

**REQUEST FOR PROPOSAL (RFP)**

<b>RFP Number:</b>	<b>TRA Trust 2010-03</b>
<b>Date Released:</b>	<b>October 20, 2010</b>
<b>Closing Date:</b>	<b>November 3, 2010</b>
<b>Procurement Officer:</b>	<b>Jim Dahmen – Trust Contact E-Mail Address: <a href="mailto:jimdahmen@columbus-ks.com">jimdahmen@columbus-ks.com</a></b>
<b>Technical Questions:</b>	<b>Bob Jurgens, KDHE: 785-296-1914 Ryan Singer, KDHE: 785-296-1990</b>
<b>Item:</b>	<b>Legal Services</b>
<b>Agency:</b>	<b>Treece Relocation Assistance Trust</b>
<b>Period of Contract:</b>	<b>Contract award date through August 31, 2012</b>
<b>Guarantee:</b>	<b>No Monetary Guarantee Required</b>
<b>Scope:</b>	<b>The Trust seeks competitive proposals from attorneys interested in representing the Trust. A qualified attorney selected through this process will be hired to represent the Trust. Selection for contract award will be based on a number of factors, including, but not limited to, cost, experience, qualifications, and geographic location.</b>

Electronic Copies of RFP # TRA Trust 2010-03 are available at [www.kdheks.gov/treece](http://www.kdheks.gov/treece) or by request from the Treece Relocation Assistance Trust (Trust) by contacting Ryan Singer, Kansas Department of Health and Environment via email at [rsinger@kdheks.gov](mailto:rsinger@kdheks.gov) or calling (785) 291-3252. KDHE is only providing technical and administrative assistance to the TRA Trust and is not a party in the contract award associated with this RFP.

# 1 INSTRUCTIONS

## 1.1 Request for Proposal Number: ***TRA Trust 2001-03***

The RFP number, indicated in the header of this page, as well as on the first page of this proposal, has been assigned to this RFP and MUST be shown on all correspondence or other documents associated with this RFP and MUST be referred to in all verbal communications. All inquiries, written or verbal, shall be directed only to the procurement officer's designated technical representative noted below:

**Bob Jurgens**, KDHE Program Manager, (785) 296-1914, bjurgens@kdheks.gov.

There shall be no communication with any other Trust employee or representative regarding this RFP except with designated participants in attendance ONLY DURING:

- Negotiations,
- Contract signing, and
- as otherwise specified in this RFP.

Violations of this provision by bidder or Trust personnel/designees may result in the rejection of the proposal.

## 1.2 ***Negotiated Procurement:***

This is a negotiated procurement contract. Final evaluation and award will be made by an affirmative vote of the Treece Relocation Assistance Trustees in accordance with the bylaws.

The Trust will negotiate contracts with qualified parties to provide services or technical products needed by the Trust. Upon receipt of bids or proposals, the Trust may negotiate with one or more of the firms submitting bids or proposals and select from among those submitting such bids or proposals the party to contract with to provide the services or technical products. Meetings to conduct negotiations pursuant to this section shall not be subject to the provisions of K.S.A. 75-4317 through 75-4320a and amendments thereto. In the event that the Trust selects a bid which is not the lowest bid on a given contract, the Trust's monthly financial reports shall contain a rationale explaining why the lowest bidder was not awarded the contract.

## 1.3 ***Appearance Before Trust:***

Any, all or no bidders may be required to appear before the Trust to explain the bidder's understanding and approach to the project and/or respond to questions from the Trust concerning the proposal; or, the Trust may award without conducting negotiations, based on the initial proposal. The Trust reserves the right to request information from bidders as needed. If information is requested, the Trust is not required to request the information of all bidders.

Bidders selected to participate in negotiations may be given an opportunity to submit a revised technical and/or cost proposal/offer to the Trust, subject to a specified cut off time for submittal of revisions. Meetings before the Trust are not subject to the Open Meetings Act. Bidders are prohibited from electronically recording these meetings. All information received prior to the cut off time will be considered part of the bidder's revised offer.

No additional revisions shall be made after the specified cut off time unless requested by the Trust.

## 1.4 ***Cost of Preparing Proposal:***

The cost of developing and submitting the proposal is entirely the responsibility of the bidder. This includes costs to determine the nature of the engagement, preparation of the proposal, submitting the proposal, negotiating for the contract and other costs associated with this RFP.

## 1.5 ***Preparation of Proposal:***

Prices are to be entered in spaces provided on the cost proposal form if provided herein. Computations and totals shall be indicated where required. In case of error in computations or totals, the unit price shall govern. The Trust has the right to rely on any prices provided by bidders. The bidder shall be responsible for any mathematical errors. The Trust reserves the right to reject proposals which contain errors.

