

# Request for Proposals

## Analysis of State-Level Economic Development Contingency Funds

Issued: August 14, 2008

By

Kansas, Inc.

Proposals to be postmarked no later than: **September 12, 2008**

All questions and requests for information are to be submitted in writing  
(No phone calls)

Kansas, Inc.  
632 SW Van Buren, Suite 100  
Topeka, Kansas 66603  
ksinc@ink.org

Questions and answers will be posted at the Kansas, Inc. website by  
**Thursday, August 28, 2008**

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## Section I -- Project Summary

**Kansas, Inc.** is an independent, objective and non-partisan organization designed to conduct economic development research and analysis with the goal of developing policies and recommendations to ensure the state's ongoing strategic competitiveness for economic growth. To attain our mission, Kansas, Inc. undertakes these primary activities: 1) Identifying, building and promoting a Strategic Plan for economic development efforts in the State of Kansas; 2) To complement the Strategic Plan, Kansas, Inc. develops and implements a proactive and aggressive research agenda, which is used to identify and promote sound economic development strategies and policies; 3) Through collaboration and outreach with economic development entities and other potential partners, Kansas, Inc. conducts evaluation reviews and provides oversight of economic development programs to benchmark development efforts in the State of Kansas.

Co-Chaired by the Governor, Kansas, Inc. is governed by a 17-member Board of Directors, including legislative leadership, the Board of Regents, the Secretary of Commerce, the Commanding General of the Kansas Cavalry, a representative from labor and eight other members from the private sector representing key Kansas industrial sectors.

### **Project Background**

In accordance with KSA 74-8002, the Kansas Economic Development Strategic Plan, entitled *Leveraging our Foundations and Designing the Future: A Kansas Economic Renaissance* provides 43 strategies and 98 recommendations intended to strategically position Kansas for long-term economic growth. The Strategic Plan was the result of a yearlong process, driven by sound, fundamental research and tested with business input throughout the state.

From the Strategic Plan, Recommendation 27-1: *Create a contingency fund of \$40 million to be used at the discretion of the Department of Commerce to provide flexibility and funding above and beyond the current range of incentive programs to compete with other states and countries that provide large incentives for existing and new businesses and projects.*

Kansas needs an overall strategy to compete with other states and countries that offer large incentives to attract and retain businesses. This strategy should support the state's overall economic development strategy. We must maintain our current incentive package and seek additional ways to attract and retain businesses in Kansas. A contingency fund would assist the Department of Commerce in achieving its mission to empower individuals, businesses and communities to realize prosperity in Kansas.

### **Project Overview**

Kansas, Inc. will facilitate an analysis of state-level economic development contingency funds, including a comparison of other state's funds/funding levels, how they are derived/maintained, funding uses/intent, history of the funds, effectiveness of the funds, etc. This analysis should include information from all 50 states (where available) and potentially information from various countries of interest. Best practices should be identified and a Kansas-specific recommendation regarding the creation of a state-level contingency fund must be addressed. Basic objectives and questions to be addressed by the research are outlined in the "Statement of Work."

Kansas, Inc. seeks to retain the services of a research team (consultant, firm, or university) to provide this analysis and will deliver this analysis to the Governor, Legislature, and all other interested parties during 2008, and the subsequent timeline will be subject to this requirement.

### **Statement of Work**

As planned the consultant, selected through a formal bid process, would provide:

- Provide an overview and analysis of state-level economic development contingency funds, including, but not limited to a comparison of other state's funds/funding levels, how they are derived/maintained, funding uses/intent, history of the funds, effectiveness of the funds, etc. This analysis should include information from all 50 states (where available) and potentially information from various countries of interest. Basic

information should be collected from all states, with focused, in-depth information provided where best practices have been identified.

- Identify and provide analysis of best practices in regards to state-level economic development contingency funds. Provide detailed information as addressed in the previous bullet point.
- Provide an overview of current local, state and federal economic development incentives and tools available in Kansas. Provide information and analysis within the context of developing a tax structure, incentives and regulations that are business-friendly and competitive on a local, state, national and international level.
- Based on best practices and the current set of local, state and federal economic development incentives and tools available, provide recommendations regarding the feasibility of developing and maintaining a state-level economic development contingency fund in Kansas. Provide an assessment whether such a fund would be feasible within the realm of the state's current economic development environment, including whether such a fund could be created, maintained, managed and utilized for economic development purposes. In general should Kansas create a state-level economic development contingency fund, and if so, how?

### **Deliverables**

The final 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 project. Kansas, Inc. will review and comment on the draft report and issues pertaining to the project. Proposals shall include a detailed timeline, subject to modification based on the award date. 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 during the FY 2009 Legislative Session.

### **Methodology**

The methodology used in this research should adequately address the objectives/questions presented in the "Statement of Work" section of this RFP. Specific details regarding this research will be addressed by Kansas, Inc. as they present themselves.

### **Period of Performance**

Proposals shall include a detailed timeline, subject to modification based upon the award date. Period of performance will be contingent upon contract award date.

### **Period of Performance**

September 26, 2008 – January 7, 2009

**Section II -- Tentative Project Schedule**

<b>Issuance of RFP</b>	<b>August 14, 2008</b>
<b>Submission of RFP Questions</b>	<b>August 22, 2008</b>
<b>Submission of Answers to RFP Questions (on web site)</b>	<b>August 28, 2008</b>
<b>Deadline for Submission of Proposals</b>	<b>September 12, 2008</b>
<b>Kansas, Inc. Meets to Select Vendor</b>	<b>September 19, 2008</b>
<b>Vendor Notified and Contractual Negotiations Complete</b>	<b>September 26, 2008</b>
<b>Tentative Date for Vendor to Begin Work</b>	<b>Per Agreement</b>
<b>Final Report Deadline</b>	<b>January 7, 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. 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 other state agencies will be supplied to the Contractor to the extent possible.

## 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 22, 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 and clarifications will be posted on the Kansas, Inc. website at <http://www.kansasinc.org> by 5 p.m. (CST) on August 28, 2008. Only written communications posted on the website are binding.

### **Requirements for Proposal Submission**

Proposals must be postmarked or received by September 12, 2008 (5:00 p.m. CST) 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 7, 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 bioscience and technology. 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.

**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 this Request; and unless otherwise specified, to accept any item in a 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 State in whatever form it is maintained by 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 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.
  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 which 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 Director of Purchases 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 the State 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: Analysis of State-Level Economic Development Contingency Funds Request for Proposal

Agency:

**Closing Date: September 12, 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