



# Commonwealth of Kentucky

## MASTER AGREEMENT

**IMPORTANT**

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

<b>Doc Description:</b> Retroreflectivity Data Collection		
<b>Doc ID No:</b> MA 605 1500000763 1	<b>Proc Folder:</b> 3755735	
<b>Procurement Type:</b> Standard Services		
<b>Effective Date:</b> 2015-03-18	<b>Expiration Date:</b> 2016-02-28	<b>Not To Exceed Amount</b>
<b>Administered By:</b> JOHN WALLACE IV		<b>Cited Authority:</b> FAP111-35-00-S
<b>Telephone:</b> 270-766-5066		<b>Issued By:</b> Jennifer Houchin
<b>V E N D O R</b>	Beck & Co. Engineering, Inc. Beck & Co. Inc. 8727 Pheasant Run Circle  Woodbury MN 55125 US	

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	Interstate and Parkway retroreflectivity data collection	0	0.00	MI	15.41000	0.00	0.00

**Extended Description**

This is a master agreement for one (1) year and have the option for two (2) additional one (1) year renewals. Services are only to be provided upon receipt of delivery order.

Vendor Rep: Richard Beck  
 Vendor PH: 612-805-1637  
 Vendor Email: rick.bcengineering@gmail.com

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
2	Conventional route retroreflectivity data collection	0	0.00	MI	15.41000	0.00	0.00

**Extended Description**

Conventional route retroreflectivity data collection

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
3	Mobilization	0	0.00	EA	1.00000	0.00	0.00

**Extended Description**

Mobilization

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The General Conditions and Instructions for Solicitations and Contracts shall be incorporated by reference in each solicitation and resulting contract. Therefore, it is the bidder's responsibility to access and read these General Conditions at: <http://finance.ky.gov/services/policies> scroll down to Procurement Services- Procurement , double click on the file named FAP 110-10-00 General Conditions and Instructions for Solicitations and Contracts or request a copy by contacting the KYTC Division of Purchases buyer named in section 3.01. Every person submitting a bid to the Commonwealth shall be deemed to have assented to these conditions by the act of bidding.

**CAUTION:** PER FAP 110-10-00 2(d) – *“The person signing the offer shall initial an erasure or other change in ink”.*

*Per FAP 111-34-00 (2) (b) - A bid **shall** be rejected if the bid contains **material alterations** or erasures not initialed in ink by the bidder*

## **Section 1—Specifications - Service**

### **1.00—Specifications of Commodity and/or Service Requirements**

#### **Specifications**

The scope of this contract is to collect and report continuous retroreflectivity readings taken in accordance with the Commonwealth of Kentucky, Transportation Cabinet, Department of Highways' Standard Specifications for Road and Bridge Construction, 2012 Edition, applicable Special Provisions, Kentucky Methods, general notes and specifications included in this proposal with a 30 M geometry, mobile retroreflectometer on interstates, parkways, ramps and other state-maintained roadways in the Commonwealth of Kentucky.

A link to the Standard Specifications can be found at:

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

The Division of Materials will provide the vendor with Delivery Orders identifying locations to be measured. Delivery Orders will be provided in a timely fashion to allow a minimum of 14 calendar days for data collection. Data collection for each line item identified in a Delivery Order shall be performed in accordance with Kentucky Method (KM) 203.

[http://transportation.ky.gov/Materials/Documents/KM203\\_12.pdf](http://transportation.ky.gov/Materials/Documents/KM203_12.pdf)

The majority of the readings taken under this contract will be between June and October. These months should be reserved and the vendor should be prepared to spend significant amounts of time taking readings during these months.

Readings may be requested at times other than these three months, upon issuance of a Delivery Order by the Division of Materials. The unit of measure for mobilization shall be each. The department will pay for mobilization as one (each) per Delivery Order.

The unit of measure for retroreflectivity data shall be line-miles of striping read. Pay items for

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retroreflectivity data will be made under two categories, defined by type of roadway, fully controlled access (i.e. Interstates and Parkways) and conventional routes. Payment will be based on line miles read for individual stripes on the roadway, except double-lines that are spaced close enough to be read in a single pass of the data collection vehicle will be considered as a single line.

### **Traffic Control**

Maintain traffic in accordance with the Manual on Uniform Traffic Control Devices (MUTCD), the Standard Specifications for Road and Bridge Construction, and the Standard Drawings, current editions. Traffic control will not be measured for payment but will be incidental to other items of work in this contract.

A link to the Manual on Uniform Traffic Control Devices can be found at:

<http://mutcd.fhwa.dot.gov/>

### **Location**

Evaluate routes as specified in the Delivery Orders provided by the Department.

