

Commonwealth of Kentucky SOLICITATION

TITLE: KyLOC / Warehouse Management System (WMS)

DATE ISSUED	SOLICITATION CLOSES	SOLICITATION NO.
2014-09-12	Date: 2014-10-01 Time: 13:00:00	RFQ 095 150000046

I S S U E D B Y	Department of Military Affairs PATRICIA CRAIG	A D D R E S S T O	Please see the Terms and Conditions For Information on where to submit Your Bid/Proposal.
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V E N D O R	Name: Address: City, State Zip Code: Phone #: Email Address: Contact Name: Contact Email: Vendor Customer (VC) #:	R E M I T T O	Name: Address: City, State Zip Code: Phone #: Email Address: Contact Name: Contact Email: Vendor Customer (VC) #:
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FOR INFORMATION CALL: PATRICIA CRAIG (502) 607-1579
 ONLINE BIDDING PROHIBITED Yes
 OWNERSHIP TYPE:
 Sole Proprietorship
 Partnership
 Corporation

**SIGNATURE OF AUTHORIZED AGENT IS REQUIRED UNLESS RESPONSE IS SUBMITTED ELECTRONICALLY
FAILURE TO SIGN SHALL RENDER THE BID INVALID.**

Signature X _____ FEIN# _____ DATE _____

All offers subject to all terms and conditions contained in this solicitation.

Line Items

Line Group: Default

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Cost	Line Total Or Contract Amt
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1	KyLOC / Warehouse Management System (WMS)		1.00	LMP		
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Comm Code	Comm Description	Manufacturer	Model #	Man Part #
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93648	Industrial Equipment (Not Construction and Repair, or HVAC)			
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Extended Description

Warehouse Management System for the Kentucky Logistics Operations Center.

See Terms and Conditions for detailed information.

B I L L T O	270699		S H I P T O	JOHN MANUEL	
	DMA DIV OF ADM SVC KYLOC			KYLOC	
	100 MINUTEMAN PARKWAY			5751 BRIAR HILL ROAD BUILDING 6	
	FRANKFORT KY 40601			LEXINGTON KY 40516-9721	
	US			US	

Evaluation Criteria			
<i>The following criteria will be used when determining the award of this solicitation</i>			
Code	Criteria Description	Points	Vendor Response <i>(DO NOT LIST PRICES IN THIS SECTION. UNIT PRICES AND TOTAL PRICES MUST BE FILLED IN ADJACENT TO THEIR LINE ITEMS.)</i>
PRICE	The bidder with the lowest Price receives the maximum score.	25	
OTH	Other as described in Terms and Conditions.	50	
EXP	Bidder with highest years experience receives maximum score.	25	

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**KENTUCKY DEPARTMENT OF MILITARY AFFAIRS
KENTUCKY LOGISTICS OPERATION CENTER
LEXINGTON, KY. 40516**

INFORMATION AND DATA REQUIRED OF EACH OFFEROR

PRICE – Bidder with the lowest price receives the maximum score.

OTHER - Bidder with the best technical support response time will receive the maximum score.

EXPERIENCE - Bidder with the most years of experience receives the maximum score.

RESPONSES:

Proposals submitted in response to this Request For Quote must be received in hardcopy form **no later than 1:00 p.m. Eastern Daylight Savings Time on Friday October 1, 2014.** Proposals which arrive after this date and time shall not be considered for an award of contract, unless: a) no bids are received other than the late bid; and b) the need of an agency is determined to preclude the re-solicitation of bids; and c) the offer is evaluated and found to be in the best interest of the Commonwealth.

One (1) marked Original Proposal and (1) copy shall be submitted to:

Leslie Stamper
100 Minuteman Parkway
Bldg 100
Boone National Guard Center
Frankfort, KY 40601
Leslie.c.stamper.nfg@mail.mil

All communications, oral and written (regular mail, express mail, or electronic mail), concerning this procurement shall be addressed to the contact above and they shall be the sole point of contact throughout the procurement process.

LOCATION OF SERVICE:

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Kentucky Logistics Operation Center
5751 Briar Hill Rd.
Lexington, KY 40516

Point of contact will be available upon award of contract.

PERIOD OF SERVICE:

Will be determined upon award of contract.

