



EASTERN KENTUCKY UNIVERSITY

Serving Kentuckians Since 1906

Office of Finance & Administration
Division of Capital Construction
& Project Administration

521 Lancaster Avenue
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Richmond, KY 40475-3102
(859) 622-8797

AGREEMENT FOR COMMISSIONING SERVICES

THIS AGREEMENT made and entered into this 1st day of July, 2017 by and between Eastern Kentucky University, as represented by the Division of Capital Construction & Project Administration, hereinafter called the "OWNER" and _____, hereinafter called the "COMMISSIONING AGENT".

WHITNESSETH THAT WHEREAS the Owner desires to avail itself of the services of a Commissioning Agent with experience commissioning building systems, and certified as a Commissioning agent by a nationally recognized body, to provide Commissioning services for renovations and capital projects at various locations as required by the Owner

NOW, THEREFORE, the Owner and the Commissioning Agent, for the consideration hereinafter named, agree as follows:

ARTICLE I: THE COMMISSIONING SERVICES

Provide commissioning services in accordance with EKU's Capital Construction Procedures Manual, including, construction phase reporting, acceptance phase, and post-acceptance commissioning reporting, on renovations and capital projects at various locations as required and directed by the Owner. The services may consist of (but not limited to) any or all of the following:

Provide the Owner with a high level of assurance that the building systems have been installed in the prescribed manner.

1. Provide the Owner with a high level of assurance that the building systems operate within the performance guidelines set in the design documents.
2. Provide the Owner with an unbiased, objective view of the system's installation, operation, and maintenance.
3. Write and execute functional performance tests.
4. Prepare a Construction Phase Commissioning Report
5. Prepare an Acceptance Phase Commissioning Report
6. Prepare a Post-Acceptance Commissioning Report
7. Prepare a Security/Intrusion Report

ARTICLE II: FEES AND OTHER PAYMENTS

A. For services by the Commissioning Agent pursuant to this Agreement, Eastern Kentucky University will make payments to the Commissioning Agent in accordance with the following schedule of rates:

1. Payment of Personal Services:

Principal of Firm	\$125.00 per hour
Commissioning Agent	\$100.00 per hour
Sr. Professional/Project Manager	\$75.00 per hour
Senior CAD Technician/Draftsperson	\$70.00 per hour
CAD Technician/Draftsperson	\$60.00 per hour
Word Procession/Clerical	\$40.00 per hour
Senior Commissioning Agent Technician/Inspector	\$50.00 per hour
Commissioning Agent Technician/Inspector	\$45.00 per hour

2. Reimbursements:

Actual Cost
(back up receipts required)

Printing

Testing

Other Expenses as Determined/
Approved by EKU
(work not approved if under another Master Agreement)

B. **CONDITIONS**

1. There shall be no additional charge for overhead or profit, or for overtime.
2. The Commissioning Agent is required to use employees appropriate for the job. If employee with higher qualifications than required is used, the rate of pay shall be appropriate for the job rather than the rates the employee might be entitled to for work requiring their additional qualifications.
3. Relative to portal to portal pay travel expenses, the following conditions shall prevail:
 - (a) Payment may be requested for actual time spent on behalf of the University at the contract per diem hourly rates
 - (b) Mileage expenses shall not be claimed.

ARTICLE III: RECORDS AND PAYMENTS

- A. The Commissioning Agent shall keep an accurate record of time and expense on each project, and such records shall be accessible to the University for examination upon request.
- B. Within thirty (30) days after completion of a project, the Commissioning Agent shall render an itemized invoice on the standard invoice and receiving report form of the University. After same has been audited and approved, it will be processed for payment in routine manner and form, as prescribed for payment of obligations.

ARTICLE IV: TENURE OF CONTRACT AND TERMINATION RIGHTS

- A. Contract shall begin upon award of contract and end June 30 of each year with annual renewals thereafter subject to cancellation by the University
- B. No adjustment in the contract unity fees with be permitted.
- C. Pursuant to 200 KAR 5:312, the Owner may terminate this Agreement when, in the opinion of the Owner, the A/E is in breach of any of the terms and conditions of this Agreement.