### **Weather and Pavement Conditions**

Data shall be collected when pavement and markings are dry and atmospheric conditions are within the retroreflectometer manufacturer's stated tolerances. Fog and condensation of morning dew will not be considered as acceptable weather conditions.

### **Daylight Conditions**

Collect data only during daylight hours of each working days. A working day shall be defined as any calendar day, or portion thereof, where the requirements for Weather and Pavement Conditions are met. On days that work is performed, operate the vehicle as described under the Data Collection and Reporting section.

### **Data Collection Vehicle**

The vehicle selected for this contract will be capable of:

- A. Obtaining continuous retroreflectivity measurement using 30 M geometry mobile retroreflectometer.
- B. Obtaining data, which shall be plotted in graph form, showing the average retroreflectivity of each individual line at 528'(1/10 of a miles) intervals
- C. Being contained in one driving lane
- D. Operating at highway free flow speeds, without interfering with normal traffic flow
- E. Creating a video log with data overlay to be made available on both DVD and a secure internet site for a period of no less than five years

### **Calibration**

Calibrate the data collection instruments and the data collection vehicle in accordance with the operating manual and calibration guide for the retroreflectometers and vehicle. Calibrate the retroreflectometers no less than twice per day. Log all calibrations and times performed. Provide daily calibration logs with reports for each Delivery Order.

Schedule and conduct monthly quality assurance verifications for any vehicle and handheld retroreflectometer that will perform testing or verify test data collected under this contract. Schedule quality assurance verifications with the Division of Materials a minimum of three (3) business days in

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advance. Quality assurance verifications will be conducted during normal business hours at a centrally located site selected by the Division of Materials. Successful quality assurance verifications shall be completed prior to data collection each calendar month in which data is to be collected. Handheld retroreflectometers will be calibrated on site in the presence of the Department. The Department and the vendor will conduct joint evaluations of both yellow and white longitudinal markings within the test site using approved 30 M geometry handheld retroreflectometers and the mobile retroreflectometer. The verification will be deemed successful for each marking evaluated within the test site if (1) the mean averages between the approved vendor's mobile retroreflectometer and handheld retroreflectometer meet field verification requirements as outlined in the approved vendor's quality control plan; and (2) the mean average obtained by the approved vendor's mobile retroreflectometer differs by less than 10% to the mean average obtained by the Department's handheld retroreflectometer.

### **Data Collection and Reporting**

The vendor shall notify the Division of Materials 3 calendar days prior to beginning data collection and 3 calendar days after completing data collection. The vendor shall provide the Division of Materials with a contact person and telephone number.

Encode the data as detailed in Section A of the Excel spreadsheet requirements listed below.

Differentiate between the types of retroreflective material on the roadway, i.e., paint, thermoplastic, tape, or any other reflective medium.

Assess the appearance of the line (i.e., over spray, tracking, proper retracing, debris, etc.). Note lines that do not have a good appearance on the data summary sheet.

Prior to award the vendor will provide the Department with a sample format of data reporting illustrating compliance to the requirements of this contract.. The Department will review the data reporting format for acceptance..

### **Provide data as follows:**

#### **Excel spreadsheets shall:**

- A. Include all individual files with
  1. Application Date
  2. District
  3. County
  4. Route
  5. Direction
  6. Line type(i.e. right edgeline, left edgeline, centerline, skip line, gore marking) and line color
  7. Retroreflectivity parameters
  8. File name corresponding to CID (contract identification number)
  9. Number of 528' intervals
    - a. Intervals passing minimum retroreflectivity as defined by KM203
    - b. Intervals failing as defined by KM203
    - c. Percentage of passing intervals as defined by KM203
    - d. Percentage of failing intervals as defined by KM203
    - e. Average reading taken at each interval as defined by KM203
  10. Measurement Date
  11. Graphical representation of 528' interval averages

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12. GPS longitude and latitude coordinates corresponding to the beginning of each interval
13. Ambient air temperature and percent relative humidity recorded at the beginning of each interval

B. Include in the summary spreadsheet:

1. District
2. County
3. Route
4. Direction
5. Line type (i.e. right edgeline, left edgeline, centerline, skip line, gore marking) and line color
6. Starting mile point
7. Ending mile point
8. Total mileage
9. File name corresponding to CID (contract identification number)
10. Measurement date
11. Average RL
12. Number of total 528' intervals per section as defined by KM 203
13. Number of passing intervals per section as defined by KM203
14. Percent of passing intervals per section as defined by KM203
15. Number of failing intervals per section as defined by KM203
16. Percent of failing intervals per section as defined by KM203
17. Application date
18. Truck name/number and driver name

