;
- Failing to keep or perform, within the time period set forth herein, or violation of, any of the covenants, conditions, provisions or agreements herein contained;
- Adjudicating as a voluntarily bankrupt, making a transfer in fraud of its creditors, filing a petition under any section from time to time, or under any similar law or statute of the United States or any state thereof, or if an order for relief shall be entered against the Contractor in any proceeding filed by or against contractor thereunder. In the event of any such involuntary bankruptcy proceeding being instituted against the Contractor, the fact of such an involuntary petition being filed shall not be considered an event of default until sixty (60) days after filing of said petition in order that Contractor might during that sixty (60) day period have the opportunity to seek dismissal of the involuntary petition or otherwise cure said potential default; or
- Making a general assignment for the benefit of its creditors, or taking the benefit of any insolvency act, or if a permanent receiver or trustee in bankruptcy shall be appointed for the Contractor.

### Demand for Assurances

In the event the University has reason to believe Contractor will be unable to perform under the Contract, it may make a demand for reasonable assurances that Contractor will be able to timely perform all obligations under the Contract. If Contractor is unable to provide such adequate assurances, then such failure shall be an event of default and grounds for termination of the Contract.

### Notification

The University will provide ten (10) calendar days written notice of default. Unless arrangements are made to correct the non-performance issues to the University's satisfaction within ten (10) calendar days, the University may terminate the contract by giving forty-five (45) days notice, by registered or certified mail, of its intent to cancel this contract.

### **6.12 Funding Out**

The University may terminate this contract if funds are not appropriated or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The University shall provide the contractor thirty (30) calendar days' written notice of termination under this provision.

### **6.13 Prime Contractor Responsibility**

Any contracts that may result from the RFP shall specify that the contractor(s) is/are solely responsible for fulfillment of the contract with the University.

### **6.14 Assignment and Subcontracting**

The Contractor(s) may not assign or delegate its rights and obligations under any contract in whole or in part without the prior written consent of the University. Any attempted assignment or subcontracting shall be void.

### **6.15 Permits, Licenses, Taxes**

The contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations and ordinances of all federal, state and local governments in which work under this contract is performed.

The contractor must furnish certification of authority to conduct business in the Commonwealth of Kentucky as a condition of contract award. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. However, the contractor need not be registered as a prerequisite for responding to the RFP.

The contractor shall pay any sales, use, personal property and other tax arising out of this contract and the transaction contemplated hereby. Any other taxes levied upon this contract, the transaction or the equipment or services delivered pursuant hereto shall be the responsibility of the contractor.

The contractor will be required to accept liability for payment of all payroll taxes or deductions required by local and federal law including (but not limited to) old age pension, social security or annuities.

### **6.16 Attorneys' Fees**

In the event that either party deems it necessary to take legal action to enforce any provision of the contract and in the event that the University prevails, the contractor agrees to pay all expenses of such action including attorneys' fees and costs at all stages of litigation.



**6.17 Royalties, Patents, Copyrights and Trademarks**

The Contractor shall pay all applicable royalties and license fees. If a particular process, products 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 University harmless, and defend all suits, claims, losses, damages or liability resulting from any infringement of patent, copyright, and trademark rights resulting from the incorporation in the Work or device specified in the Contract Documents.

Unless provided otherwise in the contract, the Contractor shall not use the University's name nor any of its trademarks or copyrights, although it may state that it has a Contract with the University.

**6.18 Indemnification**

The contractor shall indemnify, hold and save harmless the University, its affiliates and subsidiaries and their officers, agents and employees from losses, claims, suits, actions, expenses, damages, costs (including court costs and attorneys' fees of the University's attorneys), all liability of any nature or kind arising out of or relating to the Contractor's response to this RFP or its performance or failure to perform under the contract awarded from this RFP. This clause shall survive termination for as long as necessary to protect the University.

**6.19 Insurance and Bonding**

If awarded, bidder / proposer must provide NKU with an insurance certificate listing NKU as a certificate holder and additionally insured.