A proposal shall not be considered for award if the price in the proposal was not arrived at independently and without collusion, consultation, communication or agreement as to any matter related to price with any other bidder, competitor or public officer/employee.

Technical proposals shall contain a concise description of bidder's capabilities to satisfy the requirements of this RFP with emphasis on completeness and clarity of content. Repetition of terms and conditions of the RFP without additional clarification shall not be considered responsive.

#### **1.6 Signature of Proposals:**

Each proposal shall give the complete legal name, mailing address and e-mail address of the bidder and be signed by an authorized representative by original signature with his or her name and legal title typed below the signature line. If the contract's contact will be a different entity, indicate that individual's contact information for communication purposes. Each proposal shall include the bidder's tax number.

#### **1.7 Acknowledgment of Amendments:**

All bidders shall acknowledge receipt of any amendments to this RFP by returning a signed hard copy with the bid. Failure to acknowledge receipt of any amendments may render the proposal to be non-responsive. Changes to this RFP shall be issued only by the Trust in writing.

#### **1.8 Modification of Proposals:**

A bidder may modify a proposal by letter at any time prior to the closing date and time for receipt of proposals.

#### **1.9 Withdrawal of Proposals:**

A proposal may be withdrawn on written request from the bidder to the Trust Procurement Officer prior to the closing date.

#### **1.10 Competition:**

The purpose of this RFP is to seek competition. The bidder shall advise the Trust if any specification, language or other requirement inadvertently restricts or limits bidding to a single source. Notification shall be in writing and must be received by the TRA Trust no later than five (5) business days prior to the bid closing date. The TRA Trust Chair reserves the right to waive minor deviations in the specifications which do not hinder the intent of this RFP.

#### **1.11 Evaluation of Proposals:**

Award shall be made in the best interest of the Trust as determined by the PNC or their designees. Although no weighted value is assigned, consideration may focus toward but is not limited to:

- Cost. Bidders are not to inflate prices in the initial proposal as cost is a factor in determining who may receive an award or be invited to formal negotiations. The Trust reserves the right to award to the lowest responsive bid without conducting formal negotiations.
- Adequacy and completeness of proposal
- Bidder's understanding of the project
- Compliance with the terms and conditions of the RFP
- Experience in providing like services
- Qualified staff
- Methodology to accomplish tasks
- Response format as required by this RFP

**1.12 Acceptance or Rejection:**

The Trust reserves the right to accept or reject any or all proposals or part of a proposal; to waive any informalities or technicalities; clarify any ambiguities in proposals; modify any criteria in this RFP; and unless otherwise specified, to accept any item in a proposal.

**1.13 Proposal Disclosures:**

At the time of closing, only the names of those who submitted proposals shall be made public information. No price information will be released. Interested bidders or their representatives will be notified in writing of the contract award results. Bid results will not be given to individuals over the telephone or e-mail. Results may be obtained after contract finalization by obtaining a bid tabulation from the Trust by sending (*do not include with bid*):

- A self-addressed, stamped envelope
- RFP Number

Send to:

**TRA Trust**  
**Attention: Legal Services Bid Results/Copies**  
**P.O. Box 66**  
**Columbus, KS 66725**

Copies of individual proposals may be obtained under the Kansas Open Records Act by sending an email to the Trust's designee: Ryan Singer at [rsinger@kdheks.gov](mailto:rsinger@kdheks.gov) or calling (785) 291-3252 to request an estimate of the cost to reproduce the documents and remitting that amount with a written request to the above address or a vendor may make an appointment by calling the above number to view the proposal file. Upon receipt of the funds, the documents will be mailed. Information in proposal files shall not be released until a contract has been executed or all proposals have been rejected.

**1.14 Disclosure of Proposal Content and Proprietary Information:**

All proposals become the property of the Trust. The Open Records Act (K.S.A. 45-215 et seq) of the State of Kansas requires public information be placed in the public domain at the conclusion of the selection process, and be available for examination by all interested parties. No proposals shall be disclosed until after a contract award has been issued. The State reserves the right to destroy all proposals if the RFP is withdrawn, a contract award is withdrawn, or in accordance with Kansas law. Late proposals will be retained unopened in the file and not receive consideration or may be returned to the bidder.

Trade secrets or proprietary information legally recognized as such and protected by law may be requested to be withheld if clearly labeled "Proprietary" on each individual page and provided as separate from the main proposal. Pricing information is not considered proprietary and the bidder's entire proposal response package will not be considered proprietary.

