

## 9-28-2020 – PLEASE SEE ADDENDUM #1 LOCATED AT THE END OF THIS DOCUMENT.

### ELECTRONIC BID SUBMISSION

Bid responses shall be received by electronic submission in the eProcurement system.

An electronic bid shall be authorized by the proper agent of the firm by the act of submitting it electronically through the eProcurement system.

Bid information **MUST** be completed online. Response must contain all required information for the Solicitation.

Online bid responses must be in an “Accepted” status and shall be assigned a date and time stamp from the eProcurement system at the time of final acceptance and formal submission by the vendor. **The system will not allow submission of an online response after the published date and time for closing.**

An offer may be modified or withdrawn by electronic or written notice **ONLY** if received prior to the bid closing date and time. An electronic offer may be modified by applying the appropriate electronic signature and following the procedure in the state’s eProcurement signature.

The following items **MUST** be submitted prior to award:

\_\_\_\_ REVENUE FORM 10A100 KENTUCKY TAX REGISTRATION APPLICATION  
(see Section 37)

\_\_\_\_ CERTIFICATE OF AUTHORITY – REGISTRATION WITH SECRETARY OF  
STATE BY A FOREIGN ENTITY (see Section 39)

\_\_\_\_ REQUIRED AFFIDAVIT(S) (see Attachment B)

\_\_\_\_ EEO FORMS IF APPLICABLE (see Section 34)

**ATTACHMENT A**

**Commonwealth of Kentucky  
Request for Bid (RFB)  
For  
RAIL SUPPLIES FOR MOTIVE RAIL AT WHF  
RFB 758 2100000148**

**Issued by  
The Finance and Administration Cabinet  
On Behalf Of  
Department of Military Affairs**

<p><b>Release Date: September 21, 2020 Vendors' Written Questions Due: September 28, 2020 at 10:00 AM, ET CLOSING DATE AND TIME: October 6, 2020 at 1:30 PM, ET</b></p>
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**Commonwealth Buyer:  
Keith Srutowski  
COMMONWEALTH OF KENTUCKY  
FINANCE AND ADMINISTRATION CABINET  
Office of Procurement Services  
New Capitol Annex  
702 CAPITOL AVE RM 096  
FRANKFORT KY 40601  
(502) 564-7007  
[keith.srutowski@ky.gov](mailto:keith.srutowski@ky.gov)**

**PUBLIC BID READINGS HAVE BEEN TEMPORARILY SUSPENDED**

As Governor Andy Beshear has declared a state of emergency due to the public health emergency related to the COVID-19 disease, we are committed to providing a safe environment for our staff and visitors. Therefore, we have temporarily suspended public bid readings in the Office of Procurement Services (OPS). Any person wishing to hear a bid reading may call the OPS conference line at 844-603-5060, Participant Code 44510, at 3:30pm, EDT on the bid closing date.

**PLEASE READ THIS SOLICITATION AND ITS INSTRUCTIONS IN ITS ENTIRETY.**

**This is a Request for Bid (RFB).**

**Vendors shall comply with the terms and conditions stated in the solicitation. Any efforts to negotiate these terms and conditions SHALL NOT be accepted and SHALL cause the bid to be deemed non-responsive.**

**All proposed pricing shall remain valid for a minimum of sixty (60) calendar days after the bid due date.**

This Contract shall be awarded by line item. Vendors shall bid one (1) or more line items.

Vendors should review and comply with the general bidding requirements listed under “Procurement Laws, Preference, Regulations and Policies” and “Response to Solicitation” located on the eProcurement Web page at <http://eprocurement.ky.gov> and <http://finance.ky.gov/services/eprocurement/Pages/VendorServices.aspx> respectively. The vendor must comply with all applicable statutes, regulations and policies related to this procurement.

**Solicitation**

**Terms and Conditions**

**Award Contract**

**Section 1  
Scope of Contract**

The Office of Procurement Services issues this solicitation to establish an **Award Contract** for: Rail Supplies for Motive Rail at Wendell H. Ford Regional Training Center

## **Section 2**

**Bid Specifications** (Requirements that include the words “Shall”, “Will”, “Must” indicate a mandatory requirement)

## **Section 3**

### **Purpose**

The purpose of this solicitation is to request vendor responses in order to provide these items under contract to agencies as needed.

