



**LINCOLN UNIVERSITY  
PURCHASING DEPARTMENT  
REQUEST FOR QUOTATION (RFQ)**

**RFQ NO.:** B15-1070  
**TITLE:** Heat Pumps  
**ISSUE DATE:** July 7, 2015

**REQ NO:** N/A  
**BUYER:** John Stegmann  
**PHONE NO:** (573) 681-5417  
**E-MAIL:** stegmannj@lincolnu.edu

**TARGET DATE AND TIME:** July 21, 2015 AT 2:00 P.M. CENTRAL TIME

**MAILING INSTRUCTIONS:** Print or type **RFQ Number** and **Return Target Date** on the lower left hand corner of the envelope or package. Quotations should be in the Lincoln University Purchasing Department (1002 Chestnut St, Room 101) by the target date and time.

**RETURN BID TO:** (courier service) **LINCOLN UNIVERSITY** or (fax) **LINCOLN UNIVERSITY**  
**1002 CHESTNUT ST** **573-681-5420**  
**SHIPPING & RECEIVING BLDG**  
**JEFFERSON CITY MO 65101**

**Quotations may also be e-mailed to the address above. Please mail, fax, or e-mail, not all.**

**CONTRACT PERIOD:**

The bidder hereby declares understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements and specifications contained herein and the Terms and Conditions Request for Quotation (Dated 04-23-2010). The bidder further agrees that the language of this RFQ shall govern in the event of a conflict with his/her bid. The bidder further agrees that upon receipt of an authorized purchase order from Lincoln University or when this RFQ is countersigned by an authorized official of Lincoln University, a binding contract shall exist between the bidder and Lincoln University.

**SIGNATURE REQUIRED**

AUTHORIZED SIGNATURE		DATE	
PRINTED NAME		TITLE	
DOING BUSINESS AS (DBA) NAME		LEGAL NAME OF ENTITY/INDIVIDUAL FILED WITH IRS FOR THIS TAX ID #	
MAILING ADDRESS		IRS FORM 1099 MAILING ADDRESS	
CITY, STATE, ZIP CODE		CITY, STATE, ZIP CODE	
VENDOR NO. (IF KNOWN)	TAXPAYER ID NUMBER (TIN)	TAXPAYER ID (TIN) TYPE (CHECK ONE) <input type="checkbox"/> FEIN or <input type="checkbox"/> SSN	
VENDOR TAX FILING TYPE WITH IRS (CHECK ONE) <input type="checkbox"/> Corporation <input type="checkbox"/> Individual <input type="checkbox"/> State/Local Government <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Other			
CONTACT PERSON		E-MAIL ADDRESS	
PHONE NUM BER.		FAX NUMBER	

**NOTICE OF AWARD (LINCOLN UNIVERSITY ONLY)**

ACCEPTED BY LINCOLN UNIVERSITY AS FOLLOWS:		
CONTRACT NO.		CONTRACT PERIOD
BUYER	DATE	PURCHASING DIRECTOR

## **SECTION I – SPECIFIC REQUIREMENTS**

This Request for Quotation (herein referred to as a RFQ) is a request for competitive bids from qualified individuals and organizations to provide heat pump units for Lincoln University of Missouri in accordance with the terms and conditions set forth herein. Manufacturer names and/or catalog numbers are for informational purposes only and are not intended to limit competition. Item numbers and descriptions come from various brands, (p. 4) however the bidder may offer any brand which meets or exceeds the specification for any item, but must state the manufacturer's name and model number for any such brands in the bid. All units must come with MCO unit mounted thermostat with DXM controls or equivalent option. All units must be compatible with dimensions of noted units (p. 4) as to be capable to replace current units in use with minimal alterations to current duct work and building configurations. Budget will dictate overall total purchase. It is the intention of the University to order the number of units noted on the pricing page, however the University reserves the right to order more than that number, less than that number or none at all. All quoted pricing shall be good for up to one year post issuance of award and/or purchase order.

