



**LINCOLN UNIVERSITY  
PURCHASING DEPARTMENT  
REQUEST FOR PROPOSAL (RFP)**

**RFP NO.: B19-1163**  
**TITLE: LEGAL SERVICES**  
**ISSUE DATE: JANUARY 10, 2019**

**REQ NO.: n/a**  
**BUYER: Debra Kidwell**  
**PHONE NO.: (573) 681-5415**  
**E-MAIL: kidwelld@lincolnu.edu**

**RETURN PROPOSAL NO LATER THAN: January 31, 2019 AT 2 P.M. CENTRAL TIME**

**MAILING INSTRUCTIONS:** Print or type **RFP Number** and **Return Due Date** on the lower left hand corner of the envelope or package. Delivered sealed proposals must be in the Lincoln University Purchasing Department (1002 Chestnut St, Room 101) by the return date and time.

(courier service)  
**RETURN PROPOSAL TO: LINCOLN UNIVERSITY**  
**1002 CHESTNUT ST**  
**SHIPPING & RECEIVING BLDG**  
**JEFFERSON CITY MO 65101**

**CONTRACT PERIOD: DATE OF AWARD THROUGH JUNE 30, 2019, WITH THE OPTION TO RENEW THE CONTRACT FOR FOUR (4) ADDITIONAL ONE-YEAR PERIODS.**

The offeror 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 Proposal (Revised 04/23/2010). The offeror further agrees that the language of this RFP shall govern in the event of a conflict with his/her proposal. The offeror further agrees that upon receipt of an authorized purchase order from Lincoln University or when this RFP is countersigned by an authorized official of Lincoln University, a binding contract shall exist between the offeror 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

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**Request for Proposals for Legal Services**  
**for Lincoln University (LU)**

**I. OBJECTIVE**

Lincoln University (LU) is seeking the services of an outside counsel to handle litigation and to advise on various matters of the University when needed. LU has one attorney on staff to handle day-to-day business but is seeking additional expertise in several areas as described below. The University is currently utilizing an external firm for two litigation matters; that firm will continue their representation on those specific matters through conclusion.

The overall objective of this Request for Proposal is to permit firms the opportunity to submit their relevant legal experience, client references and proposed schedule of charges for consideration.

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## II. BACKGROUND

Lincoln University of Missouri is a historically black, 1890 land-grant, public, comprehensive institution that provides excellent educational opportunities including theoretical and applied learning experiences to a diverse population within a nurturing, student-centered environment. Lincoln University was founded in 1866 by the men of the 62nd and 65th United States Colored Infantries and their white officers for the special benefit of freed African Americans. Today, Lincoln University's role in the education of Missourians and others and its service to stakeholders throughout the state, the nation, and across the globe is well recognized. Lincoln University continues to serve the needs of its diverse student body through a tradition of offering innovative programs that make the college experience special.

Lincoln University Key Facts:

- Offers 50 learner-centered undergraduate degree programs
- Master's degree programs in education, business and the social sciences
- Fifty registered student organizations, ranging from fraternities and sororities, to academic and professional affiliations
- Internship opportunities with local and national employers
- Global-reaching research opportunities

Lincoln University's website is [www.lincolnu.edu](http://www.lincolnu.edu).

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### **III. SCOPE OF SERVICES**

LU is seeking proposals for legal services in the following areas (your proposal must indicate whether you are proposing to serve in all areas or in a specific area/areas. If only a specific area or areas, please indicate which). To be considered, Litigation services MUST be provided.

#### **A. LABOR AND EMPLOYMENT LAW**

- Provide advice, consultation and representation for LU on litigation matters in the area of labor and employment law.
- Provide advice, guidance and consultation services on employee relations strategies and techniques to minimize the risk of litigation.
- Provide advice, consultation and representation on grievances and related actions.
- Provide such other services as are inherent in matters related to employee relations.

As requested:

- Provide advice, consultation and representation for LU with respect to the employment, discipline and dismissal of employees
- Provide advice, consultation and representation on issues involving employees relative to: legal qualifications; teaching credentials and certificates, and other required licenses; proposed reductions in force and related seniority and tenure questions; various forms of leaves of absence; substitute and part-time employees; and matters related to compensation.
- Provide advice on matters related to unionization.
- Provide advice, consultation and representation on grievances and related actions.