## **Section 4**

### **General**

This solicitation specifies requested items. It is not the intention of this solicitation to eliminate vendors or manufacturers of similar or equal equipment of the types specified. It should be noted, however, that these requested items are written around specific needs of State agencies. The Commonwealth reserves the right to consider bids non-responsive if they do not comply with the specifications contained herein.

## **Section 5**

### **Initial Contract Period**

Does not apply.

## **Section 6**

### **Renewal Clause – Optional Renewal Period**

Does not apply.

## **Section 7**

### **Exceptions to Specifications**

Vendors are cautioned that changes made to the solicitation other than in the designated fields for response shall render the response invalid and result in a non-responsive bid. Otherwise, it will be considered that items/services offered are in strict compliance with these specifications, and the successful bidder shall be held responsible for delivering materials/services that meet these specifications. Any exceptions shall be marked as such within the body of the bid and explained on a separate page. The Commonwealth is not bound to accept any exceptions.

## **Section 8**

### **Alternate Brands/Specifications**

Unless otherwise specified, brands and specifications referenced in this solicitation are meant to establish a minimum standard of quality only. Bidders may bid brands/specifications they consider to be equal by specifying the brand(s)/specifications and inserting the brand name(s), model number(s), etc. on which they are bidding. Bids offering “equal” products/specifications will be considered for award if such products are clearly identified in the bid and are determined by the State to meet or exceed fully the minimum essential specifications and salient characteristics referenced in the

Solicitation. Bids that contain products/specifications that fail to meet the minimum essential requirements shall be deemed non-responsive.

Bidders who propose alternate brands/specifications should enclose descriptive literature with their bids so that the equality can be verified. Failure to enclose sufficient literature may result in a non-responsive bid. If the brands are not changed, the contract will be written accordingly and the successful bidder shall be required to deliver the brands/specifications stated in the solicitation.

**Section 9  
Recycle Requirements**

Prospective bidders are required to comply with Recycle Requirements for the purchase of goods, supplies, equipment, materials and printing with a minimum recycled content to the extent practicable per 200 KAR 5:330. This regulation can be viewed on the Internet at <<http://www.lrc.state.ky.us/kar/200/005/330.htm>>.

**Section 10  
Acknowledgment of Addenda**

It is the vendor's responsibility to check the web site for any modifications to this solicitation. Electronic Bid submittal is the vendor's agreement to be bound by the terms of all addenda issued.

**Section 11  
Agencies to be Served**

This contract shall be for use by the following agency of the Commonwealth of Kentucky:

Department of Military Affairs

**Section 12  
Solicitation Submission Requirements**

Paper Bids are NOT acceptable for this RFB and shall be considered non-responsive.

**Section 13  
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.

<b>Measurable Criteria:</b>	
<b>Price</b>	<b>90 Points</b>
<b>Delivery</b>	<b>10 Points</b>

**TOTAL POINTS 100 Points**

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.

A bidder shall submit one (1) response to a solicitation and shall not propose more than one (1) model/brand for each item listed in the solicitation, except for requested tier pricing. Multiple or alternate bids offering more than one (1) bid price in total or by line item shall be rejected.

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.

**A. PRICE (90 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, 90 points is allocated to the lowest Price criteria for this procurement, bidder "A" bids \$3.00 as the lowest bidder and receives the maximum 90 points ( $\$3.00 / \$3.00 = 1.00 \times 90 = 90$ ). Assume bidder "B" is the next lowest bidder at \$4.00, then "B" receives 67.5 points ( $\$3.00 / \$4.00 = .75 \times 90 = 67.5$ ).

**B. DELIVERY (10 points)**

The bidder shall clearly state the delivery time for this procurement. Delivery time must be specific and such phrases as, "as required", "as soon as possible", or "prompt" have no meaning and may result in a non-responsive bid.

For Commodity line 1, delivery time shall be the number of calendar days when the railroad ties will be available for shipping. For Commodity line 2, delivery time shall be the number of calendar days to ship the railroad ties to the agency once they are made available. For Commodity line 3, the delivery time shall be the number of calendar days to ship the rail spikes to the agency. For Commodity line 4, the delivery time shall be the number of calendar days to ship the switch stand to the agency. For Commodity line 5, the delivery time shall be the number of calendar days to ship the aggregate to the agency.

For Commodity line 1, the railroad ties must be available within three (3) weeks of contract award. For Commodity line 2, the railroad ties must be shipped to the agency within three (3) weeks of receipt of items. For the remaining Commodity lines, the items must be shipped to the agency within six (6) weeks of contract award.