## **SECTION II – GENERAL CONTRACTUAL REQUIREMENTS**

1. **Contact:** Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc. related to the bid document must be referred to the Buyer of Record identified on the first page of this document. Failure to abide by this requirement may result in disqualification of the offeror.
2. **Contract Price:** All prices shall be as indicated on the Pricing Page. Lincoln University shall not pay nor be liable for any other additional costs including but not limited to taxes, shipping charges, insurance, interest, penalties, termination payments, attorney fees, liquidated damages, etc. The contractor shall be paid installation costs and/or maintenance/repair costs provided that such costs are firm, fixed and specifically quoted in response to the Request for Quotation. Failure to quote costs for installation and maintenance/repair shall not relieve the contractor from his/her responsibility to maintain, install and/or repair all items, and any related costs for the service shall be considered by both the contractor and Lincoln University to be included within the price stated in the contract.
3. **Contract Document:** The contract between Lincoln University and the contractor shall consist of: (1) the Request For Quotation (RFQ), including the Terms and Conditions attached hereto, and (2) any amendment to the RFQ, and (3) the contractor's response to the RFQ. Lincoln University reserves the right to clarify any contractual relationship in writing with the concurrence of the contractor and such written clarification shall govern in the event of a conflict with the applicable requirement(s) stated either in the RFQ or the contractor's response. In all other matters not affected by the written clarification, if any, the RFQ shall govern. The contractor is cautioned that his/her response shall be subject to acceptance without further clarification.
4. **Submission of Bids:** Bids are to be priced, signed and returned (with all necessary attachments) to the University by the date and time stated on page one. The bidder must respond to this RFQ by submitting all data required herein in order for his/her response to be evaluated and considered for award. The bidder is cautioned that it is the bidder's sole responsibility to submit information related the evaluation categories and that the University is under no obligation to solicit such information if it is not included with the bid. The bidder's failure to submit such information may cause an adverse impact on the evaluation of the bid.
5. **No bid shall be withdrawn for a period of 60 days after the scheduled time and date of opening.** Lincoln University reserves the right to waive any informalities in any bid and to reject any and all bids without any statement or reason thereof. Final acceptance shall be subject to the parties entering into a written agreement including the terms thereof.

6. In the event that only one bid is received in response to this RFQ, the University reserves the right to negotiate the terms and conditions, including price, as proposed in the sole vendor's bid. In addition, as part of such negotiations, the University reserves the right to require supporting costs, pricing and other data from the sole vendor in order to determine the reasonableness and acceptability of the bid.
7. Right to Terminate: Lincoln University reserves the right to terminate the contract at any time, for the convenience of Lincoln University, without penalty or recourse by giving the contractor a written notice of such termination at least thirty (30) calendar days prior to termination. The contractor shall be entitled to receive compensation according to the terms of the contract for that work completed pursuant to the contract prior to the effective date of termination.
8. Any subcontracts for the products/services described herein must include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by the contractor and the university to ensure that the university is indemnified, saved, and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in those matters described in the contract between the university and contractor. The contractor shall expressly understand and agree that he/she shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract. The contractor shall agree and understand that utilization of a subcontractor to provide any of the products/services in the contract shall in no way relieve the contractor of the responsibility for providing the products/services as described and set forth herein. The contractor must obtain acknowledgement from the university prior to establishing any new subcontracting arrangements and before changing any subcontractors.
9. No official or employee of Lincoln University, its governing body or consultant, who exercised any function or responsibilities in the review or approval of the undertaking or carrying out of the scope or work covered by the contract shall voluntarily acquire any personal interest, directly or indirectly, in the contract or proposed contract.
10. The contractor covenants that he or she presently has no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services hereunder. The contractor further covenants that no person having any such interest shall be employed or conveyed an interest, directly or indirectly, in the contract.

