



CONTRACT AWARD

Date of Award: February 2, 2010

Contract Number: 87147

Replaces Contract: NEW

Buyer: Carla Swoyer

Telephone: 785-864-5972

E-Mail Address: cswoyer@ku.edu

Web Address: <http://www.purchasing.ku.edu/>

Item: **Transit and Maintenance Facility: Facility Purchase**

Agency: The University of Kansas Department of Parking and Transit

Location: Lawrence, Kansas

Period of Contract: Date of Award through Real Estate Purchase Agreement Closing Date

Contractor: Advanco, Incorporated
1441 Wakarusa Drive
Lawrence, KS 66049
People Soft Vendor ID# 37805
Contact: Martin Moore, President
Phone: (785) 841 - 6565
E-mail: martmoor@sunflower.com

Political

Subdivisions: Pricing is **not** available to the political subdivisions of the State of Kansas.

The above referenced contract award was recently posted to the University of Kansas Internet website. The document can be downloaded by going to the following website:
<http://www.purchasing.ku.edu/>

Conditions of Contract: The following terms and conditions of award are incorporated by reference and include: Real Estate Purchase Agreement; specifications and conditions of the proposal including any addenda; vendors' response including any addenda, appendices and exhibits.

Contract Documents / Order of Precedence: The RFP and any amendments and the response and any amendments provided by the Proposer during the evaluation process shall be incorporated along with the Da-146a into the written contract which shall become the complete understanding of the parties. In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:

- a. State of Kansas Contract Provisions Attachment DA-146a;
- b. Written modifications and addenda to the executed contract;
- c. Written contract signed by the parties;
- d. The Request for Proposal including any and all addenda; and
- e. Contractor's response including any addenda, appendices and exhibits.

Termination for Cause: The University may terminate the contract(s), or any part of the contract(s) entered into for cause under any one of the following circumstances:

- the Contractor fails to make delivery of goods or services as specified in the contract(s);
or
- the Contractor provides substandard quality and/or workmanship;
- the Contractor fails to perform any of the provisions of the contract(s), or so fails to make progress as to endanger performance of this contract in accordance with its terms.

The University shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within ten (10) days from the receipt of the notice (or such longer period as the University may authorize in writing), the University shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.

Termination for Convenience: The University may terminate performance of work under a contract or contracts entered into pursuant to this RFP in whole or in part whenever, for any reason, they shall determine that the termination is in the best interest of the University. In the event that the University elects to terminate this contract pursuant to this provision, it shall provide the Contractor written notice at least 30 days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may have not been terminated by the notice.

Additional Terms and Conditions

1. Total Project Cost shall not exceed THREE MILLION NINE HUNDRED SEVENTY FIVE THOUSAND EIGHT HUNDRED AND NINETY ONE DOLLARS (\$3,975,891).

2. Contractor's Cost Proposal is hereby revised and agreed to as follows:

Advanced Cost Proposal No Sales Tax Included

Base Bid	
Land	\$ 735,000
Bonding	\$ 179,238
Sitework	\$ 1,432,667
Landscaping	\$ 34,000
BioSwale	\$ 72,000
Bldg Shell	\$ 348,711
Finishes	\$ 184,510
Furnishings/Equip	\$ 50,727
Mechanical/Electrical	\$ 554,757
General Conditions	\$ 181,818
Permits, Fees	\$ 46,030
Design & Testing	\$ 156,433
Total	\$ 3,975,891

13 Acres - Land Cost 735,000.00

Cost/Acre	\$ 56,538
Cost/Square Foot	\$ 1.2979

Alternates

Alternate 1 -- Additional Costs Bus Wash

Bonding Financing	\$ 12,170
Site Construction	\$ -
Shell	\$ 94,657
Finishes	\$ 12,102
Furnishings/Equip	\$ 92,980
Mechanical/Electrical	\$ 39,471
General Conditions	\$ 3,653
Permits, Fees	\$ 14,881
Design & Testing	\$ -
Total	\$ 269,914

Alternate 2 – Additional Costs Fueling Station**Above Ground****Fueling Station**

