

## **Request for Proposals**

### **Evaluation of the Kansas Technology Enterprise Corporation**

Issued: July 29, 2008

By

Kansas, Inc.

Proposals to be postmarked no later than: September 5, 2008

Kansas, Inc.

632 SW Van Buren, Suite 100

Topeka, Kansas 66603

All questions and requests for information are to be submitted  
via e-mail by August 15, 2008 at [ksinc@ink.org](mailto:ksinc@ink.org)  
(No phone calls)

Questions and answers will be posted at the Kansas, Inc. website by August 21, 2008

# Table of Contents

**Section I – Project Summary..... 3**

**Section II – Tentative Project Schedule..... 8**

**Section III – Project Management..... 9**

**Section IV – Proposal Requirements.....10**

**Section V -- Terms and Conditions of Award.....14**

**Section VI – Terms and Conditions of the Contract.....15**

**Attachments:**

**A. Signature Sheet.....21**

**B. Contractual Provisions.....22**

**C. Certificate Regarding Immigration Reform & Control.....23**

## Section I -- Project Summary

**Request for Proposal** to evaluate the Kansas Technology Enterprise Corporation (KTEC) and its efforts in regards to technology-based economic development as outlined in this document.

### **Kansas, Inc.**

Kansas, Inc. is a public-private instrumentality of state government designed to conduct economic development research and analysis with the goal of developing policies and recommendations to ensure the state's ongoing competitiveness for economic growth. In concert with these goals, Kansas, Inc. is required by statute to evaluate and report on the effectiveness of the activities of the KTEC to the Governor, Legislature, and all other interested parties.

### **Project Background**

KTEC is a private/public partnership established by Kansas to promote technology based economic development. KTEC assists Kansas entrepreneurs and technology companies by supporting the development and commercialization of new technologies through a statewide network designed and built to support researchers, entrepreneurs, and technology companies through each phase of the technology life cycle. The ultimate goal of the program is to create rapid growth companies and higher paying jobs. KTEC's many programs and affiliate organizations fall into three basic functional areas:

- **Strategic Research and Development/Centers of Excellence:** Located at the state's universities, these Centers conduct basic and applied industry-led research that is the foundation for new products and technologies.
- **KTEC's Intense, Hands-on Business Assistance/Incubators:** Unique private/public partnerships designed to turn intellectual property and science into businesses and products to sell in the marketplace.
- **KTEC Investment Funds:** KTEC provides equity investment in early-stage technology companies and helps companies acquire the capital they need in critical early states.

**KTEC: A Key Ally in the Biosciences:** As a natural extension of its mission, KTEC has played a key support role in the statewide Bioscience Initiative. As a sponsor of the Regional Bioscience & Innovation Roadmap process, as a founding member of KansasBio, and as a support to the Kansas Bioscience Authority, KTEC is dedicated to statewide success in the competitive bioscience industry.

### **Kansas, Inc. Statutory Obligation**

**K.S.A. 74-8010 Review and evaluation of state economic development programs and activities; recommendations to legislature.**

(a) Kansas, Inc. shall review and evaluate the effectiveness of economic development programs and activities within the state, including, but not by way of limitation, the Kansas Technology Enterprise Corporation programs and activities, the major programs and activities of the department of commerce, the statewide risk capital system, the venture capital tax credit, and the research and development activities tax credit. The effectiveness of the research and development activities tax credit shall be measured by the extent to which the tax credit encourages innovation and development of new value-added products and processes which will lead to the commercialization of new products and processes by primary job creating Kansas businesses.

(b) Kansas, Inc. shall periodically conduct a review and evaluation of economic development programs and activities. The review and evaluation should include:

- 1) A performance analysis of the extent to which the purposes of the acts providing for the programs and activities have been achieved; and
- 2) The economic and fiscal impact of the programs and activities on the state's economy and jobs created.

(c) Based on the findings of its review and evaluation, Kansas, Inc. will recommend to the legislature the continuation in effect, modification, or repeal of the acts providing for the programs and activities.

History: L. 1986, ch. 298, § 10; L. 1996, ch. 88, § 5; L. 2003, ch. 154, § 74; July 1.

Kansas, Inc. last delivered an *Analysis of Kansas Business Assistance* during January 1996, that include an analysis of KTEC and its subsidiaries. The overall purpose of this report was to assess the delivery and performance of selected Kansas economic development programs designed to assist businesses and entrepreneurs.