### SECTION III – PRICING PAGE

Quantity	UoM	PART NUMBER	DESCRIPTION	BRAND	MANUFACTURER ORDER NUMBER	UNIT PRICE	EXTENDED PRICE
2	ea	HL019GSZRRSGCSA	19 MBH, Right Piping, ceiling units			\$ _____	\$ _____
3	ea	HL024GSZRRBGCSA	24 MBH, Right Piping, ceiling units			\$ _____	\$ _____
1	ea	HL030GSCRRBGCSA	30 MBH, Right Piping, ceiling unit			\$ _____	\$ _____
1	ea	GRH024AGC20CRSS	24 MBH, Right Piping, ceiling unit			\$ _____	\$ _____
9	ea	CL015GL08ASS0SC	15 MBH, Left Piping, console unit			\$ _____	\$ _____
11	ea	CL019GL08ASS0SC	19 MBH, Left Piping, console unit			\$ _____	\$ _____
3	ea	CL007GR08ASS0SC	7 MBH, Left Piping, console unit			\$ _____	\$ _____
1	ea	CL009GL08ASS0SC	9 MBH, Left Piping, console unit			\$ _____	\$ _____
1	ea	CCE19CGAASSCLS	19 MBH, Left Piping, console unit			\$ _____	\$ _____
1	ea	CCE19CGASSCSRS	19 MBH, Left Piping, console unit			\$ _____	\$ _____
6	ea	CL019GR08ASS0SC	19 MBH, Right Piping, console unit			\$ _____	\$ _____
1	ea	CCE19CGAASSCSRS	19 MBH, Right Piping, console unit			\$ _____	\$ _____
3	ea	CL007GR08ASS0SC	7 MBH, Right Piping, console unit			\$ _____	\$ _____
2	ea	CL015GL08ASS0SC	15 MBH, Right Piping, console unit			\$ _____	\$ _____
						Total	\$ _____

It is the intention of the University to order the number of units noted on the pricing page, however the University reserves the right to order more than that number, less than that number or none at all. All quoted pricing shall be good for up to one year post issuance of award and/or purchase order. The University reserves the right to order per line item lowest cost, bundled lowest costs, whole group lowest costs, or not order a line item at all. Payment will be net 30 days.

Bid submittals must include specification sheets and warranty information.  
 \_\_\_\_ Check line to ensure information is included.

Units are to be delivered to:  
 Lincoln University  
 1002 Chestnut Street  
 Jefferson City MO, 65101

**LINCOLN UNIVERSITY  
PURCHASING DEPARTMENT**

**TERMS AND CONDITIONS -- REQUEST FOR QUOTATION**

**1. TERMINOLOGY/DEFINITIONS**

Whenever the following words and expressions appear in a Request for Quotation (RFQ) document or any amendment thereto, the definition or meaning described below shall apply.

- a. **Agency** Lincoln University (the University) in the State of Missouri for which the equipment, supplies, and/or services are being purchased by Lincoln University. Lincoln University is also responsible for payment.
- b. **Amendment** means a written, official modification to a RFQ or to a contract.
- c. **Attachment** applies to all forms which are included with a RFQ to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- d. **Bid Target Date and Time** and similar expressions mean the deadline required by the RFQ for receipt of bids..
- e. **Bidder** means the person or organization that responds to a RFQ by submitting a bid with prices to provide the equipment, supplies, and/or services as required in the RFQ document.
- f. **Buyer** means the procurement staff member of Lincoln University. The **Contact Person** as referenced herein is usually the Buyer .
- g. **Contract** means a legal and binding agreement between two or more competent parties, for a consideration for the procurement of equipment, supplies, and/or services.
- h. **Contractor** means a person or organization who is a successful bidder as a result of a RFQ and who enters into a contract.
- i. **Exhibit** applies to forms which are included with a RFQ for the bidder to complete and return with the bid prior to the specified target date and time.
- j. **Request for Quotation (RFQ)** means the solicitation document issued by Lincoln University to potential bidders for the purchase of equipment, supplies, and/or services as described in the document. The definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Amendments thereto.
- k. **May** means that a certain feature, component, or action is permissible, but not required.
- l. **Must** means that a certain feature, component, or action is a mandatory condition. Failure to provide or comply will result in a bid being considered non-responsive.
- m. **Pricing Page(s)** applies to the form(s) on which the bidder shall state the price(s) applicable for the equipment, supplies, and/or services required in the RFQ. The pricing pages must be completed and returned by the bidder with the bid prior to the specified target date and time.
- n. **RSMo (Revised Statutes of Missouri)** refers to the body of laws enacted by the Legislature which govern the operations of all agencies of the State of Missouri. Chapter 34 of the statutes is the primary chapter governing the operations of Lincoln University.
- o. **Shall** have the same meaning as the word **must**.
- p. **Should** mean that a certain feature, component and/or action are desirable but not mandatory.