The Owner shall also have the right to terminate this Agreement for its own convenience as authorized under KAR 5:312.

ARTICLE V: AGREEMENTS AND UNDERSTANDINGS

- A. It shall be understood and agreed that any contract or agreement will not be effective or binding against the Owner until the unit Price Contract has been approved and issued by Eastern Kentucky University and one (1) copy of the Agreement filed with the Legislative Research Commission with each such copy being accompanied by documentation of the need for such service.
- B. The Commissioning Agent hereby certifies that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this contract, has contributed more than the amount specified in KRS 121.056(2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this contract. The undersigned further swears under the penalty of perjury, that neither he/she or the Company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the Company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.
- C. The Commissioning Agent acknowledges and understands that no payment may be made under this agreement before completion of the procedure provided for by KRS 45A.695 unless and until alternate actions occur as set out in KRS 45A.695(7).
- D. It shall not be construed that any legal or financial responsibility is constituted on behalf of the Owner by the contract unless the Owner directs the Commissioning Agent, in writing, to perform services as hereinbefore outlines in this Agreement.
- E. The Commissioning Agent agrees to commence services, when directed by the Owner upon a prompt and reasonable date and complete same at the earliest possible time.
- F. All reports, drawings and specifications, as instruments of services shall be the property of the Owner whether or not the work for which they are made be executed.
- G. It is agreed by and between the parties hereto that the Commissioning Agent will observe the rules of Eastern Kentucky University and will not solicit or employ University employees in conjunction with his work under this contract without the approval of the Owner and the head of the department in which the employee is employed. The Owner and the Commissioning Agent hereby agree to the performance of the covenants contained herein.
- H. **MINIMUM INSURANCE REQUIREMENTS:** The Commissioning Agent shall maintain the following or equivalent insurance policies at no less than the limits shown below and cause its sub consultants to maintain similar insurance with limits acceptable to the University:

COVERAGE	LIMITS
Professional Liability	\$1 million per claim, \$2 million aggregate
General Liability	\$1 million per claim, \$2 million aggregate

Worker's Compensation	Statutory
Employer's Liability	\$500,000

The policies above shall contain the following conditions:

1. The University shall be named as an additional insured in the Commissioning Agent's general liability policy.
2. The Commissioning Agent's general liability shall be primary to any insurance or self-insurance retained by the Commonwealth of Kentucky.
3. The University shall be provided at least thirty (30) days notice in the event any of the required policies are canceled or non-renewed.
4. Professional Liability (Errors and Omission) policies shall be maintained for a minimum of three(3)years beyond the completion date of the project, to the extent commercially available. If not commercially available, the Commissioning Agent shall notify the Owner and obtain similar insurance that is commercially available and acceptable to the University.
5. A copy of the certificate of insurance shall be provided by the Commissioning Agent to the Owner upon execution of this Contract.

Said coverage shall be written by insurers acceptable to the Owner and shall be in a form acceptable to the Owner. Additional insurance coverage and amounts required, if any, are stated below:

- I. By signature, the Commissioning Agent certifies a legal entitlement to enter into the subject contract with Eastern Kentucky University and by holding and performing this contract will not be violating any conflict of interest statute (KRS 45A.330-45A340, 45A.990, 164.390), or KRS 11A.001 through KRS11A.990 of the Executive Branch Code of Ethics, relating to the employment of former public servants.
- J. INDEMNITY: The Commissioning Agent shall indemnify and hold harmless the Owner from an against all liability claims, loss, costs, and expense, including defense costs, arising out of, or resulting from, the negligent acts, errors, or omissions of the Commissioning Agent and its sub consultants under this Contract. In the event the Owner is alleged to be liable on account of negligent acts or omissions, or both, of the Commissioning Agent, the Commissioning Agent shall defend such allegations and the Commissioning Agent shall bear all costs, fees, and expenses of such defense, including but not limited to, all attorneys' fees and expenses, court costs, and expert witness fees and expenses.
- K. CHOICE OF LAW: This Agreement shall be construed and enforces in accordance with the laws of the Commonwealth of Kentucky.