Requirements (Fencing, Piping, etc...)	\$	7,500
Sitework	\$	2,174
Landscaping	\$	-
Bonding Financing	\$	6,968
Fueling Equipment	\$	134,000
TLS 350 fuel monitoring system with Ethernet TCP/IP	\$	4,125
MEP	\$	8,560
Shell	\$	-
Finishes	\$	-
Furnishings/Equip	\$	-
Mechanical/Electrical	\$	-
General Conditions	\$	1,640
Permits, Fees	\$	1,220
Design & Testing		
Total	\$	166,187

Alternate 4 – Additional Costs Expanded Transit Building .

Bonding Financing	\$	6,443
Shell	\$	67,505
Finishes	\$	38,017
Furnishings/Equip	\$	2,245
Mechanical/Electrical	\$	28,635
General Conditions	\$	1,920
Permits, Fees	\$	595
Design & Testing	\$	-
Total	\$	145,360

TOTAL Base + All Alternates	\$	4,557,352
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3. Subject to the terms and conditions of the Real Estate Purchase Agreement which incorporates this Contract Award by reference, Contractor agrees to sell and convey to University, and University agrees to purchase from Contractor, the real property together with the interests therein and the improvements located thereon, as more specifically described in Exhibit A of the Real Estate Purchase Agreement.

4. Alternates 1 (Bus Wash), 2 (Fueling Station) and 4 (Expanded Transit Facility) as detailed in this Contract Award are not being exercised at the time of initial project award, however, the University reserves the right to exercise these options under the following terms and conditions.

The University may add Alternates #1 and #4 (as revised below) on or before February 1, 2010 at the Additional Costs set forth above in Section 2. In the event that the University desires to add Alternates #1 and #4 after February 1, 2010, but on or before February 15, 2010, then the Total Project Cost shall increase by Eight Thousand Dollars (\$8,000.00), and the completion date shall remain unchanged. In the event that the University desires to add Alternates #1 and #4 after February 15, 2010, then the Total Project Cost shall increase by an amount to be mutually agreed to by the parties and the contract completion date shall be extended as mutually agreed to by the parties.

The University may add Alternate #2 (as revised below) on or before April 1, 2010. In the event that the University desires to add Alternate #2 after April 1, 2010, then the Total Project Cost shall increase by an amount to be mutually agreed to by the parties and the contract completion date shall be extended as mutually agreed to by the parties.

The University reserves the right to either proceed as stated above through the contract closing date or to bid these alternates after the closing date, whichever is deemed by the University to be in its best interest.

- a. Alternate #1—Bus Washing Facility: Contractor shall provide on site an enclosed commercial grade bus wash station, meeting all city/county and other regulatory requirements. The Bus Washing Facility will be attached to the maintenance area by adding on 20' bay to the east side of the building. Half of the bay, an area of 20' x 60', will be used for the wash bay and the other half of the bay will be for bus detailing. Overhead doors will be placed at each side of the building, as well as an overhead door on the interior to separate the wash bay from the detailing area. The wall separating the maintenance area from the wash/detailing area will be a CMU wall. The sand/oil separator will be increased in size to accommodate the additional load from the bus wash. The bus wash system will be an NS Wash Systems Model SYS-3100. This system is an all-aluminum, brush type, drive-through model designed specifically for transit buses. It will have a 108" width clearance between the curb rails. Overall dimensions will be 16'h x 18'w, and 45'l. An NS Wash Systems Model ROS-2000 Reverse Osmosis Spot Free system for mineral free water final rinse will be included. Adequate site and interior lighting will be provided for round-the-clock use.
- b. Alternate #2—Fueling Station: The on-site fueling station will consist of canopy with lighting, island and pumps, and will meet all city/county and regulatory

requirements. The Fueling Station will be located in accordance with the University approved final design and provide logical vehicle movement sequencing from parking/staging, to fueling station, to bus wash, and back to parking with adequate space for all turning movements. The canopy will be 24' x 50' with external drains and a clear height of 15'-6". The above ground storage tank will be a 12,000 gallon doublewall fiberglass tank. Two pump islands with two Gasboy Atlas 9100 Series dispensers. Also included is a Veeder-Roots TLS 350R with Ethernet TCP/IP module fuel monitoring system for leak detection and fuel inventory reports. Fleet management will be provided by the installation of a Gasboy Plus Series Fleet Management system. Power to the fueling station will be controlled from the maintenance building, and will be connected to the emergency generator ATS. The fueling area shall be adequately lit for round-the-clock use. All monitor equipment will be located in the maintenance building. Contractor will provide an adequate diesel generator to allow fueling during power outages.