**2. APPLICABLE LAWS AND REGULATIONS**

- a. The contract shall be construed according to the laws of the State of Missouri. The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- b. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the University.
- c. The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.
- d. The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.
- e. The exclusive venue for any legal proceeding relating to arising out of the RFQ or resulting contract shall be in the Circuit Court of Cole County, Missouri.
- f. The contractor shall only utilize personnel authorized to work in the United States in accordance with applicable federal and state laws and Executive Order 07-13 for work performed in the United States.

**3. OPEN COMPETITION/REQUEST FOR QUOTATION DOCUMENT**

- a. It shall be the bidder's responsibility to ask questions, request changes or clarification, or otherwise advise Lincoln University if any language, specifications or requirements of a RFQ appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the RFQ to a single source. Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc., must be directed to the buyer from Lincoln University, as indicated on the first page of the RFQ. Such communication should be received at least five calendar days prior to the official bid target date.
- b. Every attempt shall be made to ensure that the bidder receives an adequate and prompt response. However, in order to maintain a fair and equitable bid process, all bidders will be advised, via the issuance of an amendment to the RFQ, of any relevant or pertinent information related to the procurement. Therefore, bidders are advised that unless specified elsewhere in the RFQ, any questions received by Lincoln University less than five calendar days prior to the RFQ target date may not be answered.
- c. Bidders are cautioned that the only official position of Lincoln University is that position which is stated in writing and issued by Lincoln University in the RFQ or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- d. Lincoln University monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among bidders, price-fixing by bidders, or any other anticompetitive conduct by bidders which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.
- e. Lincoln University reserves the right to officially modify or cancel a RFQ after issuance. Such a modification shall be identified as an amendment.

**4. PREPARATION OF BIDS**

- a. Bidders **must** examine the entire RFQ carefully. Failure to do so shall be at bidder's risk.
- b. Unless otherwise specifically stated in the RFQ, all specifications and requirements constitute minimum requirements. All bids must meet or exceed the stated specifications and requirements.
- c. Unless otherwise specifically stated in the RFQ, any manufacturer's names, trade names, brand names, information and/or catalog numbers listed in a specification and/or requirement are for informational purposes only and are not intended to limit competition. The bidder may offer any brand which meets or exceeds the specification for any item, but must state the manufacturer's name and model number for any such brands in the bid. In addition, the bidder shall explain, in detail, (1) the reasons why the proposed equivalent meets or exceeds the specifications and/or requirements and (2) why the proposed equivalent should not be considered an exception thereto. Bids which do not comply with the requirements and specifications are subject to rejection without clarification.
- d. Bids lacking any written indication of intent to bid an alternate brand or to take an exception shall be received and considered in complete compliance with the specifications and requirements as listed in the RFQ.
- e. In the event that the bidder is an agency of state government or other such political subdivision which is prohibited by law or court decision from complying with certain provisions of a RFQ, such a bidder may submit a bid which contains a list of statutory limitations and identification of those prohibitive clauses which will be modified via a clarification conference between Lincoln University and the bidder, if such bidder is selected for contract award. The clarification conference will be conducted in order to agree to language that reflects the intent and compliance of such law and/or court order and the RFQ. Any such bidder needs to include in the bid, a complete list of statutory references and citations for each provision of the RFQ which is affected by this paragraph.
- f. All equipment and supplies offered in a bid must be new and of current production and available for marketing by the manufacturer unless the RFQ clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered.
- g. Prices shall include all packing, handling and shipping charges FOB destination, freight prepaid and allowed unless otherwise specified in the RFQ.
- h. Bids, including all prices therein, shall remain valid for 90 days from the target date unless otherwise indicated. If the bid is accepted, prices shall be firm for the specified contract period.
- i. Any foreign bidder not having an Employer Identification Number assigned by the United States Internal Revenue Service (IRS) must submit a completed IRS Form W-8 prior to or with the submission of their bid in order to be considered for award.