The vendor agrees that when delivery is not made within the contracted due date,

one percent (1%) per day shall be deducted from the vendor's invoice for each day the vendor fails to meet the contracted delivery date.

Vendor should enter best availability time in calendar days for railroad ties (Commodity line 1): \_\_\_\_\_ DAYS ARO (after receipt of order)

Vendor should enter best delivery time in calendar days for delivering railroad ties (Commodity line 2): \_\_\_\_\_ DAYS after availability of railroad ties from supplier

Vendor should enter best delivery time in calendar days for rail spikes (Commodity line 3): \_\_\_\_\_ DAYS ARO (after receipt of order)

Vendor should enter best delivery time in calendar days for switch stand (Commodity line 4): \_\_\_\_\_ DAYS ARO (after receipt of order)

Vendor should enter best delivery time in calendar days for aggregate (Commodity line 5): \_\_\_\_\_ DAYS ARO (after receipt of order)

Best Value scoring is subject to **Reciprocal preference for Kentucky resident bidders and Preferences for a Qualified Bidder or the Department of Corrections, Division of Prison Industries (KAR 200 5:410).**

**KRS 45A.490 Definitions for KRS 45A.490 to 45A.494.**

As used in KRS 45A.490 to 45A.494:

- (1) "Contract" means any agreement of a public agency, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item; and
- (2) "Public agency" has the same meaning as in KRS 61.805.

**KRS 45A.492 Legislative declarations.**

The General Assembly declares:

- (1) A public purpose of the Commonwealth is served by providing preference to Kentucky residents in contracts by public agencies; and
- (2) Providing preference to Kentucky residents equalizes the competition with other states that provide preference to their residents.

**KRS 45A.494 Reciprocal preference to be given by public agencies to resident bidders -- List of states -- Administrative regulations.**

- (1) Prior to a contract being awarded to the lowest responsible and responsive bidder on a contract by a public agency, a resident bidder of the Commonwealth shall be given a preference against a nonresident bidder registered in any state that gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder.
- (2) A resident bidder is an individual, partnership, association, corporation, or other business entity that, on the date the contract is first advertised or announced as available for bidding:
  - (a) Is authorized to transact business in the Commonwealth; and
  - (b) Has for one (1) year prior to and through the date of the advertisement, filed Kentucky corporate income taxes, made payments to the Kentucky unemployment insurance fund established in KRS 341.490, and maintained a Kentucky workers' compensation policy in effect.
- (3) A nonresident bidder is an individual, partnership, association, corporation, or other business entity that does not meet the requirements of subsection (2) of this section.

(4) If a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder.

(5) This section shall apply to all contracts funded or controlled in whole or in part by a public agency.

(6) The Finance and Administration Cabinet shall maintain a list of states that give to or require a preference for their own resident bidders, **including** details of the preference given to such bidders, to be used by public agencies in determining resident bidder preferences. The cabinet shall also promulgate administrative regulations in accordance with KRS Chapter 13A establishing the procedure by which the preferences required by this section shall be given.

(7) The preference for resident bidders shall not be given if the preference conflicts with federal law.

(8) Any public agency soliciting or advertising for bids for contracts shall make KRS 45A.490 to 45A.494 part of the solicitation or advertisement for bids.

The reciprocal preference as described in KRS 45A.490-494 above shall be applied in accordance with 200 KAR 5:400.

#### **Determining the residency of a bidder for purposes of applying a reciprocal preference**

Any individual, partnership, association, corporation, or other business entity claiming resident bidder status shall submit along with its response the attached Required Annual Affidavit for Bidders, Offerors, and Contractors Claiming Resident Bidder Status, unless a valid, Annual Affidavit is already on file with the Commonwealth. The BIDDING AGENCY reserves the right to request documentation supporting a bidder's claim of resident bidder status. Failure to provide such documentation upon request shall result in disqualification of the bidder or contract termination.

A nonresident bidder shall submit, along with its response, its certificate of authority to transact business in the Commonwealth as filed with the Commonwealth of Kentucky, Secretary of State. The location of the principal office identified therein shall be deemed the state of residency for that bidder. If the bidder is not required by law to obtain said certificate, the state of residency for that bidder shall be deemed to be that which is identified in its mailing address as provided in its bid.