TYPE OF SERVICE:

Overview:

The Kentucky Logistics Operations Center's (KYLOC) mission is to provide military clothing and items to any location in the world with the most efficient technologies possible. KYLOC supports warfighters of various branches of the military, including the National Guard, Army, Army Reserve, Marines, Air Force and many others. KYLOC is a federally funded operation that ships between 2500 to 5000 packages a day, 24 hours a day, 5 days a week.

KYLOC is a third-party logistics (3PL) warehouse that receives military apparel materials in bulk from the Department of Defense (DoD). KYLOC receives re-distribution orders to assemble individual orders from DoD-owned bulk inventory within their facility. KYLOC currently has one distribution center that includes three buildings with approximately 600,000 square feet. KYLOC manages about 9000 SKU's and ships around 10,000 packages per day. They are currently using a custom-written in-house WMS which is aging and no longer meets their needs. KYLOC is evaluating all possible solutions to replace the current Warehouse Management System (WMS) including an "off-the-shelf, turn-key" system.

Requirements:

Specific System Requirements:

- 1.) System must be secure and contain user access roles/permissions to limit access to certain processes and control internal/external visibility.

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- 2.) Provide visibility of incoming shipments from appropriate external systems (e.g. third-party, DoD inventory).
- 3.) Communicate with the appropriate external systems via electronic data interchange (EDI), including importing/exporting customer requisitions and creating required transactions for DoD.
- 4.) Establish multiple virtual warehouses within the system (e.g. bulk storage and fulfillment).
- 5.) Establish date/time stamping of location storage activity and implement FIFO bulk flow.
- 6.) Implement wireless network which provides necessary "hotspots" to support wireless hand-held device functionality for day-to-day operations.
- 7.) Provide (15) robust, programmable wireless hand-held devices which interface seamlessly and in "real-time" with the WMS.
- 8.) Allow input of incoming stock to bulk warehouse via wireless hand-held device or console.
- 9.) Allow SKU's to be stored virtually in multiple locations.
- 10.) Provide ability to add/edit locations via wireless hand-held device or console (all warehouses).
- 11.) Provide barcode label reports/stickers for bin locations.
- 12.) Allow warehouses to receive replenishment requests using wireless hand-held device or console.
- 13.) Establish robust inventory put-away/slotting logic based on several factors (such as bin size capacity and location, FIFO dating, item pick frequency, etc.).
- 14.) Allow warehouses to deliver replenishment requests using wireless hand-held device or console (including partial quantity deliveries).
- 15.) Reconcile partial replenishment deliveries within appropriate warehouse.
- 16.) Allow movement of stock to different locations within warehouse via hand scanner or console.
- 17.) Provide ability to create the appropriate internal stock gain and stock loss transactions.
- 18.) Provide ability to "freeze" and "unfreeze" stock movement/processing at SKU level by warehouse to support wall-to-wall and cyclic count surveys.
- 19.) Provide count sheet reports to support wall-to-wall and cyclic counts.
- 20.) Provide transaction reporting for all external receipts, internal movements, gains, losses, and external deliveries. This will provide appropriate audit data (time/date, computer/wireless hand-held device id, username, reason, etc.)
- 21.) Provide reporting (to SKU-level) of overall on-hand quantities per warehouse, including a view of pending requests / available inventory.
- 22.) Provide robust pick ticket generation with multiple options to filter printable requisitions.

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- 23.) Provide pick ticket re-print function.
- 24.) Provide shipping line application to record carrier's package id for tracking and ship date to requisition.
- 25.) Provide back order creation process for customer requisitions.
- 26.) Provide reporting for open printed orders and static back orders.
- 27.) Provide metrics reporting for shipped requisitions.
- 28.) System should be redundant with fail-over capability, with the ability to be backed up incrementally with off-site data storage for reliable disaster recovery.
- 29.) Provide other basic reports.
- 30.) System will be scalable to meet future requirements for radio-frequency identification (RFID) including perimeter tracking and/or internal receipt-to-ship RFID tracking.
- 31.) WMS data must reside in Microsoft SQL Server database, with full accessibility by KYLOC server administrator(s).
- 32.) System must be scalable, and have the ability be modified by KYLOC IT programmers when necessary. For example, it may be prudent that the new system with be open-source to KYLOC IT developers.
- 33.) Robust documentation for users of the WMS must be provided.
- 34.) Initial and recurring training and support will be required.

METHOD OF AWARD

Best Value – Ranking Approach

The Commonwealth intends to award a Contract to the Vendor, whose offer, conforming to the Solicitation, is the most advantageous on the basis of "best value" for all products, services, and requirements contained herein.