200 KAR 5:314. Disclosure of contractor's financial records and information to certain government entities.

RELATES TO: KRS Chapter 45A

STATUTORY AUTHORITY: KRS 45A.035(2)(h)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035(2)(h) authorizes the Secretary of the Finance and Administration Cabinet to promulgate this administrative regulation to govern confidentiality of technical data and trade secrets information submitted by actual or prospective bidders or offerors. This administrative regulation establishes requirements which allow governmental oversight agencies to obtain access to the financial data of state contractors.

Section 1. All state contracts, as defined in KRS 45A.030(7), shall contain the following language: "The contractor, as defined in KRS 45A.030(9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program

REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS CLAIMING RESIDENT BIDDER STATUS

FOR BIDS AND CONTRACTS IN GENERAL:

The bidder or offeror hereby swears and affirms under penalty of perjury that, in accordance with KRS 45A.494(2), the entity bidding is an individual, partnership, association, corporation, or other business entity that, on the date the contract is first advertised or announced as available for bidding:

- 1. Is authorized to transact business in the Commonwealth;
- 2. Has for one year prior to and through the date of advertisement
 - a. Filed Kentucky corporate income taxes;
 - b. Made payments to the Kentucky unemployment insurance fund established in KRS 341.49; and
 - c. Maintained a Kentucky workers' compensation policy in effect.

The BIDDING AGENCY reserves the right to request documentation supporting a bidder's claim of resident bidder status. Failure to provide such documentation upon request shall result in disqualification of the bidder or contract termination.

_____ Signature	_____ Printed Name
_____ Title	_____ Date

Company Name _____
Address _____

Subscribed and sworn to before me by _____
(Affiant) (Title)

of _____ this ____ day of _____, 20____.
(Company Name)

Notary Public
[seal of notary] My commission expires: _____

VENDOR STATEMENT OF NON-CONFLICT OF INTEREST

PROJECT: _____

Purchase Order No: _____

I HEREBY CERTIFY, IN RELATION TO THE ABOVE LISTED PROJECT:

1. That I am the bidder (if the bidder is an individual), a partner in the bid (if the bidder is a partnership), or an officer or employee of the bidding corporation having authority to sign on its behalf (if the bidder is a corporation). "Bidder" shall be used interchangeably with "person providing quote" based on whether a bid or phone quote, respectively, is being solicited.
2. That the bidder, or person providing an oral quote, is legally entitled to enter into the contract with the Commonwealth of Kentucky and its agency, Eastern Kentucky University, and is not in violation of any prohibited conflict of interest, including those prohibited by the provisions of KRS 45A.455 or KRS 164.390.
3. That the bidder acknowledges a certificate of insurance is on file with ECU Facilities Services office and that it is current and will remain current for the extent of this project.
4. Eastern Kentucky University is a tobacco-free campus. In an effort to create a healthy and beautiful campus environment for ECU faculty, staff, students, and visitors, ECU has implemented a tobacco-free policy as of June 1, 2014. The use of all tobacco is prohibited on all property that is owned, leased, occupied, or controlled by the University. The policy includes all forms of tobacco, including, but not limited to, cigarettes, cigars, pipes, water pipes (hookah), electronic cigarettes, bidis, clove cigarettes and smokeless tobacco products (snuff, chewing tobacco, and dipping tobacco).

For more on this information, please visit www.tobaccofree.eku.edu.

SIGNED BY: _____ TITLE: _____

FIRM: _____ TELEPHONE NO: _____

ADDRESS: _____ DATE: _____

CITY: _____ STATE: _____ ZIP: _____

FEDERAL I.D. NO. OR SOCIAL SECURITY NO.: _____