- c. Alternate #4—Expanded Transit Facility: Contractor shall provide the expanded transit facility based upon the same specifications and requirements as the base bid facility with two (2) additional maintenance stations and additional office and support areas as described in the RFP. The square footage numbers shown below represent the total for an expanded facility and are NOT in addition to the base facility program.

Program Space	Qty	Ethernet Data Jacks	Phone Voice Jacks	Desired Net SF	Sub-Total Net SF	Desired Total Net SF
Office Area						5850
Lobby/ Application Desk	1	2	0	178		
Administration Office	1	2	2	120		
Operations Mgr. Offices	2	2	2	120	240	
General Mgr. Office	1	2	2	158		
Dispatch	1	8	8	428		
Small Conference Room	1	2	1	212		
Workroom	1	1	0	64		
Locked File/Storage Room	1	1	0	136		
IT Server Room	1	1	1	69		
Employee Break Room	1	1	1	474		
Training Room for 30 people	1	2	2	817		
Training Mgr. Office	1	1	1	102		
Training Storage	1	0	0	122		
Men's Public Restroom/Locker Rm.	1	0	0	296		
170 Lockers adjacent to Men's and Women's		0	0			

Restrooms/Locker Rooms						
Women's Public Restroom/ Locker Rm.	1	0	0	296		
Janitor	1	0	0	96		
Maintenance Area						10,129
Maint. Mgr./ Parts Office	1	4	2	283		
Secured Vault Room	1	0	0	80		
Office Storage	1	1	0	58		
Unisex Restroom	1	0	0	64		
Maintenance Storage	1	1	0	332		
Parts Room	1	1	0	1345		
Maintenance Bays	6	0	0	1328 (avg)	7967	
Total Facility						15,979

5. Emergency stand-by generators provided by Contractor in accordance with the RFP shall be diesel generators.
6. The "Purchase Option Vendor Terms and Conditions" set forth at page I3 of Contractor's Technical Proposal dated October 5, 2007 are hereby deleted and the following new terms are inserted in their place:
 - a. Payment to Contractor shall be in accordance with the terms of the Real Estate Purchase Agreement.
 - b. Late payments shall be handled in accordance with the Kansas Prompt Payment Act (K.S.A. 75-6403).
 Advanco, Inc. will assign all warranties to the University of Kansas, upon full payment of the purchase price.
7. **Sales Tax Exemption:** The University shall be responsible for applying for a project sales tax exemption covering the activities contemplated by this contract. In the event that such exemption is not obtained, applicable sales tax, estimated to be \$87,000 (without Alternates) or \$111,000 (with Alternates), shall be added to the total contract cost.
8. **Penalties and Incentives:** The Contractor agrees to meet the following project completion date: November 30, 2010. Liquidated damages in the amount of \$150 per day will be assessed if the Transit and Maintenance Facility (with all selected Alternates as outlined in section 4 above) is not completed and delivered to the University in accordance with the contract by November 30, 2010. The Timeline included as item E in Contractor's Technical Proposal shall be the basis for determining delays beyond the Contractor's control.

State of Kansas
Department of Administration
DA-146a (Rev. 1-01)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 2nd day of February, 2010.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
 2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the University of Kansas.
 3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
 4. **Disclaimer Of Liability:** Neither the University of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
 5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.
- Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
 7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the University of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
 8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
 9. **Responsibility For Taxes:** The University of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
 10. **Insurance:** The University of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
 11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 *et seq.*
 12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the University of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."