An evaluation committee, or a designated individual, will evaluate the information provided by the Vendor in response to the established measurable criteria contained in the Solicitation.

Measurable Criteria:

- Price 25 Points
- Other 50 Points
- Experience 25 Points

TOTAL POINTS 100 Points

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Each Vendor is responsible for submitting all relevant, factual and correct information with their offer to enable the evaluator(s) to afford each Vendor the maximum score based on the available data submitted by the Vendor. VENDOR SHALL ENTER UNIT PRICE AND TOTAL PRICE ON THE BID SHEET. If adequate space is not available, the Vendor must attach additional information that clearly cross-references the appropriate location in the solicitation (i.e. page number, paragraph, subject, etc.).

Vendors responding with the minimum Best Value requirements in this Solicitation shall not be credited with Best Value points. Vendors responding with greater than the minimum requirements shall receive Best Value points. Failure to provide adequate information will impact the evaluated points awarded to the Vendor.

Price (25 points)

The bidder with the lowest Price receives the maximum score. The bidder with the next lowest Price receives points by dividing the lowest Price by the next lowest price and multiplying that percentage by the available points. For example, 25 points is allocated to the lowest Price criteria for this procurement, Bidder "A" bids \$3.00 as the lowest bidder and receives the maximum 25 points ($\$3.00 / \$3.00 = 1.00 \times 25 = 25$). Assume Bidder "B" is the next lowest bidder at \$4.00, then "B" receives 18.75 points ($\$3.00 / \$4.00 = .75 \times 25 = 18.75$).

Price to be entered on page two on line one (1).

Other/ Response Time (50 points)

Bidder with the best technical support response time will receive the maximum score.

Vendor shall enter response time here: _____

Experience- (25 points)

Five (5) years experience is the minimum requirement for this criteria. Points are only given to bidders who exceed the five (5) year requirement. The bidder with the greatest number of years experience (not to exceed 25 years for evaluation purposes) receives the maximum number of points. The bidder with the next largest number of years experience, receives points by dividing the next largest number of years experience by the largest number of years experience and multiplying that percentage by the available points. For example, 25 points is allocated to the largest number of years experience, over five (5) years, for this procurement, Bidder "A" bids 20 years as the bidder with the largest number of years experience and receives the maximum of 25 points ($20 / 20 =$

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1.00 x 25 = 25). Assume Vendor "B" is the bidder with the next largest number of years experience at 15 years, then "B" receives 11.3 points $(15 / 20) = .75 \times 25 = 18.75$.

Vendor shall enter number of years experience: _____ years

Experience shall only include experience within the United States.

STATE AND FEDERAL CLAUSE REQUIREMENTS

GOVERNMENTAL MANDATES (WORKMAN'S COMPENSATION, UNEMPLOYMENT INSURANCE, ETC.):

The Vendor/Contractor/Proprietor is responsible for compliance with all applicable mandates concerning this agreement. For the purposes of this contract the Vendor/Contractor/Proprietor is deemed to be an independent agent and is not considered to be an employee of the Commonwealth. This agreement is governed by the laws of the Commonwealth of Kentucky.

010.010 AWARD OF CONTRACT:

This written notice of award (or acceptance of offer) mailed or otherwise furnished to the offeror within the time for acceptance specified in the offer shall be deemed to result in a binding contract without further action by either party.

010.015 KENTUCKY SALES AND USE TAXES:

Sales of tangible personal property or services to the State of Kentucky and its constitutional agencies are not subject to state sales or use taxes.

010.020 COMPLIANCE WITH STATE LAWS:

Any contracts or orders placed as a result of the offer shall be governed by the laws of the Commonwealth of Kentucky. The rights and obligations of the parties thereto shall be determined in accordance with these laws. Any offer conditioned upon governance by the laws of a state other than Kentucky shall not be considered.

010.025 CONTRACT MODIFICATIONS:

No modification to this contract shall be permitted unless the contractor receives written

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approval from the Commonwealth of Kentucky.

If the contractor believes modifications are necessary, he/she may request approval of the Commonwealth of Kentucky. All contract modifications shall be subject to the provisions of 200 KAR 5:311.