#### **Preferences for a Qualified Bidder or the Department of Corrections, Division of Prison Industries (KAR 200 5:410).**

Pursuant to 200 KAR 5:410, and KRS 45A.470, Kentucky Correctional Industries will receive a preference equal to twenty (20) percent of the maximum points awarded to a bidder in a solicitation. In addition, the following "qualified bidders" will receive a preference equal to fifteen (15) percent of the maximum points awarded to a bidder in a solicitation: Kentucky Industries for the Blind, any nonprofit corporation that furthers the purposes of KRS Chapter 163 and any qualified nonprofit agencies for individuals with severe disabilities as defined in KRS 45A.465(3). Other than Kentucky Industries for the Blind, a bidder claiming "qualified bidder" status shall submit along with its response to the solicitation a notarized annual affidavit, which affirms that it meets the requirements to be considered a qualified bidder- annual affidavit form included. The annual affidavit form is not required if a valid, annual affidavit is already on file with the Commonwealth. If requested, failure to provide documentation to a public agency proving qualified bidder status may result in disqualification of the bidder or contract termination.

**Past Vendor Performance may be considered in the award of this Contract. Vendors with a record of poor performance in the last 12 months may be found non-responsible and ineligible for award.**

#### **Section 14**

##### **Tax Exempt Status**

Do not include Federal Excise Tax, Kentucky Sales or Use Tax in prices quoted in response to this solicitation.

#### **Section 15**

##### **Basis of Price Revisions**

Does not apply.



## **Section 16**

### **Vendor Terms and Conditions**

Solicitation or quotation forms that include terms and conditions not in conformity with the terms and conditions of this solicitation or the Statutes of the Commonwealth of Kentucky may be deemed non-responsive.

The Commonwealth of Kentucky shall not be bound by any part(s) of the bidder's response to this solicitation that contains information, options, conditions, terms, or prices neither requested nor required in the solicitation. In the event of any conflicts between the specifications, terms and conditions indicated by the Commonwealth and those indicated by the contractor, those of the Commonwealth take precedence. The contract supersedes all bids or other prior agreements, oral or written, and all other communications between the parties relating to this subject.

## **Section 17**

### **Post Contract Agreements**

The resulting contract shall constitute the entire agreement between the State and awarded contractor. Unless contractually provided, **State agencies utilizing this contract will not be required to enter into nor sign further agreements, leases, company orders or other documents to complete or initiate the terms of a contract resulting from this solicitation or offer.** Any such documents so obtained will be non-binding on the State and agents of the State and will be cause for breach of contract.

## **Section 18**

### **Equipment**

Unless otherwise indicated in the bid, it is understood and agreed that any item offered or shipped on this bid shall be new and the latest or current year model and be in first class condition. Any unit failing to meet the foregoing requirements shall be returned to the contractor, at their expense, and replaced with a new unit.

The Commonwealth recognizes the rapid advancement of technology. If the bidder can provide new equipment of advanced technology after the award of the contract, the Commonwealth and the bidder may choose by mutual agreement to install such equipment. The price of the new technology equipment cannot exceed the cost of the award contract.

## **Section 19**

### **Quantity Basis of Contract – Estimated Quantities**

Any and all quantities mentioned in this solicitation are purely estimates, and are not to be implied nor inferred as being guarantees. The State is obligated to buy only that quantity needed by its agencies during the term of the contract. Requirements may exceed the quantities shown and the contractor will be required to furnish all requirements shown on Delivery Orders dated during the life of the contract.

## **Section 20**

**Manuals and Distribution of Literature**

Instruction and operating manuals shall be furnished for all equipment installed. Upon request, the vendor shall furnish State agencies and other public bodies with descriptive literature and service information for items awarded.

**Section 21****Vendor's Report**

Does not apply.

**Section 22****FOB Basis of Shipment – Vendor Responsible**

Quotations of unit prices on this solicitation shall be **F.O.B. Destination Freight Prepaid and Allowed**. The vendor shall be fully responsible for all shipments and freight charges involved to the ordering agency.

**Section 23****Cancellation Clause – 30 Days Notice**

The Commonwealth may cancel the contract established from this solicitation by giving written notice thirty (30) days prior to effective cancellation date. In the event such action is taken, the contract shall be null and void upon receipt of a Modification from the Office of Procurement Services canceling the contract.

