# **CONTRACT AWARD**

Date of Award: Contract ID: Event ID: Replace Contract: December 02, 2022 00000000000000000053096 EVT0008818 42575

Procurement Officer: Telephone: E-Mail Address: Phillip L Curtis 785-296-2985

# 1. Terms and Conditions

# 1.1. Contract Documents

In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:

- x Form DA 146a.
- x written modifications to the executed contract.
- x written contract signed by the parties.
- x the Bid Event documents, including any and all amendments; and
- x Contractor's written offer submitted in response to the Bid Event as finalized.

# 1.2. Captions

The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.

# 1.3. Definitions

A glossary of common procurement terms is available at http://admin.ks.gov/offices/procurement-andcontracts, under the "Procurement Forms" link.

# 1.4. Contract Formation

No contract shall be considered to have been entered into by the State until all statutorily required signatures and certifications have been rendered and a written contract has been signed by the contractor.

# 1.5. Notices

All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") that may be required or desired to be given by either party to the other shall be IN WRITING and addressed as follows:

Kansas Procurement and Contracts 900 SW Jackson, Suite 451-South Topeka, Kansas 66612-1286 RE: Contract Number 53096

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

# 1.6. Sta (6.)JJ0 Tc 01 (TJ0e0 Tc w 3.61 0 Td( )Tj9MC /H1 AMCID 12MC 90 399.84 43.32 125d( )Tj4)-

State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this Agreement shall be deemed a waiver of the Eleventh Amendment

#### 1.9. Mandatory Provisions

The provisions found in Contractual Provisions Attachment (DA 146a) are incorporated by reference and made a part of this contract.

#### 1.10. Termination for Cause

The Director of Purchases may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:

- x the Contractor fails to make delivery of goods or services as specified in this contract.
- x the Contractor provides substandard quality or workmanship.
- x the Contractor fails to perform any of the provisions of this contract, or
- x the Contractor 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 Director of Purchases 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.

#### 1.11. Termination for Convenience

The Director of Purchases may terminate performance of work under this contract in whole or in part whenever, for any reason, the Director of Purchases shall determine that the termination is in the best interest of the State of Kansas. In the event that the Director of Purchases 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 o -1.2 (r)-6.3 (ac)-8 (t)-13.2 (o)-12.3 (r)-6.3 (w)-2.9A aeda

#### 1.14. Hold Harmless

The Contractor shall indemnify the State against any and all loss or damage to the extent arising out of the Contractor's negligence in the performance of services under this contract and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

The State shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control, where such loss or destruction is to state property. The Contractor shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction or damage to State property.

#### 1.15. Force Majeure

The Contractor shall not be held liable if the failure to perform under this contract arises out of causes beyond the control of the Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes.

#### 1.16. Breach

Waiver or any breach of any contract term or condition shall not be deemed a waiver of any prior or subsequent breach. No contract term or condition shall be held to be waived, modified, or deleted except by a written instrument signed by the parties thereto.

If any contract term or condition or application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition or application. To this end the contract terms and conditions are severable.

#### 1.17. Assignment

The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of the Sta( not)-13.w4 ( t)-13.1 (er)-6.9Don wr no8 (h.).2 (t( w)-14.9 (r)-)-8.9 .3

#### 1.22. Subcontractors

The Contractor shall be the sole source of contact for the contract. The State will not subcontract any work under the contract to any other firm and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of the contract shall apply without qualification to any services performed or goods provided by any subcontractor.

#### 1.23. Independent Contractor

Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation, social security, income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

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

# 1.42. Federal, State and Local Taxes

Unless otherwise specified, the contracted price shall include all applicable federal, state and local taxes. The Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Contract. 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 contracted price. Upon request, the State shall provide to the Contractor a certificate of tax exemption.

The State makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

#### 1.43. Quarterly Reports

The Contractor shall be required to file a quarterly report by each state agency or political subdivision making purchases under this contract. Reports are due no later than 30 days after the end of each calendar quarter and shall correlate with figures submitted as Administrative Fees (see below). Above referenced reports are to be filed with Procurement and Contracts Open Records Officer or his/her designee located at 900 SW Jackson, Ste. 451-South, Topeka, KS 66612-1286. Reports may also be required to be submitted to the specific using agency.

Electronic files shall be e-mailed to the following e-mail address: <u>reports@da.ks.gov</u>, in Microsoft® Excel or Microsoft® Access Database format.

The required reporting format may be found on Procurement and Contracts website at <a href="http://admin.ks.gov/offices/procurement-and-contracts">http://admin.ks.gov/offices/procurement-and-contracts</a>, under the "Procurement Forms" link.

Report Types - Reports shall be available reflecting the following information. Agencies and Procurement and Contracts reserve the right to request additional information.

