

REQUEST FOR PROPOSAL

EXCLUSIVE SPORTS APPAREL AND FOOTWEAR AGREEMENT



Solicitation Number: K2200075

Proposal Opening Date: 07/21/2022

Proposal Opening Time: 2:00 p.m. (CT)

McNeese State University

06/16/2022

TABLE OF CONTENTS

PART I: ADMINISTRATIVE AND GENERAL INFORMATION.....	5
1.1 Purpose.....	5
1.2 Background.....	5
1.3 Goals and Objectives.....	5
1.4 Term of Contract.....	5
1.5 Definitions.....	5
1.5.1 Acronyms.....	6
1.6 Schedule of Events.....	7
1.7 Proposal Submittal.....	7
1.8 Proposal Response Format.....	9
1.9 Number of Response Copies.....	10
1.10 Legibility/Clarity.....	10
1.11 Confidential Information, Trade Secrets, and Proprietary Information.....	10
1.12 Proposal Clarifications Prior to Submittal.....	12
1.12.1 Pre-Proposal Conference.....	12
1.12.2 Proposer Inquiry Periods.....	12
1.12.3 Blackout Period.....	13
1.13 Errors and Omissions in Proposal.....	14
1.14 Proposal Guarantee.....	14
1.15 Performance Bond.....	14
1.16 Fidelity Bond Requirements.....	14
1.17 Changes, Addenda, Withdrawals.....	14
1.18 Withdrawal of Proposal.....	15
1.19 Material in the RFP.....	15
1.20 Waiver of Administrative Informalities.....	15
1.21 Proposal Rejection.....	15
1.22 Ownership of Proposal.....	15
1.23 Cost of Offer Preparation.....	15
1.24 Non-negotiable Contract Terms.....	16
1.25 Taxes.....	16
1.26 Proposal Validity.....	16
1.27 Prime Contractor Responsibilities.....	16
1.28 Use of Subcontractors.....	16
1.29 Written or Oral Discussions/Presentations.....	17
1.30 Acceptance of Proposal Content.....	17
1.31 Independent Price Determination.....	17
1.32 Evaluation and Selection.....	17
1.33 Best and Final Offers (BAFO).....	17
1.34 Contract Negotiations.....	18
1.35 Contract Award and Execution.....	18
1.36 Notice of Intent to Award.....	18
1.37 Debriefings.....	19
1.38 Insurance Requirements.....	19

1.39	Subcontractor Insurance	19
1.40	Indemnification and Limitation of Liability	19
1.41	Payment.....	20
1.41.1	Payment for Services.....	20
1.41.2	Late Payments	21
1.41.3	Electronic Vendor Payment Solutions	21
1.42	Termination	21
1.42.1	Termination of the Contract for Cause.....	21
1.42.2	Termination of the Contract for Convenience.....	21
1.42.3	Termination for Non-Appropriation of Funds	21
1.43	Assignment.....	22
1.44	No Guarantee of Quantities	22
1.45	Audit of Records	22
1.46	Civil Rights Compliance	22
1.47	Record Retention	23
1.48	Record Ownership	23
1.49	Content of Contract/ Order of Precedence	23
1.50	Contract Changes	23
1.51	Substitution of Personnel	23
1.52	Governing Law.....	23
1.53	Claims or Controversies.....	24
1.54	Proposer’s Certification of No Federal Suspension or Debarment	24
1.54.1	Proposer’s Eligibility	24
1.54.2	Continuing Obligation	24
1.55	Anti-Kickback Clause.....	24
1.56	Clean Air Act	24
1.57	Energy Policy and Conservation Act.....	24
1.58	Clean Water Act	25
1.59	Anti-Lobbying and Debarment Act	25
1.60	Warranties	25
1.61	Code of Ethics.....	25
1.62	Proposer’s Cooperation	25
1.63	Security	25
1.64	Prohibition of Discriminatory Boycotts of Israel.....	25
1.65	Key Internal Control Outsourcing.....	26
PART II: SCOPE OF WORK/SERVICES.....		27
2.1	Scope of Work/Services.....	27
2.2	Deliverables.....	27
2.3	Price Schedule.....	27
2.4	Location	28
2.5	Proposal Elements	28
2.5.1	Financial.....	28
2.5.2	Technical	28
2.5.3	Veteran-Owned and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (Veteran Initiative) and Louisiana Initiative for Small Entrepreneurships (Hudson Initiative) Programs Participation.....	29

PART III: EVALUATION.....	31
3.1 Technical Proposal	31
3.2 Financial Proposal.....	31
3.3 Veteran-Owned and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (Veteran Initiative) and Louisiana Initiative for Small Entrepreneurships (Hudson Initiative) Programs Participation	32
PART IV: PERFORMANCE STANDARDS.....	34
4.1 Performance Requirements.....	34
4.2 Performance Measurement	34
4.3 Veteran-Owned and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (Veteran Initiative) and Louisiana Initiative for Small Entrepreneurships (Hudson Initiative) Programs Reporting Requirements.....	34

ATTACHMENTS

APPENDIX A: Proposal Response Form	34
ATTACHMENT 1: Athletic Team Makeup and Scholarships	36
ATTACHMENT 2: Purchase Amounts by Individual Sports	37
ATTACHMENT 3: Sample Contract.....	38

REQUEST FOR PROPOSAL FOR

EXCLUSIVE SPORTS APPAREL AND FOOTWEAR AGREEMENT

PART I: ADMINISTRATIVE AND GENERAL INFORMATION

1.1 Purpose

The purpose of this Request for Proposal (RFP) is to obtain competitive proposals as allowed by Louisiana Revised Statute 39:1595 from bona fide, qualified Proposers who are interested in providing an Exclusive Sports Apparel and Footwear Agreement for McNeese State University.

1.2 Background

McNeese State University is a member of the Southland Conference. Football competes in Division 1-AA Football Championship Subdivision (FCS), and all other sports compete in Division 1. McNeese fields a total of twelve (12) athletic teams, all sanctioned by the National Collegiate Athletic Association (NCAA). Information regarding the number of participants and scholarships for each of these teams is provided in **Attachment 1 – Athletic Team Make Up and Scholarships**.

The total amount spent (in US Dollars) for Men and Women Athletic Apparel, Footwear, and Accessories for fiscal year 2021-2022 is \$191,885. The information from this breakdown is provided in **Attachment 2 – Purchase Amounts by Individual Sport**.

1.3 Goals and Objectives

McNeese State University desires to establish an Exclusive Sports Apparel and Footwear Agreement as a means to realize valued savings through combining the purchasing power of all NCAA sanctioned sports programs.

The goals of establishing such an agreement are to maximize operational cost savings and act as a unifying brand.

1.4 Term of Contract

The term of any contract resulting from this solicitation shall be for a period of sixty (60) months to begin on or about July 1, 2023 and to end June 30, 2028, unless otherwise terminated in accordance with termination provisions of the Contract. Total contract time may not exceed sixty (60) months.

1.5 Definitions

- A. Contract – A legal binding agreement between the University and the awarded Contractor(s).

- B. Contractor – Any person having a contract with a governmental body. For sections of this RFP outlining required actions of a Contractor, the Contractor should be understood to refer to the successful Proposer responding to this RFP.
- C. Discussions- For the purposes of this RFP, a formal, structured means of conducting written or oral communications/presentations with responsible Proposers who submit proposals in response to this RFP.
- D. May - The term denotes an advisory or permissible action per La. R.S. 39:1556(33).
- E. McNeese – McNeese State University
- F. Must - The term denotes mandatory requirements.
- G. Non-Program Specific – Items purchased for athletic staff, trainers, managers, and strength coaches that are not specific to one (1) sport.
- H. Proposal – A submission by the Proposer to enter into a Contract with the University to supply and support the products and/or services described, in accordance with the RFP specifications.
- I. Proposer – A firm, venture or individual who responds to this RFP. The successful Proposer responsive to this RFP is also described as the Contractor in this document.
- J. Shall – The term denotes mandatory requirements per La. R.S. 39:1556(52).
- K. Should – The term denotes a desirable action.
- L. State- The State of Louisiana.
- M. University – McNeese State University

1.5.1 Acronyms

- A. DOA – Division of Administration
- B. FCS – Football Championship Subdivision
- C. NCAA – National Collegiate Athletic Association
- D. OSP – Office of State Procurement
- E. RFP – Request for Proposal

1.6 Schedule of Events

EVENT	TIME (central time zone)	DATE
1. Post on LaPAC & Blackout period begins	2:00 p.m.	06/16/2022
2. Deadline to receive written inquiries by email or fax inquiries	10:00 a.m.	06/24/2022
3. Deadline to answer written inquiries		07/07/2022
4. RFP Submission Deadline (Proposal Opening Date)	2:00 p.m.	07/21/2022
5. Oral discussion with proposers, if applicable		To be scheduled, if applicable
6. Best and Final Offer with Proposers, if applicable		To be scheduled, if applicable
7. Notice of Intent to Award to be issued Contract Initiation		To be scheduled
8. Contract Initiation		To be scheduled

NOTE: McNeese State University reserves the right to revise this schedule. Revisions before the Proposal Submission Deadline, if any, will be formalized by the issuance of an addendum to the RFP. Revisions after the Proposal Submission Deadline, if any, will be by written notification to the eligible Proposers.

1.7 Proposal Submittal

This RFP is available in electronic form at the LaPAC website <https://www.cfprd.doa.louisiana.gov/osp/lapac/pubMain.cfm>. It is available in PDF format or in printed form by submitting a written request to the RFP Contracting Officer with the McNeese State University Purchasing Department. Contact information for the RFP Contracting Officer is provided in **Section 1.12.2** of this RFP.

It is the Proposer's responsibility to check the Office of State Procurement LaPAC website frequently for any possible addenda that may be issued. McNeese State University Purchasing Department is not responsible for a Proposer's failure to download any addenda documents required to submit a response to this Request for Proposal.

Proposers are hereby advised that the U. S. Postal Service does not make deliveries to the McNeese State University Purchasing Department's physical location.

Proposals may be mailed through the U. S. Postal Service to:

McNeese State University
Attn: Kimberly Schultz
P.O. Box 92415
Lake Charles, LA 70609

If delivering by U.S. Postal Service to the P.O. Box listed above, please allow sufficient time for the mail to then be transmitted to the McNeese State University Purchasing Department. The McNeese State University Purchasing Department must receive the proposal at its physical location by the date and time specified in **Section 1.6 Schedule of Events**, of this RFP.