**Section 24****Exception to Required Use of Contract**

The establishment of this Award Contract is not intended to preclude the use of similar products when requested by the agency. The Commonwealth of Kentucky reserves the right to contract for large requirements by using a separate solicitation.

**Section 25****Service Performance**

All services performed under this contract, if applicable, shall be in accordance with the terms and provisions of the contract. It will be the agency's responsibility to ensure that such services rendered are performed and are acceptable.

The relationship between the State and the Contractor is that of client and independent contractor. No agent, employee, or servant of the contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this contract.

Major deviations of services performed will not be made without the written approval of the Office of Procurement Services. Problems that arise under any aspect of performance should first be resolved between the vendor and the agency. Either party should refer in writing any such problems and/or disagreements that cannot be resolved to the Office of Procurement Services for settlement.

**Section 26**  
**Addition or Deletion of Items or Services**

Does not apply.

**Section 27**  
**Agreement between Parties**

By submitting a bid, the bidder acknowledges and agrees to be bound by the terms and conditions of the solicitation.

The bidder agrees that a resulting contract is the complete and exclusive statement of the agreement between the parties, which supersedes all prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this solicitation. It is further agreed between the parties, that any valid modification of contractual agreement must be formalized by issuance of a Contract Modification from the Office of Procurement Services.

Purchase or Sales Agreements, supplied by the bidder making an offer, in reply to the solicitation, will not be accepted. The only terms and conditions acceptable to the Commonwealth of Kentucky are as outlined in the solicitation. Bids not conforming will be considered as non-responsive.

**Section 28**  
**Governmental Restrictions**

In the event any Governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship, or performance of the items offered on this proposal prior to delivery, it shall be the responsibility of the successful bidder to notify the Office of Procurement Services in writing, indicating the specific regulation which requires such alterations. The Commonwealth reserves the right to accept any such alterations, including any subsequent price adjustments, or to cancel the contract.

**Section 29**  
**Payments**

The vendor shall be paid, upon the submission of proper invoices to the receiving agency at the prices stipulated for the supplies delivered and accepted, or services rendered. Unless otherwise specified, payment will not be made for partial deliveries accepted. Payments will be made within thirty (30) working days after receipt of goods or a vendor's invoice in accordance with KRS 45.453 and KRS 45.454.

**Section 30**  
**Inspection**

All supplies, equipment and services shall be subject to inspection or tests by the Commonwealth prior to acceptance. In the event supplies, equipment or services are defective in material or workmanship or otherwise not in conformity with specified requirements, the Commonwealth shall have the right to reject the items or services or require acceptable correction at the Vendor's expense.

**Section 31**

**Inquiries**

All questions shall be submitted in writing by 10:00 AM, ET on 9-28-2020 to the Commonwealth buyer listed below. No questions shall be accepted after the date(s) listed unless the question(s) is considered material to the procurement. The Commonwealth shall respond to salient questions in writing by issuing an addendum to the solicitation. The addendum shall be posted to the Kentucky Vendor Self Service site.

**(SUBMIT QUESTIONS VIA EMAIL TO THE COMMONWEALTH BUYER)**

**Sole Point of Contact – Commonwealth Buyer**

The Commonwealth Buyer listed below shall be the sole point of contact throughout the procurement process. All communications, oral and written (regular, express, or electronic mail, or fax), concerning this procurement shall be addressed to:

Commonwealth Buyer  
Keith Srutowski  
COMMONWEALTH OF KENTUCKY  
FINANCE AND ADMINISTRATION CABINET  
Office of Procurement Services  
New Capitol Annex  
702 CAPITOL AVE RM 096  
FRANKFORT KY 40601  
(502) 564-7007  
keith.srutowski@ky.gov

**Restrictions on Communications**

From the issue date of this solicitation until a contractor(s) is selected and the selection is announced, offerors are not allowed to communicate with any Commonwealth Staff concerning this solicitation except:

- The Commonwealth Buyer cited in this solicitation
- Via written questions submitted to the Commonwealth Buyer

Potential bidders should clearly understand that any verbal representatives made or assumed to be made during any oral discussions held between representatives of potential bidders and any state employee or official are not binding on the Commonwealth of Kentucky.

For violation of this provision, the Commonwealth shall reserve the right to disqualify the bid/proposal.

