Contract Award

Date of Award: September 1, 2013
Contract Number: 36341419
Replaces Contract: 05260
Buyer: [redacted]
Telephone: 785-864-5972
E-Mail Address: cswoyer@ku.edu
Web Address: [http://www.purchasing.ku.edu/](http://www.purchasing.ku.edu/)

Item: University of Kansas Card Center Financial Services
Agency: The University of Kansas
Location(s): Lawrence, Kansas
Period of Contract: September 1, 2013 to August 31, 2020
(With one (1) Optional Three Year Renewal)

Contractor: Commerce Bank
811 Main Street
Kansas City, MO 64105
PeopleSoft ID: 0000018487
Account Code: 136900
Contact: [redacted]
PH: [redacted]
FX: [redacted]
E: [redacted]

Prices: See Attached
Scope: This contract shall cover the procurement of Service for Card Center Financial Services for the University of Kansas during the contract period referenced above.

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

The above referenced contract award was recently posted to the University of Kansas website. The document can be downloaded by going to: [http://www.purchasing.ku.edu/](http://www.purchasing.ku.edu/)
ADDENDUM TO CONTRACT AWARD #36341419

This Addendum to Contract Award #36341419 ("Contract") between The University of Kansas ("University") and Commerce Bank ("Contractor") is entered into this 29th day of August, 2013. The purpose of this Addendum is to incorporate changes to the Contract made by Commerce Bank in response to RFP General Terms and Conditions and through the process of negotiating the final Contract.

Contract Award No. 36341419

1. Paragraph 3 is deleted because termination is covered in the Termination For Cause section in the RFP General Terms and Conditions.

2. Paragraph 4 is deleted because the documents which comprise the Contract, and the order of preference, are described in paragraph 7 of the RFP General Terms and Conditions, as amended by this Addendum.

RFP General Terms and Conditions

3. Paragraph 4 entitled Statutes is revised replacing the first sentence with the following language: "Each and every provision of law and clause required by law applicable to the business contemplated under this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein.

4. Paragraph 6 entitled Notices is revised to add the contact and address for Commerce Bank as follows:
Commerce Bank
811 Main
Kansas City, Missouri 64141

5. Paragraph 7 entitled Contract Documents is deleted and replaced with the following new paragraph:

"Contract Documents: This Request and any amendments and the the response and any amendments of the Contractor shall be incorporated along with the DA-146a(Rev. 06-12) into a written contract which shall comprise the complete understanding of the parties.

In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:
   a. Contractual Provisions Attachment Form DA-146a(Rev. 06-12), as amended by the Addendum to Contract Award;
   b. Written modifications and addenda to the executed Contract, including the Addendum To Contract Award;
   c. This Contract document;
   d. Contractor’s written response to the Request for Proposal, including any addenda, appendices and exhibits; and
   e. The Request for Proposal, including any and all addenda."
6. Paragraph 14 entitled Staff Qualifications is revised to add the following sentence: “Vendors that perform operation and processing services for Contractor shall not be considered subcontractors subject to Staff Qualifications.”

7. Paragraph 15 entitled Subcontractors is revised to add the following sentence: “Vendors that perform operation and processing services for Contractor shall not be considered subcontractors subject to this disclosure requirement.”

8. Paragraph 29 entitled Termination for Cause is deleted in its entirety and replaced with the following provision:

“Termination for Cause: Either party may terminate this Contract for cause under any one of the following circumstances:

(1) The Contractor fails to make delivery of goods or services as specified in this Contract; or
(2) Either party fails to perform any material provision of this Contract or so fails to make progress as to endanger performance of this Contract in accordance with its terms.

The party seeking to terminate the Contract shall give the other party written notice of the conditions endangering performance, and the party receiving said notice shall have ten (10) days (or such longer period as may be authorized in writing) after its receipt of said notice to remedy such failure. If the failure is not remedied by the defaulting party within the time period provided above, the non-defaulting party may terminate this Contract by giving the defaulting party written notice. Receipt of the notice shall be presumed to have occurred within three (3) business days of the date of the notice. If the breach is remedied by the defaulting party within the time period provided above, then this Contract shall continue as though no such notice had been given.”

9. Paragraph 30 entitled Termination for Convenience is revised to add the following language:

“In the event of termination of the Contract (except for material breach by Contractor), the University shall:

1. Return to Contractor a pro rata portion of the $200,000 signing bonus provided for in the revised Remuneration Schedule Round 2 Proposal of April 11, 2013, equal to 1/84th of the $200,000 for every full calendar month remaining in this Contract after termination.