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## **B. GENERAL COUNSEL**

As requested:

- Provide advice, consultation and representation on a wide variety of legal matters.
- Defend lawsuits, administrative claims, or other legal claims; conduct litigation as necessary.
- The General Counsel should demonstrate the ability to generally handle litigation issues from initial notice through settlement or court resolution.
- Be physically present on days of Board meetings.
- Provide advice to and consultation with the Board of Curators, the President and designated Key Personnel in connection with their general and specific powers and duties.
- Provide advice with respect to governance questions.
- Provide advice and consultation with respect to issues related to public records requests and responses.
- Assist in the development of employment contracts upon request.
- Provide advice, consultation and representation on student matters, including hearings, proceedings related to hearings, and potential litigation.
- Provide advice, consultation and representation related to real property matters, including acquisition, disposition, environmental impact reports, leasing and construction of facilities, as well as contract and bidding requirements.
- Provide advice, consultation and representation related to procurement matters, including contract and bidding requirements.
- Provide advice and guidance on grant related matters.
- Provide such other services as are inherent in matters relating to the operation of a higher education institution.
- Provide information on new federal and state laws that may impact LU and advise appropriate action.
- Review personnel, fiscal and other policies, as well as rules and regulations of the University.
- Review contractual agreements as requested.

- Provide advice and guidance to LU in matters involving external entities that support the University's mission such as the Lincoln University Foundation and the Blue Tiger Athletic Club. **LU's general counsel will NOT operate as the general counsel for any such entities.**

### C. HIGHER EDUCATION LAW

As requested:

- Provide such other services as are inherent in matters related to the operation of a higher education institution.

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#### IV. CONTENTS FOR PROPOSALS

In order for proposals to be considered, said proposal must be clear, concise, complete, well organized and demonstrate both respondents' qualifications, and its ability to follow instructions. The quality of answers, not length of responses or visual exhibits, is important in the proposal. Do not use 3-ring binders.

The proposal shall be organized in the format listed below. Respondents shall read each item carefully and answer each of the following items accurately to ensure compliance with LU requirements.

- A. **Submittal Letter:** Include the RFP's title and submittal due date, the name, address, fax number and telephone number of the responding firm. Include a contact person and corresponding e-mail address. The letter shall state that the proposal shall be valid for a 120-day period and that the staff proposed is available immediately to work on this project. The person authorized by the firm to negotiate a contract with LU shall sign the cover letter.
  
- B. **Description of Firm:** This section should provide an overview and history of your firm, and its practice in Missouri, as well as the type of legal services for which your firm is submitting a proposal, and the approach that will be used in meeting the needs of LU. Please also include what areas of law are firm specialties.
  
- C. **Description of Experience:** Use this section to indicate the areas of expertise of your firm and how the firm's expertise will enable LU to benefit from that expertise. Include at least three (3) clients with similar demographics, along with the name(s) and email(s) of individuals familiar with your work and submitted as references that can be contacted. Higher education references are required.
  
- D. **Team:** Please provide the names and resumés of staff who would be working with LU. Specifically discuss the individual(s)' experience in providing legal and advisory services to an organization and program similar in size and scope as specified in this RFP. Please indicate who the primary contact will be and who will be responsible for the day to day work with LU.



- E. **Day-to-Day Operations:** Describe in detail how this contract would be managed regarding day-to-day operations. Describe how you will ensure that you are only working with authorized individuals, that you are only working on approved tasks, how you determine when a call generates chargeable fees, how you determine which staff are assigned to a specific project or work item, and other operational tasks. Describe how you would communicate with the University, including secure communications when needed. Describe how you would report on the work performed.
- F. **Fee Schedule:** Describe in detail all fees to be charged, including hourly rates for each level of service. Describe how you might adjust your fees for subsequent years of the contract. Describe in detail, charges for travel, telephone calls, and any other expenses to be separately billed. Indicate how billings are specific for each area/case. Also, identify billing increments (i.e. 1/10 hour, ¼ hour etc.)
- G. **Miscellaneous:** Please provide the following additional information:
- a. Include a sample billing statement and sample supporting documentation for same.
  - b. List any additional services that your Firm provides, but which were not listed in the Request for Proposals.
  - c. Provide details of any litigation against your Firm within the last five (5) years.
  - d. Provide a Copy of Firm's Professional Liability Certificate of Insurance.
  - e. Provide a sample of any contract that the University may be asked to execute as part of the award of any contract resulting from this RFP.

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## V. SELECTION CRITERIA

A Selection Advisory Committee will evaluate and select those firms deemed to be the most highly qualified to perform the required services. The evaluation of proposals and the basis of award will be based on the review and analysis of numerous factors, which will include, but not be limited to, the following:

- Proposed approach to scope of work.
- Qualifications of personnel.
- The Offeror's experience with similar clients and legal matters.
- References.
- Costs.

Upon evaluation of all submitted proposals, a limited number of Firms deemed most qualified to provide the requested legal services may be invited to present their qualifications and respond to questions.