Important - - Clearly mark outside of envelope, box or package with the following information and format:

Proposal Name: Exclusive Sports Apparel and Footwear Agreement
File Number: K2200075
Proposal Opening Date and Time: 07/21/2022 at 2:00 p.m.

OR

Proposals may be delivered by hand or courier service to the McNeese State University Purchasing Department's physical location at:

McNeese State University
Purchasing Department
150 Lawton Drive
Smith Hall, Room 121
Lake Charles, LA 70609

Important - - Clearly mark outside of envelope, box or package with the following information and format:

Proposal Name: Exclusive Sports Apparel and Footwear Agreement
File Number: K2200075
Proposal Opening Date and Time: 07/21/2022 at 2:00 p.m.

Proposer is solely responsible for ensuring that its courier service provider makes inside deliveries to the physical location. McNeese State University Purchasing Department is not responsible for any delays caused by the Proposer's chosen means of proposal delivery.

Proposer is solely responsible for the timely delivery of its proposal. Failure to meet the proposal opening date and time shall result in rejection of the proposal.

All proposals shall be received in hard copy (printed) form by the McNeese State University Purchasing Department **no later than the date and time shown in the Schedule of Events.**

NOTE: FAX, EMAIL OR ANY OTHER ELECTRONIC SUBMISSIONS ARE NOT ACCEPTABLE.

PROPOSALS SHALL BE OPENED PUBLICLY AT THE PHYSICAL LOCATION IDENTIFIED ABOVE AND ONLY THE NAME OF THE PROPOSERS SUBMITTING PROPOSALS SHALL BE IDENTIFIED ALOUD. NO OTHER INFORMATION CONTAINED IN THE PROPOSAL SHALL BE RELEASED OR DISCLOSED.

1.8 Proposal Response Format

Proposals submitted for consideration should follow the format and order of presentation described below:

- A. **Cover Letter:** The cover letter should be submitted on the Proposer's official business letterhead and exhibit the Proposer's understanding and approach to the project. It should contain a summary of Proposer's ability to perform the services described in the RFP and confirm that Proposer is willing to perform those services and enter into a contract with McNeese.

ATTENTION: Please indicate in the Cover Letter which of the following applies to the signer of the proposal. Evidence of signature authority shall be provided upon McNeese's request.

1. The signer of the proposal is either a corporate officer who is listed on the most current annual report on file with the Secretary of State **or** a member of a partnership or partnership in commendam as reflected in the most current partnership records on file with the Secretary of State. **A copy of the annual report or partnership record must be submitted to the McNeese Purchasing Department before contract award.**
2. The signer of the proposal is a representative of the Proposer authorized to submit the proposal as evidenced by documents such as, corporate resolution, certification as to corporate principal, etc. **If this applies a copy of the resolution, certification or other supportive documents should be attached to the Cover Letter.**
3. The Proposer has filed with the Secretary of State an affidavit **or** resolution **or** other acknowledged/authentic document indicating that the signer is authorized to submit proposals for public contracts. **A copy of the applicable document must be submitted to the McNeese Purchasing Department before contract award.**
4. The signer of the proposal has been designated by the Proposer as authorized to submit proposals on the Proposer's vendor registration on file with McNeese State University Purchasing Department.

The cover letter should also:

- Identify the submitting Proposer and provide their federal tax identification number;
- Identify the name, title, address, telephone number, fax number, and email address of each person authorized by the Proposer to contractually obligate the Proposer;
- Identify the name, address, telephone number, fax number, and email address of the contact person for technical and contractual clarifications throughout the evaluation period.

- B. **Table of Contents:** Organized in the order cited in the format contained herein.

- C. **Company Background and Experience:** History and background of Proposer, related services provided to other universities, existing customer satisfaction, volume of merchants, etc.
- D. **Service and Support Requirements:** Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors.
- E. **Approach and Methodology:** Provide information demonstrating your company's understanding of the nature and scope of this project.
- F. **Innovative Concepts:** Presentation of innovative concepts, if any, for consideration.
- G. **Financial Proposal:** Proposer's fees and other costs, if any, shall be submitted in accordance with **Appendix A – Proposal Response Form**. Prices (the discount percentage and compensation and incentives) proposed shall be firm for the duration of the contract. This financial proposal shall include any and all costs the Contractor wishes to have considered in the contractual arrangement with McNeese.

1.9 Number of Response Copies

Each Proposer shall submit one (1) signed original response. Five (5) additional copies of the proposal should be provided, as well as one (1) redacted copy, if applicable (See **Section 1.11**) and one (1) "searchable" electronic copy on a USB flash drive.

1.10 Legibility/Clarity

Responses to the requirements of this RFP in the formats requested are desirable with all questions answered in as much detail as practicable. The Proposer's response is to demonstrate an understanding of the requirements. Proposals prepared simply and economically, providing a straightforward, concise description of the Proposer's ability to meet the requirements of the RFP is also desired. Each Proposer is solely responsible for the accuracy and completeness of its proposal.

1.11 Confidential Information, Trade Secrets, and Proprietary Information

The designation of certain information as trade secrets and/or privileged or confidential proprietary information shall only apply to the technical portion of the proposal. **The financial proposal will not be considered confidential under any circumstance.** Any proposal copyrighted or marked as confidential or proprietary in its entirety may be rejected without further consideration or recourse.

For the purposes of this procurement, the provisions of the Louisiana Public Records Act (La. R.S. 44.1 et. seq.) shall be in effect. Pursuant to this Act, all proceedings, records, contracts, and other public documents relating to this procurement shall be open to public inspection. Proposers are reminded that while trade secrets and other proprietary information they submit in conjunction with this procurement may not be subject to public disclosure, protections must be claimed by the

Proposer at the time of submission of its Technical Proposal. Proposers should refer to the Louisiana Public Records Act for further clarification.

The Proposer shall clearly designate the part of the proposal that contains a trade secret and/or privileged or confidential proprietary information as “confidential” in order to claim protection, if any, from disclosure. The Proposer shall mark the cover sheet of the proposal with the following legend, specifying the specific section(s) of the proposal sought to be restricted in accordance with the conditions of the legend:

“The data contained in pages _____ of the proposal have been submitted in confidence and contain trade secrets and/or privileged or confidential information and such data shall only be disclosed for evaluation purposes, provided that if a contract is awarded to this Proposer as a result of or in connection with the submission of this proposal, McNeese shall have the right to use or disclose the data therein to the extent provided in the contract. This restriction does not limit McNeese’s right to use or disclose data obtained from any source, including the Proposer, without restrictions.”

Further, to protect such data, each page containing such data shall be specifically identified and marked “CONFIDENTIAL”.

If the Proposer’s response contains confidential information, the Proposer should also submit a redacted copy of their proposal along with their original proposal. When submitting the redacted copy, the Proposer should clearly mark the cover as such - “REDACTED COPY” - to avoid having this copy reviewed by an evaluation committee member. The redacted copy should also state which sections or information has been removed. The proposer should also submit one (1) electronic redacted copy of its proposal on a USB flash drive. The redacted copy of the proposal will be the copy produced by McNeese if a competing proposer or other person seeks review or copies of the Proposer’s confidential data.

If the Proposer does not submit the redacted copy, it will be assumed that any claim to keep information confidential is waived.

Proposers must be prepared to defend the reasons why the material should be held confidential. By submitting a proposal with data, information, or material designated as containing trade secrets and/or privileged or confidential proprietary information, or otherwise designated as “confidential”, the Proposer agrees to indemnify and defend (including attorney’s fees) McNeese and hold McNeese harmless against all actions or court proceedings that may ensue which seek to order McNeese to disclose the information.

McNeese reserves the right to make any proposal, including proprietary information contained therein, available to McNeese personnel, the Office of the Governor, or other State Agencies or organizations for the sole purpose of assisting McNeese in its evaluation of the proposal. McNeese shall require said individuals to protect the confidentiality of any specifically identified proprietary information or privileged business information obtained as a result of their participation in these evaluations.

Additionally, any proposal that fails to follow this section and/or La. R.S. 44:3.2.(D)(1) shall have failed to properly assert the designation of trade secrets and/or privileged or confidential proprietary information and the information may be considered public records.

1.12 Proposal Clarifications Prior to Submittal

1.12.1 Pre-Proposal Conference

NOT REQUIRED FOR THIS RFP.

1.12.2 Proposer Inquiry Periods

McNeese shall not and cannot permit an open-ended inquiry period, as this creates an unwarranted delay in the procurement cycle and operations of our agency customers. McNeese reasonably expects and requires *responsible and interested* Proposers to conduct their in-depth proposal review and submit inquiries in a timely manner.

An inquiry period is hereby firmly set for all interested Proposers to perform a detailed review of the RFP documents and to submit any written inquiries relative thereto. *Without exception*, all inquiries MUST be submitted in writing by an authorized representative of the Proposer, clearly cross-referenced to the relevant solicitation section. All inquiries must be received by the Inquiry Deadline date set forth in **Section 1.6 Schedule of Events** of this RFP. Only those inquiries received by the established deadline shall be considered by McNeese. Inquiries received after the established deadline shall not be entertained.

Inquiries concerning this solicitation shall be delivered to McNeese's contact person for this RFP, Kimberly Schultz, by e-mail, hand, or fax:

McNeese Purchasing Department
Attention: Kimberly Schultz
150 Lawton Drive
Lake Charles LA 70605

McNeese Purchasing Department
Attention: Kimberly Schultz
P O Box 92415
Lake Charles LA 70609

E-Mail: kschultz@mcneese.edu

Phone: (337) 475-5081/ Fax: (337) 475-5082

Only the person identified above or their designee has the authority to officially respond to Proposer's questions on behalf of McNeese, including during the Blackout Period. Any communications from any other individuals are not binding to McNeese.

An addendum will be issued and posted by McNeese on the Office of State Procurement LaPAC website, to address all inquiries received and any other changes or clarifications to the solicitation. Thereafter, all RFP documents, including but not limited to the specifications, terms, conditions, plans, etc., will stand as written and/or amended by any addendum. No negotiations, decisions, or actions shall be executed by any Proposer as a result of any oral discussions with any McNeese employee or consultant. It is the Proposer's responsibility to check the LaPAC website frequently for any possible addenda that may be issued. The McNeese State University Purchasing Department is not responsible for a Proposer's failure to download any addenda documents required to complete a Request for Proposal.

