

CONTRACT AWARD
Issued on Behalf of
Kansas Unified School Districts
and
Interlocal Cooperative Agreements

Date of Award: October 25, 2022
Contract ID: **CB0012-B**
Event ID: CB0012

Replaces Contract: CB0011-B

Procurement Officer: Laura Miller
Telephone: 785-296-3332
E-Mail Address: Laura.Miller@ks.gov
Web Address: <http://www.ksdot.org/BurFiscal/rfq/rfq.asp>

Item: **School and Activity Buses**
Agency/Business Unit: Kansas Unified School Districts and Interlocal Cooperative Agreements
Period of Contract: November 1, 2022, through October 31, 2023.

Contractor: Midwest Transit Equipment, Inc.
145 W Issert Drive
Kankakee IL 60901

Vendor ID: **0000477442**
FEIN: 36-3033895
Contact Person: Dave Hammen
E-Mail: dave.hammen@midwesttransit.com
Toll Free Telephone: 800-933-2412
Local Telephone: 815-933-2412
Cell Phone Number: 815-592-8100
Fax: 815-933-3966

Pricing and Dealers located at the following link:

<https://kansas.cooppurchase.com/default.aspx>

Payment Terms: NET 30 Days

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

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

Administrative Fee: There are no administrative fees.

The above referenced contract award was recently posted to the KDOT website. The document can be downloaded by going to the following website: <http://www.ksdot.org/BurFiscal/rfq/rfq.asp>

Terms and Conditions

1. **Term of Contract:** The term of this contract is for a period commencing on November 1, 2022, through October 31, 2023.
2. **Inspection:** The State reserves the right to reject, on arrival at destination, any items which do not conform to the specification of this IFB.
3. **Contract Documents:** 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 Invitation for Bid documents, including any and all amendments; and
 - Contractor's written offer submitted in response to the Bid Event as finalized.
4. **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 contractor.
5. **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:

Laura Miller, Procurement Officer
Kansas Department of Transportation
Fiscal Procurement Section
700 SW Harrison 3rd Floor West Wing
Topeka, Kansas 66603
RE: Contract Number: CB0012-B

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

6. **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.
7. **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.
8. **Jurisdiction:** The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas, District Court of Shawnee County. The United States District Court for the State of Kansas sitting in Topeka, Shawnee County, Kansas, shall be the venue for any federal action or proceeding arising hereunder in which the State is a party.
9. **Mandatory Provisions:** The provisions found in Contractual Provisions Attachment (DA 146a) are incorporated by reference and made a part of this contract.
10. **Termination for Cause:** The KDOT Chief Procurement Officer 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; or
- the Contractor fails to perform any of the provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms.

The KDOT Chief Procurement Officer shall provide the 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 authorized in writing, the KDOT Chief Procurement Officer 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.

11. Termination for Convenience: The KDOT Chief Procurement Officer may terminate performance of work under this contract in whole or in part whenever, for any reason, the KDOT Chief Procurement Officer shall determine that the termination is in the best interest of the Kansas Department of Transportation. In the event that the KDOT Chief Procurement Officer elects to terminate this contract pursuant to this provision, the Contractor shall be provided written notice at least thirty (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.

12. 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 USD's and ICA's in the manner and to the extent directed, any completed materials. The USD's and ICA's shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

If it is determined, after notice of termination for cause, that Contractor's failure was due to causes beyond the control of or negligence of the Contractor, the termination shall be a termination for convenience.

In the event of termination, the Contractor shall receive payment pro-rated for that portion of the contract period services were provided to and/or goods were accepted by the USD's and ICA's subject to any offset 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.

13. Reviews and Hearings: The Contractor agrees to advise the KDOT Chief Procurement Officer of all complaints of recipients made known to the Contractor and refer all appeals or fair hearing requests to the KDOT Chief Procurement Officer. The State has the discretion to require the Contractor to participate in any review, appeal, fair hearing or litigation involving issues related to this contract.

14. 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.

15. 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.

- 16. 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, and Contractor will reimburse State for such property's loss or damage caused by Contractor, normal wear and tear excepted.
- 17. 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, USD, or ICA employee at any time.
- 18. 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.
- 19. 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.

- 20. Third Party Beneficiaries:** This contract shall not be construed as providing an enforceable right to any third party.
- 21. 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.
- 22. 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.
- 23. 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.
- 24. Independent Contractor:** All 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 and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

- 25. 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.
- 26. Proof of Insurance:** Upon request, the Contractor shall present an affidavit of Worker's Compensation, Public Liability, and Property Damage Insurance to the KDOT Fiscal Procurement Section.
- 27. 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.
- 28. 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.
- 29. 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 agrees 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 shall not use any of such data or any material derived from the data for any purpose and, where so instructed by State, shall destroy or render it unreadable.
- 30. 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.
- 31. 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 the State for such property's loss or damage caused by the Contractor, except for normal wear and tear.
- 32. 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.
- 33. 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.

