Commonwealth of Kentucky

MASTER AGREEMENT

IMPORTANT

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

Doc Description: Steel Grates for Drop Box Inlets and Headwalls - D9

Doc ID No: MA 605 1500001063 1 **Proc Folder:** 3937648

Procurement Type: Standard Goods

Effective Date: 2015-08-02 **Expiration Date:** 2016-07-31 **Not To Exceed Amount**

Administered By: THOMAS GILPIN **Cited Authority:** FAP111-35-00-G

Telephone: 270-766-5066 **Issued By:** Cindy Watts

VENDOR

J R HOE AND SONS INC

4006 Collins Lane

Louisville KY 40245

US

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	Steel Grates for Drop Box Inlets and Headwalls		0.00		0.00000	0.00	0.00

Extended Description

Vendor Rep: Rocky Campbell
Phone: 502-326-1347
Email: rcampbell@jrhoe.com

MA 1

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 - Commodity

1.00—Specifications of Commodity and/or Service Requirements

Provide Steel Grates (for Catch Basins, Inlets, Outlets, and Manholes) according to the KYTC Standard Drawings and Section 812 of the Kentucky Standard Specifications for Road and Bridge Construction.

Refer to the appropriate KYTC Standard Drawing for dimensions, specifications, and details for each line item in the contract. Unless otherwise specified in the contract, provide the size and number of grates detailed in the standard drawings.

All items shall be stamped or cast lettered "KYDOH" in no less than one location per item, equally spaced.

Shipping shall be F.O.B. destination to the specified location.

Except as provided herein, conform to all requirements of the Transportation Cabinet/Department of Highways' Standard Specifications for Road and Bridge Construction. Section references are to the Standard Specifications.

NOTE: For item 40 there should be one (1) tri-grove socket tool per order of 10. For item 41 there should be two (2) tri-grove sockets per order of 50.

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:

Steel Grates

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 August 2, 2015 and will expire July 31, 2016.

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:

Division of Maintenance and 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—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 Contract shall be in writing.

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

2.13—Deliveries

Vendor guarantees delivery of all requested items within thirty (30) calendar days after award of contract.

The Vendor agrees that when delivery is not made within the contracted due date, one percent (1%) per day shall be deducted from the Vendor's invoice for each day the Vendor fails to meet the contracted delivery date.

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

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— 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

2.23-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 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.

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 - Discrimination:

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

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity or age. The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The contractor agrees to provide, upon request, needed reasonable accommodations. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

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

4. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or

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

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

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

2.25—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.

2.26—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.

2.27—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

2.28—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).

2.29-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)

2.30-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.

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.