

**COMMONWEALTH OF KENTUCKY**

**Request for Proposal (RFP)**

**For  
Kentucky State Fair Board  
Operation of the Amusement Park on the Grounds of the Kentucky Fair Board  
Solicitation # RFB 758 1300000095**

**Date of Solicitation Release  
September 10, 2012**

**Issued by  
The Finance and Administration Cabinet  
On Behalf Of  
Kentucky State Fair Board**

**Commonwealth Buyer:  
Greg Hughes  
COMMONWEALTH OF KENTUCKY  
FINANCE AND ADMINISTRATION CABINET  
Office of Procurement Services  
New Capitol Annex  
702 CAPITOL AVE RM 096  
FRANKFORT KY 40601  
[Hughes.KSFB@ky.gov](mailto:Hughes.KSFB@ky.gov)**

**Restrictions on Communications**

The Commonwealth Buyer named below shall be the sole point of contact throughout the procurement process. All communications, shall be in writing (regular, express, or electronic mail) concerning this procurement shall be addressed to:

**Commonwealth Buyer:  
Greg Hughes  
COMMONWEALTH OF KENTUCKY  
FINANCE AND ADMINISTRATION CABINET  
Office of Procurement Services  
New Capitol Annex  
702 CAPITOL AVE RM 096  
FRANKFORT KY 40601**

[Hughes.KSFB@ky.gov](mailto:Hughes.KSFB@ky.gov)

From the issue date of this RFP until a Contractor is selected and the selection is announced, Offerors shall not communicate with any Commonwealth Staff concerning this RFP except:

- The Commonwealth Buyer cited in this RFP;
- Commonwealth representatives during Site Visits or
- Via written questions submitted to the Commonwealth Buyer.

For violation of this provision, the Commonwealth shall reserve the right to reject Vendors' proposal response.

**REQUESTS FOR PROPOSALS**  
**FOR OPERATION OF THE AMUSEMENT PARK**  
**ON THE GROUNDS OF THE KENTUCKY STATE FAIR BOARD**

**INTRODUCTION**

Pursuant to KRS 45A.085 and 200 KAR 5:307, this RFP is being issued by the Finance and Administration Cabinet on behalf of the Kentucky State Fair Board (collectively "the Commonwealth"). The purpose of this RFP is to locate an operator to manage and operate the amusement park grounds owned by the Commonwealth of Kentucky and managed by the Kentucky State Fair Board.

The format of the RFP is intended to be more flexible than prescriptive. Proposals shall contain a financial plan and an operational plan which describes the Respondent's general vision and implementation scheme.

The proposals will be reviewed by an evaluation team selected by the Finance and Administration Cabinet. All responsive and responsible proposals will be evaluated. The top 3 proposals will be selected to engage in the competitive negotiation process with the Commonwealth.

The RFP contains provisions to which the Commonwealth will not agree under any circumstances. If a proposal includes one of the provisions listed in the "Dealbreakers" section, then said proposal shall be deemed non-responsive/non-responsible and will NOT be evaluated by the Commonwealth.

Points will not be specifically awarded or deducted for style or method of presentation. The proposal shall be clear, unambiguous and easy to understand. Specific questions may be addressed during the competitive negotiation phase if a proposal has been selected in the top 3.

In the end, higher points will be awarded to proposals that maximize financial benefits to the Commonwealth and that minimize financial risk/detriments to the Commonwealth.

The Commonwealth will provide demographic, historical and tourism information for all Respondents to consider. This information is provided solely for analysis by the Respondents. This information is attached as Addendum 1 to the RFP.

On September 18, 2012, a delegation from the Commonwealth will conduct a tour of the premises for all interested Respondents. The purpose of the tour will be to allow the potential Respondents to assess the real and tangible property of the premises. Interested potential Respondents should contact Mr. Mike Sausman at (502) 367-5020 or [msausman@ksfb.ky.gov](mailto:msausman@ksfb.ky.gov) to register for the tour. Potential respondents are advised to bring along any individuals that it deems necessary to evaluate the premises and the tangible property on the premises.