All information requested to be handled as "Proprietary" shall be submitted separately from the main proposal and clearly labeled, in a separate envelope or clipped apart from all other documentation. The bidder shall provide detailed written documentation justifying why this material should be considered "Proprietary". The Trust reserves the right to accept, amend or deny such requests for maintaining information as proprietary in accordance with Kansas law.

The Trust does not guarantee protection of any information which is not submitted as required.

**1.15 Exceptions:**

By submission of a response, the bidder acknowledges and accepts all terms and conditions of the RFP unless clearly avowed and wholly documented in a separate section of the Proposal to be entitled: "Exceptions".

**1.16 Notice of Award:**

An award is made on execution of the written contract by all parties.

## 2 Proposal Response

### 2.1 Submission of Proposals:

Bidder's proposal shall consist of:

- One (1) original and 1 copy of the proposal, including applicable literature and other supporting documents;
- One (1) electronic / software version(s) of the proposal is required. This shall be provided on CD or flash drive, in Microsoft® Word or Excel Version 2003 or 2007. Technical and cost responses shall be submitted on separate media.

Bidder's proposal, sealed securely in an envelope or other container, shall be received no later than 5:00 p.m., Central Time, on the closing date, addressed as follows:

**TRA Trust**  
**Attention: TRA Trust 2010-03 – Legal Services Bid**  
**P.O. Box 66**  
**Columbus, KS 66725**

It is the bidder's responsibility to ensure bids are received by the closing date and time. Delays in mail delivery or any other means of transmittal, including couriers or agents of the issuing entity shall not excuse late bid submissions.

Faxed, e-mailed or telephoned proposals are not acceptable unless otherwise specified.

Proposals received prior to the closing date shall be kept secured and sealed until closing. The Trust shall not be responsible for the premature opening of a proposal or for the rejection of a proposal that was not received prior to the closing date because it was not properly identified on the outside of the envelope or container. Late proposals will be retained unopened in the file and not receive consideration or may be returned to the bidder.

### 2.2 Proposal Format:

Bidders are instructed to prepare their Proposal following the same sequence as this RFP.

### 2.3 Transmittal Letter:

All bidders **shall** respond to the following statements:

- (a) the bidder is the prime contractor and identifying all subcontractors;
- (b) the bidder is a corporation or other legal entity;
- (c) no attempt has been made or will be made to induce any other person or firm to submit or not to submit a proposal;
- (d) the bidder does not discriminate in employment practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin or disability;
- (e) no cost or pricing information has been included in the transmittal letter or the Technical Proposal;
- (f) the bidder presently has no interest, direct or indirect, which would conflict with the performance of services under this contract and shall not employ, in the performance of this contract, any person having a conflict;
- (g) the person signing the proposal is authorized to make decisions as to pricing quoted and has not participated, and will not participate, in any action contrary to the above statements;
- (h) whether there is a reasonable probability that the bidder is or will be associated with any parent, affiliate or subsidiary organization, either formally or informally, in supplying any service or furnishing any supplies or equipment to the bidder which would relate to the performance of this contract. If the statement is in the affirmative, the bidder is required to submit with the proposal, written certification and authorization from the parent, affiliate or subsidiary organization granting the State and/or the federal government the right to examine any directly pertinent books, documents, papers and records involving such transactions related to the contract. Further, if at any time after a proposal is submitted, such an association arises, the bidder will obtain a similar certification and authorization and failure to do so will constitute grounds for termination for cause of the contract at the option of the State;

(i) bidder agrees that any lost or reduced federal or state funding resulting from unacceptable performance in a contractor task or responsibility defined in the RFP, contract or modification shall be accompanied by reductions in Trust payments to Contractor; and

(j) the bidder has not been retained, nor has it retained a person to solicit or secure a state contract on an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the bidder for the purpose of securing business. For breach of this provision, the Trust shall have the right to reject the proposal, terminate the contract for cause and/or deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee or other benefit.

#### **2.4 Bidder Information:**

The bidder must include a narrative of the bidder's corporation and each subcontractor if any. The narrative shall include the following:

- (a) date established;
- (b) ownership (public, partnership, subsidiary, etc.);
- (c) number of personnel, full and part time, assigned to this project by function and job title;
- (d) resources assigned to this project and the extent they are dedicated to other matters;
- (e) organizational chart;

#### **2.5 Qualifications:**

A description of the bidder's qualifications and experience providing the requested or similar service, including resumes of personnel assigned to the project stating their education and work experience, shall be submitted with the Proposal. The bidder must be an established firm recognized for its capacity to perform. The bidder must have sufficient personnel to meet the deadlines specified in the RFP.