Any person aggrieved in connection with the solicitation or the specifications contained therein, has the right to protest in accordance with La. R.S. 39:1671. Such protest shall be made in writing to the McNeese State University Purchasing Department at least two (2) days prior to the deadline for submitting proposals.

Note: LaPAC is the State's online electronic bid posting and notification system resident on the Office of State Procurement website [<http://www.doa.la.gov/Pages/osp/Index.aspx>]. In that

LaPAC provides an immediate e-mail notification to subscribing Bidders/Proposers that a solicitation and any subsequent addenda have been let and posted, notice and receipt thereof is considered formally given as of their respective dates of posting.

To receive the e-mail notification, Vendors/Proposers must register in the LaGov portal. Registration is intuitive at the following link:

https://lagoverpvendor.doa.louisiana.gov/iri/portal/anonymous?quest_user=self_reg

Help scripts are available on OSP website under vendor center at:

<http://www.doa.la.gov/Pages/osp/vendorcenter/regnhelp/index.aspx>

1.12.3 Blackout Period

The Blackout Period is a specified period of time during a competitive sealed procurement process in which any Proposer, Bidder, or its Agent or Representative, is prohibited from communicating with any University employee or Contractor of McNeese involved in any step in the procurement process about the affected procurement. The Blackout Period applies not only to McNeese employees, but also to any Contractor of McNeese. "Involvement" in the procurement process includes but may not be limited to project management, design, development, implementation, procurement management, development of specifications, and evaluation of proposals for a particular procurement. All solicitations for competitive sealed procurements will identify a designated contact person, as per **Section 1.12.2** of this RFP. All communications to and from potential Proposers, Bidders, Vendors and/or their representatives during the Blackout Period must be in accordance with this solicitation's defined method of communication with the designated contact person. The Blackout Period will begin upon posting of the solicitation. The Blackout Period will end when the contract is awarded.

In those instances in which a prospective Proposer is also an incumbent Contractor, McNeese and the incumbent Contractor may contact each other with respect to the existing contract only. Under no circumstances may McNeese and the incumbent Contractor and/or its representative(s) discuss the blacked-out procurement.

Any Bidder, Proposer, or McNeese Contractor who violates the Blackout Period may be liable to McNeese in damages and/or subject to any other remedy allowed by law. Further, failure to comply with these requirements may result in the Proposal's disqualification.

Any costs associated with cancellation or termination will be the responsibility of the Proposer or Bidder.

Notwithstanding the foregoing, the Blackout Period shall not apply to:

1. A protest to a solicitation submitted pursuant to La. R.S. 39:1671;
2. Duly noticed site visits and/or conferences for Bidders or Proposers;
3. Oral presentations during the evaluation process; or
4. Communications regarding a particular solicitation between any person and staff of the procuring agency provided the communication is limited strictly to matters of procedure. Procedural matters include deadlines for decisions or submission of proposals and the proper means of communicating regarding the procurement, but shall not include any substantive matter related to the particular procurement or requirements of the RFP.

1.13 Errors and Omissions in Proposal

McNeese will not be liable for any errors or omissions in the proposal. Proposer will not be allowed to alter proposal documents after the deadline for proposal submission, except under the following condition: McNeese reserves the right to make corrections or clarifications due to patent errors identified in proposals by McNeese or the Proposer. McNeese, at its option, has the right to request clarification or additional information from the Proposer.

1.14 Proposal Guarantee

NOT REQUIRED FOR THIS RFP

1.15 Performance Bond

The successful Proposer shall be required to provide a performance (surety) bond in the amount of One Hundred Percent (100%) of annual guaranteed payment of each contract to insure the successful performance under the terms and conditions of the contract negotiated between the successful Proposer and McNeese. Any performance bond furnished shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register*, or by a Louisiana domiciled insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of policyholders' surplus as shown in the A.M. Best's Key Rating Guide or by an insurance company that is either domiciled in Louisiana or owned by Louisiana residents and is licensed to write surety bonds.

No surety or insurance company shall write a performance bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Louisiana domiciled insurance company with an A-rating by A.M. Best up to a limit of 10 percent of policyholders' surplus as shown by A.M. Best; companies authorized by this Paragraph who are not on the treasury list shall not write a performance bond when the penalty exceeds 15 percent of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Department of Insurance.

The performance bond is to be provided within ten (10) working days from request. Failure to provide within the time specified may cause your offer to be rejected.

In addition, any performance bond furnished shall be written by a surety or insurance company that is currently licensed to do business in the State of Louisiana.

1.16 Fidelity Bond Requirements

NOT REQUIRED FOR THIS RFP

1.17 Changes, Addenda, Withdrawals

McNeese reserves the right to change the Schedule of Events or issue Addenda to the RFP at any time. McNeese also reserves the right to cancel or reissue the RFP.

If the Proposer needs to submit changes or addenda, such shall be submitted in writing, signed by an authorized representative of the Proposer, cross-referenced clearly to the relevant proposal section, prior to the proposal opening, and should be submitted in a sealed envelope. Such shall meet all requirements for the proposal.

1.18 Withdrawal of Proposal

A Proposer may withdraw a proposal that has been submitted at any time up to the proposal closing date and time. To accomplish this, a written request signed by the authorized representative of the Proposer must be submitted to the McNeese State University Purchasing Department.

1.19 Material in the RFP

Proposals shall be based only on the material contained in this RFP. The RFP includes official responses to questions, addenda, and other material, which may be provided by McNeese pursuant to the RFP.

1.20 Waiver of Administrative Informalities

McNeese reserves the right, at its sole discretion, to waive administrative informalities contained in any proposal.

1.21 Proposal Rejection

Issuance of this RFP in no way constitutes a commitment by McNeese to award a contract. McNeese reserves the right to accept or reject any or all proposals submitted or to cancel this RFP if it is in the best interest of McNeese to do so. Further, McNeese reserves the right to cancel or decline to enter into a contract with the successful Proposer at any time after the award is made and before the contract receives final approval from McNeese State University's Director of Purchasing.

In accordance with the provisions of La. R.S. 39:2192, in awarding contracts after August 15, 2010, any public entity is authorized to reject a proposal or bid from, or not award the contract to, a business in which any individual with an ownership interest of five percent or more, has been convicted of, or has entered a plea of guilty or nolo contendere to any State felony or equivalent federal felony crime committed in the solicitation or execution of a contract or bid awarded under the laws governing public contracts under the provisions of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950, or the Louisiana Procurement Code under the provisions of Chapter 17 of Title 39.

In accordance with Louisiana law, all corporations (see La. R.S. 12:262.1) and limited liability companies (see La. R.S. 12:1308.2) must be registered and in good standing with the Louisiana Secretary of State in order to hold a purchase order and/or a contract with McNeese.

1.22 Ownership of Proposal

All materials submitted in response to this request become the property of McNeese. Selection or rejection of a response does not affect this right. All proposals submitted will be retained by McNeese and not returned to Proposers. Any copyrighted materials in the response are not transferred to McNeese.

1.23 Cost of Offer Preparation

McNeese is not liable for any costs incurred by prospective Proposers or Contractors prior to issuance of or entering into a Contract. Costs associated with developing the proposal, preparing for oral presentations, and any other expenses incurred by the Proposer in responding to the RFP are entirely the responsibility of the Proposer, and shall not be reimbursed in any manner by McNeese.

1.24 Non-negotiable Contract Terms

Non-negotiable contract terms include but are not limited to taxes, assignment of contract, audit of records, EEOC and ADA compliance, record retention, content of contract/order of precedence, contract changes, governing law, claims or controversies, and termination based on contingency of appropriation of funds.

1.25 Taxes

Any taxes, other than State and local sales and use taxes, from which McNeese is exempt, shall be assumed to be included within the Proposer's cost.

1.26 Proposal Validity

All proposals shall be considered valid for acceptance until such time an award is made, unless the Proposer provides for a different time period within its proposal response. However, McNeese reserves the right to reject a proposal if the Proposer's acceptance period is unacceptable and the Proposer is unwilling to extend the validity of its proposal.

1.27 Prime Contractor Responsibilities

The selected Proposer shall be required to assume responsibility for all items and services offered in their proposal whether or not they produce or provide them. McNeese shall consider the selected Proposer to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

1.28 Use of Subcontractors

Each Contractor shall serve as the single prime Contractor for all work performed pursuant to its contract. That prime Contractor shall be responsible for all deliverables referenced in this RFP. This general requirement notwithstanding, Proposers may enter into subcontractor arrangements. Proposers may submit a proposal in response to this RFP, which identifies subcontract(s) with others, provided that the prime Contractor acknowledges total responsibility for the entire contract.

If it becomes necessary for the prime Contractor to use subcontractors, McNeese urges the prime Contractor to use Louisiana vendors, including small and emerging businesses, a small entrepreneurship or a veteran or service-connected disabled veteran-owned small entrepreneurship, if practical. In all events, any subcontractor used by the prime should be identified to the University Project Manager.

Information required of the prime Contractor under the terms of this RFP, is also required for each subcontractor and the subcontractors must agree to be bound by the terms of the contract. The prime Contractor shall assume total responsibility for compliance.

1.29 Written or Oral Discussions/Presentations

McNeese, at its sole discretion, may require all Proposers who submit proposals determined to be reasonably susceptible of being selected for the award to provide an oral presentation of how they propose to meet the agency's objectives; however, McNeese reserves the right to enter into an Agreement without further discussion of the proposal submitted based on the initial offers received.

Any commitments or representations made by the Proposer during these discussions, if conducted, may become formally recorded in the final contract.

Written or oral discussions/presentations for clarification may be conducted to enhance McNeese's understanding of any or all of the proposals submitted. Proposals may be accepted without such discussions.

1.30 Acceptance of Proposal Content

The mandatory RFP requirements shall become contractual obligations if a contract ensues. Failure of the successful Proposer to accept these obligations shall result in the rejection of the proposal.

1.31 Independent Price Determination

By submitting a proposal, the Proposer certifies that the price submitted was independently arrived at without collusion.