**Northern Kentucky University  
617 Lucas Administrative Center  
1 Nunn Drive  
Highland Heights, KY 41099**

The Contractor shall furnish the University the Certificates of Insurance and guarantee the maintenance of such coverage during the term of the contract. The Contractor shall provide an original policy endorsement of its CGL insurance naming Northern Kentucky University and the directors, officers, trustees, and employees of the University as additional insured on a primary and non-contributory basis as their interest appears. Additionally, the Contractor shall provide an original policy endorsement for Waiver of subrogation in favor of the Northern Kentucky University its directors, officers, trustees, and employees as additional insured.

**Our basic insurance requirements are:**

Workers' Compensation insurance with Kentucky's statutory limits and Employers' Liability insurance with at least \$100,000 limits of liability.

Comprehensive General Liability (CGL) Insurance the limits of liability shall not be less than \$500,000 each occurrence for bodily injury and \$250,000 property damage.

Comprehensive Automobile Liability 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 bodily injury and \$100,000 for property damage.

Excess liability insurance in an umbrella form for excess coverages shall have a minimum of \$1,000,000 combined single limits for bodily injury and property damage for each.

***If accessing NKU Student, Employee, or other personal records, vendor needs Security and Privacy Liability Insurance with limits no less than \$1,000,000.***

## **6.20 Method of Award**

It is the intent of the University to award a contract to the qualified offeror whose offer, conforming to the conditions and requirements of the RFP, is determined to be the most advantageous to the University, cost and other factors considered.

Notwithstanding the above, this RFP does not commit the University to award a contract from this solicitation. The University reserves the right to reject any or all offers and to waive formalities and minor irregularities in the proposal received.

## **6.21 Reciprocal Preference**

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

An affidavit is provided and attached, for your convenience to this RFP.

## **6.22 Reports and Auditing**

The University, or its duly authorized representatives, shall have access to any books, documents, papers, records or other evidence which are directly pertinent to this contract for the purpose of financial audit or program review.

## **6.23 Confidentiality**

The University recognizes an offeror's possible interest in preserving selected information and data included in the proposal; however, the University must treat such information and data as required by the Kentucky Open Records Act, KRS 61.870, et seq.

If the offeror declares information provided in their response to be proprietary in nature and not available for public disclosure, the offeror shall declare in their response the inclusion of proprietary information and shall noticeably label as confidential or proprietary each sheet containing such information. Proposals containing information declared by the offeror to be proprietary or confidential, either wholly or in part, not excluded by the Kentucky Open Records Act, KRS 61.870 may be deemed non-responsive and may be rejected.

The University's General Counsel shall review each offeror's information claimed to be confidential and, in consultation with the offeror (if needed), make a final determination as to whether or not the confidential or proprietary nature of the information or data complies with the Kentucky Open Records Act.

#### **6.24 Conflict of Interest**

When submitting and signing a proposal, an offeror is certifying that no actual, apparent or potential conflict of interest exists between the interests of the University and the interests of the offeror. A conflict of interest (whether contractual, financial, organizational or otherwise) exists when any individual, contractor or subcontractor has a direct or indirect interest because of a financial or pecuniary interest, gift or other activities or relationships with other persons (including business, familial or household relationships) and is thus unable to render or is impeded from rendering impartial assistance or advice, has impaired objectivity in performing the proposed work or has an unfair competitive advantage.

Questions concerning this section or interpretation of this section should be directed to the University purchasing agent identified in this RFP.

#### **6.25 Extending Contract**

The offeror's response to this RFP must state whether or not the offeror will permit the use of this contract by other Universities, state agencies, public and private institutions in the Commonwealth of Kentucky. An answer to this issue must be submitted within the response.

#### **6.26 Personal Service Contract Policies**

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

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

**REGARDING PERSONAL SERVICE CONTRACT INVOICING**

House Bill 387 has now amended Kentucky Revised Statute 45A.695(10)(A) with the following language, “No payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee”. The Personal Service Contract Invoice Form shall be used for this purpose and for your convenience we have added fields so that it can be filled in online and printed. This form can be located on NKU’s Procurement Services website at: [www.lrc.ky.gov/statcomm/contracts/PSC%20INVOICE%20form.pdf](http://www.lrc.ky.gov/statcomm/contracts/PSC%20INVOICE%20form.pdf)