#### **2.6 References:**

Provide a minimum of 3 references who purchased similar items or services from the bidder in the last 2 year(s). References shall show firm name, contact person, address, e-mail address and phone number. Bidder's employees and the buying agency shall not be shown as references.

### 3 TERMS AND CONDITIONS

#### 3.1 **Contract:**

The successful legal services bidder(s) may be required to enter into a written contract with the Trust depending on the expertise in real estate and trust law. The contractor agrees to accept the provisions of Contractual Provisions Attachment, which is incorporated into contracts with the Trust and is incorporated into this RFP.

#### 3.2 **Contract Formation:**

No contracts shall be considered to have been entered into by the Trust until all statutorily required signatures and certifications have been rendered and a written contract has been signed by the successful bidder.

#### 3.3 **Notices:**

All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") that may be required or desired to be given by either party to the other shall be IN WRITING and addressed as follows:

**TRA Trust**  
**Attention: RFP # TRA Trust 2010-03**  
**P.O. Box 66**  
**Columbus, KS 66725**

or to any other persons or addresses as may be designated by notice from one party to the other.

#### 3.4 **Termination for Cause:**

The TRA Trustees may terminate a contract, or any part of the contract, for cause under any one of the following circumstances:

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

The TRA Trust Chair shall provide Contractors 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 Trust may authorize in writing), the Chair 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.

#### 3.5 **Termination for Convenience:**

The TRA Trustees may terminate performance of work under this contract in whole or in part whenever, for any reason, the trustees shall determine that the termination is in the best interest of the Trust. In the event that the trustees elect to terminate this contract pursuant to this provision, they 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.

#### 3.6 **Rights and Remedies:**

If this contract is terminated, the Trust, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to the Trust in the manner and to the extent directed, any completed materials. The Trust shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

In the event of termination, the Contractor shall receive payment prorated for that portion of the contract period services were provided to or goods were accepted by Trust subject to any offset by Trust for actual damages including loss of federal matching funds.

The rights and remedies of the Trust provided for in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

**3.7 Force Majeure:**

The Contractor shall not be held liable if the failure to perform under this contract arises out of causes beyond the control of the Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes.

**3.8 Waiver:**

Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by Trust shall not constitute a waiver.

**3.9 Independent Contractor:**

Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation, social security, income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

**3.10 Staff Qualifications:**

The Contractor shall warrant that all persons assigned by it to the performance of this contract shall be employees of the Contractor (or specified Subcontractor) and shall be fully qualified to perform the work required. The Contractor shall include a similar provision in any contract with any Subcontractor selected to perform work under this contract.

Failure of the Contractors to provide qualified staffing at the level required by the contract specifications may result in termination of this contract or damages.

**3.11 Subcontractors:**

The Contractors shall be the sole source of contact for the contracts. The Trust will not subcontract any work under the contract to any other firm than those initially awarded and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of the contract shall apply without qualification to any services performed or goods provided by any subcontractor. Subcontractors must be pre-approved by the Trust prior to commencing any appraisal activities.

**3.12 Proof of Insurance:**

The Contractor selected for award shall maintain professional liability insurance in the amount of \$1,000,000 which the Trust considers reasonable and adequate to protect the Trust from acts, omissions, and negligence on the part of the firm, its partners, attorneys and/or employees. The firm shall furnish the Trust original certificates of insurance naming TRA Trust as an additional insured and evidencing such coverage dictated by the Trust on the effective date of the contract resulting from this RFP.

**3.13 Confidentiality:**

The Contractor may have access to private or confidential data maintained by Trust to the extent necessary to carry out its responsibilities under this contract. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services under this contract. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this contract shall be disseminated by either party except as authorized by statute, either during the period of the contract or thereafter. Contractor must agree to return any or all data furnished by the Trust promptly at the request of Trust in whatever form it is maintained by Contractor. On the termination or expiration of this contract, Contractor will not use any of such data or any material derived from the data for any purpose and, where so instructed by Trust, will destroy or render it unreadable.

**3.14 Nondiscrimination and Workplace Safety:**

The Contractor agrees to abide by all federal, state and local laws, and rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws or rules or regulations may result in termination of this contract.

**3.15 Hold Harmless:**

The Contractor shall indemnify the Trust against any and all loss or damage to the extent arising out of the Contractor's negligence in the performance of services under this contract and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

The Trust shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control, where such loss or destruction is to state property. The Contractor shall do nothing to prejudice the Trust's right to recover against third parties for any loss, destruction or damage to the applicant's or Trust's property.