1.32 Evaluation and Selection

All responses received as a result of this RFP are subject to evaluation by McNeese's Evaluation Committee for the purpose of selecting the Proposer most advantageous to McNeese with whom McNeese shall contract.

To evaluate all proposals, a committee whose members have expertise in various areas has been selected by McNeese. A consensus-based evaluation process shall be used to evaluate responses. This committee will determine which proposals are reasonably susceptible of being selected for award. If required, written or oral discussions may be conducted with any or all of the Proposers to make this determination.

McNeese's Evaluation Committee may consult Subject Matter Expert(s) (SMEs) to serve in an advisory capacity regarding any Proposer or Proposal. Such input may include, but not limited to, analysis of Proposer financial statements, review of technical requirements, or preparation of cost score data.

Written recommendation for award shall be made to the Director of McNeese Purchasing Department for the responsible Proposer whose proposal, conforming to the RFP, will be the most advantageous to McNeese State University, price and other factors considered.

The committee may reject any or all proposals if it is considered in the best interest of McNeese.

1.33 Best and Final Offers (BAFO)

McNeese reserves the right to conduct a BAFO with one or more Proposers determined by the committee to be reasonably susceptible of being selected for award. If conducted, the Proposers selected to participate will receive written notification of their selection, with a list of specific items to be addressed in the BAFO along with instructions for submittal. The BAFO negotiation may be used to assist McNeese in clarifying the scope of work or to obtain the most cost effective pricing available from the Proposers.

The written invitation will not obligate McNeese to a commitment to enter into a contract.

1.34 Contract Negotiations

If for any reason, after final evaluation and issuance of the Intent to Award letter, the responsible Proposer whose proposal is most advantageous to McNeese's needs, price and other evaluation factors set forth in the RFP considered, does not agree to a contract, that proposal shall be rejected and McNeese may negotiate with the next most advantageous responsible Proposer.

Negotiation may include revision of any non-mandatory terms or conditions, and clarification of the scope of work and/or implementation of the most cost effective pricing available from the Proposers. McNeese's Purchasing Director must approve the final contract form and issue a purchase order, if applicable, to complete the process.

1.35 Contract Award and Execution

McNeese reserves the right to enter into a contract without further discussion of the proposal submitted based on the initial offers received.

The RFP, including any addenda, and the proposal of the selected Contractor will become part of any contract initiated by McNeese.

Proposers are discouraged from submitting their own standard terms and conditions with their proposals. Proposers should address the specific language in the sample generic contract in **Attachment 3** of this RFP and submit any exceptions or deviations the Proposer wishes to negotiate. The proposed terms will be negotiated before a final contract is executed. McNeese's mandatory terms and conditions including but not limited to those contained in **Section 1.24** of this RFP are not negotiable. If applicable, a Proposer may submit or refer to a Master Agreement entered into by the Contractor and the Office of State Procurement in accordance with La. R.S. 39:198(J).

If the contract negotiation period exceeds thirty (30) days or if the selected Proposer fails to sign the contract within **seven (7) calendar** days of delivery of it, McNeese may elect to cancel the award and award the contract to the next most advantageous responsible Proposer.

Award shall be made to the Proposer with the highest score, whose proposal, conforming to the RFP, will be the most advantageous to McNeese State University, price and other factors considered.

McNeese intends to award to a single Proposer.

1.36 Notice of Intent to Award

Upon review and approval of the evaluation committee's and agency's recommendation for award, OSP will issue a "Notice of Intent to Award" letter to the apparent successful Proposer. The "Notice of Intent to Award" letter is the notification of the award of the contract. However, the "Notice of Intent to Award" is contingent upon successful negotiation of a final contract and approval by McNeese. A contract shall be completed and signed by all parties concerned on or before the date indicated in the "Schedule of Events." If this date is not met, through no fault of McNeese, McNeese may elect to cancel the "Notice of Intent to Award" letter and make the award to the next most advantageous responsible Proposer.

McNeese will also notify all unsuccessful Proposers as to the outcome of the evaluation process. The proposals received (except for that information appropriately designated as confidential in accordance with La. R.S. 44.1 et. seq.) along with the evaluation factors, points, evaluation committee member names, and the completed evaluation summary and recommendation report are public record and shall be made available, upon request, to all interested parties after the "Notice of Intent to Award" letter has been issued.

Any person aggrieved by the proposed award has the right to submit a protest in writing, in accordance with La. R.S. 39:1671, to McNeese's Purchasing Director, within fourteen (14) days of the award/intent to award. The "Notice of Intent to Award" letter starts the protest period.

1.37 Debriefings

Debriefings may be scheduled by the participating Proposers after the "Notice of Intent to Award" letter has been issued by scheduling an appointment with McNeese's Assistant Director of Purchasing. Contact may be made by phone at (337) 475-5081 or E-mail to kschultz@mcneese.edu.

1.38 Insurance Requirements

NOT REQUIRED FOR THIS RFP

1.39 Subcontractor Insurance

NOT REQUIRED FOR THIS RFP

1.40 Indemnification and Limitation of Liability

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under the contract.

Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless McNeese from suits, actions, damages and costs of every name and description relating to personal injury and damage to property caused by Contractor, its agents, employees, partners or subcontractors in the performance of the contract, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of McNeese.

Contractor will indemnify, defend and hold McNeese harmless, **without limitation**, from and against any and all damages, expenses (including reasonable attorneys' fees), claims judgments, liabilities and costs which may be finally assessed against McNeese in any action for infringement of a United States Letter Patent with respect to the Products, Materials, or Services furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that McNeese

shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of the Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, McNeese may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: (i) McNeese's unauthorized modification or alteration of a Product, Material, or Service; (ii) McNeese's use of the Product, Material, or Service in combination with other products, materials, or services not furnished by Contractor; (iii) McNeese's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion as McNeese's exclusive remedy to take action no later than six (6) months after the issuance of an injunction in the following order of precedence: (i) to procure for McNeese the right to continue using such item(s) or part(s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to McNeese up to the dollar amount of the Contract. Any injunction that is issued against McNeese which prevents McNeese from utilizing the Contractor's product in excess of six (6) months and for which the Contractor has not obtained for McNeese or provided to McNeese one of the alternatives set forth in the foregoing sentence is cause for McNeese to terminate the Contract. In the event of such termination, McNeese will not be obligated to compensate the Contractor for any costs incurred by the Contractor.

For all other claims against the Contractor where liability is not otherwise set forth in the contract as being "without limitation", and regardless of the basis on which the claim is made, Contractor's liability **for direct damages, shall be the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges for products, materials, or services rendered by the Contractor under the Contract.** Unless otherwise specifically enumerated herein mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

McNeese may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

1.41 Payment

1.41.1 Payment for Services

The Agency shall pay the Contractor in accordance with the Pricing Schedule set forth in **Appendix A**. Payments will be made by McNeese within approximately thirty (30) days after receipt of a properly executed invoice, and approval by McNeese. Invoices shall include the contract and order number, using department and product purchased. Invoices submitted without the referenced documentation will not be approved for payment until the required information is provided.

1.41.2 Late Payments

Interest due by McNeese for late payments shall be in accordance with La. R.S. 39:1695 at the rates established in La. R.S. 13:4202.

1.41.3 Electronic Vendor Payment Solutions

NOT REQUIRED FOR THIS RFP

1.42 Termination

McNeese has the right to terminate the contract immediately for any of the following reasons: (a) misrepresentation by the Contractor; (b) Contractor's fraud, collusion, conspiracy or other unlawful means of obtaining any contract with the McNeese; (c) conflict of contract provisions with constitutional or statutory provisions of State or Federal Law; (d) abusive or belligerent conduct by the Contractor towards an employee or agent of McNeese; (e) Contractor's intentional violation of the Louisiana Procurement Code (La. R.S. 39:1551 et seq.) and its corresponding regulations; or, (f) any listed reason for debarment under La. R.S. 39:1672.

1.42.1 Termination of the Contract for Cause

McNeese may terminate the contract for cause based upon the failure of the Contractor to comply with the terms and/or conditions of the contract, or failure to fulfill its performance obligations pursuant to the contract, provided that McNeese shall give the Contractor written notice specifying the Contractor's failure. If within thirty (30) days after receipt of such notice, the Contractor shall not have corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then McNeese may, at its option, place the Contractor in default and the contract shall terminate on the date specified in such notice.

The Contractor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of McNeese to comply with the terms and conditions of the contract, provided that the Contractor shall give McNeese written notice specifying the McNeese's failure and a reasonable opportunity for McNeese to cure the defect.

1.42.2 Termination of the Contract for Convenience

McNeese may terminate the contract for convenience at any time (1) by giving thirty (30) days written notice to the Contractor of such termination; or (2) by negotiating with the Contractor an effective date. McNeese shall pay the Contractor for, if applicable: (a) deliverables in progress; (b) the percentage that has been completed satisfactorily; and, (c) for transaction-based services up to the date of termination, to the extent work has been performed satisfactorily.

1.42.3 Termination for Non-Appropriation of Funds

The continuance of the contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act or Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

1.43 Assignment

The Contractor shall not assign any interest in the contract by assignment, transfer, or novation, without prior written consent of McNeese. This provision shall not be construed to prohibit the Contractor from assigning his bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to McNeese.

1.44 No Guarantee of Quantities

The quantities referenced in the RFP are estimated to be the amount needed. In the event a greater or lesser quantity is needed, the right is reserved by the McNeese to increase or decrease the amount, at the unit price stated in the proposal.

McNeese does not obligate itself to contract for or accept more than their actual requirements during the period of the contract, as determined by actual needs and availability of appropriated funds.

1.45 Audit of Records

The State legislative auditor, federal auditors and internal auditors of McNeese State University, or others so designated by the DOA, shall have the option to audit all accounts directly pertaining to the resulting contract for a period of five (5) years from the date of final payment or as required by applicable State and Federal law. Records shall be made available during normal working hours for this purpose.

1.46 Civil Rights Compliance

The Contractor agrees to abide by the requirements of the following as applicable: Title VI and Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246 as amended, the Federal Rehabilitation Act of 1973 as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968 as amended, and Contractor agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

Contractor agrees not to discriminate in its employment practices, and will render services under the contract without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, disability, or age in any matter relating to employment. Any act of discrimination committed by Contractor, or failure to comply with these statutory obligations when applicable shall be grounds for termination of the contract.