### **Project Overview**

Kansas, Inc. will facilitate an independent assessment and evaluation of KTEC to include: 1) a performance analysis of the extent to which the purposes of the acts providing for the programs and activities have been achieved; and 2) the economic and fiscal impact of the programs and activities on the state's economy and jobs created. Based on the findings of the review and evaluation, Kansas, Inc. will recommend to the legislature the continuation, in effect, modification, or repeal of the acts providing for the programs and activities. (K.S.A. 74-8010)

KTEC's principal statutory functions and responsibilities are as follows:

- To foster innovation in existing and developing businesses, especially the creation, growth and expansion of Kansas enterprises in a diversified range of primary sectors which develop value-added products, processes and services;
- To invest in basic research, applied research and development, and technology transfer at Kansas educational institutions which meet competitive standards of excellence and which create innovative collaboration between Kansas educational institutions and Kansas enterprises;
- To award applied research matching grants to Kansas educational institutions and Kansas private enterprises in order to move innovation and applied research toward commercial application;
- To engage in seed-capital financing for the development and implementation of innovations or new technologies for existing resource, technology-based, and emerging Kansas businesses;
- To provide technical referral services to such small, new, emerging or mature businesses and encourage Kansas educational institutions to establish technical information databases and industrial liaison offices that are easily accessible by both private and public sector Kansas organizations.

This evaluation will measure KTEC and its subsidiaries efforts in regards to technology-based economic development, including its Strategic Research and Development/Centers of Excellence; Business Assistance/Incubators; Investment Funds; and involvement in the support of the Kansas Bioscience Initiative. This evaluation shall be conducted to obtain the maximum benefit for KTEC, its partners and stakeholders. Information collected and provided through the evaluation process will be subject to analysis and/or further details by Kansas, Inc. Kansas, Inc. will provide final approval on all information collected and presented through this evaluation process.

Kansas, Inc. will deliver this evaluation to the Governor, Legislature, and all other interested parties during 2008, and the subsequent timeline will be subject to this requirement.

### **Statement of Work**

Kansas, Inc. seeks to retain the services of a research team (consultant, firm, or university) to evaluate and provide detailed analysis of KTEC and its subsidiaries. Kansas, Inc. will facilitate an independent assessment and evaluation of KTEC to include: 1) a performance analysis of the extent to which the purposes of the acts providing for the programs and activities have been achieved; and 2) the economic and fiscal impact of the programs and activities on the state's economy and jobs created. Based on the findings of the review and evaluation, Kansas, Inc. will recommend to the legislature the continuation, in effect, modification, or repeal of the acts providing for the programs and activities (K.S.A. 74-8010). As planned the consultant, selected through a formal bid process, would provide:

### **Literature Assessment**

Independent of Kansas, Inc., Kansas Legislative Post Audit (LPA) and KTEC have recently conducted studies regarding the funding and impact of technology-based economic development in Kansas. Since Kansas, Inc. was not involved in the process for establishing the scope of these studies; procedures must be performed to determine the extent to which this work can be relied upon in relation to the evaluation and the extent to which additional procedures would need to be performed by an independent auditor. The Contractor's assistance is requested to perform procedures that would provide Kansas, Inc. with a sufficient basis for relying upon these studies and their respective methodology in relation to the evaluation.

- During 2008, LPA, the audit agency of Kansas government, completed *Economic Development: Determining the Amounts the State Has Spent on Economic Development Programs and the Economic Impacts on Kansas Counties*. This audit explores what programs fund economic development activities in Kansas, and how much State, federal, and local funds are spent for economic development purposes. The audit also explores past audits and current literature regarding the effectiveness of spending for economic development activities and what types of results can be shown in Kansas for the money that has been spent to date. The complete report will be available on LPA's website: <http://www.kslegislature.org/postaudit/> once it has been presented to the Kansas Legislative Post Audit Committee.

Since Kansas, Inc. was not involved in the process for establishing the scope of this audit, procedures must be performed to determine the extent to which LPA's work can be relied upon in relation to the evaluation and the extent to which additional procedures would need to be performed by an independent evaluator. As both Kansas, Inc. and LPA are instrumentalities of state government, to be prudent and avoid waste and duplication of efforts; as customary, this evaluation will rely upon LPA's work to the extent possible.