**Section 32****Subcontracts**

The contractor is permitted to make subcontract(s) with any other party for furnishing any of the work or services herein. The contractor shall be solely responsible for performance of the entire contract whether or not subcontractors are used. The Commonwealth shall not be involved in the relationship between the prime contractor

and the subcontractor. Any issues that arise as a result of this relationship shall be resolved by the prime contractor.

All references to the contractor shall be construed to encompass both the contractor and any subcontractors of the contractor.

### **Section 33**

#### **Federal Tax Exempt Purchases by the Commonwealth of Kentucky**

**Contracts Direct With Manufacturer:** In the event a manufacturer bids direct and is awarded a contract, the Office of Procurement Services shall request the contractor to furnish evidence of registration with the U.S. Internal Revenue Service. This registration shall be in accordance with the "Temporary Rules, 1958 Excise Tax Act". After such registration, individual Excise Tax Exemption Certificates are not necessary on each individual order issued against the contract by the Office of Procurement Services. Therefore, quoted prices must be exclusive of Federal Excise Taxes.

**Contract With Other Than Manufacturer:** If successful bidder is other than the manufacturer, the Office of Procurement Services will furnish a Tax Exemption Certificate with each individual order issued against this contract. Therefore, quoted prices must be exclusive of Federal Excise Taxes.

### **Section 34**

#### **EEO Requirements**

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding \$500,000. The contractor shall comply with all terms and conditions of the Act.

<http://finance.ky.gov/services/eprocurement/Pages/VendorServices.aspx>

### **Section 35**

#### **Governing Law**

This contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Any action brought against the Commonwealth on the contract, including but not limited to actions either for breach of contract or for enforcement of the contract, shall be brought in Franklin Circuit Court, Franklin County, Kentucky in accordance with KRS 45A.245.

### **Section 36**

#### **Protest**

Pursuant to KRS 45A.285, the Secretary of the Finance and Administration Cabinet, or his designee, shall have authority to determine protests and other controversies of actual or prospective offerors in connection with the solicitations or selection for award of a contract.

Any actual or prospective offeror or contractor, who is aggrieved in connection with solicitation or selection for award of a contract, may file protest with the Secretary of the Finance and Administration Cabinet. A protest or notice of other controversy must be

filed promptly and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing and shall be addressed and mailed to:

**HOLLY M. JOHNSON, SECRETARY  
COMMONWEALTH OF KENTUCKY  
FINANCE AND ADMINISTRATION CABINET  
New Capitol Annex  
702 CAPITOL AVE RM 383  
FRANKFORT KY 40601**

The Secretary of Finance and Administration Cabinet shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

The decision by the Secretary of the Finance and Administration Cabinet shall be final and conclusive.

### **Section 37**

#### **Kentucky Tax Registration Application**

Revenue Form 10A100, Kentucky Tax Registration Application effective July 2008, is a form to be completed by any person or entity wishing to contract with the Commonwealth to provide goods or services subject to sales and use tax pursuant to KRS 139.200. The form is located at this web-link as Attachment 5:

<http://finance.ky.gov/services/eprocurement/Pages/VendorServices.aspx>

In accordance with administrative regulation 200 KAR 5:390, this form has to be completed and submitted, before a contract can be awarded. Section 2 of the regulation also notes: "Failure to submit the required documentation or to remain registered and in compliance with the sales and use tax filing and remittance requirements of KRS 139.540 and KRS 139.550 throughout the duration of the contract shall constitute a material breach of the contract and the contract may be terminated."

### **Section 38**

#### **Access to Records**

The state agency certifies that it is in compliance with the provisions of KRS 45A.695, "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The Contractor, as defined in KRS 45A.030, 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 agreement for the purpose of financial audit or program review. 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. Records and other prequalification information confidentially disclosed as part of the bid process shall not be

deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

### **Section 39**

#### **Registration with the Secretary of State by a Foreign Entity**

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by KRS 14A.9-010:

obtain a certificate of authority to transact business in the Commonwealth (“certificate”) from the Secretary of State under KRS 14A.9-030:

<https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=40424> therefore, foreign entities should submit a copy of their certificate with their solicitation response. If

the foreign entity is not required to obtain a certificate as provided in KRS 14A.9-010:

<https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=44318>, the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within KRS 14A.1-070:

<https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=47674>.

