Commonwealth of Kentucky

MASTER AGREEMENT

IMPORTANT

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

Doc Description:	Traffic Control D-9		
Doc ID No:	MA 605 1200000839 3	**Proc Folder:**	2487415
Procurement Type:	Standard Services		
Effective Date:	2012-04-27	**Expiration Date:**	2015-04-01
Administered By:	THOMAS GILPIN	**Cited Authority:**	FAP111-35-00-S
Telephone:	270-766-5066	**Issued By:**	LINDA SHINN

Not To Exceed Amount

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 04/02/2014 thru 04/01/2015. There are no optional renewal periods remaining on contract.

VENDOR

AWP, Inc.
Area Wide Protective
826 Overholt Rd.

Kent OH 44240
US

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	Lane Closure Two-Lane Highway		0.00	HR	149.60000	0.00	0.00

Extended Description

Rep: Dan Bertke
Phone: 800-343-2650
Email: dbertke@awptime.com

Vendor is responsible for set up, maintenance, and removal of all traffic control items required per KYTC Standard Drawing TTC-100-02. This item includes two ATSSA Certified Flaggers. When submitting a delivery order for this item, there will be a four (4) hour minimum. The time shall begin once all traffic control items are in place.

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
2	Single Lane Closure Multi-Lane Highway		0.00	EA	1,738.00000	0.00	0.00

Extended Description

Vendor is responsible for set up and removal of all traffic control items required per KYTC Standard Drawing TTC-115-02. Lane closures shall not remain in place more than three days.

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
3	Double Lane Closure Multi-Lane Highway		0.00	EA	1,997.00000	0.00	0.00

Extended Description

Vendor is responsible for set up and removal or all traffic control item required per KYTC Standard Drawing TTC-125-02. Lane closures shall not remain in place more than three days.

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
4	Truck Mounted Attenuator		0.00	HR	120.00000	0.00	0.00

Extended Description

Use only NCHRP 350 TL-3 compliant devices. Attenuator must be mounted on a support vehicle that is in close conformity to the one it was tested with for NCHRP compliance. Prevent shifting during impact. TMA vehicle must be equipped with a truck mounted arrow panel, type C, solar powered and high intensity strobe lights. Properly trained operator must remain on site at all times. When submitting a delivery order for this item, there will be a four (4) hour minimum. The time shall begin once all traffic control items are in place.

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
5	Traffic Control Maintenance		0.00	HR	74.80000	0.00	0.00

Extended Description

When requested by the district the vendor must provide an ATSSA Certified Traffic Control Technician to maintain the traffic control items. When requested by the district, this line item shall be used in conjuction with line item 2 or line item 3. When submitting a delivery order for this item, there will be a four (4) hour minimum. The time shall begin once all traffic control items are in place.

Total Order Amount:	0.00

Section 1—Specifications - Service

1.00—Specifications of Commodity and/or Service Requirements

The vendor shall be responsible for furnishing all items required by the Kentucky Standard Drawings. The link to the Standard Drawings can be found at:

http://transportation.ky.gov/Highway-Design/Pages/2012-Standard-Drawings.aspx

The Department shall provide the Vendor with a minimum of 72 hours notice. If agreed upon by the Department and the Vendor, the Vendor may provide the necessary traffic control earlier than 72 hours.

The maximum Lane Closure Distance allowed shall be two (2) miles.

The Vendor is responsible for setting up and removing the traffic control necessary for the lane closures.

All flaggers shall be ATSSA Certified, and all employees are required to wear the appropriate PPE while on the jobsite. All materials and equipment must be in new or like new condition and meet the requirements of the MUTCD and KYTC Standard Drawings.

Lane Closures shall not remain in place more than three (3) days.

Section 1.01-Supervision

The equipment and the operator(s) will be under the supervision and subject to the orders of the Transportation Cabinet, who shall direct the time and place for the use of such equipment.

The Transportation Cabinet and all its officers, agents, and employees shall be held harmless from all suits, actions, or claims of any character brought on account of any injury or damages sustained by any person or property from any actions or for any negligence in performance of the above named equipment. Nothing in this proposal is to be construed as any agency relationship between the parties.