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## VI. PROPOSAL REQUIREMENTS: FORMAT, SUBMISSION

- A. Contractor's Contacts: All questions regarding technical specifications, bid process, etc., must be directed to Debra Kidwell, Director of Purchasing at 573.681.5415 or by email at [kidwelld@lincolnu.edu](mailto:kidwelld@lincolnu.edu). Questions should be submitted in writing and received not later than one (1) week prior to the bid closing date.
- B. Clarification of Requirements: It is the intent and purpose of Lincoln University that this request permits competitive bidding. It shall be the Contractor's responsibility to advise Lincoln University, at the address noted on page one of the RFP, if any language, requirements, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source. Such notification shall be submitted in writing and received by Lincoln University Purchasing Department not later than one (1) week prior to the bid closing date. A review of such notifications will be made.
- C. The following documents and forms should accompany any offer submitted, and may be considered by the Selection Committee in evaluation and scoring. The forms are also available at <https://www.lincolnu.edu/web/purchasing/vendor-forms>.
- a. [Vendor Registration Form](#)
  - b. [W-9 Form](#)

### D. PROPOSAL SPECIFICATIONS AND ASSEMBLY:

- a. **One (1) Original Document** – with original signatures and noted *ORIGINAL*. *Double sided printing is encouraged when appropriate.*
- b. **Plus two (2) Copies of Original Document** – (copies of original submittal including any additional materials/enclosures provided) clearly noted **COPY** on the cover. *Double sided printing is encouraged whenever appropriate for the submittal.*
- c. **Plus one (1) Electronic Copy on a thumb drive** - file shall be provided as a single .pdf.
- d. **Page Limit** – None, if not otherwise specified herein this document.
- e. **Page Size** – 8 ½ x 11; oversized or pullout pages must be folded down to meet this size.
- f. **Binding** – It is preferred that all submittals be submitted using comb binders that shall be neat and appropriate for the document's thickness. **NO 3-RING BINDERS.**

- E. Open Records Law: The Contractor is hereby advised that, upon completion of the evaluation process, all proposals and associated documentation will be made public pursuant to the Open Records law of the State of Missouri (RSMo 610.021). Please do not include statements of confidentiality or proprietary information in your proposal. All proposals are required to become a matter of public record according to state law.

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## **VII. PROPOSAL EVALUATION PROCESS**

- A. Proposals will be evaluated immediately following the due date of this RFP. Evaluation may take up to 3 months from submission of proposals and may include interviews with and presentations from top candidates in Spring 2019.
- B. Official Position: The Contractor is advised that the official position of the University is that position which is stated in writing and issued by the Purchasing Office as a Request for Proposal and any amendments thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- C. Contractor's Responsibility: The Contractor is cautioned that it is the Contractor's sole responsibility to submit information related to the evaluation categories included herein and that the University is under no obligation to solicit such information if it is not included as part of the Contractor's proposal. Failure to submit such information may cause an adverse impact on the evaluation of the Contractor's proposal.
- D. Proposal Evaluation: Any contract award resulting from this request shall be made following the evaluation of all proposals which are responsive to the terms, conditions, and provisions of the Request for Proposal. The comparative assessment of the relative benefits and deficiencies of a proposal in relation to the published evaluation criteria will be made using subjective judgment. The University will be the sole judge as to the acceptability, for our purposes, of any and all proposals.
- E. Oral Presentation: After an initial screening process, the Contractor may be requested to give an oral presentation of the Contractor's proposal to select University officials, if deemed necessary by the University, to clarify or verify the Contractor's proposal and to develop a comprehensive assessment thereof. If an oral presentation is deemed necessary, the Contractor will be so advised.
- F. Negotiation: The University reserves the right to negotiate with selected Contractors if deemed necessary and in the best interests of the University. Contractors are cautioned, however, that an award decision may be made without negotiation, based on the prices and terms of a Contractor's original proposal.
- G. Errors/Omissions: The Contractor shall be solely responsible for errors or omissions in the Contractor's proposal. Contractors may not revise or withdraw submitted proposals after the stated time and date for the receipt of proposals. Revisions to the

Contractor's original proposal will only be allowed if specifically requested by the University as part of the negotiation process.

- H. Conformity with Specifications: Any deviations from the requirements of this Request for Proposal must be set forth in detail as part of the Contractor's proposal. The University may, at its sole discretion, waive minor informalities or irregularities that do not materially affect the overall proposal.
- I. Specification Interpretation: In the event of a difference of opinion between the Contractor and the University as to the meaning of any provision in these specifications, the decision of the University shall be final and without recourse.
- J. Discussions/Negotiations: Lincoln University reserves the right to conduct discussions with Contractors, and to accept revisions of proposals, and to negotiate price changes at the sole discretion of the University. During this discussion period, LU will not disclose any information regarding proposal submittals. Upon the execution of a contract, the proposals will become public record and contents will be disclosed upon request.
- K. Contract Award:
  - a. Any contract award resulting from this RFP will be made only by written authorization from the University's Purchasing Office and may be subject to approval by the President of Lincoln University and/or the University's Board of Curators. The University reserves the right to not award a contract if deemed in the best interests of the University.
  - b. The award shall be made to the responsible Contractor whose proposal is determined to be the most advantageous to the University based on the evaluation factors described in the RFP. Price, although a consideration, may not be the sole determining factor.