**3.16 Care of Trust Property:**

The Contractor shall be responsible for the proper care and custody of any applicant- or Trust-owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this contract. The Contractor shall reimburse the applicant or Trust for such property's loss or damage caused by Contractor, normal wear and tear excepted.

**3.17 Prohibition of Gratuities:**

Neither the Contractor nor any person, firm, or corporation employed by the Contractor in the performance of this contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any State employee at any time.

**3.18 Retention of Records:**

Unless the Trust specifies in writing a different period of time, the Contractor agrees to preserve and make available at reasonable times all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of five (5) years from the date of the expiration or termination of this contract.

Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

The Contractor agrees that authorized federal and state representatives, including but not limited to, personnel of the Trust and supporting agencies (KDHE, Kansas Attorney General's office and US Environmental Protection Agency (EPA)); independent auditors acting on behalf of Trust, state and/or federal agencies shall have access to and the right to examine records during the contract period and during the five (5) year post contract period. Delivery of and access to the records shall be within five (5) business days at no cost to the state.

**3.19 Antitrust:**

If the Contractor elects not to proceed with performance under any such contract with the Trust, the Contractor assigns to the Trust all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and the State of Kansas relating to the particular services purchased or acquired by the Trust pursuant to this contract.

**3.20 Modification:**

This contract shall be modified only by the written agreement and approval of the parties. No alteration or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.

**3.21 Assignment:**

The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of the Trust. The Trust may reasonably withhold consent for any reason.

This contract may terminate for cause in the event of its assignment, conveyance, encumbrance or other transfer by the Contractor without the prior written consent of the Trust.

**3.22 Third Party Beneficiaries:**

This contract shall not be construed as providing an enforceable right to any third party.

**3.23 Captions:**

The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.

**3.24 Severability:**

If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.

**3.25 Governing Law:**

This contract shall be governed by the laws of the State of Kansas and shall be deemed executed in Columbus, Cherokee County, Kansas.

**3.26 Jurisdiction:**

The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas District Court of Shawnee County, unless otherwise specified and agreed upon by the Trust. Contractor waives personal service of process, all defenses of lack of personal jurisdiction and forum non conveniens. The Eleventh Amendment of the United States Constitution is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this Agreement shall be deemed a waiver of the Eleventh Amendment.

**3.27 Mandatory Provisions:**

The provisions found in Contractual Provisions Attachment are incorporated by reference and made a part of this contract.

**3.28 Integration:**

This contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This Agreement between the parties shall be independent of and have no effect on any other contracts of either party.

**3.29 Immigration and Reform Control Act of 1986 (IRCA):**

All contractors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the contractor as well as any subcontractor or sub-contractors. The usual method of verification is through the Employment Verification (I-9) Form.

With the submission of this bid, the contractor hereby certifies without exception that such contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at the Trust's option, may subject the contract to termination for cause and any applicable damages.

Unless provided otherwise herein, all contractors are expected to be able to produce for the Trust any documentation or other such evidence to verify Contractor's IRCA compliance with any provision, duty, certification or like item under the contract.

Contractor will provide a copy of a signed Certification Regarding Immigration Reform and Control Form (see <http://www.uscis.gov/files/form/i-9.pdf>) with the technical proposal.

### **3.30 Worker Misclassification:**

The contractor and all lower tiered subcontractors under the contractor shall properly classify workers as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes, and income tax withholding. Failure to do so may result in contract termination.

### **3.31 Criminal or Civil Offense:**

Any conviction for a criminal or civil offense of an individual or entity that controls a company or organization or will perform work under this contract that indicates a lack of business integrity or business honesty must be disclosed. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in disqualification of the bid or termination of the contract.

### **3.32 Injunctions:**

Should the Trust be prevented or enjoined from proceeding with the services before or after contract execution by reason of any litigation or other reason beyond the control of the State, Contractor shall not be entitled to make or assert claim for damage by reason of said delay.

### **3.33 Statutes:**

Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the application of either party the contract shall be amended to make such insertion or correction.

### **3.34 Federal, State and Local Taxes:**

Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. The Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Contract. The Trust is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the bidder's price quotation. Upon request, the Trust shall provide to the Contractor a certificate of tax exemption.

The Trust makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

### **3.35 Accounts Receivable Set-Off Program:**

This contract utilizes federal and state funding sources. If, during the course of this contract the Contractor is found to owe a debt to the State of Kansas, agency payments to the Contractor may be intercepted/setoff by the State of Kansas. Notice of the setoff action will be provided to the Contractor. Pursuant to K.S.A. 75-6201 et seq, Contractor shall have the opportunity to challenge the validity of the debt. If the debt is undisputed, the Contractor shall credit the account of the agency making the payment in an amount equal to the funds intercepted.