- During 2007, KTEC management contracted with RTI International (RTI), a non-profit organization with a respected industry brand and recognized expertise in technology-based economic development programs, to perform an independent evaluation to gauge the level of effectiveness and impact of KTEC operations and programs. This work has been completed and the report *Evaluation of KTEC Programs: Final Report*, as well as derivative documents and press materials have been published by KTEC and are available on its website: [http://www.ktec.com/sec\\_impact/impact.htm](http://www.ktec.com/sec_impact/impact.htm)

Since Kansas, Inc. was not involved in the process for establishing the scope of RTI's work, procedures must be performed to determine the extent to which RTI's work can be relied upon in relation to the evaluation and the extent to which additional procedures would need to be performed by an independent evaluator. As both Kansas, Inc. and KTEC are instrumentalities of state government, to be prudent and

avoid waste and duplication of efforts; as customary, this study will rely upon RTI's work to the extent possible.

### **Statutory/Agency Assessment**

- Based on KSA 74-8101 through 74-8137 (KTEC statutes), provide a detailed analysis of the progress and accomplishments of KTEC and its subsidiaries. Provide details regarding programs, initiatives and services to establish and analyze both qualitative and quantitative benchmarks. Provide an assessment regarding how this has addressed the requirements set forth in the original or any ensuing legislation. Provide recommendations and analysis regarding potential successes, issues or shortcomings.
- Conduct detailed interviews and/or surveys with current and former: staff, board members, legislators and other partners involved with KTEC and its subsidiaries to determine if they are meeting statutory obligations. Provide recommendations and analysis regarding potential successes, issues or shortcomings.
- Provide an assessment of the overall organizational structure and its functionality (both KTEC staff and Board) in regards to operational capacity and efficiency, transparency, and its ability to partner with other organizations to achieve desired outcomes. Provide analysis regarding reporting requirements, internal auditing, measures of success and overall outcomes. Provide recommendations and analysis regarding potential successes, issues or shortcomings.
- Provide a detailed analysis of KTEC and its subsidiaries overall revenue/funding stream for technology-based economic development initiatives. Provide analysis on programs, initiatives and services. Analysis should include information such as transparency, accountability, distribution, frequency, coordination, flow of funds and overall revenue/funding stream trends. Provide an analysis whether the overall revenue/funding stream is meeting the competitive needs of KTEC's efforts and its ability to meet future competitive needs regarding technology-based economic development. Provide recommendations and analysis regarding potential successes, issues or shortcomings.

### **Investment/Service Assessment**

- Develop a list of recipients and/or potential recipients that have received investments or services from KTEC and its subsidiaries. Provide an overview of the processes/criteria utilized to determine recipients for KTEC investments or services. Conduct detailed interviews and/or surveys to determine the level of effectiveness of the investments or services provided by KTEC. Provide an analysis of the "breadth," or quantity of KTEC activity across Kansas, and the "depth," or quality of KTEC activity across Kansas. Analysis should include information such as transparency, accountability, distribution, frequency, coordination and overall results. If possible, analysis should include measures regarding return on investment (ROI). Provide an overview of KTEC's efforts to commercialize technology-based economic development opportunities, foster the formation and growth of technology-based startups, facilitate the attraction and expansion of technology-based companies, and KTEC's ability to develop and enhance partnerships for the growth of technology-based economic development throughout the state. Provide recommendations and analysis regarding potential successes, issues or shortcomings.
- Provide an assessment detailing specific case studies that analyze KTEC's impact throughout a business entity's lifecycle. If possible, analysis should include measures regarding return on investment (ROI). Provide recommendations and analysis regarding potential successes, issues or shortcomings.

### **Partner Organizations**

- Develop a list of partner organizations that work in conjunction with KTEC and its subsidiaries. Conduct detailed interviews and/or surveys to determine the level of effectiveness of this interaction with KTEC.

Provide an analysis of the “breadth,” or quantity of KTEC activity across Kansas, and the “depth,” or quality of KTEC activity across Kansas. Provide an overview of KTEC’s efforts to commercialize technology-based economic development opportunities, foster the formation and growth of technology-based startups, facilitate the attraction and expansion of technology-based companies, and KTEC’s ability to develop and enhance partnerships for the growth of technology-based economic development throughout the state. Provide recommendations and analysis regarding potential successes, issues or shortcomings.