1.47 Record Retention

The Contractor shall maintain all records in relation to the contract for a period of at least five (5) years after final payment.

1.48 Record Ownership

All records, reports, documents, or other material related to any contract resulting from this RFP and/or obtained or prepared by Contractor in connection with the performance of the services contracted for herein shall become the property of McNeese and shall, upon request, be returned by Contractor to McNeese, at Contractor's expense, at termination or expiration of the contract.

1.49 Content of Contract/ Order of Precedence

In the event of an inconsistency between the contract, the RFP and/or the Contractor's Proposal, the inconsistency shall be resolved by giving precedence first to the final contract, then to the RFP and subsequent addenda (if any) and finally, the Contractor's Proposal.

1.50 Contract Changes

No additional changes, enhancements, or modifications to any contract resulting from this RFP shall be made without the prior written approval of McNeese.

Changes to the contract include any change in: compensation; beginning/ ending date of the contract; scope of work; and/or Contractor change through the Assignment of Contract process. Any such changes, once approved, will result in the issuance of an amendment to the contract.

1.51 Substitution of Personnel

McNeese intends to include in any contract resulting from this RFP the following condition:

Substitution of Personnel: If, during the term of the contract, the Contractor or subcontractor cannot provide the personnel as proposed and requests a substitution, that substitution shall meet or exceed the requirements stated herein. A detailed resume of qualifications and justification is to be submitted to McNeese for approval prior to any personnel substitution. It shall be acknowledged by the Contractor that every reasonable attempt shall be made to assign the personnel listed in the Contractor's proposal.

McNeese shall reserve the right to require removal and replacement of any contract personnel whose performance it considers unacceptable.

1.52 Governing Law

All activities associated with this RFP process shall be interpreted under Louisiana Law, including but not limited to La. R.S. 39:1551-1736 (Louisiana Procurement Code) and La. R.S. 39:196-200 (Information Technology Procurement Code), if applicable; purchasing rules and regulations; executive orders; standard terms and conditions; special terms and conditions; and specifications listed in this RFP. Venue of any action brought with regard to all activities associated with this RFP process shall be in the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

1.53 Claims or Controversies

Any claims or controversies shall be resolved in accordance with the Louisiana Procurement Code, La. R.S. 39:1671-1673.

1.54 Proposer's Certification of No Federal Suspension or Debarment

By signing and submitting any proposal for \$25,000 or more, the Proposer certifies that their company, any subcontractors, or principals are not suspended or debarred by the General Services Administration (GSA) in accordance with the requirements in "Audit Requirements in Subpart F of the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (formerly OMB Circular A-133).

A list of parties who have been suspended or debarred can be viewed via the internet at <https://www.sam.gov>.

1.54.1 Proposer's Eligibility

A statement of the Proposer's involvement in litigation and any suspension or debarment proceedings which could affect this work shall also be included in the Proposal. A suspension or debarment proceeding which could affect this work is any proceeding, whether pending or concluded, that involves a governmental body or governmental entity. If no such litigation, suspension or debarment exists, proposer shall so state.

1.54.2 Continuing Obligation

Contractor has a continuing obligation to disclose any suspensions or debarment by any government entity, including but not limited to General Services Administration (GSA). Failure to disclose may constitute grounds for suspension and/or termination of the Contract and debarment from future contracts.

1.55 Anti-Kickback Clause

The Contractor hereby agrees to adhere to the mandate dictated by the Copeland "Anti-Kickback" Act which provides that each Contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the completion of work, to give up any part of the compensation to which he is otherwise entitled.

1.56 Clean Air Act

The Contractor hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act which prohibits the use under non-exempt federal contracts, grants or loans of facilities included on the Environmental Protection Agency (EPA) list of Violating Facilities.

1.57 Energy Policy and Conservation Act

The Contractor hereby recognizes the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

1.58 Clean Water Act

The Contractor hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders, or requirements issued under Section 508 of the Clean Water Act which prohibits the use under non-exempt federal contracts, grants or loans of facilities included on the Environmental Protection Agency (EPA) List of Violating Facilities.

1.59 Anti-Lobbying and Debarment Act

The Contractor will be expected to comply with federal statutes required in the Anti-Lobbying Act and the Debarment Act.

1.60 Warranties

Contractor warrants that all services shall be performed in good faith, with diligence and care, by experienced and qualified personnel in a professional, workmanlike manner, and according to its current description (including any completion criteria) contained in the scope of work.

Contractor further warrants that it has the right to provide and or license its product to McNeese and that it will operate in accordance with this solicitation. In the event of a material failure of Contractor's product to function and operate, and/or failure by the Contractor to perform its obligations, in accordance with the terms and conditions of the contract that results in the termination of the contract for cause by McNeese, McNeese will not be obligated to compensate the Contractor of any costs incurred by Contractor.

1.61 Code of Ethics

The Contractor acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (La. R.S. 42:1101 et. seq., Code of Governmental Ethics) applies to the Contracting Party in the performance of services called for in the Contract. The Contractor agrees to immediately notify McNeese if potential violations of the Code of Governmental Ethics arise at any time during the term of the Contract.

1.62 Proposer's Cooperation

Any Proposer has the duty to fully cooperate with McNeese and provide any and all requested information, documentation, etc. to McNeese when requested. This applies even if an eventual contract is terminated and/or a lawsuit is filed. Specifically, the Proposer shall not limit or impede McNeese's right to audit or to withhold McNeese owned documents.

1.63 Security

Contractor's personnel shall comply with all security regulations in effect at McNeese's premises, the Information Security Program Policy at <https://www.mcneese.edu/policy/information-security-program-policy/> and externally for materials and property belonging to McNeese or to the project. Where special security precautions are warranted (e.g., correctional facilities), McNeese shall provide such procedures to the Contractor, accordingly. Contractor is responsible for promptly reporting to the McNeese any known breach of security.

1.64 Prohibition of Discriminatory Boycotts of Israel

In accordance with La. R.S. 39:1602.1, the following applies to any Proposal with a value of \$100,000 or more and to Proposers with five (5) or more employees:

By submitting a response to this solicitation, the Proposer certifies and agrees that the following information is correct: In preparing its response, the Proposer has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not, in the solicitation, selection, or commercial treatment of any subcontractor or supplier, refused to transact or terminated business activities, or taken other actions intended to limit commercial relations, with a person or entity that is engaging in commercial transactions in Israel or Israeli-controlled territories, with the specific intent to accomplish a boycott or divestment of Israel. The Proposer has also not retaliated against any person or other entity for reporting such refusal, termination, or commercially limiting actions. McNeese reserves the right to reject the response of the Proposer if this certification is subsequently determined to be false, and to terminate any contract awarded based on such a false response.

1.65 Key Internal Control Outsourcing
NOT REQUIRED FOR THIS RFP

This space intentionally left blank

PART II: SCOPE OF WORK/SERVICES

2.1 Scope of Work/Services

The Contractor shall provide all men's and women's athletic apparel (including practice uniforms), footwear, and accessories for the University's intercollegiate sports teams.

All products to be offered to the sports teams and coaches must be pre-approved by the Athletic Administration.

The approved team logo artwork for game uniforms will be provided through the Athletic Administration. All items customized with any McNeese State University name, logo, or other identifying marks must be approved by the University.

2.2 Deliverables

The deliverables listed in this section are the minimum desired from the successful Proposer. Every Proposer should describe what deliverables will be provided per their proposal and how the proposed deliverables will be provided.

The Contractor must deliver the following items as noted below:

- Apparel, footwear, and accessories at the discounted percentage from catalog retail, compensation merchandise, and incentives as listed on **Appendix A**.
- Annual retail product catalogs.
- Annual report must be submitted to the Deputy Athletic Director by July 31 showing the previous year's purchases and compensated items by athletic sport.

2.3 Price Schedule

Prices proposed by the Proposers shall be submitted on the price schedule furnished herein on **Appendix A**. Prices submitted shall be firm for the term of the contract. Prices shall include delivery of all items FOB destination.

Prices should include delivery of all items FOB destination. If not, Proposer must present the method of reducing freight costs, i.e. flat freight percent model formula, or other information pertinent to the shipping strategy (**Appendix A**).

Proposers should provide five (5) current retail catalogs for the evaluation committee review.

Proposers should address the compensation and incentive levels in addition to the pricing proposal (**Appendix A**).

Proposers should show the number of days required for delivery of products ordered upon receipt of a valid Purchase Order from the University (**Appendix A**).

Proposers should also include the up-front brand exchange value or whether or not they will exchange current inventory at a 1:1 Rate (**Appendix A**).

2.4 Location

The location(s) the delivery is to be completed is at the Athletic Department at McNeese State University, 700 East McNeese St., Lake Charles, LA 70607.

2.5 Proposal Elements

2.5.1 Financial

Proposal shall include prices per the schedule furnished in **Appendix A**, as well as other potential charges (if any) for proposed services associated with the RFP program implementation and administration that you wish McNeese to consider. Proposers should provide details related to financial incentives to be included in their response (**Appendix A**).

2.5.2 Technical

Each Proposer should address how the firm will meet all the requirements of this RFP, with particular attention to:

Company Background and Experience:

- Provide company history and background including appropriate credentials and references. If applicable, list institutions with names of institution personnel, contact name, email and phone number with whom they have or have had similar agreements.

Service and Support Requirements:

- Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors. Provide information on customer service, including personnel assigned, toll-free number, and account inquiry, etc.
- Provide resumes for account manager, designated customer service representative(s) and any other key personnel to be assigned to this project including those of subcontractors, if any.

Approach and Methodology:

- Provide information demonstrating the Proposer's understanding of the nature and scope of this project. Include detailed information on processing of apparel/footwear orders, including the number of days required for delivery of products upon receipt of a valid McNeese purchase order, along with any follow-up procedures that must be completed.
- Provide your plan of how your firm will become part of the McNeese State University Athletics staff/team to help streamline the process and how your firm will aid in maximizing operational cost saving measures.

Innovative Concepts:

- Present innovative concepts, if any, for consideration.

Any other information deemed pertinent by the Proposer including terms and conditions which the Proposer wishes the McNeese to consider.

