

CONTRACT AWARD

Date of Award: March 11, 2009

Contract Number: 87109

PR Number: 1656

Replaces Contract: 7023R

Buyer: Eileen Lechner Phillips
Telephone: 785-864-5976
E-Mail Address: eileenlp@ku.edu
Web Address: <http://www.purchasing.ku.edu/>

Item: Asbestos and Lead Testing Services

Agency: The University of Kansas
Location(s): Lawrence, Kansas

Period of Contract: April 1, 2009 to March 31, 2011
(with three (3) additional optional one (1) year renewal periods)

Contractor: EMSL Analytical, Inc.
107 Haddon Ave.
Westmont, NJ 08108
Phone: 800-220-3675 x1202 Fax: 856-858-9551
Contact: John C. Van Voorhees

PeopleSoft ID: 2788 Account Code: 12990

Prices: See Attached

Scope: This contract shall cover the procurement of **Asbestos and Lead Testing Services** for University of Kansas **Environmental Health & Safety** during the contract period referenced above.

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

The above referenced contract award was recently posted to the University of Kansas website. The document can be downloaded by going to: <http://www.purchasing.ku.edu/>

Quarterly Reports: The vendor is required to submit quarterly, to KU Purchasing Services, all acquisitions made from this contract. This report should include as a minimum the agency name, quantity, description, and amount.

Conditions of Contract: The following terms and conditions of award are incorporated by reference and include: State of Kansas DA-45/146a; specifications and conditions of the proposal including any addenda; vendors' response including any addenda, appendices and exhibits.

Order of Precedence: Any conflict to the provisions of this contract and the documents incorporated by reference shall be determined by the following priority order:

- a. State of Kansas Contract Provisions Attachment DA-45/146a;
- b. Written modifications and addenda to the executed contract;
- c. This contract document;
- d. The above referenced Request for Proposal (RFP) including any addenda;
- e. Contractors response including any addenda, appendices and exhibits.

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 vendor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Solicitation. **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 vendor's price quotations.**

Termination for Cause: The Director of Purchasing 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 provides substandard quality and/or workmanship;
- 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 Director of Purchasing 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 the University may authorize in writing), the Director of Purchasing 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.

Termination for Convenience: The Director of Purchasing may terminate performance of work under this contract in whole or in part whenever, for any reason, the Director of Purchasing shall determine that the termination is in the best interest of the University of Kansas. In the event that the Director of Purchasing 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.

Statement of Work

Background and Scope:

The University of Kansas Department of Environment, Health, and Safety coordinates the analysis of asbestos and lead for the Lawrence Campus. This involves analysis of paint chips, soils, dust-wipe and air sample analysis for lead and bulk and air sample analysis for asbestos. These services must be provided by a single laboratory, which is accredited by AIHA and NVLAP (for asbestos) and NLLAP (for lead).

Services to be Provided:

Asbestos – it is anticipated that most samples will require same-day turnaround.

Air samples will be analyzed as follows:

PCM (NIOSH 7400 method)

TEM (40 CFR Chapter 1, Part 763, Sub-part E, Appendix A, or current US EPA TEM Method)

Bulk Samples:

PLM (EPA – 600/R-93-116)

Less than 1% asbestos then EPA point-counting method shall be performed -

Less than 10% of the samples will require point-count or TEM gravimetric method

Lead – it is anticipated that most samples will require 24-hour turnaround.

Deliverable:

Test results to be provided via email with pdf file attached.

State Resources to be Provided:

Oversight and coordination by on-site staff from the Environment, Health and Safety Department.

Timeline

Services will be used periodically, as needed, usually on a weekly basis for asbestos.

Cost Page

<i>A. (1) PCM (NIOSH 7400 Method)</i>			
Same day turn-around			7.50
24 hour turn-around			5.00
48 hour turn-around			4.75
<i>(2) TEM (40 CFR Chapter 1, Part 763, Subpart E, Appendix A or Current US EPA TEM Method)</i>			
Same day turn-around			45.00
24 hour turn-around			40.00
48 hour turn-around			30.00
3-5 day turn-around			30.00
<i>B. (1) PLM (EPA-600/R-93-116)</i>			
Same day turn-around			6.25
24 hour turn-around			6.00
48 hour turn-around			5.50
3-5 day turn-around			5.00
<i>(2) EPA Pont Counting Method</i>			
Same day turn-around			14.00
24 hour turn-around			9.00
48 hour turn-around			8.00
3-5 day turn-around			7.00
<i>(3) TEM NOB (Gravimetric) - Bulk</i>			
Same day turn-around			90.00
24 hour turn-around			50.00
48 hour turn-around			45.00
3-5 day turn-around			35.00
LEAD			
<i>A. (1) Lead Paint Chip</i>			
Same day turn-around			14.50
24 hour turn-around			7.00
48 hour turn-around			5.50
3-5 day turn-around			5.25
<i>(2) Lead Paint soil</i>			
Same day turn-around			14.00
24 hour turn-around			7.00
48 hour turn-around			6.00
3-5 day turn-around			5.00
<i>(3) Lead Paint dust wipe analysis</i>			
Same day turn-around			14.50
24 hour turn-around			7.00
48 hour turn-around			5.50
3-5 day turn-around			5.00
<i>(4) Lead Paint in Air - NIOSH 7082</i>			
Same day turn-around			14.50
24 hour turn-around			7.00
48 hour turn-around			5.50
3-5 day turn-around			5.00

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. 1-01), 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 March, 2009.

- 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.
- 2. Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the University 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 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:** Neither the University of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred 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.

Parties to this contract understand that 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 shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the University of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit 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 University of Kansas 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 University of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State 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 vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor 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 University 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."

Purchasing Services