### **Deliverables**

The final evaluation report will include: detailed results and recommendations in a MS Word electronic document and a MS PowerPoint presentation summarizing the results of the report. Once the final timeline is set for the project, Kansas, Inc. will request periodic updates regarding the evaluation. Kansas, Inc. will review and comment on the draft report and issues pertaining to the evaluation. Proposals shall include a detailed timeline, subject to modification based on the award date; therefore, proposals should provide adequate time before January 5, 2009 for Kansas, Inc. to review and comment on the results. The Contractor may be required to appear in person and provide testimony to the Kansas, Inc. Board of Directors, Kansas Legislature and other interested parties after January 12, 2009 and during the FY 2009 Legislative Session.

### **Methodology**

The methodology used for this evaluation should adequately address the objectives/questions presented in the “Statement of Work” section of this RFP. Kansas, Inc. and KTEC will address other specific details regarding the evaluation process as they present themselves.

### **Period of Performance**

September 19, 2008 – January 5, 2009

### **Disclaimer**

**In conjunction with KTEC, Kansas, Inc. has determined because of the mutual interests between KTEC and the Kansas Regents Institutions, proposals will not be considered from the Kansas Regents Institutions for this RFP. Any other parties that have had or presently have any relationship with KTEC that could be perceived as a conflict-of-interest must disclose this issue in the bid proposal.** Further questions regarding this can be directed to Kansas, Inc.

## Section II -- Tentative Project Schedule

<b>Issuance of RFP</b>	<b>July 29, 2008</b>
<b>Submission of RFP Questions</b>	<b>August 15, 2008</b>
<b>Submission of Answers to RFP Questions (on web site)</b>	<b>August 21, 2008</b>
<b>Deadline for Submission of Proposals</b>	<b>September 5, 2008</b>
<b>Kansas, Inc. Selects Vendor</b>	<b>September 12, 2008</b>
<b>Vendor Notified and Contractual Negotiations Complete</b>	<b>September 19, 2008</b>
<b>Tentative Date for Vendor to Begin Work</b>	<b>Per Agreement</b>
<b>Final Report Deadline</b>	<b>January 5, 2009</b>

## Section III -- Project Management

### **Responsibilities of Kansas, Inc.**

The President of Kansas, Inc. is responsible for the administration of the project. The Kansas, Inc. Board of Directors has authority to approve the final project submission before it becomes public.

The President of **Kansas, Inc.** is responsible for:

1. Coordinating the work of the vendor;
2. Overseeing the overall operation of the project;
3. Determining any changes in emphasis or end product that may be required in consultation with the Contractor;
4. Assessing the progress and resolving any problems that arise related to the project;
5. Approving the vendor's proposed work plans and any modifications to such plans;
6. Assuring the vendor's compliance in performance of the work plan;
7. Reviewing invoices submitted by the vendor for progress and final payments and authorizing reimbursements;
8. Determining final compliance with the terms of the contract; and
9. **Kansas, Inc. staff is responsible for distribution of the final project report.**

The **Contractor** is responsible for:

1. Collect, analyze and review of the final data analysis and project submitted by the vendor;
2. Provide further recommendations for action based on the outcomes of the project;
3. Provide a final written report compilation in MS Word and PowerPoint presentation electronically.

### **Assistance from Kansas Organizations**

In furtherance of the project, Kansas, Inc., the Kansas Technology Enterprise Corporation and other state agencies will comply, to the extent possible, with reasonable requests for information. Names and contact information for these organizations will be provided to the successful Contractor.

### **Access to Existing Research Materials**

All information currently developed in-house by Kansas, Inc. or the Kansas Technology Enterprise Corporation will be supplied to the Contractor.

## Section IV -- Proposal Requirements

### **Questions on Proposals and Proposal Submission**

No pre-proposal conference is scheduled for this RFP. Questions requesting clarification of the Request for Proposal must be submitted electronically (MS Word) to Kansas, Inc. by 5 p.m. (CST) on August 15, 2008 by e-mail or fax. Modifications to this RFP shall be made in writing by addendum and posted to the website <http://www.kansasinc.org>. Answers to the questions will be posted on the Kansas, Inc. website at <http://www.kansasinc.org> by August 21, 2008 (CST). Only written communications posted on the website are binding.