2. Return to Contractor a pro rata portion of the annual revenue payment for the KU Card Program provided for in the revised Remuneration Schedule Round 2 Proposal of April 11, 2013, equal to 1/12th of the $165,000 for every full calendar month remaining in the applicable year after termination.

3. Return to Contractor a pro rata portion of the KU cardstock expense provided for in the revised Remuneration Schedule Round 2 Proposal of April 11, 2013, equal to 1/12th of the actual annual cardstock expenditure for every full calendar month remaining in the applicable payment year after termination.

4. Return to Contractor a pro rata portion of the $100,000 signing bonus for the 3 year Contract renewal period provided for in the revised Remuneration Schedule Round 2 Proposal of April 11, 2013, with a calculation of 1/36th of the $100,000 signing bonus for every full calendar month remaining in the Contract renewal period.”
5. Return to Contractor a pro rata portion of the annual revenue payment for the KU Card Program provided for the 3 year Contract renewal period provided for in the revised Remuneration Schedule Round 2 Proposal of April 11, 2013, equal to 1/12th of the $175,000 for every full calendar month remaining in the applicable payment year after termination.

6. Return to Contractor a pro rata portion of the KU cardstock expense provided to KU in the 3 year Contract renewal period provided for in the revised Remuneration Schedule Round 2 Proposal of April 11, 2013, equal to 1/12th of the actual annual cardstock expenditure for every full calendar month remaining in the applicable payment year after termination.
CONTRACT AWARD

This contract is entered into this 29th day of August, 2013 by and between the University of Kansas (University) and Commerce Bank 811 Main St., Kansas City, MO 64105 (Contractor).

The parties agree as follows:

1. Subject to the terms and conditions of this contract, University hereby accepts the offer of Contractor as expressed by Contractor's bid submitted to the KU Purchasing Services on March 1st, 2013, in response to RFP Number 36341419 Addendum 1, both of which are incorporated into this contract by reference.

2. It is understood and agreed by the parties that pursuant to the bid, Contractor agrees to furnish KU Card Center Financial Services for the University for the period from September 1, 2013 to August 31, 2020 with One Optional Three Year Renewal on order of the Department(s) at the price or prices contained in the bid. University agrees to accept on delivery the amount(s) to be paid by Contractor within 30 days after each annual anniversary date in accordance with the bid as shown on delivery invoice(s) of the Contractor to the Department(s).

3. Section has been struck from agreement as agreed upon by both parties.

4. Section has been struck from agreement as agreed upon by both parties

5. The provisions found in the attached Contractual Provisions Attachment (DA-146a), is incorporated and made a part of this contract by reference.

6. In the event of any disputes regarding the terms and conditions of this Contract or payments alleged to be due and owing, Contractor's sole remedy shall be with the Department that placed the order.
State of Kansas

Department of Administration
DA-1468 (Rev. 06-12)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-1468a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 1st day of September 2015.

1. Terms Herein Controlling Provisions: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. Kansas Law and Venue: This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.

3. Termination Due To Lack Of Funding Appropriation: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 50 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State’s current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. Disclaimer Of Liability: No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

5. Anti-Discrimination Clause: The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon any subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total $5,000 or less during the fiscal year of such agency.

6. Acceptance Of Contract: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. Arbitration, Damages, Warranties: Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

8. Representative’s Authority To Contract: By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. Responsibility For Taxes: The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. Insurance: The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall such insurance require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.