- x Sales Summary -- Report shall include a list of agencies and political subdivisions who have used the contract, a subtotal of sales to each agency or political subdivision, as well as a grand total of all sales.
- x Items Sold -- Report shall include a list of items sold to agencies and political subdivisions, indicating the contract price and using agency, a subtotal of sales to each agency or political subdivision, as well as a grand total of all sales.
- x Items Sold, by Agency Same as above, except sorted by agency.

#### 1.44. Administrative Fee

Contractor(s) must pay a 1.0% Administrative Fee on all purchases (including political subdivisions) made against this contract. The fee is to be included in the cost of the goods or services. The Administrative Fee is to be based upon the total dollars invoiced under the contract. The Administrative Fee shall be made in check form, payable to the "State of Kansas - Procurement and Contracts" and must be paid within 30 days following the end of each quarter. Fees paid under this mandate shall correlate with figures submitted on the quarterly reports.

#### 1.45. Shipping and F.O.B. Point

Unless otherwise specified, prices shall be F.O.B. DESTINATION, PREPAID AND ALLOWED (included in the price bid), which means delivered to a state agency's receiving dock or other designated point as specified in this contract or subsequent purchase orders without additional charge. Shipments shall be made in order to arrive at the destination at a satisfactory time for unloading during receiving hours.

## 1.46. Deliveries

All orders shall be shipped within sixty days ARO, clearly marked with the purchase order number. If delays in delivery are anticipated, the Contractor shall immediately notify the ordering agency of the revised delivery date or partial delivery date. The order may be canceled if delivery time is unsatisfactory. The Contractor shall inform Procurement and Contracts of any supply or delivery problems. Continued delivery problems may result in termination of the contract for cause.

## 1.47. Charge Back Clause

If the Contractor fails to deliver the product within the delivery time established by the contract, the State reserves the right to purchase the product from the open market and charge back the difference between contract price and open market price to the Contractor.

#### 1.48. Debarment of State Contractors

Any Contractor who defaults on delivery or does not perform in a satisfactory manner as defined in this Agreement may be barred for up to a period of three (3) years, pursuant to K.S.A. 75-37,103, or have its work evaluated for pre-qualification purposes. Contractor shall disclose any conviction or judgment for a criminal or civil offense of any employee, individual or entity which controls a company or organization or will perform work under this Agreement that indicates a lack of business integrity or business honesty. 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 the termination ln (s)-8 (u)-10n, an in a

#### 1.53. Warranty

The State requires a "standard" warranty of 365 days. This warranty shall be included in the cost of the product or equipment.

The Contractor will be the sole point of contact on any problems with the product, equipment or systems during the warranty period.

The Contractor shall be responsible for all work performed under this contract. The Contractor shall make good, repair and replace, at the Contractor's own expense, as may be necessary, any defective work, material acceptance, if in the opinion of agency or Procurement and Contracts said defect is due to imperfection in material, design, nthe or PPg td" war onfacince,fy per.

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# 1.62. Severability

# 2. Specifications

#### **Background and Scope**

The State of Kansas has numerous microscopes, many on university campuses. Due to specific research or applications various departments may require a specific brand for compatibility issues, commonality of replacement parts or various other criteria.

This is a State-wide Optional use contract that will be used to supply microscopes, cameras, and image viewing supplies and equipment.

#### 2.1 Services to be Provided

- x Full product information
- x Application information
- x Product research and statistical information
- x Consultation and advice
- x Product demonstrations, as appropriate
- x Delivery, full product set-up, and on-site training
- x Service and repair
- x Assistance for any warranty issues

#### 2.2. Travel and Mileage

Travel and mileage expenses will be reimbursed at the current State rates. All travel and mileage will require prior approval by the agency. Only business-related travel and mileage will be invoiced.

Current rates can be found at:

State Employees Travel Center | Kansas Department of Administration (ks.gov)

# 3. Cost Sheet

Contractor Name: Show Me Optical, LLC

Manufacturer Name: Teledyne Lumenera, Accu-Scope, Unitron, Media Cybernetics			
Category	Description	%Discount	
1	Complete Microscope System		12%
2	Imaging Devices/Software		8%
3	Accessory Equipment		5%
4	Consumables/Repair Parts		5%
Other:			
Response Time for Emergency Repairs		24 hours	
Delivery Time		60 Days	
Payment Terms		Net 30	
Warranty (Full Parts & Labor)		1-5 yrs	
Service/Repair (after warranty)		\$125.00hr	
Information on loaner units when repairs require factory work:			

Microscope loaners will be provided during warranty period

Camera loaners are based on availability.

# 4. Contractual Provisions Attachment

DA-146a Rev. 07/19

## 4.1. Important

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), 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 2nd day of December 2022.

**4.2. Terms Herein Controlling Provisions** It is expressly agreed that the terms of each and every provision in this attachment shall ol70Cract to t pr 70C2 (t)-1.1

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