K.S.A. 75-6201 et seq. allows the Director of Accounts & Reports to setoff funds the Trust owes Contractors against debts owed by the Contractors to the State of Kansas. Payments setoff in this manner constitute lawful payment for

services or goods received. The Contractor benefits fully from the payment because its obligation to the Trust is reduced by the amount subject to setoff.

### **3.36 Definitions:**

A glossary of common procurement terms also used by the Trust is available at <http://da.ks.gov/purch>, under "Purchasing Forms".

## **4 4.0 OTHER TERMS AND CONDITIONS**

### **4.1 Indefinite Quantity Contract:**

This Request is for an open-ended contract between a Contractor and the TRA Trust to furnish an undetermined quantity of a service in a given period of time. The quantities ordered will be those actually required during the contract period, and the Contractor will deliver only such quantities as may be ordered. No guarantee of volume is made.

### **4.2 Experience:**

All bidders (are preferred to have) a minimum of 3 years continuous active participation in the applicable industry, providing services comparable in size and complexity to those specified herein.

Bidders are required to furnish information in the Proposal supporting the capability to comply with conditions for bidding and fulfill the contract if receiving an award of contract. Such information may include, but not be limited to, a list of similar size and type projects the bidder has completed.

### **4.3 Prices or Price Adjustments:**

Prices shall remain firm for the entire contract period. Prices shall be net delivered, including all trade, quantity and cash discounts. Any price reductions available during the contract period shall be offered to the Trust. Failure to provide available price reductions may result in termination of the contract for cause.

### **4.4 Payment:**

Payment Terms are Net 30 days. NOTE: If the 30th calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following workday will become the required payment date.

Payments shall not be made for costs or items not listed in the Contractor's response.

Payment schedule shall be on a frequency mutually agreed upon by both the Trust and the Contractor.

### **4.5 Unit Pricing:**

Each item required by the bid must be individually priced (i.e. priced per single unit) and be able to be ordered individually.

### **4.6 Shipping and F.O.B. Point:**

Unless otherwise specified, bid prices shall be F.O.B. DESTINATION, PREPAID AND ALLOWED (included in the price bid), which means delivered to the Trust's post office box or other designated point as specified in this RFP without additional charge. Shipments shall be made in order to arrive at the destination at a satisfactory time for unloading during receiving hours.

### **4.7 Deliveries:**

All orders shall be shipped FOB destination, prepaid and allowed, clearly marked with the purchase/work order number. If delays in delivery are anticipated, the Contractor shall immediately notify the ordering agency of the revised delivery date or partial delivery date. The order may be canceled if delivery time is unsatisfactory. The Contractor shall inform the Trust of any supply or delivery problems. Continued delivery problems may result in termination of the contract for cause.

In the event delivery minimums apply, bidders shall submit that information with their bid response.

**4.8 *Materials and Workmanship:***

The Contractor shall perform all work and furnish all supplies and materials, machinery, equipment, facilities, and means, necessary to complete all the work required by this Contract, within the time specified, in accordance with the provisions as specified.

The contractor shall be responsible for all work put in under these specifications and shall make good, repair and/or replace, at the contractor's own expense, as may be necessary, any defective work, material, etc., if in the opinion of agency and/or Division of Purchases said issue is due to imperfection in material, design, workmanship or contractor fault.

**4.9 *Industry Standards:***

If not otherwise provided, services called for in this contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.

**4.10 *Tax Clearance***

The Trust requires tax clearance certificates for all subcontractors be submitted with the technical proposal, and that the bidder additionally provide subcontractor(s) legal company name, contact information and tax ID number (FEIN/TIN) as well.

**4.11 *Equipment:***

Any proposed equipment, equipment options, and hardware expansions must be identified by manufacturer and model number and descriptive literature of such equipment must be submitted with the bid response.

**4.12 *Implied Requirements:***

All products and services not specifically mentioned in this RFP, but which are necessary to provide the functional capabilities described by the specifications, shall be included. Other products required to make the described software functional shall be identified in the bidder's response.

**4.13 *Acceptance:***

No contract provision or use of items by the State shall constitute acceptance or relieve the Contractor of liability in respect to any expressed or implied warranties.

**4.14 *Ownership:***

All data, forms, procedures, manuals, system descriptions and work flows developed or accumulated by the Contractor under this contract shall be owned by the Trust. The Contractor may not release any materials without the written approval of the using agency.