## 5. SUBMISSION OF BIDS

- a. Bids may be submitted either by a hardcopy delivered or faxed to the Lincoln University Purchasing Department. All bids must (1) be submitted by a duly authorized representative of the bidder's organization, (2) contain all information required by the RFQ, and (3) be priced as required. Bids should be received in the Lincoln University Purchasing Department prior to the target date and time specified in the RFQ.
- b. The envelope or container containing a bid should be clearly marked on the outside with (1) the official RFQ number and (2) the official target date and time. Different bids should not be placed in the same envelope, although copies of the same bid may be placed in the same envelope.
- c. A bid may only be modified or withdrawn by signed, written notice which has been received by Lincoln University Purchasing Department prior to the official target date and time specified. A bid may also be withdrawn or modified in person by the bidder or its authorized representative, provided proper identification is presented before the official target date and time. Telephone or telegraphic requests to withdraw or modify a bid shall not be honored.
- d. Bidders must sign and return the RFQ cover page or, if applicable, the cover page of the last amendment thereto in order to constitute acceptance by the bidder of all RFQ terms and conditions. Failure to do so may result in rejection of the bid unless the bidder's full compliance with those documents is indicated elsewhere within the bidder's response.
- e. Faxed and e-mailed no-bid notifications shall be accepted.

## 6. PREFERENCES

- a. In the evaluation of bids, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri and to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals. Such preference shall be given when quality is equal or better and delivered price is the same or less.
- c. In accordance with Executive Order 05-30, contractors are encouraged to utilize certified minority and women-owned businesses in selecting subcontractors.

## 7. EVALUATION/AWARD

- a. Any clerical error, apparent on its face, may be corrected by the buyer before contract award. Upon discovering an apparent clerical error, the buyer shall contact the bidder and request written clarification of the intended bid. The correction shall be made in the notice of award. Examples of apparent clerical errors are: 1) misplacement of a decimal point; and 2) obvious mistake in designation of unit.
- b. Any pricing information submitted by a bidder shall be subject to evaluation if deemed by Lincoln University to be in the best interests of the University.
- c. The bidder is encouraged to propose price discounts for prompt payment or propose other price discounts that would benefit Lincoln University. However, unless otherwise specified in the RFQ, pricing shall be evaluated at the maximum potential financial liability to the University.
- d. Awards shall be made to the bidder whose bid (1) complies with all mandatory specifications and requirements of the RFQ, (2) is the lowest and best bid, considering price, responsibility of the bidder, and all other evaluation criteria specified in the RFQ and (3) complies with Sections 34.010 and 34.070 RSMo and Executive Order 04-09.
- e. In the event all bidders fail to meet the same mandatory requirement in a RFQ, Lincoln University reserves the right, at its sole discretion, to waive that requirement for all bidders and to proceed with the evaluation. In addition, Lincoln University reserves the right to waive any minor irregularity or technicality found in any individual bid.
- f. Lincoln University reserves the right to reject any and all bids. When all bids are unacceptable and time does not permit a rebid, Lincoln University may negotiate for the required supplies.
- g. When evaluating a bid, Lincoln University reserves the right to consider relevant information and fact, whether gained from a bid, from a bidder, from bidder's references, or from any other source.
- h. Any information submitted with the bid, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a bid and the award of a contract.

- i. Any award of a contract shall be made by written notification from Lincoln University Purchasing Department to the successful bidder. The University reserves the right to make awards by item, group of items, or an all or none basis. The grouping of items awarded shall be determined by Lincoln University based upon factors such as item similarity, location, administrative efficiency, or other considerations in the best interest of the University.
- j. All bids and associated documentation will be considered open records pursuant to Section 610.021 RSMo.
- k. The University reserves the right to request clarification of any portion of the bidder's response in order to verify the intent of the bidder. The bidder is cautioned, however, that their response shall be subject to acceptance or rejection without further clarification.
- l. Any bid award protest must be received within ten (10) calendar days after the date of award in accordance with the requirements of 1 CSR 40-1.050 (10).
- m. The final determination of contract award(s) shall be made by Lincoln University.