The agency reserves the right to modify this agreement for the addition or deletion of requirements deemed necessary by the agency with the mutual agreement of both parties; however **modifications will not result in the expenditures against this contract exceeding \$20,000 per fiscal year.**

010.030 SELLER'S INVOICES:

Invoices shall be prepared and transmitted to the agency receiving the goods or services on or before the 10th of the month following the month in which the service(s) were rendered. One copy shall be marked "original" unless otherwise specified. Invoices shall contain, at a minimum, the following information: Contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended totals.

010.035 FUNDING OUT PROVISION:

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the contractor thirty (30) calendar days written notice of the termination of the contract.

010.040 CANCELLATION CLAUSE:

Either party may cancel the contract at any time for cause or may cancel without cause on 30 days' written notice.

010.045 TERMINATION OF CONTRACT:

The Commonwealth shall be authorized to terminate for the procurement of supplies and services when the purchasing official has determined that such termination will be in the Commonwealth's best interest. All contract terminations shall be subject to the

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provisions of 200 KAR 5:312.

010.050 PAYMENT TERMS:

The Commonwealth shall pay all invoices in accordance with KRS 44.010, KRS 45.453 and KRS 45.454, which basically is “when due, and within 30 working days after receipt of approved invoice.” Vendor/Contractor/Proprietor with the ability to accept credit card transactions must accept the Commonwealth Procurement Card (MasterCard) for payment of services.

010.055 SUBCONTRACTOR REQUIREMENT:

The Second Party agrees that all requirements of this contract shall also be applicable and binding on any subcontractor (subject to First Party approval) the Second Party contracts with to meet the statement of work, method of payment, and deliverables of this contract.

010.060 CHOICE OF LAW AND FORUM PROVISION:

The laws of the Commonwealth shall govern all questions as to the execution, validity, interpretation and performance of this contract. Furthermore, the parties hereto agree that any legal action that is brought on the basis of this contract shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky. However, see section **010.215** for exception regarding United States.

010.065 SOLE BENEFIT:

This Contract is intended for the sole benefit of the First Party, the Second Party, and, if implementing a federal grant program element, the United States Government and is not intended to create any other beneficiaries.

010.070 SUCCESSORS AND ASSIGNS:

This Contract may not be assigned by a party without the express written consent of the other party. All covenants made under this Contract shall bind and inure to the benefit of any successors and assigns of the parties whether or not expressly assumed or acknowledged by such successors or assigns.

010.075 ENTIRE CONTRACT:

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This Contract forms the entire contract between the parties as to scope and subject matter of this Contract. All prior discussions and understandings concerning the scope and subject matter are superseded and incorporated by this Contract

010.080 SEVERABILITY:

If any provision of this Contract is held judicially invalid, the remainder of the Contract shall continue in force and effect to the extent not inconsistent with such holding.

010.085 WAIVER OF BREACH:

If a party waives enforcement of any provision of this Contract upon any event of breach by the other party, the waiver shall not automatically extend to any other or future events of breach

010.090 DATA COLLECTION/ANALYSIS LIMITATIONS:

No data collected and provided by the First Party shall be used for any other purpose other than those expressly authorized in this Contract.

010.095 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION, LOWER TIER COVERED TRANSACTIONS:

The Second Party hereby certifies the following by signing this contract:

That neither it nor its principals and/or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Where the prospective recipient of federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall submit an explanation in writing to the First Party.

010.100 CHANGE OF CIRCUMSTANCES:

Each party shall promptly notify the other party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect the party's ability to carry out any of its obligations under this Contract.

010.105 PROPERTY:

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Property purchased by the First Party for the purposes of fulfilling the requirements of the scope of services for this contract, and which may include, but not be limited to, furniture, computer software, computer hardware, office equipment, and supplies are considered the property of the First Party and shall remain the property of the First Party.

010.110 INTELLECTUAL PROPERTIES:

The contractor agrees that any formulae, methodology, other reports and compilations of data provided by the First Party to the contractor for the purposes of meeting the terms and conditions of this contract, or as developed, prepared or produced by the contractor for use by the First Party under the scope of services of this contract shall be the exclusive property of the First Party. Any use of this material for purposes other than those specifically outlined and authorized by this contract without prior approval and without appropriate acknowledgement of the funding source, shall be grounds for immediate termination of this contract and possible criminal prosecution.

010.115 TRAVEL:

The contractor shall be paid no travel expense unless and except as specifically authorized under the specifications of this contract. Unless otherwise indicated, travel reimbursement shall be in accordance with 200 KAR 2:006. No travel time nor travel expenses will be included in the Second Party's or any subcontractor's hourly rates.