**4.15 *Software Code and Intellectual Property Rights:***

As applicable, all original software and software code and related intellectual property developed or created by the Contractor in the performance of its obligations under this Contract or any Task Order issued under this Contract, shall become the sole property of the Trust. The Contractor will surrender all original written materials, including any reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer-based training modules, electronically or magnetically recorded material, used to develop this software or software code and related intellectual property to the state entity for which it was developed.

**4.16 *Data:***

Any and all data required to be provided at any time during the bid process or contract term shall be made available in a format as requested and/or approved by the Trust.

**4.17 Submission of the Bid:**

Submission of the bid will be considered presumptive evidence that the bidder is conversant with local facilities and difficulties, the requirements of the documents and of pertinent State and/or local codes, state of labor and material markets, and has made due allowances in the proposal for all contingencies. Later claims for labor, work, materials, equipment, and tax liability required for any difficulties encountered which could have been foreseen will not be recognized and all such difficulties shall be properly taken care of by Contractor at no additional cost to the Trust.

**4.18 Certification of Materials Submitted:**

The response to this RFP, together with the specifications set forth herein and all data submitted by the bidder to support the response including brochures, manuals, and descriptions covering the operating characteristics of the item(s) proposed, shall become a part of any contract between the Contractor and the Trust. Any written representation covering such matters as reliability of the item(s), the experience of other users, or warranties of performance shall be incorporated by reference into the contract.

**4.19 Inspection:**

The Trust reserves the right to reject, on arrival at destination, any items which do not conform with specification of the Contract.

**4.20 Bidder Contracts:**

Bidders must include with their RFP response, a copy of any contracts, agreements, licenses, warranties, etc. that the bidder would propose to incorporate into the any contract generated from this Bid Event. (Contractual Provision Attachment remains a mandatory requirement in all contracts.)

**4.21 Transition Assistance:**

In the event of contract termination or expiration, Contractor shall provide all reasonable and necessary assistance to Trust to allow for a functional transition to another vendor.

**4.22 Award:**

Award will be by line item or group total, whichever is in the best interest of the Trust.

**SCOPE OF WORK**  
**TREECE RELOCATION ASSISTANCE TRUST**  
**CONTRACT REQUIREMENTS FOR PROFESSIONAL LEGAL SERVICES**

**Background**

EPA Region 6 signed a Record of Decision (ROD) for Operable Unit 4 (OU4) - Chat Piles, Other Mine and Mill Waste, and Smelter Waste at the Tar Creek Superfund Site on February 20, 2008. On February 12, 2010, EPA issued a Draft Explanation of Significant Difference for the aforementioned ROD to offer relocation to the residents of Treece, Kansas, as part of its remedy for OU4 of the Tar Creek Site. This relocation includes both residential and business properties.

The funding of this project would provide significant benefits for the State of Kansas because Treece residents are removed from the areas of waste associated with the Tar Creek Site while active remediation is underway at Tar Creek OU4. It also benefits the State of Oklahoma and EPA Region 6 by allowing the State to address its remedial priorities for Operable Unit 4 and furthering Region 6's achievement of its long-term strategic targets in accordance with the Strategic Plan and the ROD for Operable Unit 4.

The City of Treece residents adopted a resolution on March 13, 2006, expressing the desire to be included in the Picher relocation. On October 29, 2009, H.R. 2996: Department of the Interior, Environment, and Related Agencies Appropriations Action, 2010 became Public Law 111-88. Section 430 of Public Law 111-88 encouraged EPA to consider all appropriate criteria relating to the buyout and relocation of residents of properties in Treece, Kansas. Relocation of residents in Treece is not subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

Using state and federal funding, the Kansas Department of Health & Environment (KDHE) funds the Treece Relocation Assistance Trust (TRA Trust) for the buyout and relocation of qualified residents in the affected area. KDHE, in coordination with the TRA Trust, will provide for the buyout of residents and businesses and/or demolition and/or relocation of houses and commercial properties in and near Treece, Kansas. Structures will be purchased, demolished or moved to decrease the health risks and liability associated with homes and businesses in the area. Best management practices will be employed to protect the surrounding environment and remaining citizens in the area. Demolition activities may include removal and disposal of all construction and demolition debris, and depending upon funding availability may include: septic systems closure, utilities relocation, grading of site to allow for appropriate drainage, and final restoration of disturbed area to a vegetated condition.

**Purpose**

The Trust seeks competitive proposals from attorneys interested in providing legal services to the Trust. A qualified attorney selected through this process will be selected to represent the Trust. Contract award will be based on a number of factors, including, but not limited to, cost, experience, qualifications, and geographic location.

