Commonwealth of Kentucky

MASTER AGREEMENT

IMPORTANT

Show Doc ID number on all packages, invoices and correspondence.

Doc Description:	Concrete - Ready Mix Concrete		
Doc ID No:	MA 605 1200000804 4	**Proc Folder:**	2446201
Procurement Type:	Standard Goods		
Effective Date:	2012-05-01	**Expiration Date:**	2015-04-30
Not To Exceed Amount			
Administered By:	WHEELER NEVELS	**Cited Authority:**	FAP111-35-00-G
Telephone:	502-564-4556	**Issued By:**	Laura Hagan

Reason For Modification: Renew contract for an additional twelve months as per the terms and conditions of the contract. All parties are in agreement. Renewal contract period will be from 5/1/14 thru 4/30/15. A price increase of $8 per cubic yard has been added to all lines. There is 1 optional renewal period remaining on contract. Change Issuer to read Laura Hagan. Buyer's email address has changed to Laura.Hagan@ky.gov.

VENDOR

READY MIX CONCRETE OF

63 FOSTER LANE

SOMERSET KY 42503
US

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	Vendor Rep	0	0.00	CY	0.00000	0.00	0.00

Extended Description

Vendor Rep:
Bill Newell
606-679-7490
bill.newell@live.com

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
2	Catalog	0	0.00		0.00000	0.00	0.00
3	Catalog	0	0.00		0.00000	0.00	0.00
4	Catalog 2014	0	0.00		0.00000	0.00	0.00

Total Order Amount:	**0.00**

Section 1—Specifications - Commodity

1.00—Specifications of Commodity and/or Service Requirements

The purpose of this Solicitation is to receive Vendor's firm delivered pricing from which the Transportation Cabinet, Division of Purchases can award all State Agency and/or Agency Master Agreements (Price Contracts) to successful bidders for furnishing any part of the Transportation Cabinet's requirements for Ready Mix Concrete.

Except as provided herein; conform to all requirements of the Kentucky Transportation Cabinet's 2008 Standard Specifications for Road and Bridge Construction. Section references are to the Standard Specifications. The term "Vendor" as applied to this contract shall be understood to be synonymous with the term "Contractor" as applied to the Standard Specifications.

A link to the Standard Specifications can be found at:

http://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx

1.01 – Concrete Material Requirements

Material types:

Item 1 - Class A Concrete
Item 2 - Class AA Concrete

Item 3 – Class B Concrete

Item 4 – Class M Concrete

Item 5 – Flowable Fill Concrete

Item 6 - Grout

Except as provided herein; furnish materials meeting the requirements of Section 601. Use admixtures required by section 601.02.03. Use other admixtures conforming to section 802 when approved or directed by the Engineer. Do not use admixtures not specified in Sections 601 or 802 without prior approval of the Engineer. As directed by the engineer, if field conditions require the addition of ice to the concrete mix, the cost of the ice will be incidental to the cost of the concrete mix.

As required by KRS 45A.520, all Class A Concrete purchased by state agencies shall contain a minimum of five percent replacement of cement (by weight) with recovered Fly Ash. Class A Concrete without Fly Ash may be accepted in accordance with KRS 45A.510 when recycled material is not available or when specifications justify properties which cannot be met by concrete containing Fly Ash.

Proportion according to Section 601.03.03. Mix according to Section 601.03.08(C); do not use continuous type mixers (concrete mobiles) to mix or furnish concrete for this contract.

1.02 - Mix Design, Sampling, Testing, and Compliance

Except as provided herein, comply with Concrete Producer Responsibilities specified in Section 601.03.02. The Department reserves the right to sample and test individual materials and the Class A Concrete prior to final acceptance for payment as follows:

For orders of four cubic yards or more, Concrete may be accepted on the basis of sampling and testing or by certification at the option of the Engineer. If a certification form TC 64-601 (revised 3-93) is used, it shall be submitted in triplicate to the Engineer with each order. The Department will furnish forms to successful bidders.

For orders of less than four cubic yards, neither test nor certification will be required unless specifically requested by the Engineer at the time material is ordered.

Any concrete materials which fail to meet specification requirements, may, at the option of the Department, be:

a.) Rejected and removed at the Vendor's expense; or

b.) Accepted at a reduction in contract unit price as determined by the Engineer, which may include no payment.

1.03—Deliveries

The Department will determine Best Value for each individual Delivery Order by calculating the sum of the bidder's price from the Vendor's plant to the mid-point of the project, as applicable. The Chief District Engineer will be responsible for all calculations and will issue Delivery Order(s) to the low bidder thus calculated.