Subsequent inspections may be scheduled in the discretion of the Commonwealth. Any and all questions posed during any of the site visits will be posted, along with the responses, on the Finance and Administration Cabinet website for all to review.

## **EVALUATION CRITERIA**

### **I. FINANCIAL TERMS AND CONDITIONS---500 POINTS**

The Commonwealth provides the following guidance to potential Respondents as to the general structure and typical pieces of the deal that it seeks to consummate. The following provisions (except #2) are not mandatory but could be instructive to the Respondent in crafting their proposal to the Commonwealth.

1. Ground Lease: Proposed terms of a Ground Lease with the Commonwealth as the Landlord and the Respondent as the Tenant. The Respondent would pay rent to the Commonwealth/Landlord, or guarantee a percentage on a profit-sharing basis, or a combination thereof;

2. Terms of Financing: An unambiguous source and use list provided by the Respondent. Said list shall address the amount of funds that the Respondent proposes to spend and the timing of same, the source of said funds to be spent, and the purpose for which said funds will be used;

3. Business Plan: The Commonwealth would like to review a comprehensive business plan which includes short and long term projections demonstrating the viability of the Respondent's proposed enterprise;

4. KRS 56.515: If a financing plan is involved in point #2 above, indicate whether the Respondent desires the Commonwealth to consider the utilization of KRS 56.515.

Said statute allows the private investor to place a mortgage on the Commonwealth's property as security for the repayment of any private loans taken out by the Respondent for the purpose of improving the property for the patrons of the park and the Commonwealth;

5. Length and Terms of Ground Lease: The Commonwealth is generally comfortable with a 30 year initial lease term with three 10 year extensions that must be mutually agreed to by the Commonwealth and the Respondent/Tenant. The Commonwealth will agree to not unreasonably withhold said extensions. The Commonwealth will entertain slight deviations from these general premises;

6. Parking: The Commonwealth has acres of paved parking for use by amusement park patrons. The Commonwealth has its own admission control systems and personnel staffing same. The current rate is \$8.00.

7. Tourism Tax Incentives: Assuming Respondent can satisfy any and all eligibility standards, Tourism tax incentives may be available to the Respondent/Tenant. (Note that this process is an independent process and that the applicant should read and follow KRS 148.851 et seq. to ensure that they are eligible for said incentives).

8. Local Tax Credit: Assuming Respondent can satisfy any and all eligibility standards, a local tax credit representing the occupational tax generated at the park may be available to the Respondent/Tenant. Note that this process is an independent process governed by relevant local ordinances. The Commonwealth is not involved in this process and the Respondent/Tenant should contact the relevant, local jurisdiction to inquire as to the availability of said credits if you are so inclined.

9. Ad Valorem Tax on Tangible Property: If the consideration paid to the Commonwealth pursuant to the Lease is considered to be of "current market value", then the Department of Revenue will not assess any ad valorem property tax against the Respondent/Tenant.

## II. PATRON EXPERIENCE----500 POINTS

Explain your plan for the park from an operational and thematic perspective. In your proposal, please include answers to the following questions:

### 1. RIDES/ATTRACTIONS: (375 Points)

Explain to the Commonwealth your plan for replacing/refurbishing/renovating the park. The Commonwealth believes that it would be appropriate to include answers to the following questions in your proposal.

a. What rides/attractions will you replace, retain, upgrade, etc.?

b. What is your timetable on replacing, retaining or renovating the rides/attractions including the waterpark? Is there is a “long term” and/or a “short term” plan in terms of replacing, retaining or renovating the rides/attractions and waterpark? If so, please detail same.

c. What concepts/ideas do you possess to draw Patrons to the park?

d. Please include a proposed map of how the park will look to the Patron upon completion of your renovations, i.e. on opening day.

e. On what date will the park re-open?

f. Estimate the number of people that you intend on hiring both full time and seasonal;

g. Provide a marketing plan for the Park;

## 2. GENERAL AESTHETICS (75 POINTS)

Describe your plan for the general appearance of the park. Please include items such as landscaping, removing or modifying any structures, and any other improvement related to the general appearance of the park that you would propose to undertake.