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## VIII. GENERAL CONTRACTUAL REQUIREMENTS

Lincoln University may negotiate any final contract terms needed upon selection. All contracts are subject to review by Lincoln University's senior leaders and legal counsel, and the project will be awarded upon signing of an agreement or contract which outlines terms, scope, budget, and other necessary items.

1. **Contract Period:** The contract period shall be the date of award through JUNE 30, 2019, with the option to renew the contract for four (4) additional one-year periods.
2. Except as provided herein, the contract shall not bind, nor purport to bind, Lincoln University for any contractual commitment in excess of the stated contract period.
3. **Contract Price:** All prices shall be as stated in the contract. The University shall neither pay nor be liable for any costs not specifically identified in the contract. Increases in contract prices for any subsequent term during which the contract is effective shall be limited to the maximum amount, if any, stated in the contract for that period.
4. **Contract Documents:** The contract between Lincoln University and the Contractor shall consist of: (1) the Request for Proposal (RFP), including the Terms and Conditions attached hereto, and (2) any amendments to the RFP, (3) the Contractor's response to the RFP, and (4) any additional terms and conditions mutually agreed upon by the parties during the negotiation process. 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 in either the RFP or the Contractor's response. In all other matters not affected by the written clarification, if any, the RFP shall govern and any inconsistency in the response to the RFP shall be disregarded. The Contractor is cautioned that his/her response shall be subject to acceptance without further clarification.
5. **Amendment to Contract:** No modification of any provision in the contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and Lincoln University President and incorporated in a written amendment to the contract approved by Lincoln University prior to the effective date of such modification.

6. **Contractor Liabilities:** The Contractor shall be responsible for any and all injury or damage as a result of the Contractor's negligence involving any equipment or service provided under the terms and conditions of the contract. In addition to the liability imposed upon the Contractor on account of personal injury (including death), or property damage suffered as a result of the Contractor's negligence, the Contractor assumes the obligation to save Lincoln University, including its agents, employees, and assigns, from every expense (including attorney fees), liability, or payment arising out of such negligent act. The Contractor also agrees to hold Lincoln University, including its agents, employees, and assigns, harmless for any negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the Contractor under the terms of the contract and to indemnify Lincoln University for all costs, expenses (including attorney fees), damages and payment.
7. **Assignments:**
  1. The Contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of Lincoln University.
  2. The Contractor shall agree and understand that, in the event Lincoln University consents to a financial assignment of the contract in whole or in part to a third party, any payments made by Lincoln University pursuant to the contract, including all of those payments assigned to the third party, shall be contingent upon the performance of the prime Contractor in accordance with all terms, conditions, and provisions of the contract.
8. **Right to Terminate Contract:** 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.
  1. Lincoln University reserves the right to officially modify or cancel a RFP after issuance. Such a modification shall be identified as an amendment. Lincoln University reserves the right to interview Contractors before selecting the successful Contractor.



2. In the event that only one bid is received in response to this RFP, Lincoln University reserves the right to negotiate the terms and conditions, including the price, as proposed in the sole Contractor's bid. In addition, as part of such negotiations, the University reserves the right to require supporting cost, pricing and other data from the sole Contractor in order to determine the reasonableness and acceptability of the bid.
3. Lincoln University reserves the right to accept or reject any and all bids without any statement or reason thereof and to waive any non-conformities. Final acceptance shall be subject to the parties entering into a written agreement including the terms thereof.
9. Independent Contractor: The Contractor represents himself or herself to be an independent contractor offering such services to the general public and shall not represent himself/herself or his/her employees to be an employee of Lincoln University, therefore, the Contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee health insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save and hold Lincoln University, its officers, agents, employees, and assigns, harmless from and against any and all loss, cost, (including attorney fees), and damage of any related to such matters.
10. Property of Lincoln University: All reports, documentation, and material developed or acquired by the Contractor as a direct requirement specified in the contract shall become the property of Lincoln University.
11. Confidentiality Requirements: The Contractor agrees and understands that all discussions with the Contractor and all information gained by the Contractor as a result of the Contractor's performance under the contract shall be confidential and that no reports, documentation, or material prepared as required by the contract shall be released to the public without the prior written consent of the University. The Contractor must ensure the complete confidentiality of all data/information to which the Contractor has access.
12. Bankruptcy or Insolvency: 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 Purchasing Office immediately. Upon learning

of the actions identified herein, 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.