2.5.3 Veteran-Owned and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (Veteran Initiative) and Louisiana Initiative for Small Entrepreneurships (Hudson Initiative) Programs Participation

Each Proposer should address how the firm will meet the following:

The State of Louisiana Veteran and Hudson Initiatives are designed to provide additional opportunities for Louisiana-based small entrepreneurships (sometimes referred to as LaVet's and SE's respectively) to participate in contracting and procurement with the State. A certified Veteran-Owned and Service-Connected Disabled Veteran-Owned small entrepreneurship (LaVet) and a Louisiana Initiative for Small Entrepreneurships (Hudson Initiative) small entrepreneurship are businesses that have been certified by the Louisiana Department of Economic Development. All eligible vendors are encouraged to become certified. Qualification requirements and online certification are available at:

<https://smallbiz.louisianaeconomicdevelopment.com>

If a Proposer is not a certified small entrepreneurship as described herein, but plans to use certified small entrepreneurship(s), Proposer shall include in their proposal the names of their certified Veteran Initiative or Hudson Initiative small entrepreneurship subcontractor(s), a description of the work each will perform, and the dollar or percentage value of each subcontract.

During the term of the contract and at expiration, the Contractor will also be required to report Veteran-Owned and Service-Connected Disabled Veteran-Owned and Hudson Initiative small entrepreneurship subcontractor or distributor participation and the dollar amount of each.

In RFP's requiring the compliance of a good faith subcontracting plan, McNeese may require Proposers to submit information on their business relationships and arrangements with certified LaVet or Hudson Initiative subcontractors at the time of proposal review. Agreements between a Proposer and a certified LaVet or Hudson Initiative subcontractor in which the certified LaVet or Hudson Initiative subcontractor promises not to provide subcontracting quotations to other Proposers shall be prohibited.

In performing its evaluation of proposals, McNeese reserves the right to require a non-certified Proposer to provide documentation and information supporting a good faith subcontracting plan. Such proof may include contracts between proposer and certified Veteran Initiative and/or Hudson Initiative subcontractor(s).

If a contract is awarded to a Proposer who proposed a good faith subcontracting plan, McNeese, the Louisiana Department of Economic Development (LED), or the Office of State Procurement (OSP) may audit Contractor to determine whether Contractor has complied in good faith with its subcontracting plan. The Contractor must be able to provide supporting documentation (i.e., phone logs, fax transmittals, letter, e-mails) to demonstrate its good faith subcontracting plan was followed. If it is determined at any time by McNeese LED, or the OSP Director that the Contractor did not in fact perform in good faith its subcontracting plan, the contract award or the existing contract may be terminated.

The statutes (La. R.S. 39:2171 *et. seq.*) concerning the Veteran Initiative may be viewed at:
<http://www.legis.la.gov/Legis/Law.aspx?d=671504>

The statutes (La. R.S. 39:2001 *et. seq.*) concerning the Hudson Initiative may be viewed at:
<http://www.legis.la.gov/Legis/Law.aspx?d=96265>

The rules for the Veteran Initiative (LAC 19:VII. Chapters 11 and 15) and for the Hudson Initiative (LAC 19:VIII Chapters 11 and 13) may be viewed at:
<http://www.doa.la.gov/pages/osp/se/secv.aspx>

A current list of certified Veteran-Owned and Service-Connected Disabled Veteran-Owned and Hudson Initiative small entrepreneurships may be obtained from the Louisiana Economic Development Certification System at:
<https://smallbiz.louisianaeconomicdevelopment.com>

Additionally, a list of Hudson and Veteran Initiative small entrepreneurships, which have been certified by the Louisiana Department of Economic Development and who have opted to register in the State of Louisiana LaGov Supplier Portal:
https://lagoverpvendor.doa.louisiana.gov/irj/portal/anonymous?guest_user=self_reg

This may be accessed from the State of Louisiana Procurement and Contract (LaPAC) Network:
<https://wwwcfprd.doa.louisiana.gov/OSP/LaPAC/vendor/VndPubMain.cfm>

When using this site, determine the search criteria (i.e. alphabetized list of all certified vendors, by commodities, etc.) and select SmallE, VSE, or DVSE.

This space intentionally left blank.

PART III: EVALUATION

The evaluation committee shall assign points to its evaluation of each Proposal as follows:

Evaluation Criteria	Possible Points
Technical Proposal (Section 3.1) Company Background and Experience (0 - 10 points) Service and Support Requirements (0 - 15 points) Approach and Methodology (0 – 15 points)	<i>38 points</i>
Financial Proposal (Section 3.2) Percentage Discount (0 - 25 points) Compensation (0 – 20 points) Incentives (0 – 5 points)	<i>50 points</i>
Veteran and Hudson Initiative (Section 3.3)	<i>12 points</i>
Total Possible Points	<i>100 points</i>

The proposal will be evaluated in light of the material and the substantiating evidence presented to McNeese, not on the basis of what may be inferred.

For a Proposer to proceed to the Financial Proposal and Veteran and Hudson Initiative evaluation, the Proposer shall achieve a minimum score equivalent to fifty percent (50%) of the possible points assigned to the Technical Proposal. Any Proposal failing to receive the minimum score at the completion of the detailed evaluation of the technical proposals will not be evaluated further and will be ineligible for award.

The scores for the Financial Proposals, Technical Proposals and Veteran and Hudson Initiative will be combined to determine the overall score. The Proposer with the highest overall score will be recommended for award.

3.1 Technical Proposal (0 – 38 points)

The following criteria are of importance and relevance to the evaluation of this RFP and will be used by the Evaluation Committee in the evaluation of the technical proposal. Such factors may include but are not limited to:

- Company Background and Experience
- Service and Support Requirements
- Approach and Methodology

3.2 Financial Proposal (0-50 points)

Prices proposed by the Proposers shall be submitted on the price schedule furnished in **Appendix A**. Prices proposed shall be firm.

A Proposer’s base cost score will be based on the cost information provided in Appendix A: Proposal Response Form. The Proposer with the lowest cost shall receive 50 points. Other Proposers shall receive cost points based upon the following formula:

$$\text{CCS} = (\text{LPC}/\text{TCP} \times 50)$$

Where: CCS = Computed cost score (points) for Proposer being evaluated
LPC = Lowest proposed cost of all Proposers
TCP = Total cost Proposer being evaluated

The following financial criteria will be evaluated:

1. Percentage discount pricing (0 – 25 points)
Complete Appendix A to offer a percentage discount from retail pricing for the following categories:
 - Apparel, and associated costs
 - Accessories
 - Footwear
2. Compensation (0 – 20 points)
Include information relative to compensation to be provided. Provide discussion and pricing pertaining to Minimum Purchasing Requirements and Compensation Merchandise.
3. Incentives (0 – 5 points)
Include information relative to incentives to be provided.

The information provided in response to this section will be used in the Financial Evaluation to calculate the highest overall score (the highest percentage discount and highest compensation & highest incentives).

3.3 Veteran-Owned and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (Veteran Initiative) and Louisiana Initiative for Small Entrepreneurships (Hudson Initiative) Programs Participation

Twelve percent (12%) of the total evaluation points in this RFP are reserved for Proposers who are certified small entrepreneurship or who will engage the participation of one or more certified small entrepreneurships as subcontractors. Reserved points shall be added to the applicable Proposers' evaluation score as follows:

Proposer Status and Allotment of Reserved Points

- i. If the Proposer is a certified Veterans Initiative small entrepreneurship, the Proposer shall receive points equal to twelve percent (12%) of the total evaluation points in this RFP.
- ii. If the Proposer is a certified Hudson Initiative small entrepreneurship, the Proposer shall receive points equal to ten percent (10%) of the total evaluation points in this RFP.
- iii. If the Proposer demonstrates its intent to use certified small entrepreneurship(s) in the performance of contract work resulting from this solicitation, the Proposer shall receive points equal to the net percentage extent of contract work which is projected to be performed by or through certified small entrepreneurship subcontractors, multiplied by the appropriate number of evaluation points.

- iv. The total number of points awarded pursuant to this Section shall not exceed twelve percent (12%) of the total number of evaluation points in this RFP.

PART IV: PERFORMANCE STANDARDS

4.1 Performance Requirements

Products to be supplied must meet acceptable durability standards.

Products to be supplied must be within the range of colors provided by McNeese. All products to be offered to sports teams and coaches must be pre-approved by the Athletic Administration.

The time frame required for delivery of products is an important component of this process and must be shown on Appendix A.

4.2 Performance Measurement

The above Performance Requirements will be evaluated on an ongoing basis with the Contractor.

4.3 Veteran-Owned and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (Veteran Initiative) and Louisiana Initiative for Small Entrepreneurships (Hudson Initiative) Programs Reporting Requirements

During the term of the contract and at expiration, the Contractor will be required to report Veteran-Owned and Service-Connected Disabled Veteran-Owned and Hudson Initiative small entrepreneurship subcontractor or distributor participation and the dollar amount of each.

If a contract is awarded to a Proposer who proposed a good faith subcontracting plan, McNeese, the Louisiana Department of Economic Development (LED), or the Office of State Procurement (OSP) may audit Contractor to determine whether Contractor has complied in good faith with its subcontracting plan. The Contractor must be able to provide supporting documentation (i.e., phone logs, fax transmittals, letter, e-mails) to demonstrate its good faith subcontracting plan was followed. If it is determined at any time by McNeese, LED, or the OSP Director that the Contractor did not in fact perform in good faith its subcontracting plan, the contract award or the existing contract may be terminated.