## 3. CONCESSIONS/FOOD OFFERINGS (50 POINTS)

Detail your concession and food service plan for the park. Please include in your proposal general representative menus for the food service that you intend to offer at the park.

## III. DEALBREAKERS--PROHIBITIONS

Any proposal that contains any of the following provisions shall be deemed non-responsive/responsible and will not be evaluated by the Commonwealth.

1. Reliance upon funds to be appropriated by the General Assembly to assist private Respondent in renovating park;

2. Provision or notion that allows any private ownership interest in any of the real or tangible property located on park grounds. This prohibition includes, but is not limited to real or tangible property interests after said property has been renovated, replaced or improved in any manner;

3. Any provision in the proposal that conflicts with KRS 56.515 (assuming that said statute is a part of the financial proposal);

4. Any provision in any instrument that causes the Commonwealth to be immediately responsible to cure a default on behalf of the Respondent/Tenant.

#### IV. ATTACHMENTS

The following documents are attached to and incorporated into this RFP for Respondent's review and consideration in developing its proposal.

1. Park Map depicting park grounds during its last year of operation—Exhibit "A".
2. Survey of Park property---"Exhibit "B"; and
3. List of existing rides and attractions—"Exhibit "C".

#### V. CONCLUSION—DUE DATE

Proposals are due into the Office of Procurement Services, Finance and Administration Cabinet, Room 095, Capitol Annex, 702 Capitol Drive, Frankfort, KY 40601 by 4:00 pm on October 19, 2012 prevailing Frankfort, KY time. Proposals shall be submitted by regular mail, overnight courier or hand delivery to Room 095 of the Capitol Annex referenced above. Any proposal received/delivered after 4:00 pm on October 19, 2012 shall not be considered.

Questions and all comments should be directed via e-mail to Greg Hughes at the following e-mail address: [Hughes.KSFB@ky.gov](mailto:Hughes.KSFB@ky.gov). The Commonwealth will NOT respond to comments sent to anyone else or at any other e-mail address other than the address referenced in this paragraph. The deadline for questions shall be at Noon on Friday, October 12, 2012, prevailing Frankfort, KY time. The Commonwealth will respond to all questions by 5:00 pm, prevailing Frankfort, KY time, Monday, October 15, 2012 or before.

#### **Access to Solicitation, RFP, and Addenda**

The Commonwealth wants each prospective Vendor to have full and complete information on which to base a proposal response. Only information presented or referred to in this RFP and any additional written information that is supplied by the Commonwealth Buyer shall be used by Vendors in preparing this response.

The solicitation, addenda, and attachments shall be posted to the Kentucky Vendor Self Service site at <https://emars.ky.gov/online/vss/AltSelfService>. It is not necessary to register to access the solicitation. Unregistered vendors can access the solicitations by clicking on public access. The vendor will be taken directly to business opportunities where they can locate the solicitation, addenda, and attachments. Vendors can search

for the solicitation title or number in the keyword search field. Click on the details link of the solicitation and view the solicitation and all attachments under the attachments tab. It is the Vendors' responsibility to assure they have obtained copies of all information and forms.