### **Requirements for Proposal Submission**

Proposals must be postmarked or received by mail prior to the close of business on September 5, 2008 (5:00 p.m. CDT) to receive consideration. **E-mail submissions will NOT be accepted. Faxed proposals will NOT be accepted.**

Mailing Address for Proposals:

Kansas, Inc.  
632 SW Van Buren, St., Suite 100  
Topeka, KS 66603

Fax: (785) 296-1463

E-mail: [ksinc@ink.org](mailto:ksinc@ink.org)

### **Proposal Format**

Proposals shall be submitted for the entire project as outlined in Section IV of this RFP. The format of the proposal shall include the following:

1. **Project Summary.** Provide a concise statement to demonstrate the vendor's understanding of the assignment.
2. **Project Work Plan.** Provide a detailed description of each task with enough detail to evaluate the project, independent of any other documentation. The research design should indicate what will be done, where it will be done, and how the research will be carried out. It should address the objectives and a clear-cut path to achieving the Statement of Work in this proposal. The methods planned to achieve each objective or task should be discussed in detail. Discuss any potential difficulties and limitations of the proposed procedures and alternative approaches to achieve the aims. Make sure to discuss the criteria to determine that the goals have been met.
3. **Typed Format.** The project work plan should be in typed format using standard fonts on 8-1/2" x 11" paper.
4. **Project Time-Line.** Kansas, Inc. understands that existing commitments may make it impossible to begin work on the tentative time schedule. Accordingly, Kansas, Inc. does not want to discourage qualified groups from submitting proposals based solely on existing scheduled commitments that can be negotiated in the final agreement. Kansas, Inc., however, would like to begin the project as soon as possible and emphasizes the importance of its timely completion. It

is the desire of Kansas, Inc. to have the final work product completed on or before January 5, 2009.

- a. Based on the Contractors proposed work plan, all proposals shall contain a time-line, which includes completion dates for major facets of the project.
- b. Accomplishment of major parts of the project shall be evidenced by drafts of work completed or other appropriate demonstration of progress toward completion of the project in compliance with project schedules. Schedule for delivery of these items shall be stipulated in the final contract.

**Vendor Information.** Briefly describe the Contractor's capacity (including any proposed subcontractors) to successfully complete the proposed work, and identify any relevant work experience with technology based economic development. The Contractor must include a narrative of the vendor's corporation and each subcontractor if any. With respect to any work performed previously on topics or issues relevant to this RFP, provide the following:

1. The title of the engagement and the client represented.
2. Associated with each engagement outlined above, a contact person and telephone number, and a description of the work performed for each engagement.
3. Any advocacy position on any issue addressed within this RFP, and
4. A description of any past or ongoing work or activities which are, or reasonably could be perceived to be, a conflict of interest or which could otherwise affect the credibility of the Contractor's work on this project.
5. Date established and ownership.
6. Number of personnel, full and part-time, assigned to this project by function and job title.
7. Resources assigned to this project and the extent they are dedicated to other matters.
8. Organizational chart.
9. A financial statement may be required.

**Qualifications.** Identify by name all staff (including any proposed subcontractors) that will work on the project; describe their related experience; and attach professional resumes. Include the names, titles, addresses, telephone numbers, and E-mail addresses, if applicable, of individuals authorized to negotiate any resulting contract.

**Collaborative Proposals.** Collaboration between groups of researchers, with expertise in various pertinent areas is encouraged. If a collaborative team submits the proposal, the requirements of this section shall apply to each team member with respect to their areas of project responsibility or expertise.

**Other Requirements.** Furnish any requests for variations from the information or conditions requested in this RFP (other than for cost), or any additional information the Contractor wishes to add.

**Cost Proposal.** Break down professional and technical service costs in terms of wages and salaries, hours, and other relevant services. Itemize reimbursable travel and other expenses, with supporting detail for the expenses. Provide cost information by each major task proposed.

**Acceptance or Rejection.** Kansas, Inc. reserves the right to accept or reject any or all proposals or part of a proposal; to waive any informalities or technicalities; clarify any ambiguities in proposals; modify any criteria in the Request; and unless otherwise specified, to accept any item in a proposal.