DVD

- A. Labeled with date and file name corresponding to CID (contract identification number)
- B. District
- C. County
- D. Route
- E. Data overlaid on the DVD shall include the following information
  1. Application date
  2. Measurement date
  3. File name corresponding to CID (contract identification number)
  4. Starting mileage
  5. Ending mileage
  6. Total miles
  7. Calibration factors
  8. Retroreflectivity average
  9. Start time and end time of the DVD in minutes and seconds
  10. Upper and lower validation threshold

Submit electronic reports and DVD's per CID to the Division of Materials within 14 calendar days of completion of data collection for each Delivery Order. Submit electronic reports as a single submission per Delivery Order. Mail DVD's as a single shipment per Delivery Order to the Division of Materials at the following address: Kentucky Transportation Cabinet, Division of Materials, ATTN: Chemical Section, 1227 Wilkinson Boulevard, Frankfort, KY 40601. The Department will notify the vendor if any files are unreadable so that the vendor will either send another file or collect data on these routes again. Retain a

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copy of each data file for a period of five years.

Submit a final electronic report within 14 calendar days of completion of data collection for the calendar year containing a summary of all days of data collection for each Contract Identification Number (CID). The final report shall consist of an Excel workbook containing individual spreadsheets per CID. Each spreadsheet shall report a summary of: the total number of 1/10 mile intervals measured per color per line type; number and percentage of passing intervals per color per line type; minimum, maximum, and average retroreflectivity value per color per line type; minimum, maximum, and average ambient conditions; , and a comment section listing any problems that were encountered while taking readings, any locations that were unable to be read and any other information pertinent to this log of data being collected.

The vendor must demonstrate sufficient data collection equipment, resources and expertise with the equipment to meet the project schedule and scope of services. Vendor shall have at least 10 years of mobile retroreflectivity data collection experience with at least 100,000 cumulative miles collected. Documentation must be presented at the time of bid.

The mobile retroreflectometer attached to the vendor's vehicle must be capable of sweeping the line every 4 feet; taking approximately 200 data points in a sweep; identifying the highest retroreflectivity data point in a sweep and averaging the five (5) data points on either side; excluding data points below a minimum threshold of 50 millicandelas per square meter per lux and above 800 millicandelas per square meter per lux.

The vendor must have an approved 30 M geometry handheld retroreflectometer for quality assurance verifications and daily on-site verifications during data collection. The handheld retroreflectometer must be calibrated annually and documentation shall be made available to the Department. The handheld retroreflectometer must be capable of storing, retrieving and printing data results. Any software needed to access or download data in the field from the vendor's handheld retroreflectometer must be made available to the Department.

Use a windows-based GPS enabled 30 M geometry mobile retroreflectometer system with a traceable, repeatable calibration source to collect data as described in other sections of this document. Use Agency approved 30 M geometry handheld retroreflectometer as part of the calibration procedure of the mobile retroreflectometer as needed. The vendor shall have a written training procedure manual for all vendor operators and staff involved with this contract. The vendor shall provide documentation to the agency prior to award that all vendor personnel involved with this contract has completed the training.

The GPS system should be accurate to within 15 meters and record coordinates a minimum of 4 times within a 1/10 mile interval beginning at the start of the interval and continuing to record coordinates every 132 feet. Records of the GPS should be made available on a secure website accessible to the Department for a period of no less than five years.

The vendor must have a minimum of five (5) vehicles capable of meeting the equipment requirements as listed in this agreement.

### **Collection and Report Penalties**

All retroreflectivity data shall be collected and reported in conformance with the requirements of this contract . The Department will deduct \$100 per day per Delivery Order, from payments due the vendor,

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when

- 1) data is not collected in accordance with KM 203 and/or
- 2) acceptable reports are not received within the time frame specified in this contract.

**Documentation to be provided prior to award**

Description of all equipment, including, but not limited to the following items:

Vehicle license and VIN numbers for a minimum of five (5) operable mobile retroreflectometers meeting the equipment requirements as outlined elsewhere in this contract and owned by the vendor. Please enter the information below.

1. VIN and license: 1FDPE24L91NB16554 MN SCT-739
2. VIN and license: 1FDNE24L86HA88955 MN 290-MGM
3. VIN and license: 16KS2KE38BR159742 MN 630-HUT
4. VIN and license: 1FTFW1ET2DFC12595 MN 867-KFJ
5. VIN and license: 1FMJK2AT0FEF08964 MN 192-RDA

Make and model of all retroreflectometers that will be used on the vehicles listed and documented above. Please enter the information below.