Section 1.02 – Insurance

Provide proper insurance coverage to indemnify the Commonwealth of Kentucky and to hold the Commonwealth of Kentucky harmless against all loss, expenses, or injury to person or property.

Evidence will be furnished to the Transportation Cabinet Division of Purchases each year that public liability (General Liability) insurance is carried on all equipment and their operators in the following amounts:

> Property $1,000,000.00
> Personal $1,000,000.00
> And Kentucky worker's compensation insurance in accordance with the requirements of KRS 45A.480 and KRS Chapter 342.

It shall be the successful bidder's responsibility to maintain this insurance coverage at all times and to

notify the Division of Purchases with any changes/additions which may occur. The Contractor shall provide an updated copy of the insurance certificate each year upon contract renewal.

Vendor must submit an ACORD Certificate (or equivalent) with the certificate holder listed as:

KYTC Div of Purchases
ATTN: Cindy Watts
200 Mero St
Frankfort, KY 40622

Any damage claims caused to the Vendor's equipment by state-owned equipment operated by Department personnel will be submitted to the state board of claims for resolution.

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:

Traffic Control D9

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 upon award and expire 4/1/2013.

2.03—Optional Renewal Period

This Master Agreement may be extended at the completion of the initial contract period for **two (2)** 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 Kentucky Transportation Cabinet:

HIGHWAY DISTRICT 9

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— Reduction in Contract Worker Hours/Employee Furlough

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document. The reduction of hours may be applicable to those contract workers that provide a service in state government buildings on a regularly scheduled basis, such as janitorial, security guard, mailing services, and food services. These services will be reduced in hours only in those circumstances where the buildings will be closed. A notification will be sent to the contract holder in advance of any scheduled reduction in contract hours.

2.11-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.

2.12—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.

2.13—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.

T.J. Gilpin
Division of Maintenance
Kentucky Transportation Cabinet
Phone: 502-564-4556
E-mail: Thomas.Gilpin@ky.gov

With copy to:

Cindy Watts
Division of Purchases
Kentucky Transportation Cabinet
Phone: 502-564-4630
E-mail: Cindy.Watts@ky.gov

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

2.14—Deliveries

Vendor shall be notified of each setup a minimum of seventy-two (72) hours in advance. Set up and removal dates and times will be agreed upon by the District Engineer and Vendor.

Night and weekend work may be required at the District's discretion.

Should vendor fail to make delivery within the guaranteed response period, they agree and further authorize the Commonwealth to deduct damages from the invoice in the amount of **2% of the delivery order total per hour** for each hour the service is withheld.

2.15—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.

2.16—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.

2.17—Payments

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.

2.18—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.

2.19—Subcontracts

The vendor shall notify the Commonwealth of any planned use of subcontractors in regards to the resulting contract. If the KYTC Division of Purchases is provided evidence of the vendor making such an arrangement without submitting the proper information prior to use of the subcontractor, the contract may be cancelled immediately.

This provision will not be taken as requiring the approval of contracts of employment between the vendor and their personnel.

All payments will be made directly to the contracted vendor. It is the vendor's responsibility to make payment to the subcontract. Payments shall not be made to the subcontractor by the Commonwealth. Subcontractors having nonpayment issues that could not be resolved with the Vendor, should report in detail these incidents to the buyer of record for this solicitation.

The Vendor shall ensure that all contractors or subcontractors comply with all applicable Federal, State, and Local laws, regulation, mandates, and terms of this solicitation and resulting contract.

Additionally, the Vendor shall not contract with any contractor or subcontractor that utilizes the services of illegal immigrants. Attached is the required affidavit regarding contractor or subcontractor employees.

The vendor is responsible for supplying the subcontractor with a copy of any applicable prevailing wage rates and the terms and conditions of the solicitation.

2.20-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.

2.21—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.

2.22—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.

2.23– 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.

2.24-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 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

2.25–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.

2.26—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.

2.27—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.

2.28—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

2.29—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).

2.30-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.