### **Acknowledgment of Addenda to Solicitations**

**It is the Vendor's responsibility to check the web site for any modifications to this Solicitation and all parties are obligated to acknowledgment such addenda to this Solicitation. Verbal acknowledgment shall not be accepted.**

### **Notification of Award of Contract**

To view the award of contract(s) and the contractor(s) receiving the award(s) for this solicitation, access the Kentucky Vendor Self Service site at <https://emars.ky.gov/online/vss/AltSelfService>. Vendors can search for the solicitation title or number in the keyword search field, or can filter their search for only awarded solicitations by clicking on Advanced Search and changing the status to awarded. The award(s) information can be accessed by clicking on the details button of the solicitation and clicking the "Notice of Award" tab. It is the vendor's responsibility to review this information in a timely fashion. No other notification of the results of an Award of Contract will be provided.

### **Contract Components and Order of Precedence**

The Commonwealth's acceptance of the Contractor's offer in response to the Solicitation, indicated by the issuance of a Contract Award by the Office of Procurement Services, shall create a valid Contract between the Parties consisting of the following:

1. Any written Agreement between the Parties;
2. Any Addenda to the Solicitation;
3. The Solicitation and all attachments thereto;
4. Conditions of a Contract with the Commonwealth of Kentucky;
5. General Conditions contained in 200 KAR 5:021 and Office of Procurement Services' FAP110-10-00;
6. Any Best and Final Offer;
7. Any clarifications concerning the Contractor's proposal in response to the Solicitation; and
8. The Contractor's proposal in response to the Solicitation.

In the event of any conflict between or among the provisions contained in the Contract, the order of precedence shall be as enumerated above.

### **Final Agreement**

The Contract represents the entire agreement between the parties with respect to the subject matter hereof. 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.

### **Changes and Modifications to the Contract**

Pursuant to KRS 45A.210(1) and 200 KAR 5:311, no modification or change of any provision in the Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the Commonwealth, and incorporated as a written amendment to the Contract and processed through the Office of Procurement Services and approved by the Finance and Administration Cabinet prior to the effective date of such modification or change pursuant to KRS 45A.210(1) and 200 KAR 5:311. Memorandum of understanding, written clarification, and/or correspondence shall not be construed as amendments to the Contract.

If the Contractor finds at any time that existing conditions made modification of the Contract necessary, it shall promptly report such matters to the Commonwealth Buyer for consideration and decision.

### **Permits, Licenses, Taxes and Commonwealth Registration**

The Contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all Federal, State, and local governments in which work under this Contract is performed.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. However, the Contractor need not be registered as a prerequisite for responding to the RFP. Additional local registration or license may be required.

The Contractor shall pay any sales, use, and other taxes assessed by the Kentucky Department of Revenue arising out of this transaction

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

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

### **Bankruptcy**

In the event the Contractor becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the Commonwealth's right to terminate this Contract may be subject to the rights of a trustee in bankruptcy to assume or assign this Contract. The trustee shall not have the right to assume or assign this Contract unless the trustee (a)

promptly cures all defaults under this Contract; (b) promptly compensates the Commonwealth for the monetary damages incurred as a result of such default, and (c) provides adequate assurance of future performance, as determined by the Commonwealth.

### **Conformance with Commonwealth & Federal Laws/Regulations**

This Contract is subject to the laws of the Commonwealth of Kentucky and where applicable Federal law. Any litigation with respect to this Contract shall be brought in state or federal court in **Franklin County, Kentucky**.

### **State Vendor Eligibility Request Form**

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

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

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

### **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.

### **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> .

### **Limitation of Liability**

The liability of the Commonwealth related to contractual damages is set forth in KRS 45A.245.

### **Clarifications of Proposals**

The Commonwealth reserves the right to request clarification of proposals pursuant to 200 KAR 5:306, Section 6.

### **Rules for Withdrawal of Proposals**

Prior to the date specified for receipt of offers, a submitted proposal may be withdrawn by submitting a signed written request for its withdrawal to the Commonwealth Buyer.

### **Disposition of Proposals**

All proposals become the property of the Commonwealth of Kentucky. The successful proposal shall be incorporated into the resulting contract by reference. Disposal of unsuccessful proposals shall be at the discretion of the Commonwealth Buyer.