11. Information: No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.

12. The Eleventh Amendment: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

13. Campaign Contributions / Lobbying: Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.
<table>
<thead>
<tr>
<th>Service Description</th>
<th>7-Year Term</th>
<th>3-Year Renewal Term</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Contract Signing Bonus</strong></td>
<td>$200,000 (Year 1)</td>
<td>$100,000 (Yr 1 of Renewal Term)</td>
</tr>
<tr>
<td><strong>Annual Revenue Payment for support of the KU Card Program</strong></td>
<td>$165,000 Annually</td>
<td>$175,000 Annually</td>
</tr>
<tr>
<td>Blank Plastic Cardstock value (magnetic stripe, no chip or RFID Prox Cards up to max limit noted)</td>
<td>$20,000 per year</td>
<td>$20,000 per year</td>
</tr>
<tr>
<td>Additional KU Card Program revenue payments</td>
<td>+10% increase in annual payment for 9,000 KU Card checking accounts. +15% increase in annual payment for 11,000 KU Card checking accounts.</td>
<td>+10% increase in annual payment for 9,000 KU Card checking accounts. +15% increase in annual payment for 11,000 KU Card checking accounts.</td>
</tr>
<tr>
<td>Processing Expense Reduction - Beak 'Em Bucks Reload (0.50% reduction for credit card processing)</td>
<td>$3,000 Annually</td>
<td>$3,000 Annually</td>
</tr>
<tr>
<td>Reimbursement Bankcard Processing Expense Beak 'Em Bucks Web Reload</td>
<td>$6,000 Annually</td>
<td>$6,000 Annually</td>
</tr>
<tr>
<td>Marketing Commitment - Beak 'Em Bucks Partnership*</td>
<td>$8,000 Annually</td>
<td>$8,000 Annually</td>
</tr>
<tr>
<td>KU Card/Branch Marketing Commitment**</td>
<td>$30,000 Annually</td>
<td>$30,000 Annually</td>
</tr>
<tr>
<td>KU Branch/ATM Lease - To be separately contracted with Kanas Memorial Union Corporation</td>
<td>$25,000 Year 1 with 2% annual increase</td>
<td>2% annual increase</td>
</tr>
<tr>
<td>Contribution to KU General Scholarship Fund</td>
<td>$2,000 Annually</td>
<td>$2,000 Annually</td>
</tr>
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SCOPE OF WORK

1. The University will control all aspects of development and issuance of the KU Card and will retain full control over card technology.

2. The University will not exchange any existing cardholder data with the financial institution awarded this contract.

3. The University has existing relationships with providers of door access systems, card production equipment and software, transaction processing and settlement services, and Beak ‘Em Bucks program administrators. The contractor will work cooperatively within any and all preexisting contractual relationships.

4. The KU Card Center Financial Services contractor must agree to have a branch on the University of Kansas Lawrence campus. Said Contractor will negotiate a lease with the Kansas Union Corporation.

5. The University will maintain control over University name, marks, and logos for marketing purposes. All marketing materials used by the contractor must be approved by the University prior to distribution.

6. Contractor shall have staff present during new student orientation to facilitate the marketing and opening of accounts. New student orientation is scheduled to begin in early June, 2013.

7. Utilization of an account offered by the contractor will not be mandatory to students, faculty or staff. Cardholders are to be offered an option.

8. Contractor must be able to electronically accept transfers of refunds from University student accounts to authorized recipient debit card accounts.

9. Contractor must be able to accept daily electronic direct deposit of University employee paychecks and other employee reimbursements to authorized recipient debit card accounts.

10. Contractor must have the ability to instantly issue cards at the branch location.

11. Contractor will pay Annual KU Card Program Revenue in August of each contract year per attached remuneration schedule.

12. The University may opt to receive advance payment of one year of annual revenue to provide for technology enhancements to the KU Card Program.

13. The University will not incur processing or other expenses related to the KU Card’s use for banking or the management of DDA accounts.

14. The University will be provided high-coercivity, ABA compliant pre-printed or blank plastics (magnetic strip, no chip) at no charge and/or RFID proximity cards up to the maximum annual cardstock investment outlined in the attached remuneration schedule.

15. The University will be paid additional funds (Outlined in attached remuneration schedule) if the number of active KU Card Checking Accounts reaches 9,000 or above.

16. The University will receive a 0.50% reduction in the currently assessed rate for credit card processing costs for processing Beak ‘Em Bucks reloads and will receive $6,000 annually in August, as reimbursed for this credit card processing expense.

17. Contractor will provide up to $8,000 in annual support for promotional Beak ‘Em Bucks load for new freshmen at New Student Orientation events.

18. Contractor will provide additional marketing support for the KU Card Program and Bank partnership up to $30,000 annually.

19. Contractor will contribute $2,000 annually to the KU General Scholarship Fund.

20. For lease of branch and ATM locations, Contractor will contract separately with the Kansas Memorial Union Corporation.

21. Contractor Benefits Banking products proposed for KU Employees are not provided exclusively to KU employees. The same Benefits Banking products outlined in the Contractors Proposal are offered to individuals from numerous companies and organizations, including State of Kansas Employees.

*Marketing partnership to be negotiated as a minimum $5 Beak ‘Em Bucks load for new KU Checking customers. Terms and Conditions will be established upon further negotiation.

**All marketing investments are at the discretion of the Contractor.