**Contract Formation.** Any contract shall not be considered entered into by the State until all statutorily required signatures and certifications have been rendered.

**Open Records Act (K.S.A. 45-215 et seq.).** All proposals become the property of the State of Kansas. Kansas' law requires all information contained in proposals to become open for public review once a contract is signed or all proposals are rejected.

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

**Federal, State and Local Taxes-Governmental Entity.** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. The successful Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Request. **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 Contractor's price quotations.**

**Insurance.** The State shall not be required to purchase any insurance against loss or damage to any personal property nor shall the State establish a "self-insurance" fund to protect against any loss or damage. Subject to the provisions of the Kansas Tort Claims Act, the Contractor shall bear the risk of any loss or damage to any personal property.

**Evaluation of Proposals.** Award shall be made in the best interest of the State as determined by Kansas, Inc. Consideration may focus toward, but is not limited to:

- a. Vendor's understanding and details of the project;
- b. Compliance with the terms and conditions of the Request;
- c. Methodology to accomplish tasks;
- d. Experience in providing like services;
- e. Qualified staff;
- f. Contractors are not to inflate prices in the initial proposal as cost is a factor in determining who may receive an award to be invited to negotiations;
- g. Format as required by this Request;
- h. Adequacy and completeness of proposal.

**Conditions for Rejection, Modification and Acceptance of Proposal.**

1. Kansas, Inc. reserves the right to reject any and all proposals and to waive informality and minor irregularities in the proposals received.
2. Kansas, Inc.'s acceptance of a Contractor proposal shall not necessarily require Kansas, Inc. to accept the Contractor proposed contract.
3. Kansas, Inc. reserves the right to negotiate with any source whatsoever in any manner necessary.

**Submission of Proposal.** Contractor's proposal shall consist of:

1. One (1) complete signed copy of the signature page (Attachment A); and
2. One (1) complete original copy an additional (6) copies of the entire Proposal, including the Cost Proposal as described in Section IV, including literature and other supporting documents.
3. One (1) complete signed copy of Attachment C.

## Section V -- Terms and Conditions of Award

**Cost of Preparing Proposal.** The cost of developing and submitting the proposal is entirely the responsibility of the vendor. This includes costs to determine the nature of the engagement, preparation of the proposal, submitting the proposal, negotiating for the contract and other costs associated with this Request. The vendor shall be responsible for any mathematical error in price quotes. Kansas, Inc. reserves the right to reject proposals that contain errors.

**Content of Proposal.** The content of the proposal of the Contractor shall, upon acceptance, constitute a contractual obligation binding upon the Contractor.

The contract shall be awarded to the Contractor or collaborative team of Contractors who best demonstrate to Kansas, Inc. the ability to satisfy the requirements of the RFP. Of lesser, but still of significant importance, will be the cost of the proposal. Important to the evaluation of the proposal will be the creativity and originality of the methodologies proposed. The Contractor shall be selected after Kansas, Inc. evaluates the finalist's proposals.

**Open Records Act (K.S.A. 45-215 et seq.).** All proposals become the property of the State of Kansas. Kansas's law requires all information contained in proposals to become open for public review once a contract is signed or all proposals are rejected.

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

**Withdrawal of Proposal.** A proposal may be withdrawn on written request from the Contractor to the President of Kansas, Inc. prior to the closing date.

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

**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 who are 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.

## Section VI -- Terms and Conditions of the Contract

### Contract

1. The successful Contractor will be required to enter into a written contract with Kansas, Inc. The Contractor agrees to accept the provisions of form DA 146a, Contractual Provisions Attachment, which is incorporated into all contracts with the State and is Attachment B to this RFP.
2. If the project is awarded to a collaborative team of Contractors, Kansas, Inc. will contract with the lead Contractor and team members shall act as subcontractors to the lead researcher with regard to project management and payment.

**Contract Type.** Kansas, Inc. shall award a negotiated, fixed-price contract for professional and technical services, and travel and other expenses, reimbursed at verified cost, up to a maximum agreed-upon amount.

**Payments.** The Contractor shall be paid on a monthly basis upon submission and approval of a monthly report and invoices, which include requests for reimbursement for reasonable and necessary travel, subsistence, and other expenses accompanied by appropriate receipts. Kansas, Inc. reserves the right to withhold as liquidated damages a percentage not greater than 25 percent of the total of each monthly invoice, the balance of which amount shall be payable when all work is completed as defined in the contract and approved by Kansas, Inc.