**Appendix A - Proposal Response Form
RFP # K2200075**

CONTRACT TERM: JULY 1, 2023 TO JUNE 30, 2028

PRICING: Submit discount pricing percentages on all men and women catalog items for the categories listed below:

ITEMS	PERCENT DISCOUNT FROM RETAIL CATALOG <i>(Provide 5 copies of current catalogs for evaluation committee)</i>
Apparel	_____
Accessories	_____
Footwear	_____

The following discount percentage for early booking date(s), all sports: _____

Charge per Embellishment/Decoration of uniform piece: * _____
**If additional space is required, please attach price list to Appendix A*

Provide the pricing pertaining to Minimum Purchasing Requirements and Compensation Merchandise for the following:

MIN. PURCHASE REQUIREMENTS	COMPENSATION MERCHANDISE
1. \$100,000-\$149,999	_____
2. \$150,000-\$199,999	_____
3. \$200,000-\$249,999	_____
4. \$250,000-\$299,999	_____
5. \$300,000-\$349,999	_____
6. \$350,000 +	_____

INCENTIVES: ALL INCENTIVE VALUES ARE TO BE IN RETAIL VALUES OF PRODUCT

Football	Merchandise at Retail Value
Bowl or Playoff Appearance	\$ _____
Coach of the Year – Conference	\$ _____
Game and Promotional use	\$ _____
 Baseball/Softball	 Merchandise at Retail Value
Baseball NCAA Regional Appearance	\$ _____
Softball NCAA Regional Appearance	\$ _____

Basketball

Merchandise at Retail Value

Women's Basketball NCAA Appearance	\$ _____
Men's Basketball NCAA Appearance	\$ _____
Game and Promotional use	\$ _____

All Other Programs

Merchandise at Retail Value

Conference Coach of the Year	\$ _____
NCAA Tournament Appearance	\$ _____

Use of Contractor's Products: INCLUDE DISCUSSION OF OTHER INCENTIVES:

Upon receipt of a valid McNeese Purchase Order, McNeese will receive delivery of merchandise in _____ (number) of days.

Up-Front Brand Exchange Value: Indicate exchange value (in dollars) OR if current inventory will be exchanged at a 1:1 rate: _____

Prices shall include delivery of all items FOB destination. Proposer must present your method of reducing freight costs, i.e. flat freight percent model formula, or other information pertinent to your shipping strategy. _____

List any other costs to be considered in your proposal:

Attachment 1

RFP # K2200075

Athletic Team Make-Up and Scholarships
(numbers are estimated)

MALE TEAMS

TEAM	Number of Athletes	Number of Scholarships	NCAA SANCTIONED
Baseball	36	29	Yes
Football	120	83	Yes
Track and Field	49	30	Yes
Basketball	14	13	Yes

FEMALE TEAMS

TEAM	Number of Athletes	Number of Scholarships	NCAA SANCTIONED
Basketball	15	15	Yes
Tennis	8	8	Yes
Soccer	25	25	Yes
Softball	27	26	Yes
Track and Field	39	29	Yes
Volleyball	15	12	Yes

**Attachment 2
RFP # K2200075**

PURCHASE AMOUNTS BY INDIVIDUAL SPORT

SPORT	DOLLAR AMOUNT SPENT FY20	DOLLAR AMOUNT SPENT FY21	DOLLAR AMOUNT SPENT FY22
Baseball	\$8,367	\$57,857	\$18,375
Football	\$104,657	\$141,716	\$50,975
Men's Basketball	\$32,113	\$40,696	\$38,135
Women's Soccer	\$5,795	\$3,015	\$2,070
Women's Softball	\$33,287	\$21,251	\$24,511
Women's Tennis	\$5,604	\$6,854	\$6,977
Volleyball	\$8,093	\$5,073	\$9,962
Women's Basketball	\$31,624	\$37,293	\$6,544
Track and Field	\$32,984	\$29,813	\$26,192
Non-Program Specific	\$42,653	\$12,162	\$8,144
TOTAL	\$305,177	\$355,730	\$191,885

ATTACHMENT 3: SAMPLE GENERIC CONTRACT

**McNeese State University
Parish of Calcasieu**

**File No. _____
Solicitation No. _____**

(NAME OF CONTRACT)

1. CONTRACT

Be it known, that effective upon approval by the Director of McNeese State University, as evidenced by the Director's signature on this document, the McNeese State University (hereinafter sometimes referred to as "McNeese" or "University") and (*Contractor's name and legal address including zip code*) (hereinafter sometimes referred to as "Contractor") do hereby enter into this Contract under the following terms and conditions.

2. SCOPE OF SERVICE

Contractor hereby agrees to furnish the following services:

(If the Scope of Services is lengthier than will fit here, it may be attached separately, referenced and incorporated herein.)

3. TERM OF CONTRACT

The term of any contract resulting from this solicitation shall be for a period of sixty (60) months to begin on or about July 1, 2023 and to end June 30, 2028, unless otherwise terminated in accordance with termination provisions of the Contract. Total contract time may not exceed sixty (60) months.

4. DELIVERABLES

The Contractor will deliver the item(s) or service(s) as described below (or per the attached) per the following schedule.

5. PERFORMANCE STANDARDS

5.1. PERFORMANCE REQUIREMENTS

5.2. PERFORMANCE MEASUREMENT/EVALUATION

5.3. VETERAN-OWNED AND SERVICE-CONNECTED DISABLED VETERAN-OWNED SMALL ENTREPRENEURSHIPS (VETERAN INITIATIVE) AND LOUISIANA INITIATIVE FOR SMALL ENTREPRENEURSHIPS (HUDSON INITIATIVE) PROGRAMS REPORTING REQUIREMENTS

During the term of this Contract and at expiration, the Contractor will be required to report Veteran-Owned and Service-Connected Disabled Veteran-Owned and Hudson Initiative small entrepreneurship subcontractor or distributor participation and the dollar amount of each.

If the Contractor proposed a good faith subcontracting plan, the University, the Louisiana Department of Economic Development (LED), or the Office of State Procurement (OSP) may audit the Contractor to determine whether the Contractor has complied in good faith with its subcontracting plan. The Contractor must be able to provide supporting documentation (i.e., phone logs, fax transmittals, letter, e-mails) to demonstrate its good faith subcontracting plan was followed. If it is determined at any time by the University, LED, or the OSP Director that the Contractor did not in fact perform in good faith its subcontracting plan, the contract award or the existing Contract may be terminated.

6. PAYMENT TERMS

McNeese shall pay Contractor in accordance with the Pricing Schedule set forth in **Appendix A** to this contract. The Contractor may invoice McNeese monthly at the billing address designated by the University. Payments will be made by McNeese within approximately thirty (30) days after receipt of a properly executed invoice, and approval by the University. Invoices shall include the contract and order number, using department and product purchased. Invoices submitted without the referenced documentation will not be approved for payment until the required information is provided.

7. TAXES

The Contractor agrees that all applicable taxes are included in the Pricing Schedule set forth in **Attachment “__”** to this Contract. State agencies are exempt from all State and local sales and use taxes.

8. LATE PAYMENTS

Interest due by the University for late payments shall be in accordance with La. R.S. 39:1695 at the rates established in La. R.S. 13:4202.

9. TERMINATION

The University has the right to terminate this Contract immediately for any of the following reasons: (a) misrepresentation by the Contractor; (b) Contractor's fraud, collusion, conspiracy or other unlawful means of obtaining any contract with the University; (c) conflict of contract provisions with constitutional or statutory provisions of State or Federal Law; (d) abusive or belligerent conduct by the Contractor towards an employee or agent of the University; (e) Contractor's intentional violation of the Louisiana Procurement Code (La. R.S. 39:1551 et seq.) and its corresponding regulations; or, (f) any listed reason for debarment under La. R.S. 39:1672.

9.1. TERMINATION OF THIS CONTRACT FOR CAUSE

The University may terminate this Contract for cause based upon the failure of Contractor to comply with the terms and/or conditions of this Contract, or failure to fulfill its performance obligations pursuant to this Contract, provided that the University shall give the Contractor written notice specifying the Contractor's failure. If within thirty (30) days after receipt of such notice, the Contractor shall not have corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then the University may, at its option, place the Contractor in default and this Contract shall terminate on the date specified in such notice.

The Contractor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the University to comply with the terms and conditions of this Contract, provided that the Contractor shall give the University written notice specifying the University's failure and a reasonable opportunity for the University to cure the defect.

9.2. TERMINATION OF THIS CONTRACT FOR CONVENIENCE

The University may terminate this Contract for convenience at any time (1) by giving thirty (30) days written notice to the Contractor of such termination; or (2) by negotiating with the Contractor an effective date. The University shall pay the Contractor for, if applicable: (a) deliverables in progress; (b) the percentage that has been completed satisfactorily; and, (c) for transaction-based services up to the date of termination, to the extent work has been performed satisfactorily.

9.3. TERMINATION FOR NON-APPROPRIATION OF FUNDS

The continuation of this Contract is contingent upon the appropriation of funds to fulfill the requirements of this Contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of this Contract or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act or Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of this Contract, this Contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

10. CONTRACT MODIFICATIONS

No amendment or modification of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required by law. No oral understanding or agreement not incorporated in this Contract is binding on any of the parties.

Changes to this Contract include any change in a) compensation; b) beginning/ending date of this Contract; c) scope of work; and/or d) Contractor change through the assignment of contract process. Any such changes, once approved, will result in the issuance of an amendment to this Contract.

11. OWNERSHIP

All records, reports, documents, or other material related to this Contract and/or obtained or prepared by the Contractor in connection with the performance of the services contracted for herein shall become the property of the University, and shall, upon request, be returned by the Contractor to the University, at the Contractor's expense, at termination or expiration of this Contract.

All records, reports, documents and other material delivered or transmitted to the Contractor by the University shall remain the property of the University, and shall be returned by the Contractor to the University at the Contractor's expense, at termination or expiration of this Contract.

12. USE OF AGENCY'S FACILITIES

Any property of the University furnished to the Contractor shall, unless otherwise provided herein, or approved by the University, be used only for the performance of this Contract.

The Contractor shall be responsible for any loss or damage to property of the University which results from willful misconduct or lack of good faith on the part of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices, to ensure that the property will be returned to the University in like condition, except for normal wear and tear, to that in which it was furnished to the Contractor. Upon the happening of loss, or destruction of, or damage to property of the University, the Contractor shall notify the University thereof and shall take all reasonable steps to protect that property from further damage.

The Contractor shall surrender to the University all property of the University prior to settlement upon completion, termination, or cancellation of this Contract. All reference to the Contractor under this section shall include any of its employees, agents, or subcontractors.

13. WAIVER

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified or deleted except by the written consent of both parties.

14. WARRANTIES

Contractor warrants that all services shall be performed in a workmanlike manner, and according to its current description (including any completion criteria) contained in the scope of work.

Contractor further warrants that it has the right to provide and or license its product to the University and that it will operate in accordance with this Contract. In the event of a material failure of Contractor's product to function and operate, and/or failure by the Contractor to perform its obligations, in accordance with the terms and conditions of this Contract that results in the termination of this Contract for cause by the University, the University will not be obligated to compensate the Contractor of any costs incurred by Contractor.