Minimum order is four cubic yards unless mutually agreed by the Engineer and the Vendor at the time order is placed. Ship only upon request from the Engineer. Verbal requests for delivery will be confirmed in writing. At the time a request for delivery is made, there shall be an agreed time of delivery. Notify the Engineer if delivery will be delayed by more than one hour. Deliver by truck mixer to any point in each county in the state. Do not use continuous type mixers (concrete mobiles) to deliver Concrete. Do not exceed the legal or authorized truck weight limits. Comply with delivery requirements of Section 601.03.07.

If a Vendor fails to make requested deliveries as set forth above, the Division of Purchases may exercise the option of canceling the contract and may purchase the material not furnished by the Vendor from another source. All costs and expenses in excess of the stipulated contract amounts will be charged to the defaulting Vendor and may be deducted from any money due him at the time of the default.

The Vendor will not be held responsible for failure to deliver the Concrete materials if the failure is due to an act beyond his control such as availability of raw materials, a general strike, war, flood, tornado, etc. Written proof that the failure to deliver was beyond Vendor's control shall be submitted immediately to the Chief District Engineer and the Director of the Division of Purchases.

1.04 - Method of Measurement

Weigh the component materials according to Sections 601.02.14 and 601.03.03. Furnish scales and water measuring devices meeting the requirements of the specifications. According to Section 601.02.14, provide for scales to be checked at least every 6 months by a representative of a recognized commercial scales company certified by the Division of Weights and Measures. Each scale shall have a scale company seal (sticker) indicating that the proper checks have been made. Have a copy of the scale inspection report (form TC 64-316 revised 3/95) available at the concrete plant. **THE VENDOR'S SCALE INSPECTION REPORT MUST BE VALID ON BID OPENING DATE.**

Calculate the volume of concrete in cubic yards on an absolute volume basis according to the approved mix design. Accepted quantities of the volume thus calculated will be measured for payment. The Department will not make payment for any admixtures specified in Sections 601 and 802 or other admixtures approved by the Engineer.

1.05 – Payment

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.

Payment will be made at the Vendor's quoted prices per cubic yard as proposed on the attached bid form upon the submission to the receiving agent of proper invoices for material delivered and accepted. For orders of less than four cubic yards accepted by the Vendor, a haul charge not to exceed $25.00 may be assessed for each delivery. Invoice the charges for material and delivery of quantities less than four cubic yards as separate line items on the same invoice. Payment will be made based on total quantity received times the contract unit price on the delivery order plus delivery charges for quantities less than four cubic yards, if applicable. Unless otherwise specified, payment will not be made for partial deliveries accepted.

NO PAYMENT WILL BE MADE FOR THAT PORTION OF ANY LOAD THAT EXCEEDS THE LEGAL OR AUTHORIZED LOAD LIMITS.

THE DEPARTMENT WILL MAKE NO ADDITIONAL PAYMENT FOR ADMIXTURES, BUT SHALL CONSIDER THE COST TO BE INCIDENTAL TO THE UNIT PRICE BID FOR CONCRETE.

When materials fail to meet specifications and are rejected by the Engineer, the Vendor shall pay all charges occurring as a result of the failure.

If contracts are used by political sub-divisions and state agencies other than the Transportation Cabinet, such responsibilities will be assumed by the user agency. All billing and payments for materials purchased from agreement(s) resulting from this invitation will be directly between the user agency and Vendors.

Section 2–Terms and Conditions of the Master Agreement

2.00—Scope of the Contract

The KYTC Division of Purchases issues this Master Agreement for:

Ready Mix Concrete

2.01—Contract Components and Order of Precedence

The Commonwealth's acceptance of the offer indicated by the issuance of an Award by the KYTC Division of Purchases shall create a valid Master Agreement consisting of the following:

1. The written Master Agreement between the Parties;
2. Any Addenda to the Solicitation;
3. Any provisions of the Solicitation and all attachments thereto;
4. The Bidder's response to the Solicitation, and
5. The Kentucky Revised Statutes KRS 45A.

In the event of an inconsistency between provisions of the solicitation, the inconsistency shall be resolved by giving precedence in the following order: (a) the Specifications; (b) other provisions of the Solicitation, whether incorporated by reference or otherwise; (c) Contract or Master Agreement Terms and Conditions; (d) FAP 110-10-00 – General Conditions and Instructions for Solicitations and Contracts.

2.02—Initial Contract Period

The Master Agreement will be effective May 1, 2012 and expire April 30, 2013.

2.03—Optional Renewal Period

This Master Agreement may be extended at the completion of the initial contract period for three (3) additional one-year periods. This extension must have the written approval of the vendor and the KYTC Division of Purchases. The Commonwealth of Kentucky reserves the right to renegotiate any terms and/or conditions as may be necessary to meet requirements for the extended period. The vendor will be advised of any proposed revisions prior to the renewal periods. In the event proposed revisions cannot be agreed upon, either party shall have the right to withdraw without prejudice from either exercising the option or continuing the contract in an extended period.