### **Protest**

Pursuant to KRS 45A.285, The Secretary of the Finance and Administration Cabinet, or his designee, shall have authority to determine protests and other controversies of

actual or prospective Offerors in connection with the solicitations or selection for award of a contract.

Any actual or prospective Offeror or Contractor, who is aggrieved in connection with solicitation or selection for award of a contract, may file protest with the Secretary of the Finance and Administration Cabinet. A protest or notice of other controversy must be filed promptly and in any event within **two (2) calendar weeks** after such aggrieved person knows or should have known of the facts giving rise thereto. (See Section 10.090 of this RFP). All protests or notices of other controversies must be in writing and shall be addressed to:

**Lori H. Flanery, Secretary  
COMMONWEALTH OF KENTUCKY  
FINANCE AND ADMINISTRATION CABINET  
New Capitol Annex  
702 CAPITOL AVE RM 383  
FRANKFORT KY 40601  
(502) 564-4240  
Fax: (502) 564-6785**

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

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

### **Proposal Submission Requirements**

Each qualified Offeror shall submit only **one (1) proposal**. **Alternate proposals shall not be allowed.**

The Vendor must complete the "**Vendor**" **box** on the face of the Solicitation. An authorized representative of the Vendor **shall sign** where indicated on the face of the Solicitation.

Proposals shall include **one (1) marked original and five (5) copies** of the Proposal under sealed cover.

The Vendor shall provide two (2) CDs containing the Proposal response in Microsoft Word. Should differences be determined to exist between the hardcopy proposal and the electronic version, the hardcopy shall prevail. **Proposals are due on October 19, 2012 at 4:00 pm prevailing Frankfort, KY time.**

**ANY PROPOSAL RECEIVED AFTER October 19 2012 at 4:30 pm SHALL NOT BE CONSIDERED.**

Vendor should complete the following certified statement and submit with Proposal:

I, \_\_\_\_\_, representing \_\_\_\_\_  
(print name) (Company name)  
certify that the diskettes/CDs submitted have been properly scanned for infected  
viruses. The virus software and version used was \_\_\_\_\_.

\_\_\_\_\_  
**Signature / Date**

Proposals shall be submitted to:

**Greg Hughes  
COMMONWEALTH OF KENTUCKY  
FINANCE AND ADMINISTRATION CABINET  
Office of Procurement Services  
702 CAPITOL AVE RM 096  
FRANKFORT KY 40601**

The outside cover of the package containing the Proposal should be marked:

**NAME OF RFP  
SOLICITATION NUMBER: RFB-758 1300000095  
PROPOSAL  
Name of Offeror**

The Commonwealth shall accept all proposals properly submitted. However, the Commonwealth reserves the right to request necessary amendments, reject any or all proposals in whole or in part, reject any proposal in whole or in part that does not meet mandatory requirements or cancel this RFP, according to the best interest of the Commonwealth.

Unless requested by the Commonwealth, the Commonwealth may not accept any addenda, revisions, or alterations to proposals after the Solicitation closing time and date.

All submitted Proposals shall remain valid for a minimum of six (6) months after the proposal due date.

### **Prohibitions of Certain Conflicts of Interest**

In accordance with KRS 45A.340, the contractor represents and warrants, and the Commonwealth relies upon such representation and warranty, that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services. The contractor further

represents and warrants that in the performance of the contract, no person, including any subcontractor, having any such interest shall be employed.

In accordance with KRS 45A.340 and KRS 11A.040 (4), the contractor agrees that it shall not knowingly allow any official or employee of the Commonwealth who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this contract to voluntarily acquire any ownership interest, direct or indirect, in the contract prior to the completion of the contract.