010.120 SOCIAL SECURITY:

The Second Party and all other parties so contracted for services under the scope of service of this contract agree that they are cognizant that the First Party is not liable for Social Security contributions pursuant to 42 U.S Code, Section 418, relative to the compensation of the Second Party during the effective dates of this contract.

010.125 FINANCIAL MANAGEMENT SYSTEM:

(Applicable only to contracts where reimbursement is based upon actual, allowable costs).

The Second Party agrees to establish and/or maintain a financial management system which shall provide for:

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Accurate, current, and complete disclosure of the financial results of the functions/services performed under this contract in accordance with the reporting requirements as set forth in this Contract and attachment(s) thereto;

Records that identify the source and application of funds for activities/functions/services performed pursuant to this contract. These records shall contain information pertaining to federal and/or state funds received, obligations, unobligated balances, if applicable, assets, liabilities, expenditures and income;

Effective control over and accountability for all funds, property, and other assets. The Second Party shall safeguard all such assets and shall assure that they are used solely for authorized purposes in the provision of functions/services under this contract; Procedures for determining reasonableness, and allowability of costs in accordance with the terms and conditions of this Contract and any attachment(s) thereto; and

Accounting records that are supported by source documentation.

200 KAR 5:314 "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract":

010.130 CONFLICT OF INTEREST LAWS AND PRINCIPLES:

The contractor certifies that he is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing the terms and conditions of this contract will not violate either any conflict of interest statute, KRS 45A.330-45A.340, 45A.990, KRS 164.390, or KRS 11A.040 of the Executive Branch code of ethics, relating to the employment of former public servants.

010.135 CERTIFICATION OF LOBBYING:

(a) No state funds appropriated to the Second Party pursuant to this contract shall be used to influence, either directly or indirectly, the introduction or modification of any federal or state legislation, or the outcomes of any federal, state or local election, referendum, or initiative.

(b) In addition, for any payment involving federal funds, the Second Party certifies to the best of his or her knowledge and belief, that for the receding contract period, if any, and for this current contract period:

No federal appropriated funds have been paid or will be paid, by or on behalf of the Second Party, to any person for influencing or attempting to influence an officer or

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employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative contract.

(c) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative contract, the Second Party shall complete and submit Standard Form-LLL

010.140 DISCLOSURE FORM TO REPORT LOBBYING, IN ACCORDANCE WITH ITS INSTRUCTIONS:

The Second Party shall require that the language of this certification be included in the award documents for all subawards at all tiers, including subcontractors, subgrants, and contracts under grants, loans, and cooperative contracts, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

010.145 VIOLATION OF TAX AND EMPLOYMENT LAWS:

(a) KRS 45A.485 requires the contractor to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

(b) To comply with the provisions of KRS 45A.485, the contractor shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

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(c) KRS 45A.485 also provides that, for the duration of any contract, the contractor shall be in continuous compliance with the provisions of those statutes which apply to the contractor's operations, and that the contractor's failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and the contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

(d) The attached Affidavit for Bidders, Offerors and contractors is hereby incorporated by reference the same as if written in full figures and numbers herein.

010.150 NOTICES:

Any notice, transmittal, approval, or other official communication made under this Contract shall be in writing and shall be delivered by hand, facsimile transmission, or by mail to the other party.

010.155 NON-DISCRIMINATION:

The Second Party agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with the Second Party's performance under this Contract, on the grounds of race, religion, color, national origin, sex, age or handicap.

Accordingly and to the extent applicable, the Second Party agrees to comply with the follow:

- (i) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
- (ii) Executive Order 11246 and Department of Labor regulations issued there under (41 CFR Part 60);
- (iii) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);
- (iv) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

During the performance of this contract, the Second Party agrees as follows:

- (i) The Second Party will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex or age. The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The Second Party agrees to provide, upon request, needed

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reasonable accommodations. The Second Party will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The Second Party agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

(ii) The Second Party will, in all solicitations or advertisements for employees placed by or on behalf of the Second Party, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, age or disability.