### General Conditions

1. **Cancellation of Contract.** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligation under the contract, or if the Contractor shall violate any provision of the contract or reporting requirements, Kansas, Inc. shall be authorized to terminate the contract by giving written notice of termination and specifying the effective date of termination. In the event of termination, any report (in any format), work papers, computer data, letters, memoranda, notes, and analyses purchased or prepared by the Contractor under the contract shall become the property of Kansas, Inc. The Contractor shall not be relieved of any liability to Kansas, Inc. for damages sustained resulting from any breach of the contract by the Contractor. Kansas, Inc. may withhold any reimbursement to the Contractor for the purpose of the set-aside until the exact amount of damages due is agreed upon or otherwise determined.
2. **Changes.** Kansas, Inc. may require the Contractor to make changes in the services performed under the contract. The changes include any increase or reduction in the amount of the Contractor's compensation, which is mutually agreed upon by Kansas, Inc. and the Contractor, shall be incorporated into written amendments to the contract.
3. **Discrimination in Employment Prohibited.** The Contractor shall not, in execution of the contract, discriminate against anyone performing work covered by the contract or against any applicant for that work because of race, color, religion, sex, national origin or ancestry, age, or physical disability unrelated to the person's ability to perform the work. This provision shall include, but not be limited to, the following: employment upgrading; demotion; transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation;

and selection of training, including apprenticeship. The contract requires that this provision shall be plainly stated all purchase orders and subcontracts for services covered by the contract. The Contractor shall include the phrase "equal opportunity employer" in all solicitations or advertisements for employees.

4. Copyright Prohibited. All documents produced in whole or in part under the contract shall become the property of Kansas, Inc. to be reproduced only with the express permission of Kansas, Inc.
5. Contract Conditions. Kansas, Inc. shall not be liable for any claims against the Contractor, or its subcontractors, from any source.
6. Notices to Proceed. Kansas, Inc. shall issue a written notice to proceed for work described in this proposal. The Contractor shall not begin the work outlined in the Contractor's proposal, even if such proposal has been approved, until Contractor has received written notice from Kansas, Inc. Kansas, Inc. shall not be liable for any expenses incurred by the Contractor before issuance of the written notice to proceed.
7. Reports. Timely preparation and production of the final report and any interim reports, and all costs associated with that preparation and production, shall be the Contractor's responsibility. Not later than the due date specified herein, the Contractor shall submit one copy of the final analysis electronically in MS Word format and one copy electronically of the PowerPoint presentation. Kansas, Inc. is responsible for reproduction and distribution of reports. In addition, all web pages and software code developed under this project shall be submitted to Kansas, Inc. and become their wholly owned property to be used at their sole discretion.
8. Hold Harmless. The Contractor shall indemnify the State against any and all claims for injury to or death of any persons; for loss or damage to any property; 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.
9. 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.
10. Ownership. All material, data, forms procedures, software, manuals, system descriptions and workflows developed or accumulated by the Contractor under this contract shall be owned by Kansas, Inc. The Contractor may not release any materials without the written approval of Kansas, Inc.
11. Force Majeure. Kansas, Inc. shall not be liable for any claims against the Contractor, or its subcontractors, from any source.

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

13. 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 proposal specifications may result in termination of the contract and/or damages.

14. Retention of Records. Unless the State specified in writing a shorter period of time, the Contractor agrees to preserve and make available 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.

- a. 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.
- b. 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 at no cost to the State.

15. 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.

16. Governing Law. The contract shall be governed by the laws of the State of Kansas and shall be deemed executed at Topeka, Shawnee County, Kansas, unless otherwise specified and agreed upon by the State of Kansas.

17. Jurisdiction. The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas, District Court of Shawnee County, unless otherwise specified and agreed upon by the State of Kansas. 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.