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

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

### **Vendor Response and Public Inspection**

The RFP specifies the format, required information, and general content of proposals submitted in response to the RFP. The Finance and Administration Cabinet shall not disclose any portions of the proposals prior to contract award to anyone outside the Finance and Administration Cabinet, representatives of the agency for whose benefit the contract is proposed, representatives of the Federal Government, if required, and the members of the evaluation committees. After a contract is awarded in whole or in part, the Commonwealth shall have the right to duplicate, use, or disclose all proposal data submitted by Vendors in response to this RFP as a matter of public record.

### **Documents that are not exempt by KRS 61.878 that are submitted by a Vendor in response to the RFP shall be available for public inspection after contract award.**

Although the Commonwealth recognizes the Vendor's possible interest in preserving selected data which may be part of a proposal, the Commonwealth must treat such information as provided by the Kentucky Open Records Act KRS 61.870 et sequitur. Informational areas which normally might be considered proprietary shall be limited to individual personnel data, customer references, selected financial data, formulae, and financial audits which, if disclosed, would permit an unfair advantage to competitors. If a proposal contains information in these areas that a Vendor declares proprietary in nature and not available for public disclosure, the Vendor shall declare the inclusion of proprietary information and shall noticeably label as proprietary each sheet containing such information. Proprietary information shall be submitted under separate sealed cover marked "Proprietary Data".

The Commonwealth of Kentucky shall have the right to use all system ideas, or adaptations of those ideas, contained in any proposal received in response to this RFP. Selection or rejections of the proposal will not affect this right.

## ATTACHMENT C1

### REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS

Solicitation/Contract #: \_\_\_\_\_

### REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS PAGE 1 OF 2

#### FOR BIDS AND CONTRACTS IN GENERAL:

I. Each bidder or offeror swears and affirms under penalty of perjury, that:

- a. In accordance with [KRS 45A.110](#) and [KRS 45A.115](#), neither the bidder or offeror as defined in [KRS 45A.070\(6\)](#), nor the entity which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth of Kentucky; and the award of a contract to the bidder or offeror or the entity which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.
- b. The bidder or offeror swears and affirms under penalty of perjury that, to the extent required by Kentucky law, the entity bidding, and all subcontractors therein, are aware of the requirements and penalties outlined in [KRS 45A.485](#); have properly disclosed all information required by this statute; and will continue to comply with such requirements for the duration of any contract awarded.
- c. The bidder or offeror swears and affirms under penalty of perjury that, to the extent required by Kentucky law, the entity bidding, and its affiliates, are duly registered with the Kentucky Department of Revenue to collect and remit the sales and use tax imposed by [KRS Chapter 139](#), and will remain registered for the duration of any contract awarded.
- d. The bidder or offeror swears and affirms under penalty of perjury that the entity bidding is not delinquent on any state taxes or fees owed to the Commonwealth of Kentucky and will remain in good standing for the duration of any contract awarded.

#### **FOR “NON-BID” CONTRACTS (I.E. SOLE-SOURCE; NOT-PRACTICAL OR FEASIBLE TO BID; OR EMERGENCY CONTRACTS, ETC):**

II. Each contractor further swears and affirms under penalty of perjury, that:

- a. In accordance with [KRS 121.056](#), and if this is a non-bid contract, neither the contractor, nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of any contract awarded, have contributed more than the amount specified in [KRS 121.150](#) to the campaign of the gubernatorial slate elected in the election last preceding the date of contract award.

- b. In accordance with [KRS 121.330\(1\) and \(2\)](#), and if this is a non-bid contract, neither the contractor, nor officers or employees of the contractor or any entity affiliated with the contractor, nor the spouses of officers or employees of the contractor or any entity affiliated with the contractor, have knowingly contributed more than \$5,000 in aggregate to the campaign of a candidate elected in the election last preceding the date of contract award that has jurisdiction over this contract award.

Solicitation/Contract #: \_\_\_\_\_

**REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS**

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- c. In accordance with [KRS 121.330\(3\) and \(4\)](#), and if this is a non-bid contract, to the best of his/her knowledge, neither the contractor, nor any member of his/her immediate family, his/her employer, or his/her employees, or any entity affiliated with any of these entities or individuals, have directly solicited contributions in excess of \$30,000 in the aggregate for the campaign of a candidate elected in the election last preceding the date of contract award that has jurisdiction over this contract.