13. Waiver: The Contractor understands and agrees that failure by the University to require performance by the Contractor of any provision contained herein or in the Contractor's proposal shall not be deemed a continuing waiver of such provision or a waiver of any other provision of the contract.
14. Communications and Notices: Any written notice to the Contractor shall be deemed sufficient when deposited in the United States mail, postage prepaid, or hand-carried and presented to an authorized employee of the Contractor at the Contractor's address as listed on the signature page of the contract or at such address as the Contractor may have requested in writing.
15. Substitution of Personnel: The Contractor agrees and understands that Lincoln University's decision to enter into the contract is predicated in part on the utilization of the specific individual(s) identified in the proposal. Therefore, the Contractor agrees that no substitution of such specific individual(s) and/or personnel qualifications shall be made without the prior written consent of Lincoln University. The Contractor further agrees that any substitution made pursuant to this paragraph shall be by personnel of equal or better qualifications than originally proposed and that Lincoln University's approval of a substitute shall not be construed as an acceptance of the substitute's performance potential.
16. Insurance Requirements: The Contractor shall understand and agree that Lincoln University cannot save and hold harmless and/or indemnify the Contractor or its employees against any liability incurred or arising as a result of any activity set out in the contract or any activity of the Contractor's employees related to the Contractor's performance under the contract.
  1. The Contractor shall acquire and maintain adequate insurance in the form(s) and amount(s) sufficient to protect Lincoln University, its employees, and the general public against any such loss, injury, damage, and/or expense.
  2. The Contractor must have and maintain, at the Contractor's expense, adequate liability insurance to protect the University and the general public against any loss, damage and/or expense related to the Contractor's performance under the contract. The insurance coverage shall include, but need not be limited to,

the following coverage in the amounts specified. Such insurance must indemnify the University to the fullest extent possible under the laws of the State of Missouri.

3. Commercial General Liability Coverage, comprehensive form with the following limits of liability:

Bodily Injury: \$2,000,000 each person

\$2,000,000 aggregate

\$5,000 medical each person

Property Damage: \$2,000,000 each accident

4. Automobile Public Liability and Property Damage with the following limits of liability:

Bodily Injury: \$2,000,000 each person

\$2,000,000 each accident

Property Damage: \$2,000,000 each accident

17. Written evidence of the required insurance coverage must be submitted before or upon award of the contract. Such policy(ies) shall name the Curators of Lincoln University of Missouri, its officers and employees, as additional named insureds and required the insurer to notify the University immediately in the event that the insurance coverage is canceled.
18. The Contractor understands and agrees that the insurance required under the terms of the contract in no way precludes the Contractor from carrying such other insurance as may be deemed necessary by the Contractor for the operation of the Contractor's business or for the benefit of the Contractor's employees.
19. Notwithstanding any other provision of the contract to the contrary, no insurance procured by Contractor shall be construed to constitute a waiver of any sovereign immunity as set forth in section 537.600 et seq., MO. REV. STAT., or any other governmental or official immunity, nor provide coverage for any liability or suit for

damages which is barred under said doctrines of sovereign, governmental or official immunity available to the University, its Board of Curators, officers or employees, nor constitute waiver of any available defense; and neither shall such insurance provide coverage for any sums other than those which the University, its Board of Curators, officers or employees may be obligated to pay as damages. The Contractor shall cause all policies of insurance related to this RFP to be endorsed in accord with this subparagraph. The Contractor shall further require the upper limits of coverage of such policies to be adjusted on an annual basis to be at least equal to the limits of liability set forth in section 537.610.2 and 537.610.5, MO. REV. STAT., as amended from time to time.

**Attachment 1: Lincoln University Standard Terms and Conditions**

Lincoln University and \_\_\_\_\_ (“Provider”) hereby enter into the agreement set out below making the following modifications to the Contract contemporaneously entered into by the parties. The provisions of this document (“Agreement”) shall control over all other contract documents. Any provisions contained in any other contract documents which are inconsistent with this Agreement shall be disregarded and shall be of no force or effect. The provisions of this Agreement shall serve as the primary guide to interpret and apply any ambiguities regarding the Contract.