1. Make and Model: LLR VI-SN#162
2. Make and Model: LLR VI-SN#167
3. Make and Model: LLR VI-SN#168
4. Make and Model: LLR VI-SN#169
5. Make and Model: LLR VI-SN#170

Make and model of GPS hardware and a description of Windows based software for the GPS system. Please enter the information below.

1. Make and Model: Garmin X-18 Software/Interface – BCE Proprietary
2. Make and Model: Garmin X-18 Software/Interface – BCE Proprietary
3. Make and Model: Garmin X-18 Software/Interface – BCE Proprietary

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4. Make and Model: Garmin X-18 Software/Interface – BCE Proprietary

5. Make and Model: Garmin X-18 Software/Interface – BCE Proprietary

Make and model of all handheld retroreflectometers that will be used in field verifications

1. Make and Model: LTL-X SN#844

2. Make and Model: LTL-X SN#746

3. Make and Model: StripeMaster SN#GF1015

4. Make and Model: StripeMaster SN#155

5. Make and Model: StripeMaster SN#157

Description of the operation of the vehicle and mobile retroreflectometer as a system, including frequency of sweeps in a tenth mile interval, high and low retroreflectivity thresholds, determination of reported data points in a single sweep

Submit Manufacturer’s operational manual for use of laser pointer to be used during this contract.

Documentation of vendor’s experience, including cumulative miles of data collected.

23 Years and 900,000 cumulative miles of data collected. Please provide 3 references to verify the experience.

1. Charles Holzschuher, PE FDOT 352-955-6341

2. Thomas Honich, PE MODOT 573-526-0122

3. Ken E Johnson, PE MNDOT 612-234-7386

Quality Control Plan including the following key elements

Name of all qualified inspectors that will collect data in the Commonwealth of Kentucky

Training Manual detailing qualification process for all inspectors

Description of vendor’s process for calibration of retroreflectometer instruments

Description of vendor’s process for assessing pavement and atmospheric conditions

Sample format of data reporting illustrating compliance to the requirements of this contract.

Vendor shall be required to sign a statement that all data collected under this contract shall be the property of the Department of Highways of the Commonwealth of Kentucky and shall not be distributed to any other entity without the prior written consent of the Department.

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## **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: Retroreflective Data Collection

### **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 begin upon award and extend through February 28, 2016.

### **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 Kentucky Transportation Cabinet:

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*Division of Maintenance and Division of Materials*

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**

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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.

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Brandi Mitchell  
Division of Materials  
Kentucky Transportation Cabinet  
Phone: 502-564-3160  
Email: [Brandi.Mitchell@ky.gov](mailto:Brandi.Mitchell@ky.gov)

With copy to:

Jennifer Houchin, CPPB  
Division of Purchases  
Kentucky Transportation Cabinet  
Phone: 502-782-3977  
E-mail: [Jennifer.Houchin@ky.gov](mailto:Jennifer.Houchin@ky.gov)

From the issue date of this solicitation until a Contractor(s) is selected and the selection is announced, Offerors are not permitted to communicate with any Commonwealth staff concerning this solicitation

After the award of a contract, all programmatic communications are to be made to the Agency Contact Person identified in the contract document with a copy to the Division of Purchases Buyer.

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

#### **2.14—Collection and Report Penalties**

All retroreflectivity data shall be collected and reported in conformance with the requirements of these specifications. The Department will deduct \$100 per day per Delivery Order, from payments due the vendor, when

Data is not collected in accordance with KM 203 and/or  
Acceptable reports are not received within the time frame specified in the specifications.

#### **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;

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- 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.

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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**

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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 Web page at the following address:  
<http://finance.ky.gov/SERVICES/FORMS/Pages/default.aspx>  
**Scroll down to the section labeled procurement.**
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.

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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](mailto: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.

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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)

### **2.31-Records Retention**

The Finance and Administration Cabinet may inspect the place of business of the Vendor or any sub Vendor under the master Agreement contract awarded or to be awarded by the Commonwealth. In accordance with KRS 45A.150, the Finance and Administration Cabinet may audit the books and records of any person who has submitted cost or pricing data under KRS 45A.120 at any time until three years from the date of final payment under the prime contract, and by any subcontractor for a period of three years from the date of final payment under the subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the contract and by any subcontractor for a period of three years from the date of final payment under the subcontract. The Finance and Administration Cabinet shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price type contract, provided, however, that this provision shall not limit the right to audit stated above. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract. The contractor shall place such the same audit requirement in any agreement it may have with a subcontractor under this contract.

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**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.

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- 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.