As a duly authorized representative for the bidder, offeror, or contractor, I have fully informed myself regarding the accuracy of all statements made in this affidavit, and acknowledge that the Commonwealth is reasonably relying upon these statements, in making a decision for contract award and any failure to accurately disclose such information may result in contract termination, repayment of funds and other available remedies under law.

\_\_\_\_\_  
Signature Printed Name

\_\_\_\_\_  
Title Date

Company Name \_\_\_\_\_

Address \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_  
(Affiant) (Title)

of \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.  
(Company Name)

\_\_\_\_\_  
Notary Public

[seal of notary]

My commission expires: \_\_\_\_\_

**ATTACHMENT C2**

Solicitation/Contract #: \_\_\_\_\_

**REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS**  
**CLAIMING RESIDENT BIDDER STATUS**

**FOR BIDS AND CONTRACTS IN GENERAL:**

The bidder or offeror hereby swears and affirms under penalty of perjury that, in accordance with KRS 45A.494(2), the entity bidding is an individual, partnership, association, corporation, or other business entity that, on the date the contract is first advertised or announced as available for bidding:

1. Is authorized to transact business in the Commonwealth;
2. Has for one year prior to and through the date of advertisement
  - a. Filed Kentucky corporate income taxes;
  - b. Made payments to the Kentucky unemployment insurance fund established in KRS 341.49; and
  - c. Maintained a Kentucky workers' compensation policy in effect.

The BIDDING AGENCY reserves the right to request documentation supporting a bidder's claim of resident bidder status. Failure to provide such documentation upon request shall result in disqualification of the bidder or contract termination.

\_\_\_\_\_  
Signature Printed Name

\_\_\_\_\_  
Title Date

Company Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_  
(Affiant) (Title)

of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(Company Name)

\_\_\_\_\_  
Notary Public

[seal of notary]

My commission expires: \_\_\_\_\_

**ATTACHMENT C3**

Solicitation/Contract #: \_\_\_\_\_

**REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS CLAIMING QUALIFIED BIDDER STATUS**

**FOR BIDS AND CONTRACTS IN GENERAL:**

I. The bidder or offeror swears and affirms under penalty of perjury that the entity bidding, and all subcontractors therein, meets the requirements to be considered a "qualified bidder" in accordance with [200 KAR 5:410\(3\)](#); and will continue to comply with such requirements for the duration of any contract awarded. Please identify below the particular "qualified bidder" status claimed by the bidding entity.

\_\_\_\_\_ A nonprofit corporation that furthers the purposes of KRS Chapter 163

\_\_\_\_\_ Per KRS 45A.465(3), a "Qualified nonprofit agency for individuals with severe disabilities" means an organization that:

- (a) Is organized and operated in the interest of individuals with severe disabilities; and
- (b) Complies with any applicable occupational health and safety law of the United States and the Commonwealth; and
- (c) In the manufacture or provision of products or services listed or purchased under KRS 45A.470, during the fiscal year employs individuals with severe disabilities for not less than seventy-five percent (75%) of the man hours of direct labor required for the manufacture or provision of the products or services; and
- (d) Is registered and in good standing as a nonprofit organization with the Secretary of State.

The BIDDING AGENCY reserves the right to request documentation supporting a bidder's claim of qualified bidder status. Failure to provide such documentation upon request may result in disqualification of the bidder or contract termination.

\_\_\_\_\_  
Signature Printed Name

\_\_\_\_\_  
Title Date

Company Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_  
(Affiant) (Title)

of \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.  
(Company Name)

\_\_\_\_\_  
Notary Public  
[seal of notary]

My commission expires: \_\_\_\_\_

## ATTACHMENT D

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.