(iii) The Second Party will send to each labor union or representative of workers with which he has a collective bargaining contract or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Second Party will take such action with respect to any subcontract or purchase order as the First Party or federal administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

(iv) The Second Party will comply with all provisions of Presidential Executive Order no. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

(v) The Second Party will furnish all information and reports required by Presidential Executive Order no. 11246 of September 24, 1965, as amended, and by the rules,

(vi) Regulations and orders of the secretary of labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(vii) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Second Party may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Presidential Executive Order no. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

(viii) The Second Party will include the provisions of paragraphs (1) through (7) of Section 202 of Presidential Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued

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pursuant to Section 204 of Presidential Executive Order no. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Second Party will take such action with respect to any subcontract or purchase order as the First Party or administering federal agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Second Party becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the First Party or federal agency, the Second Party may request the United States to enter into such litigation to protect the interests of the United States.

010.160 LOBBYING:

- (a) The Second Party agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative contract; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative contract.
- (b) The Interim Final Rule, New Restrictions on Lobbying, issued by the United States Office of Management and Budget is incorporated by reference.

010.165 DRUG-FREE WORK PLACE:

- (a) The Second Party agrees that it will comply with the provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free workplace.
- (b) The Final Rule, Government-Wide Requirements for Drug-Free Workplace (Grants), issued by the United States Office of Management and Budget is incorporated by reference and the Second Party covenants and agrees to comply with all the provision thereof, including any amendments to the Final Rule that may hereafter be issued.

010.170 ENVIRONMENTAL PROTECTION:

- (a) The Second Party agrees that its performance under this contract shall comply with:
 - (1) the requirements of Section 114 of the Clean Air Act (42 U.S.C. 7414) and
 - (2) Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1318), that relate generally to inspection, monitoring, entry reports and information, and with

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- all regulations and guidelines issued thereunder;
- (3) the Resources Conservation and Recovery Act (RCRA);
 - (4) the Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);
 - (5) the National Environmental Policy Act (NEPA); and any applicable Federal, State, or Local environmental regulation.
 - (6) the applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Air Act (33 U.S.C. 1251, et seq.) as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at Subpart J of 40 CFR part 32;
 - (7) the applicable provision of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 USC 1251, et seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 comp., p.799].

In accordance with the EPA rules, the parties further agree that the Contractor shall also identify to the agency any impact this award may have on:

(1) the quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and to prepare environment Impact Statements or other required environmental documentation. In such cases, the contractor agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.

(2) Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.

(3) Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.

(4) Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning reservation of barrier resources.

(5) Any existing or proposed component of the national Wild and Scenic Rivers Systems, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

(6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C. 300H-3).

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010.175 PREFERENCE FOR U.S. FLAG CARRIERS:

The Second Party agrees to comply with 46 U.S.C. 1241(b) and regulations issued thereunder (46 CFR Part 381) concerning the use of privately-owned United States flag commercial vessels.

010.180 DEBARMENT AND SUSPENSION:

(a) The Second Party shall not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension".

(b) The Final Rule, Government-Wide Debarment and Suspension (Non-procurement), issued by the United States Office of Management and Budget is incorporated by reference and the Second Party covenants and agrees to comply with all the provision thereof, including any amendments to the Final Rule that may hereafter be issued.

010.185 HATCH ACT:

The Second Party agrees to comply with the Hatch Act (5 U.S.C. 1501 –1508 and 7324 – 7328), as implemented by the United States Office of Personnel Management at 5 CFR Part 151, which limits political activity of employees or officer of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

010.190 BUY AMERICAN ACT:

The Second Party agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10). The Buy American Act gives preference to domestic end products and domestic construction materials. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement, and the North American Free Trade Contract (NAFTA), provide the EC and NAFTA end products and construction materials are exempted from application of The Buy American Act.

010.195 COPELAND "ANTI-KICKBACK" ACT:

The Second Party agrees that it will comply with the Copeland "Anti-Kickback" Act (18

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U.S.C. 874) as supplemented in United States Department of Labor (29 CFR Part 3). As applied to this contract, the Copeland “Anti-Kickback” Act makes it unlawful to induce, by force, intimidation, threat or procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, finance in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

010.200 PURCHASING AND SPECIFICATIONS:

The Second Party certifies that he will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph, “He” is construed to mean “They” if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then “He” is construed to mean any person with an interest therein.

010.205 CONFIDENTIALITY:

The Second Party agrees that any employee or agent acting in its behalf will abide by the state and federal rules and regulations governing access to and use of information provided to the second party by the First Party in the administration of this contract.