1. The legal name of Lincoln University is the “Curators of Lincoln University of Missouri.” (“Lincoln University” or “University”) and all references in all documents to Lincoln University shall be construed as referring to the University’s legal name. It was created and is governed by the provisions of Chapter 175 RSMo. It is an institution of higher education of the state of Missouri. As such, it is a tax-exempt organization but it is not a 501(c)3 corporation.
2. The University’s legal existence, powers and limitations are prescribed by Missouri state law and Rules and Regulations adopted by the Board of Curators which may have the force of law. Consequently,
  - a. only the President of the University has the power to sign contracts on behalf of the University, and contracts over \$150,000.00 require Board of Curators approval;
  - b. the Contract shall be governed by Missouri law (without regard to its choice of law provisions);
  - c. any lawsuit arising from or related to the Contract shall be filed in the circuit court of Cole County;
  - d. the University does not agree contractually to defend, indemnify or make contribution to any person or organization;
  - e. the University does not warrant anything; and
  - f. documents in the possession of, or available to the Curators of Lincoln University of Missouri are available to the public under the provisions of Chapter 610 RSMo. unless exempted by section 610.021 RSMo., or some other applicable law, therefore, any agreement by the University to keep any documents or information confidential is subject to and limited by applicable law.
3. Lincoln University does not purchase liability insurance and it is not technically self-insured. It is protected by the State Legal Expense Fund, section 105.711, *et. seq.* RSMo. Since the

protections provided are imposed by statute, the University cannot add an additional insured, modify the applicable limits, require notification of cancellation or modification, waive subrogation rights, add endorsements, agree to primary coverage nor change any of the other statutory provisions. The parties agree that the protections of the State Legal Expense Fund are accepted in lieu of all liability insurance requirements stated in the Contract.

4. Lincoln University's workers compensation coverage is provided pursuant to section 105.800, *et seq.* RSMo. Supp. 2006. The parties accept such coverage as satisfaction of the University's obligation to provide workers compensation insurance.
5. It is understood and agreed between the parties that Missouri law prohibits the incurring of debt beyond the current year except in very limited circumstances. Consequently, the Contract between the parties, and the University's performance of its obligations under the Contract, are contingent upon the yearly availability and the Board of Curators appropriation of funds sufficient to pay the amounts coming due each year. In the event sufficient funds are not appropriated by the Board of Curators ("Event of Non-appropriation"), to fund its obligations for any specific year, it shall notify Provider of that fact. When the funded portion of the Contract is completed, the University shall cease use of the contractual services or products and make the products available to Provider for pickup. The University shall have no further obligation under the Contract nor liability for its termination. If the Contract ends because of an Event of Non-appropriation, University will not contract with any other provider prior to the original expiration date of the Contract, for the same products or services as those provided pursuant to the Contract.
6. Notwithstanding any statements to the contrary, the University does not consent to federal court jurisdiction nor to the jurisdiction of any state or regulatory agency.
7. Disputes arising from the Contract will be resolved in court rather than arbitration unless arbitration is required by law.
8. If, despite the provisions of this agreement to the contrary, the University shall be legally obligated to indemnify or make contribution to any person or entity (at common law or otherwise) it shall nevertheless not be obligated to contribute, indemnify or hold Provider harmless from any claims which would have been barred by sovereign immunity, Eleventh Amendment immunity or any other legal or equitable defense if the claim had been brought against the University directly by the party making the claim which resulted in the obligation. By way of illustration, the University shall not be required to indemnify for a judgment arising from

a suit for negligence because such claim would have been barred by the University's sovereign immunity if it had been brought directly against the University by the injured party. Neither the Contract nor this Agreement shall be construed as any waiver of the immunities and defenses available to the University and shall not be construed or applied so that the result is the University being required to pay a claim, whether it be to the claimant or to Provider, which the University would not have had to pay in the absence of this agreement.

9. Notwithstanding any other provision or law to the contrary, the maximum amount to be paid by the University, on any and all claims arising from or relating to this agreement, and its performance shall not exceed the amount of money to be paid to the University under this contract, or \$10,000.00, whichever is greater.

The parties hereby indicate their assent to the provisions of this Agreement by and through their authorized representatives' signatures below.

**Curators of Lincoln University of Missouri**

Provider

By: \_\_\_\_\_  
Jerald Woolfolk, President  
Lincoln University of Missouri

By:  
Authorized Representative

\_\_\_\_\_  
Name and Title (Printed)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**LINCOLN UNIVERSITY PURCHASING DEPARTMENT****Attachment 2: Terms and Conditions – Request for Proposal****1. TERMINOLOGY/DEFINITIONS**

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

- a. **Agency and/or State Agency** means the statutory unit of state government 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 an RFP or to a contract.
- c. **Attachment** applies to all forms which are included with an RFP to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- d. **Proposal Opening Date and Time** and similar expressions mean the exact deadline required by the RFP for the physical receipt of sealed proposals by Lincoln University in its office.
- e. **Offeror** means the person or organization that responds to an RFP by submitting a proposal with prices to provide the equipment, supplies, and/or services as required in the RFP 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 an IFB and who enters into a contract.
- i. **Exhibit** applies to forms which are included with an RFP for the offeror to complete and return with the sealed proposal prior to the specified opening date and time.
- j. **Request for Proposal (RFP)** means the solicitation document issued by Lincoln University to potential offerors 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 proposal being considered non-responsive.
- m. **Pricing Page(s)** applies to the form(s) on which the offeror must state the price(s) applicable for the equipment, supplies, and/or services required in the RFP. The pricing pages must be completed and returned by the offeror with the sealed proposal prior to the specified proposal opening 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** has the same meaning as the word must.
- p. **Should** means that a certain feature, component and/or action is 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 offeror 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 offeror and Lincoln 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 or arising out of the RFP 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 PROPOSAL DOCUMENT**