2.04—Divisions/Agencies to Be Served

This contract shall be for use by the following Divisions/Agencies of the Commonwealth:

ALL STATE AGENCIES AND THEIR POLITICAL SUBDIVISIONS (County Governments, Schools, Universities, etc.)

This Contract designates specific Contractual responsibilities to Transportation Cabinet offices and personnel. If Contracts are used by political subdivisions and state agencies other than the Transportation Cabinet, such responsibilities will be assumed by the user agency. All billing and payments for materials purchased from an agreement(s) will be directly between the user agencies and Vendors.

No shipments or services are authorized until an official Delivery Order has been fully processed by an authorized agency.

2.05—Quantity Basis of Contract

This Master Agreement has no guarantee of any specific quantity, and the State is obligated only to buy that quantity which is needed by its agencies.

2.06—Exception to Required Use of Contract

The establishment of this Master Agreement is not intended to preclude the use of similar products when requested by the agency. The Commonwealth of Kentucky reserves the right to acquire large requirements through other competitive processes.

2.07—Basis of Price Revisions

PRICE ADJUSTMENTS: Unless otherwise specified, the prices established by the Master Agreement shall be firm for the contract period subject to the following:

A. Price Increases: A price increase will not be allowed during the first six (6) months of the contract. Only one price increase will be allowed during the contract period. The price increase must be based on industry wide price changes. The contract holder must request in writing a price increase at least thirty (30) days prior to the effective date, and shall provide firm proof that the price increase(s) is justified. The KYTC Division of Purchases may request additional information or justification. If the price increase is denied, the contract holder may withdraw from the contract without prejudice upon written notice and approval by the KYTC Division of Purchases. Notice of withdrawal must be provided a minimum of forty-five (45) days prior to the effective date.

B. Price Decreases: The contract price shall be reduced to reflect any industry wide price decreases. The contract holder is required to furnish the KYTC Division of Purchases with notice of any price decreases as soon as such decreases are available.

C. Extended Contract Periods: If the contract provides for an optional renewal period, a price adjustment may be granted at the time the contract is renewed, subject to price increase justification as required “A. Price Increases”. One (1) additional price increase may be granted during the extended contract period. This price increase will not be allowed during the first six (6) months of the extended contract period and will be subject to the

conditions in “A” above.

2.08—Addition or Deletion of Items or Services

The KYTC Division of Purchases reserves the right to add new and similar items, with the consent of the vendor, to the contract. If an addition is agreeable to both parties, the KYTC Division of Purchases will issue a Modification. Until such time as the vendor receives a Modification, the vendor shall not accept Delivery Orders from any agency referencing such items or services.

2.09—Changes and Modifications to the Contract

During the period of the contract, a modification shall not be permitted in any of its conditions and specifications, unless the contractor receives electronic or written approval from the KYTC Division of Purchases. If the contractor finds at any time that existing conditions make modification in requirements necessary, the contractor shall report the matter promptly to the KYTC Division of Purchases for consideration and decision. All contract modifications shall be subject to the provisions of 200 KAR 5:311.

2.10-Equipment

All equipment must be new and current model(s). The Commonwealth recognizes the rapid advancement of technology. If the vendor 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.

2.11—Basis of Shipment

All shipments shall be F.O.B. Destination to the receiving agency. The vendor shall be fully responsible for all shipments and freight charges involved to the ordering agency. The responsibility for filing freight claims lies with the vendor.

2.12—Notices

Unless otherwise instructed, all notices, consents, and other communications required and/or permitted by the Master Agreement shall be in writing.

After the Award, all programmatic communications are to be made to the Agency Contact Person listed below with a copy to the Division of Purchases.
Unless otherwise instructed, all notices, consents, and other communications required and/or permitted by the Master Agreement shall be in writing.

After the Award, all programmatic communications are to be made to the Agency Contact Person listed below with a copy to the Division of Purchases.

Rusty Wallace
Division of Maintenance
Kentucky Transportation Cabinet
Phone: 502-564-4556
E-mail: Rusty.Wallace@ky.gov

With copy to:

Laura Hagan, CPPB
Division of Purchases
Kentucky Transportation Cabinet
Phone: 502-564-4630
E-mail: Laura.Hagan@ky.gov

After the Award, all communications of a contractual or legal nature are to be made to the KYTC Division of Purchases.

2.13—Deliveries

See Section 1.03.

2.14—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.

2.15—Invoices

Invoices, if required, shall be prepared and transmitted to the agency receiving the goods or services. One copy shall be marked "original" unless otherwise specified. Each invoice shall contain at least the following information:

a. Contract and order number;

b. Item numbers;

c. Description of supplies or services;

d. Sizes;

e. Quantities

f. Unit prices; and

g. Extended totals.