Businesses can register with the Secretary of State at:

<https://sos.ky.gov/bus/business-filings/Forms/Pages/default.aspx>

### **Section 40**

#### **Accessibility**

Vendor hereby warrants that the products or services to be provided under this contract comply with the accessibility requirements of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Vendor further warrants that the products or services to be provided under this contract comply with existing federal standards established under Section 255 of the Federal Telecommunications Act of 1996 (47 U.S.C. § 255), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1193, to the extent the vendor's products or services may be covered by that act. Vendor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention.

### **Section 41**

#### **Funding Limitations**

If any or all responses received exceed the amount of funding available, then the Finance and Administration Cabinet, Office of Procurement Services, reserves the right to cancel this RFB.

### **Section 42**

#### **Provisions for Termination of the Contract**

Any contract resulting from this solicitation shall be subject to the termination provisions set forth in 200 KAR 5:312.

### **Section 43**

#### **Disclosure of Violation of Statutes**

Pursuant to KRS 45A.485, contractors are required to reveal final determinations of violation of certain statutes incurred within the last five (5) years and be in continuous compliance with those statutes during the contract. Where applicable, the vendor is required to complete and submit Report of Prior Violations of Tax and Employment Laws.

#### **Section 44**

##### **Discrimination (Effective April 8, 2015)**

Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity, 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 contractor agrees to provide, upon request, needed reasonable accommodations. The contractor 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, sexual orientation, gender identity, 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 contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement 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 contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.
4. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.



5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, 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.
6. 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 contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in 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.
7. The contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Section 45**

ALL PROVISIONS OF THIS SOLICITATION (RFB 758 2100000148) AND THE PROVISIONS OF FAP-110-10-00 SHALL BE PART OF ANY RESULTING AWARD CONTRACT.

**Section 46**

Attachments indicated below may be downloaded by accessing the "Attachment" link found on the Solicitation Details View page where this RFP was downloaded. Once the Attachment link is accessed, select the file name you wish to download, and select the "Download Attachment" hyperlink. For assistance with downloading these attachments please contact the Commonwealth Buyer.

**ATTACHMENT A – This RFB Document**

**ATTACHMENT B – Annual Affidavit and Other Affidavit(s)**

**ATTACHMENT C – How to Respond to Online Bids through the Kentucky Vendor Self Service Site**

**COMMONWEALTH OF KENTUCKY  
FINANCE AND ADMINISTRATION CABINET  
OFFICE OF PROCUREMENT SERVICES**

**Solicitation No.:** RFB 758 2100000148 **Date:** 9-28-2020  
**For:** Rail Supplies for Motive Rail at Wendell H.  
Ford Regional Training Center

**Addendum No. 1**

**BIDDER SHALL CONFORM TO THE FOLLOWING CHANGES AS SAME SHALL  
BECOME BINDING UPON THE CONTRACT TO BE ISSUED IN RESPONSE TO THIS  
SOLICITATION.**

Reason for change: Modification is to answer questions submitted by potential bidders.

**Question 1:** I like the idea of putting in a per mile bid, however in our industry we tend to put a minimum for mileage when we bid per mile. For example: anything over 500 miles we can confidently bid on a per mile basis, however if you were to secure a supplier for the railroad ties and the supplier is only 75 miles away, the per mile bid would not work. Let's use \$4/mi as an example: \$4.00 per mile at 501 miles would be \$2,004.00 and that would be no problem for flatbed or step deck freight. \$4.00 per mile at 75 miles however would be \$300 and there is no way we would be able to secure a truck for that kind of a rate. Typically trucks have a minimum they will run something for, so freight between 1 and 500 miles tends to get bid on a per load basis vs. per mile. We move quite a bit of military freight and with them we have a minimum and a per mile rate. Min would be anything under 500 miles and then anything over would hit our per mile rate. Therefore if we had a \$1,950 min with \$4/ mile then anything from 1 mile to 499 mi would hit our min of \$1,950 and anything over 500 miles would go into a per mile basis; i.e. 700 miles would be \$2,800. I am not sure this would be the way to go for this bid or not but it would at least protect a carrier such as myself when bidding out freight from an unknown origin.

**Answer:** Commodity line 2 has been changed to allow for bids to be submitted as both a per mile price and a minimum price for deliveries under 500 miles. For evaluation purposes, only the price per mile will be considered; however, the minimum price for deliveries under 500 miles will be included as part of any contract with the successful bidder although it will only be applicable if the delivery is under 500 miles.

**End of Addendum**

Keith Srutowski,  
Commonwealth Buyer