## **8. CONTRACT/PURCHASE ORDER**

- a. By submitting a bid, the bidder agrees to furnish any and all equipment, supplies and/or services specified in the RFQ, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the RFQ and any amendments thereto, (2) the contractor's response (bid) to the RFQ, and (3) clarification of the bid, if any, and (4) the University's acceptance of the response (bid) by "notice of award" (for ongoing provision of equipment, supplies, and/or services) or by "purchase order." All Exhibits and Attachments included in the RFQ shall be incorporated into the contract by reference.
- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the contractor must receive a properly authorized Purchase Order.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representatives of the contractor and the University or by a purchase order change order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification order to the contract.

## **9. INVOICING AND PAYMENT**

- a. Lincoln University does not pay state or federal taxes unless otherwise required under law or regulation.
- b. Each invoice submitted must reference the contract or purchase order number and must be itemized in accordance with items listed on the purchase order and/or contract. Failure to comply with this requirement may delay processing of invoices for payment.
- c. The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the University.
- d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the RFQ.
- e. Lincoln University assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the University's rejection and shall be returned at the contractor's expense.
- f. All invoices for equipment, supplies, and/or services purchased by the University shall be subject to late payment charges as provided in Section 34.055 RSMo.
- g. Lincoln University reserves the right to purchase goods and services using the Lincoln University Purchasing Card.

## **10. DELIVERY**

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

## **11. INSPECTION AND ACCEPTANCE**

- a. No equipment, supplies, and/or services received by the University pursuant to a contract shall be deemed accepted until the University has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. Lincoln University reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. Lincoln University's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the University may have.

## **12. WARRANTY**

- a. The contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the University, (2) be fit and sufficient for the purpose expressed in the RFQ, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the University's acceptance of or payment for said equipment, supplies, and/or services.

## **13. CONFLICT OF INTEREST**

- a. Officials and employees of Lincoln University, its governing body, or any other officials of Lincoln University must comply with Sections 105.452 and 105.454 RSMo regarding conflict of interest.
- b. The contractor hereby covenants that at the time of the submission of the bid the contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.

## **14. REMEDIES AND RIGHTS**

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the University of any existing or future right and/or remedy available by law in the event of any claim by the University of the contractor's default or breach of contract.
- b. The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the University of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the University.

## **15. CANCELLATION OF CONTRACT**

- a. In the event of material breach of the contractual obligations by the contractor, the University may cancel the contract. At its sole discretion, the University may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide the University within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.
- b. If the contractor fails to cure the breach or if circumstances demand immediate action, the University will issue a notice of cancellation terminating the contract immediately.
- c. If the University cancels the contract for breach, the University reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the University deems appropriate and charge the contractor for any additional costs incurred thereby.
- d. The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the University for any period in which funds have not been appropriated, and the University shall not be liable for any costs associated with termination caused by lack of appropriations.

## **16. COMMUNICATIONS AND NOTICES**

Any written notice to the contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail, or hand-carried and presented to an authorized employee of the bidder/contractor.

## **17. BANKRUPTCY OR INSOLVENCY**

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the University immediately.
- b. Upon learning of any such actions, the University reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

## **18. INVENTIONS, PATENTS AND COPYRIGHTS**

The contractor shall defend, protect, and hold harmless the University, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

## **19. NON-DISCRIMINATION AND AFFIRMATIVE ACTION**

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or, veteran status. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
- b. The identification of a person designated to handle affirmative action;
- c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
- d. The exclusion of discrimination from all collective bargaining agreements; and
- e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

If discrimination by a contractor is found to exist, the University shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, removal from all bidder's lists issued by the division until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

## **20. AMERICANS WITH DISABILITIES ACT**

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

## **21. TITLES**

Titles of paragraphs used herein are for the purpose of facilitating reference only and shall not be construed to infer a contractual construction of language.