18. Mandatory Provisions. The provisions found in Contractual Provisions Attachment (DA-146a) that are attached are incorporated by reference and made a part of this contract.
19. Criminal Or Civil Offense. Any conviction for a criminal or civil offense of an individual or entity that controls a company or organization or will perform work under this contract 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.
20. 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, vendor shall not be entitled to make or assert claim for damage by reason of said delay.
21. Statutes. Each and every provision of law and clause required by law to be inserted in the contract shall be deemed 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.
22. Industry Standards. If not otherwise provided, materials or work called for in this contract shall be furnished and performed in accordance with best-established practice and standards recognized by the contracted industry and comply with all codes and regulations that shall apply.
23. Accounts Receivable Set-Off Program. During the course of this contract if the vendor is found to owe a debt to the State of Kansas, agency payments to the vendor may be intercepted/setoff by the State of Kansas. Notice of the setoff action will be provided to the vendor. The vendor shall credit the account of the agency making the payment in an amount equal to the funds intercepted.

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

### **Termination for Cause**

The President of Kansas, Inc. may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:

- Contractor fails to make delivery of goods or services as specified in the contract; or
- Contractor provides substandard quality and/or workmanship;
- 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 President of Kansas, Inc. shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within ten (10) days from the receipt of the notice (or such longer period as State may authorize in writing), the President of Kansas, Inc. 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 President of Kansas, Inc. may terminate performance of work under this contract in whole or in part whenever, for any reason, the President of Kansas, Inc. shall determine that the termination is in the best interest of the State of Kansas. In the event that the President of Kansas, Inc. 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.

### **Definite Quantity Contract**

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

### **Off-Shore Sourcing**

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

If, during the term of the contract, the Contractor or subcontractor moves work previously performed in the United States to a location outside of the United States, the Contractor shall immediately notify Kansas, Inc. and the respective agency in writing, indicating the new location and the percentage of work relocated.

### **Ownership**

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

**Data**

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

### ATTACHMENT A: SIGNATURE SHEET

Item: Evaluation of the Kansas Technology Enterprise Corporation

Agency:

Closing Date: September 5, 2008

We submit a proposal to furnish requirements during the contract period in accordance with the specifications and Schedule of Supplies. **I hereby certify that I (we) do not have any substantial conflict of interest sufficient to influence the bidding process on this bid. A conflict of substantial interest is one, which a reasonable person would think would compromise the open competitive bid process.**

Addenda: The undersigned acknowledges receipt of the following addenda:

#1(\_\_\_\_) #2(\_\_\_\_) #3(\_\_\_\_) None(\_\_\_\_)

Legal Name of Person, Firm or Corporation\_\_\_\_\_

Toll Free Telephone\_\_\_\_\_Local\_\_\_\_\_Fax\_\_\_\_\_

E-Mail\_\_\_\_\_

Mailing Address\_\_\_\_\_

City & State\_\_\_\_\_Zip Code\_\_\_\_\_

FEIN Number\_\_\_\_\_

Signature\_\_\_\_\_Date\_\_\_\_\_

Typed Name of Signature\_\_\_\_\_Title\_\_\_\_\_

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

Address\_\_\_\_\_

City & State\_\_\_\_\_Zip Code\_\_\_\_\_

Toll Free Telephone\_\_\_\_\_Local\_\_\_\_\_Fax\_\_\_\_\_

E-Mail\_\_\_\_\_

Political Subdivisions do NOT have access to contracts that are not bid by the Division of Purchases.

**ATTACHMENT B: CONTRACTUAL PROVISIONS**

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 \_\_\_\_\_, 20\_\_\_\_.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of 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 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 State 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 State 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 State 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 State 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 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."*

## Attachment C

### CERTIFICATION REGARDING IMMIGRATION REFORM & CONTROL

All Contractors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the Contractor as well as any subcontractor or sub-subcontractor. The usual method of verification is through the Employment Verification (I-9) Form. With the submission of this bid, the Contractor hereby certifies without exception that Contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at the State's option, may subject the contract to termination and any applicable damages.

Contractor certifies that, should it be awarded a contract by the State, Contractor will comply with all applicable federal and state laws, standards, orders and regulations affecting a person's participation and eligibility in any program or activity undertaken by the Contractor pursuant to this contract. Contractor further certifies that it will remain in compliance throughout the term of the contract.

At the State's request, Contractor is expected to produce to the State any documentation or other such evidence to verify Contractor's compliance with any provision, duty, certification, or the like under the contract.

Contractor agrees to include this Certification in contracts between itself and any subcontractors in connection with the services performed under this contract.

---

Signature, Title of Contractor

---

Date