- a. It shall be the offeror's responsibility to ask questions, request changes or clarification, or otherwise advise Lincoln University if any language, specifications or requirements of an RFP appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the RFP to a single source. Any and all communication from offerors regarding specifications, requirements, competitive procurement process, etc., must be directed to the buyer from Lincoln University, as indicated on the first page of the RFP. Such communication should be received at least ten calendar days prior to the official proposal opening date.
- b. Every attempt shall be made to ensure that the offeror receives an adequate and prompt response. However, in order to maintain a fair and equitable procurement process, all offerors will be advised, via the issuance of an amendment to the RFP, of any relevant or pertinent information related to the procurement. Therefore, offerors are advised that unless specified elsewhere in the RFP, any questions received by Lincoln University less than ten calendar days prior to the RFP opening date may not be answered.
- c. Offerors 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 RFP 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 offerors, price-fixing by offerors, or any other anticompetitive conduct by offerors 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. The RFP is available for viewing and downloading on Lincoln University's Purchasing Department webpage. E-mail notifications will be sent to potential offerors at the current address maintained on the vendor registration file in Lincoln University's Purchasing Department. Any subsequent amendment to an RFP shall be e-mailed to the same address as the original RFP unless otherwise notified.
- f. Lincoln University reserves the right to officially modify or cancel an RFP after issuance. Such a modification shall be identified as an amendment.

#### 4. PREPARATION OF PROPOSALS

- a. Offerors **must** examine the entire RFP carefully. Failure to do so shall be at offeror's risk.
- b. Unless otherwise specifically stated in the RFP, all specifications and requirements constitute minimum requirements. All proposals must meet or exceed the stated specifications and requirements.
- c. Unless otherwise specifically stated in the RFP, 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 offeror 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 proposal. In addition, the offeror 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. Proposals which do not comply with the requirements and specifications are subject to rejection without clarification.
- d. Proposals lacking any indication of intent to offer 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 RFP.
- e. The following is only applicable to state agencies and political subdivisions submitting a proposal. In the event that the offerer is an agency of Lincoln University or other such political subdivision which is prohibited by law or court decision from complying with certain provisions of an RFP, such an offeror may submit a proposal 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 offeror, if such offeror 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 RFP. Any such offeror needs to include in the proposal, a complete list of statutory references and citations for each provision of the RFP which is affected by this paragraph.
- f. All equipment and supplies offered in a proposal must be new and of current production and available for marketing by the manufacturer unless the RFP 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 RFP.
- h. Proposals, including all prices therein, shall remain valid for 90 days from proposal opening unless otherwise indicated. If the proposal 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 proposal in order to be considered for award.

#### 5. SUBMISSION OF PROPOSALS

- a. A proposal submitted by a offeror must (1) be signed by a duly authorized representative of the offeror's organization, (2) contain all information required by the RFP, (3) be priced as required, (4) be sealed in an envelope or container, and (5) be mailed or hand-delivered (not faxed) to the Purchasing Department at Lincoln University located at 1002 Chestnut Street and officially clocked in no later than the exact opening time and date specified in the RFP. It shall be the responsibility of the offeror to ensure their proposal is in the Purchasing office no later than the exact opening time and date specified in the RFP.
- b. The sealed envelope or container containing a proposal should be clearly marked on the outside with (1) the official RFP number and (2) the official opening date and time. Different proposals should not be placed in the same envelope, although copies of the same proposal may be placed in the same envelope.
- c. A proposal may only be modified or withdrawn by signed, written notice which has been received by Lincoln University prior to the official opening date and time specified. A proposal may also be withdrawn or modified in person by the offeror or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to withdraw or modify a proposal shall not be honored.
- d. Offerors must sign and return the RFP cover page or, if applicable, the cover page of the last amendment thereto in order to constitute acceptance by the offeror of all RFP terms and conditions. Failure to do so shall result in rejection of the proposal unless the offeror's full compliance with those documents is indicated elsewhere within the offeror's response.
- e. Electronic submission of proposals shall not be accepted. Faxed proposals shall not be accepted. However, faxed and e-mail no-bid notifications shall be accepted.

#### 6. PROPOSAL OPENING

- a. Proposal openings are public on the opening date and at the opening time specified on the RFP document. Only the names of the respondents shall be read at the proposal opening. The contents of the proposals shall not be disclosed.
- b. Proposals which are not received by Lincoln University prior to the official opening date and time shall be considered late, regardless of the degree of lateness, and normally will not be opened. Late proposals may only be opened under extraordinary circumstances.