Extent of Warranty: THESE WARRANTIES REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE

15. INDEMNIFICATION AND LIMITATION OF LIABILITY

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under this Contract.

Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the University from suits, actions, damages and costs of every name and description relating to personal injury and damage to property caused by Contractor, its agents, employees, partners or subcontractors in the performance of this Contract, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the University.

Contractor will indemnify, defend and hold the University harmless, **without limitation**, from and against any and all damages, expenses (including reasonable attorneys' fees), claims judgments, liabilities and costs which may be finally assessed against the University in any action for infringement of a United States Letter Patent with respect to the Products, Materials, or Services furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the University shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the University may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: (i) University's unauthorized modification or alteration of a Product, Material, or Service; (ii) University's use of the Product, Material, or Service in combination with other products, materials, or services not furnished by Contractor; (iii) University's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion as the University's exclusive remedy to take action no later than six (6) months after the issuance of an injunction in the following order of precedence: (i) to procure for the University the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the University up to the dollar amount of this Contract. Any injunction that is issued against the University which prevents the University from utilizing the Contractor's product in excess of six (6) months and for which the Contractor has not obtained for the University or provided to the University one of the alternatives set forth in the foregoing sentence is cause for the University to terminate this Contract. In the event of such termination, the University will not be obligated to compensate the Contractor for any costs incurred by the Contractor.

For all other claims against the Contractor where liability is not otherwise set forth in this Contract as being "without limitation", and regardless of the basis on which the claim is made, Contractor's liability **for direct damages, shall be the greater of \$100,000, the dollar amount of this Contract, or two (2) times the charges for services rendered by the Contractor under this Contract.** Unless otherwise specifically enumerated herein mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The University may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

16. PERFORMANCE BOND

Contractor shall provide a Performance Bond (Surety Bond) in the amount equal to One Hundred Percent (100%) of the value of the annual contract to insure the successful performance under the terms and conditions of this Contract. The performance bond shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Services list of approved bonding companies which is published annually in the Federal Register, or by a Louisiana domiciled insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to ten percent (10%) of policyholder's surplus as shown in the A.M. Best's Key Rating Guide or by an insurance company that is either domiciled in Louisiana or owned by Louisiana residents and is licensed to write surety bonds.

No surety or insurance company shall write a performance bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Louisiana domiciled insurance company with an A-rating by A.M. Best up to a limit of ten percent (10%) of policyholders' surplus as shown by A.M. Best; companies authorized by this Paragraph who are not on the treasury list shall not write a performance bond when the penalty exceeds fifteen percent (15%) of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Department of Insurance.

In addition, any performance bond furnished shall be written by a surety or insurance company that is currently licensed to do business in the State of Louisiana.

The Contractor shall maintain the performance bond for the full term of this Contract. Failure to comply shall be grounds for termination of this Contract.

17. LICENSES AND PERMITS

Contractor shall secure and maintain all licenses and permits, and pay inspection fees required to do the work required to complete this Contract, if applicable.

18. SEVERABILITY

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application; to this end the terms and conditions of this Contract are declared severable.

19. SUBCONTRACTORS

The Contractor may enter into subcontracts with third parties for the performance of any part of the Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the University for any breach in the performance of the Contractor's duties. The Contractor will be the single point of contact for all subcontractor work.

20. SUBSTITUTION OF PERSONNEL

If, during the term of this Contract, the Contractor or subcontractor cannot provide the personnel as proposed and requests a substitution, that substitution shall meet or exceed the requirements stated herein. A detailed resume of qualifications and justification is to be submitted to the University for approval prior to any personnel substitution. It shall be acknowledged by the Contractor that every reasonable attempt shall be made to assign the personnel listed in the Contractor's proposal.

The University shall reserve the right to require removal and replacement of any Contract personnel whose performance it considers unacceptable.

21. ASSIGNMENT

Contractor shall not assign any interest in this Contract by assignment, transfer, or novation, without prior written consent of the University. This provision shall not be construed to prohibit the Contractor from assigning his bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the University.

22. CODE OF ETHICS

The Contractor acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (La. R.S. 42:1101 et. seq., Code of Governmental Ethics) applies to the Contracting Party in the performance of services called for in this Contract. The Contractor agrees to immediately notify the University if potential violations of the Code of Governmental Ethics arise at any time during the term of this Contract.

23. CONFIDENTIALITY

The following provision will apply unless the University statement of work specifically indicates that all information exchanged will be non-confidential:

All financial, statistical, personal, technical and other data and information relating to the University's operations which are designated confidential by the University and made available to the Contractor in order to carry out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the University. The identification of all such confidential data and information as well as the University's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the University in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the University to be adequate for the protection of the University's confidential information, such methods and procedures may be used, with the written consent of the University, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information, which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.

24. CONTRACT CONTROVERSIES

Any claim or controversy arising out of this Contract shall be resolved by the provisions of Louisiana Revised Statute 39:1671-1673.

25. RIGHT TO AUDIT

The State Legislative auditor, federal auditors and internal auditors of McNeese State University, Division of Administration, or others so designated by the DOA, shall have the option to audit all accounts directly pertaining to this Contract for a period of five (5) years from the date of final payment or as required by applicable State and Federal Law. Records shall be made available during normal working hours for this purpose.

26. RECORD RETENTION

The Contractor shall maintain all records in relation to this Contract for a period of at least five (5) years after final payment.

27. CONTRACTOR'S CERTIFICATION OF NO FEDERAL SUSPENSION OR DEBARMENT

Contractor has a continuing obligation to disclose any suspensions or debarment by any government entity, including but not limited to General Services Administration (GSA). Failure to disclose may constitute grounds for suspension and/or termination of this Contract and debarment from future contracts.

28. CONTRACTOR'S COOPERATION/CLOSE-OUT

The Contractor has the duty to fully cooperate with the University and provide any and all requested information, documentation, etc. to the University when requested. This applies even if this Contract is terminated and/or a lawsuit is filed. Specifically, the Contractor shall not limit or impede the University's right to audit or to withhold University owned documents.

29. SECURITY

Contractor's personnel will comply with all security regulations in effect at the University's premises, the Information Security Program Policy at <https://www.mcneese.edu/policy/information-security-program-policy/> and externally for materials and property belonging to the University or to the project. Where special security precautions are warranted (e.g., correctional facilities), the University shall provide such procedures to the Contractor, accordingly. Contractor is responsible for promptly reporting to the University any known breach of security.

30. COMMENCEMENT OF WORK

No work shall be performed by Contractor and the University shall not be bound until such time as this Contract is fully executed between the University and the Contractor and all required approvals are obtained.

31. COMPLIANCE WITH CIVIL RIGHTS LAWS

The Contractor agrees to abide by the requirements of the following as applicable: Title VI and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246 as amended, the Federal Rehabilitation Act of 1973 as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968

as amended, and Contractor agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

Contractor agrees not to discriminate in its employment practices, and will render services under this Contract without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, disability or age in any matter relating to employment. Any act of discrimination committed by Contractor, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this Contract.

32. ANTI-KICKBACK CLAUSE

The Contractor hereby agrees to adhere to the mandate dictated by the Copeland "Anti-Kickback" Act which provides that each Contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the completion of work, to give up any part of the compensation to which he is otherwise entitled.

33. CLEAN AIR ACT

The Contractor hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the Environmental Protection Agency (EPA) list of Violating Facilities.

34. ENERGY POLICY AND CONSERVATION ACT

The Contractor hereby recognizes the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

35. CLEAN WATER ACT

The Contractor hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders, or requirements issued under Section 508 of the Clean Water Act which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the Environmental Protection Agency (EPA) List of Violating Facilities.

36. ANTI-LOBBYING AND DEBARMENT ACT

The Contractor will be expected to comply with Federal statutes required in the Anti-Lobbying Act and the Debarment Act.

37. PROHIBITION OF DISCRIMINATORY BOYCOTTS OF ISRAEL

In accordance with La. R.S. 39:1602.1, for any contracts with a value of \$100,000 or more and for any Contractor with five (5) or more employees, the Contractor certifies that it is not engaging in a boycott of Israel and it will, for the duration of its contractual obligations, refrain from a boycott of Israel.

38. FUND USE

Contractor agrees not to use contract proceeds to urge any elector to vote for or against any candidate or proposition on an election ballot nor shall such funds be used to lobby for or against any proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority.

39. HEADINGS

Descriptive headings in this Contract are for convenience only and shall not affect the construction of this Contract or meaning of contractual language.

40. GOVERNING LAW

This Contract shall be governed by and interpreted in accordance with the laws of the State of Louisiana, including but not limited to La. R.S. 39:1551-1736 (Louisiana Procurement Code) and La. R.S. 39:196-200 (Information Technology Procurement Code), if applicable; purchasing rules and regulations; executive orders; standard terms and conditions; special terms and conditions; and specifications listed in the RFP; and this Contract. Venue of any action brought with regard to this Contract shall be in the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

41. COMPLETE CONTRACT

This is the complete Contract between the parties with respect to the subject matter and all prior discussions and negotiations are merged into this Contract. This Contract is entered into with neither party relying on any statement or representation made by the other party not embodied in this Contract and there are no other agreements or understanding changing or modifying the terms. This Contract shall become effective upon final statutory approval.

42. ORDER OF PRECEDENCE

The Request for Proposals (RFP), dated _____, and the Contractor's Proposal dated _____, are attached hereto and, incorporated into this Contract as though fully set forth herein. In the event of an inconsistency between this Contract, the RFP and/or the Contractor's Proposal, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence first to this Contract, then to the RFP and finally, the Contractor's Proposal.

THUS DONE AND SIGNED AT _____ on this ____ day of _____, 20____, and, IN WITNESS WHEREOF, the parties have executed this Contract.

WITNESSES' SIGNATURES:

CONTRACTOR SIGNATURE:

By: _____
Title: _____

THUS DONE AND SIGNED AT Lake Charles, Louisiana on this _____ day of _____, 20____, and,
IN WITNESS WHEREOF, the parties have executed this Contract.

WITNESSES' SIGNATURES:

MCNEESE STATE UNIVERSITY:

By:_____

Title_____