2.16—Payments

See Section 1.04.

A bill shall be paid within 30 working days of either the receipt of correct invoice, or receipt of goods or services in satisfactory condition. A penalty payment of one percent (1%) per month shall be added to the amount due the vendor for each full or partial month that the payment exceeds 30 working days. As an incentive for earlier payment, bidders for state contracts are encouraged to offer discounts for payments made in less than the prescribed 30 days.

2.17—Post Contract Agreements

The Master Agreement shall represent the entire agreement between the parties. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this contract. The Commonwealth shall not be required to enter into nor sign further agreements, leases, company orders or other documents to complete or initiate the terms of the contract. Any such documents so obtained will be non-binding on the State and be cause for breach of contract.

2.18—Service Performance

All services performed under contract shall be in accordance with the terms and conditions 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.

Deviations of services performed will not be made without the written approval of the KYTC Division of Purchases. Problems that arise under any aspect of performance should first be resolved between the vendor and the agency. If such problems and/or disagreements cannot be resolved they should be referred to the KYTC Division of Purchases for mediation.

2.19—Assignment

The vendor shall not assign this Master Agreement in whole or in part to another vendor at any time during the initial or optional renewal terms of the contract, without the consent, guidance and approval of the Commonwealth. Any assignment hereunder entered into, subsequent to the execution of the contract with the prime vendor, must be annotated and approved by the Commonwealth. Any purported assignment without this consent shall be null and void.

2.20—Termination of Contracts

A contract may be terminated for default by the vendor, for the convenience of the Commonwealth, or for lack of appropriation in accordance with 200 KAR 5:312.

2.21— Endorsements

The Contractor shall not refer to the Award of Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky.

2.22 Secretary of State Filing

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 to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under KRS 14A.9-030 unless the person produces the certificate within fourteen (14) days of the bid or proposal opening. 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, the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within KRS 14A.1-070.
For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity's solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.

Businesses can register with the Secretary of State at https://secure.kentucky.gov/sos/ftbr/welcome.aspx

2.23—EEO ACT

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, if applicable.

1. Failure to comply with the Act may result in non-award, withdrawal of award, cessation of contract payments, etc.

2. Vendors/Contractors must submit the following documents in accordance with the requirements of the solicitation—EEO-1: Employer Information Report, Affidavit of Intent to Comply and Subcontractor Report or a copy of the Kentucky EEO Approval Letter issued by the Finance and Administration Cabinet, Office of EEO and Contract Compliance.

3. Vendors/Contractors may obtain copies of the required EEO documents from the Finance and Administration Cabinet's e-Procurement Web page under Standard Attachments and General Terms at the following address: http://eprocurement.ky.gov/attachments.htm.

4. Vendors/Contractors must advise each subcontractor/subvendor—with a subcontract of more than $500,000—of the subcontractor's obligation to comply with the KY EEO Act. Further, Vendors/Contractors are responsible for compiling EEO documentation from their subcontractors/subvendors and submitting the documentation to the Finance and Administration Cabinet, Office of EEO and Contract Compliance. (Note: contracts below the second tier are exempt from EEO reporting.)

5. Failure to complete, sign and submit all required documents will delay the award process as incomplete submissions will not be processed. Further, alternate versions of the required documents will not be accepted or processed.

6. Pursuant to KRS 45.610 (2), the Finance and Administration Cabinet, Office of EEO and Contract Compliance reserves the right to request additional information and/or documentation and to conduct on-site monitoring reviews of project sites and/or business facilities at any point for the duration of any contract which exceeds $500,000 to ascertain compliance with the Act and such rules, regulations and orders issued pursuant thereto.

7. All questions regarding EEO forms or contract compliance issues must be directed to the Finance and Administration Cabinet, Office of EEO and Contract Compliance via e-mail: Finance.ContractCompliance@ky.gov or via telephone: (502) 564-2874.

2.24—Prevailing Wage

If the federal government or any of its agencies furnishes by loans or grants any part of the funds used in constructing public works, and if the federal government or its agencies prescribe predetermined prevailing minimum wages to be paid to mechanics, workmen and laborers employed in the construction of the public works, and if KRS 337.505 to 337.550 is also applicable, those wages in each classification which are higher shall prevail.

2.25—Kentucky Sales and Use Taxes

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

2.26—Extension Period

This contract may be extended at the termination of all contract renewal periods for additional time not to exceed **90 days**. This extension must be accompanied by the written approval of the vendor and the Division of Purchases

2.27—Extending Master Agreement To Other Agencies

The Division of Purchases reserves the right, with the consent of the vendor, to offer this master agreement to other state agencies or political subdivisions who may have need for the product (s).

2.28-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. (See attachment)

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 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:

I. 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.

II. 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.

III. 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.

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

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