#### 7. PREFERENCES

- a. In the evaluation of proposals, 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 of 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.
- d. In the evaluation of proposals, a service-disabled veteran business preference shall be applied in accordance with Section 34.074 RSMo.

## 8. 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 offeror and request written clarification of the intended proposal. 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 offeror but not reflected on the pricing page shall be subject to evaluation if deemed by Lincoln University to be in the best interests of Lincoln University.
- c. The offeror 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 RFP, pricing shall be evaluated at the maximum potential financial liability to the State of Missouri.
- d. Awards shall be made to the offeror whose proposal (1) complies with all mandatory specifications and requirements of the RFP and (2) is the lowest and best proposal, considering price, responsibility of the offeror, and all other evaluation criteria specified in the RFP and any subsequent negotiations and (3) complies with Sections 34.010 and 34.070 RSMo and Executive Order 04-09.
- e. In the event all offerors fail to meet the same mandatory requirement in a RFP, Lincoln University reserves the right, at its sole discretion, to waive that requirement for all offerors and to proceed with the evaluation. In addition, Lincoln University reserves the right to waive any minor irregularity or technicality found in any individual proposal.
- f. Lincoln University reserves the right to reject any and all proposals.
- g. When evaluating a proposal, Lincoln University reserves the right to consider relevant information and fact, whether gained from a proposal, from a offeror, from offeror's references, or from any other source.
- h. Negotiations may be conducted with those offerors who submit potentially acceptable proposals. Proposal revisions may be permitted for the purpose of obtaining best and final offers. In conducting negotiations, there shall be no disclosure of any information submitted by competing offerors.
- i. Any award of a contract shall be made by written notification from Lincoln University to the successful offeror. Lincoln University reserves the right to make awards by item, group of items, all or none, or a combination thereof on a geographic and/or statewide basis with one or more suppliers. 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 Lincoln University.
- j. Pursuant to Section 610.021 RSMo, proposals and related documents shall not be available for public review until after a contract is executed or all proposals are rejected.
- k. Lincoln University reserves the right to request written clarification of any portion of the offeror's response in order to verify the intent of the offeror. The offeror is cautioned, however, that its response shall be subject to acceptance or rejection without further clarification.

## 9. CONTRACT/PURCHASE ORDER

- a. By submitting a proposal, the offeror agrees to furnish any and all equipment, supplies and/or services specified in the RFP, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the RFP and any exhibits or amendments thereto, (2) the contractor's response (proposal) to the RFP including the contractor's best and final offer and (3) Lincoln University's acceptance of the response (proposal) by "notice of award" (for ongoing provision of equipment, supplies, and/or services) or by "purchase order."
- 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 or other approved form of authorization.
- 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 to the contract, 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 Lincoln University or by a modified purchase 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/change order to the contract.

## 10. 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 written consent of Lincoln University.
- d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the RFP.
- 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 Lincoln 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.

## 11. 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.

## 12. INSPECTION AND ACCEPTANCE

- a. No equipment, supplies, and/or services received by Lincoln 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.

## 13. 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 Lincoln University, (2) be fit and sufficient for the purpose expressed in the RFP, (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 Lincoln University's acceptance of or payment for said equipment, supplies, and/or services.

## 14. CONFLICT OF INTEREST

- a. Officials and employees of Lincoln University, its governing body, or any other public officials of the State of Missouri 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 proposal 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.

## 15. REMEDIES AND RIGHTS

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by Lincoln University of any existing or future right and/or remedy available by law in the event of any claim by the Lincoln 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 Lincoln 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 Lincoln University.

## 16. CANCELLATION OF CONTRACT

- a. In the event of material breach of the contractual obligations by the contractor, Lincoln University may cancel the contract. At its sole discretion, Lincoln 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 Lincoln 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, Lincoln University will issue a notice of cancellation terminating the contract immediately.
- c. If Lincoln University cancels the contract for breach, Lincoln 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 Lincoln 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 Lincoln University for any period in which funds have not been appropriated, and Lincoln University shall not be liable for any costs associated with termination caused by lack of appropriations.

## 17. COMMUNICATIONS AND NOTICES

Any written notice to the offeror/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 offeror/contractor.

## 18. 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 Lincoln University immediately.
- b. Upon learning of any such actions, Lincoln University reserves the right, at its sole discretion, to either cancel the contract or affirm the

contract and hold the contractor responsible for damages.

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

The contractor shall defend, protect, and hold harmless Lincoln 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.

## **20. 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, Lincoln University shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, removal from all contractor'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.

## **21. 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).

## **22. 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.