- 34. In-Site Inspection:** Failure to adequately inspect the premises shall not relieve the Contractor from furnishing without additional cost to the State any materials, equipment, supplies or labor that may be required to carry out the intent of this Contract.
- 35. Indefinite Quantity Contract:** This is an open-ended contract between the Contractor and the State to furnish an undetermined quantity of a good or service in a given period of time. The quantities ordered will be those actually required during the contract period, and the Contractor will deliver only such quantities as may be ordered. No guarantee of volume is made. An estimated quantity based on past history or other means may be used as a guide.
- 36. 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.
- 37. 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. Payments shall not be made for costs or items not listed in this contract.
- 39. Federal, State and Local Taxes Governmental Entity:** Unless otherwise specified, the bid response price shall include all applicable federal, state and local taxes. The successful bidder shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with the IFB. The USD's and ICA's are exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the bidder's prices.
- 40. Shipping and F.O.B. Point:** Unless otherwise specified, prices shall be F.O.B. DESTINATION, PREPAID AND ALLOWED (included in the price bid), which means delivered to a state agency's receiving dock or other designated point as specified in this contract or subsequent purchase orders without additional charge. Shipments shall be made in order to arrive at the destination at a satisfactory time for unloading during receiving hours.
- 41. Deliveries:** If delays in delivery are anticipated, the Contractor shall immediately notify the ordering agency of the revised delivery date or partial delivery date. The order may be canceled if delivery time is unsatisfactory. The Contractor shall inform KDOT Fiscal Procurement Section of any supply or delivery problems. Continued delivery problems may result in termination of the contract for cause.
- 42. Criminal Or Civil Offense Of An Individual Or Entity That Controls A Company Or Organization Or Will Perform Work Under This Contract:** Any conviction for a criminal or civil offense that indicates a lack of business integrity or business honesty must be disclosed. 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.

- 43. Implied Requirements:** All products and services not specifically mentioned in this contract, but which are necessary to provide the functional capabilities described by the specifications, shall be included.
- 44. 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.
- 45. Warranty:** The Contractor shall be responsible for all work performed under this contract. The Contractor shall make good, repair and replace, at the Contractor's own expense, as may be necessary, any defective work, material acceptance, if in the opinion of agency or KDOT Fiscal Procurement Section said defect is due to imperfection in material, design, or workmanship for the warranty period specified.
- 46. 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.
- 47. 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.
- 48. 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.
- 49. 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.
- 50. 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.
- 51. 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.

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 1st day of November, 2022.

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.

CONTRACT

AGREEMENT made this 25th day of October, 2022, by and between the STATE OF KANSAS, DEPARTMENT OF TRANSPORTATION (Agency), first party, and Midwest Transit Equipment, Inc., second party (Contractor):

WITNESSETH, that in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

- I. Subject to the terms and conditions of this agreement, first party hereby accepts the offer of second party as expressed by second party's bid submitted to the Kansas Department of Transportation on September 28, 2022, in response to invitation for bid number CB0012.
- II. It is understood and agreed by the parties that, pursuant to said bid, second party agrees to furnish School and activity buses in accordance with the specifications for the period from November 1, 2022, to October 31, 2023, which shall be furnished upon order of Kansas Unified School Districts and Interlocals at the price or prices contained in said bid. In consideration thereof, Kansas Unified School Districts and Interlocals ordering any of such items agrees to pay upon delivery of said items the amount or amounts billed for by second party in accordance with said proposal as shown on delivery invoices of the second party furnished to Kansas Unified School Districts and Interlocals. Payments will be made as soon after receipt of said invoices as possible in accordance with the State Law.
- III. Failure of second party to furnish said item or items in accordance with the specifications required and agreed to by both parties set out in this contract and those materials incorporated into this contract by reference, or failure of second party to deliver said items in accordance with any time schedules prescribed in this contract and the materials incorporated by reference into this contract or reasonably required by first party or its agencies, shall result in forfeiture under the performance bond of second party or in cancellation of this contract at the option of first party.
- IV. It is understood and agreed that the provisions set out in the State of Kansas General Conditions and Instructions on Bidding, the Notice to Bidders, Bid Sheet, Special Conditions, and Specifications issued by the Kansas Department of Transportation to solicit bids for the aforementioned contract proposal, are included and made a part of this contract by reference as though contained in their entirety herein, and the second party agrees to comply with the provisions of said documents.
- V. The provisions found in Contractual Provisions Attachment (form DA-146a), are hereby incorporated by reference in this contract and made a part hereof.

IN WITNESS THEREOF, the said parties have hereto set their hands and seals, the day and year first above mentioned.

Contractor: _____

Agency: Kansas Department of Transportation

By: _____

By: _____

Title: _____

Printed Name: Todd Herman

Title: Chief Procurement Officer
Kansas Department of Transportation
Fiscal Procurement Section