010.210 AUDIT REQUIREMENTS:

If the Second Party is a governmental entity, an institution of higher learning or other nonprofit institution, the Second Party shall procure an audit in accordance with the United State’s Office of Management and Budget (OMB) Circular A-133, as amended. A copy of the Second Party’s audit report(s) shall be submitted to the First Party as so identified and detailed, and in the prescribed timeframes as set forth in this Contract and in the attachment(s) to the contract.

010.215 APPLICABLE LAW:

This Contract is incidental to the implementation of a federal grant program. Accordingly, this Contract shall be governed by and construed according to Federal law as it may affect the right, remedies, and obligations of the United States.

010.220 GOVERNING REGULATIONS:

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To the extent not inconsistent with the express terms of this Contract, the provisions of 49 CFR 18, Uniform Administrative Requirements for Grants and Cooperative Contracts and OMB Circular A-87 which are hereby incorporated by reference as if fully set forth herein, shall govern this Contract.

010.225 PROCUREMENT:

The acquisition of goods and services by the Contractor in performance of this Contract shall be according to applicable Commonwealth of Kentucky contracting procedures, the standards and procedures contained in applicable federal regulations (44 CFR, 49 CFR, 32 CFR, others).

010.230 ENVIRONMENTAL REQUIREMENTS:

The contractor is encouraged to integrate National Environmental Policy Act compliance and related legislation as implemented under 49 CFR in the execution and administration of this contract.

010.235 UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES:

The contractor agrees that it will comply with CFR 49 part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C Section 4601 et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

010.240 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:

The contractor covenants and agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1.5 times the basic rate of pay.

010.245 COST PRINCIPLES:

Determination of allowable cost for reimbursements will be determined as outlined in

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OMB Circular No.A-87 for local governments, A-21 for Educational Institutions or OMB Circular No.A-122 for Nonprofit Organizations and other applicable Federal Regulations.

010.250 ACCESS TO RECORDS:

The contractor, as defined in KRS 45A.030 (9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004.

**SECRETARY'S ORDER
11-004**

FINANCE AND ADMINISTRATION CABINET

Vendor Document Disclosure

WHEREAS, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary to conduct a review of the records of a private vendor that holds a contract to provide goods and/or services to the Commonwealth; and

WHEREAS, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary

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during the course of an audit, investigation or any other inquiry by an Executive Branch agency that involves the review of documents; and

WHEREAS, KRS 42.014 and KRS 12.270 authorizes the Secretary of the Finance and Administration Cabinet to establish the internal organization and assignment of functions which are not established by statute relating to the Finance and Administration Cabinet; further, KRS Chapter 45A.050 and 45A.230 authorizes the Secretary of the Finance and Administration Cabinet to procure, manage and control all supplies and services that are procured by the Commonwealth and to intervene in controversies among vendors and state agencies; and

NOW, THEREFORE, pursuant to the authority vested in me by KRS 42.014, KRS 12.270, KRS 45A.050, and 45A.230, I, Lori H. Flanery, Secretary of the Finance and Administration Cabinet, do hereby order and direct the following:

Upon the request of an Executive Branch agency, the Finance and Administration Cabinet ("FAC") shall formally review any dispute arising where the agency has requested documents from a private vendor that holds a state contract and the vendor has refused access to said documents under a claim that said documents are not directly pertinent or relevant to the agency's inquiry upon which the document request was predicated.

Upon the request of an Executive Branch agency, the FAC shall formally review any situation where the agency has requested documents that the agency deems necessary to conduct audits, investigations or any other formal inquiry where a dispute has arisen as to what documents are necessary to conclude the inquiry.

Upon receipt of a request by a state agency pursuant to Sections I & II, the FAC shall consider the request from the Executive Branch agency and the position of the vendor or party opposing the disclosure of the documents, applying any and all relevant law to the facts and circumstances of the matter in controversy. After FAC's review is complete, FAC shall issue a Determination which sets out FAC's position as to what documents and/or records, if any, should be disclosed to the requesting agency. The Determination shall be issued within 30 days of receipt of the request from the agency. This time period may be extended for good cause.

If the Determination concludes that documents are being wrongfully withheld by the private vendor or other party opposing the disclosure from

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the state agency, the private vendor shall immediately comply with the FAC's Determination. Should the private vendor or other party refuse to comply with FAC's Determination, then the FAC, in concert with the requesting agency, shall effectuate any and all options that it possesses to obtain the documents in question, including, but not limited to, jointly initiating an action in the appropriate court for relief.

Any provisions of any prior Order that conflicts with the provisions of this Order shall be deemed null and void.