**Scope of Work**

The Trust anticipates the appointed attorney(s) will act as general counsel to the Board, attend trust meetings upon request, and provide advice and representation in matters relevant to the Trust's duties to administer relocation assistance pursuant to Kansas Statutes Annotated 49-511 through 49-517 and to acquire, hold and dispose of property as specified in said act.

This representation requires knowledge of multiple practice areas, including, but not limited to, trust law; contract law; real estate law; administrative law; employment law; general civil litigation; regulatory compliance; and state constitutional law. Representation may include the review of contracts, pleadings, motions, memoranda, briefs, and other documents as requested by the Trust. In addition, the Board attorney is expected to advise the Board on issues related to statutory and regulatory interpretation, open meetings, open records, and parliamentary procedure.

**Attorney Qualifications***Required*

- Current license to practice law in Kansas;
- No public disciplinary actions either resolved or pending in Kansas or any other jurisdiction;
- Availability to attend 10-15 board meetings each year in Cherokee County;
- Sufficient office space to accommodate the filing and storage of materials for the Trust and full-time secretarial staff; law library and/or access to electronic research resources sufficient to meet the Trust's needs;
- Sufficient financial resources to advance payment for on-going monetary requirements for future reimbursement by the Board, including, but not limited to:
  - Process service to witnesses;
  - Copying;
  - Reproducing exhibits;
  - Filing fees;
  - Transcript costs;
- Malpractice insurance for any attorney handling Trust matters sufficient to protect the Trust at a minimum of one million dollars per claim and two million dollars per annual aggregate.

*Preferred*

- 2 years experience practicing trust and/or real estate law;
- Familiarity with the Kansas Administrative Procedures Act, the Kansas Open Records Act; and the Kansas Open Meetings Act;
- Familiarity with the Kansas constitution, statutes, and administrative regulations pertaining to the Trust in particular;
- Experience with civil litigation, including experience at the appellate level;

**Other Terms and Conditions**

The Trust Attorney shall not be prohibited from engaging in the private practice of law during the course of this contract as long as the practice does not interfere with or conflict with the matters or activities of the Trust. Neither the Trust Attorney nor any member of the Trust Attorney's firm shall represent an applicant for relocation from the Treece, Kansas area during the time he or she represents the Trust.

Attorney fees, including investigative fees and other expenses, must be itemized and billed in 1/10<sup>th</sup> hour increments and will be paid on a monthly basis.

Reimbursement for professional services shall include sufficient clerical and support staff to produce finished legal products.

Reimbursement under the terms of the contract shall include an hourly rate for the attorney, an associate attorney or law clerk, and paralegal. Reimbursement for mileage will be at the State's current rate at the time of the travel. Other Expenses shall be paid in the amount billed to the attorney with copies of all receipts to be included with the monthly billing.

**PRICING SHEET**  
**RFP # TRA TRUST 2010-03 – LEGAL SERVICES**

**For Period Date of Award through August 31, 2012**

In order to evaluate and select the most appropriate legal service, each bidder must respond to the following questions/statements/requests for information:

**Legal Services**

Task		Unit	Cost
Attorney (Partner/member)		Hr	
Attorney (Associates/Of Counsel)		Hr	
Legal Assistant/Paralegal		Hr	
Reimbursement costs (includes all support services)			
<b>Please check box if the mileage rate is acceptable</b>	<b>Acceptable?</b>		
In-house photocopying (cost/copy)			Actual Cost
Travel Rates ( <b>half</b> of regular hourly rates)		Hr	Varies
Travel – Mileage rate (does not include travel labor)**		Mile	\$0.50

Actual costs will be reimbursed for the following types of expenses when receipts and/or detailed statements are provided and charges are approved by the Board:

- Long Distance Calls
- Fax Transmittals
- Postage and Shipping Expenses
- Overnight Delivery
- Publication Expenses
- Court Reporting/Transcription Fees
- Recording/Filing Fees
- State Agency Fees
- Outside Reproductions
- Outside Printing for large or non-standard copy projects
- Exhibit Preparation by outside providers
- Tolls/Parking
- Taxis or other transportation
- Meals
- Lodging

TREECE RELOCATION ASSISTANCE TRUST  
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, 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 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.**

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 State of Kansas.
3. **Termination Due To Lack of Funding Appropriation:** If, in the judgment of the Treece Relocation Assistance (TRA) Trust Chair, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, Trust may terminate this agreement at the end of its current fiscal year. Trust 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 Trust under the contract. Trust 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 Trust, title to any such equipment shall revert to contractor at the end of Trust'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 TRA Trust, State 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 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 TRA Trust or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the Trust 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 Trust 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 Trust 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 State of Kansas and need not be reserved, but prudence requires the Trust and State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment.