

COMMONWEALTH OF KENTUCKY

**FINANCE AND ADMINISTRATION CABINET
Office of Procurement Services
Capitol Annex
702 Capitol Ave, Room 095
Frankfort, KY 40601
(502) 564-4510**

**Richard Mize
Email: Richard.Mize@ky.gov**

**SOLICITATION FOR
Forklifts**

PLEASE READ THIS SOLICITATION AND ITS INSTRUCTIONS IN ITS ENTIRETY.

*******NOTICE*******

The Commonwealth of Kentucky (Commonwealth) has determined that this procurement will be made using the multistep competitive sealed bidding method. Multistep competitive sealed bidding is a two (2) phase process consisting of a technical first phase composed of one (1) or more steps in which bidders may submit unpriced technical offers to be evaluated by the purchasing agency, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase. The Commonwealth intends to conduct a reverse auction for the second phase of the multistep process. The reverse auction will be a real-time, structured bidding process during which multiple suppliers, anonymous to each other, submit revised lower bids to provide the equipment specified herein.

Phase One (1) TECHNICAL OFFERS

Bidders are to submit **unpriced** technical offers only;

Unpriced technical offers shall be evaluated according to Section 5 Alternate Brands/Specifications and Section 12 Method of Award. Offers shall specify the brand(s)/specifications and insert the brand name(s), model number(s), etc. on which they are bidding. Descriptive literature for the brand and model being bid is to be included with the technical offer.

The following is to be submitted for the unpriced technical offer:

Fully executed Required Affidavit for Bidders, Offerors and Contractors;
A KY Sales and Use Tax Permit or a completed KY Tax Registration Application; and
Registration with the Secretary of State by a Foreign Entity;

Note: Forms, links and directions are included in the Solicitation

Evaluation of unpriced technical offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the solicitation. A bidder shall submit a technical offer in sufficient detail so as to substantially comply with the technical

specifications of the solicitation. The unpriced technical offers shall be categorized as:

Acceptable;
Potentially acceptable; or
Unacceptable;

The Commonwealth Buyer may discuss with bidders, including any subcontractor or supplier of goods or services, acceptable and potentially acceptable bids. Discussions may be conducted for the purposes of facilitating understanding of technical offers and specifications. All discussions shall be performed in writing. Once discussions have begun, any bidder who has submitted an offer found acceptable or potentially acceptable may submit supplemental information modifying or otherwise amending its technical offer at any time until the closing date established by the procurement officer. The procurement officer shall notify all acceptable or potentially acceptable bidders in writing when no additional supplemental information may be submitted;

Please provide a primary contact and a secondary contact for communications regarding the bidder's phase one (1) unpriced technical offer and training as discussed in phase two (2). (Please type or print contact's name):

Primary contact: _____

Phone: _____

Fax: _____

Email: _____

Secondary Contact: _____

Phone: _____

Fax: _____

Email: _____

Only the bidders whose unpriced technical offers are found acceptable in the first phase may participate in the phase two (2) reverse auction;

Bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data that are to remain confidential;

The equipment being procured shall be furnished in accordance with the bidder's technical offer as found to be fully acceptable; and

Receipt and handling of unpriced technical offers. Unpriced technical offers shall be opened publicly, identifying only the names of the bidders. Technical offers and modifications shall be time stamped upon receipt and held in a secure place until the specified date and time. After the date established for receipt of bids, a register of bids shall be open to public inspection and shall include the name of each bidder. Prior to the completion of phase two of the multi-step bidding process, documents related to the bid evaluation process shall be considered preliminary and

may only be disclosed to authorized state personnel and those involved in the evaluation process who have a legitimate interest in a particular matter.

Phase Two (2) ONLINE REVERSE AUCTION BIDDING REQUIREMENTS

The auction is scheduled to start 10/15/12, 11:00 am Eastern Time and scheduled to end 10/15/12, 11:30 am Eastern Time, in accordance with auction rules.

NOTE: In the event a bid is received within the last 5 minutes on the online auction the event will continue for an additional 5 minutes. This practice will continue until there is no activity during the extension time.

To be eligible to bid, bidders whose unpriced technical offers were found acceptable in the first phase must register with Orbis Online, Inc. At least one hour prior to the scheduled event at www.orbisonline.com/kentucky and establish a company profile.

All bids will be accepted via online reverse auction during the event. Proxy bids faxed or delivered must be received at least one hour prior to the scheduled time of the online reverse auction.

To be eligible to participate in specific reverse auction events, a vendor must request to participate by selecting the participate button. To fulfill this requirement, the vendor must first register on www.orbisonline.com/kentucky. Next, the vendor will need to login under their username and password. Select the "view all RFQs" tab at the top of the page. Click on the "view" hyperlink for the auction you are interested in participating. Select the "participate" button at the bottom of the RFQ posting page. Note: registration for previously conducted reverse auction events will not satisfy this requirement.

Bidders must comply with all rules, regulations and statutes relating to the procurement as stated in the RFB.

Early proxy bidding-when not bidding online, early bids submitted via proxy bid must be submitted using this Request for Bid (RFB) document. Bids must be submitted in this format, failure to do so will disqualify bids. Bids must be time stamped one hour before the scheduled auction start time specified in the RFB document. Early proxy bidding requires that the bidder be registered one hour prior to the start of the event.

Assisted bidding by proxy- In the event of technical issue(s) when bidding online, bids may be submitted by proxy using this RFB document. In accordance with the auction rules, proxy bids are to be faxed or delivered to the address below prior to the end of the auction event:

ORBIS ONLINE, INC.
ATTN: Auction Manager
27560 Old Blanco Road
San Antonio, Texas 78260
FAX NUMBER FOR ALL PROXY BIDDING: (830) 980-9086

Quote FOB destination, freight prepaid and allowed unless otherwise stated within specifications.

Bids cannot be altered or amended from lowest bid(s) submitted online. No bids can be withdrawn after close of auction time without approval by The Commonwealth of Kentucky, Office of Procurement Services based on an acceptable written reason, in accordance with the Commonwealth of Kentucky Model Procurement Code and Kentucky Administrative Regulations.

Do not include tax in bid. Federal excise tax exemption certificates are available upon request.

The Commonwealth of Kentucky reserves the right to accept or reject all or any part of any bid, waive minor technicalities and award the bid to best serve the interests of the Commonwealth of Kentucky.

Bidders must complete and return the attachments: Bid Certification page. This page is to be returned immediately following the auction event with the lowest price your company bid during the online auction. This paperwork is required regardless if you were the lowest bidder or not.

Fees: The vendor shall pay Orbis Online, Inc. a fee based on a percentage as outlined below of the total contract awarded by the Commonwealth of Kentucky.

2.0% Commission \$0 - \$100,000
1.5 % Commission \$100,001 - \$500,000
1.0% Commission \$501,000 – \$1,000,000
0.5% Commission \$1,000,001 and above

This fee will be due and payable to Orbis Online, Inc. within thirty (30) days of vendor receiving payment(s) from the Commonwealth of Kentucky. Please submit payment(s) to:

Orbis Online, Inc.
ATTN: Carole Nelms or Mary Jane Ramsey, Accounting Manager
27560 Old Blanco Road
San Antonio, Texas 78260

The Orbis Online, Inc. User Agreement can be viewed at:
<https://auctions.orbisonline.com/WebServices/b2b agreement.jsp?sCustomerCode=OOB2BWS>

Training

Only bidders whose unpriced technical offers were found acceptable in the first phase will be allowed to participate in the online bidding portion of the Multistep RFB. Prior to the start of the event all bidders whose unpriced technical offers were found acceptable in the first phase will have the opportunity to go through a one-on-one training session. During this 15 to 20 minute training session Orbis Online's Support Team will check for any technical issues to include connectivity, software and firewall issues. Orbis Online, Inc. will walk vendors through the registration and participation process and conduct a mock auction where they learn how to bid and utilize all the features of the software. At the end of the session vendors will feel comfortable with Orbis Online's system as well as the bidding process.

If at any time a vendor has questions before, during or after an event Orbis Online's help desk is available at 830-980-9085. They have also developed the SIBRO Advisor, a real time communication tool. This tool features real time activity alerts of all bids placed during the event

and provides a direct communication link between Orbis Online's auction managers and the vendors.

Vendors shall comply with the terms and conditions stated in the Solicitation. Any efforts to negotiate these terms and conditions SHALL NOT be accepted and may cause the bid to be deemed non-responsive.

This contract shall be awarded as Group All. Vendors shall bid all line items, otherwise bid shall be deemed non-responsive.

****EVERY VENDOR must submit either a copy of their KY Sales and Use Tax Permit
-OR-
a completed KY Tax Registration Application (may be found at:
<http://finance.ky.gov/services/eprocurement/Pages/VendorServices.aspx>)**

Vendors shall review and comply with the general bidding requirements listed under "Laws, Policies, and Procedures" and "Standard Attachments and General Terms" located on the eProcurement Web page at <https://eprocurement.ky.gov> .

Note:

There are three affidavits attached at the end of this RFB.

The "Revised Affidavit - Final 10-29-09 with links.xml" is required to be completed and submitted by every vendor.

The "AffidavitforQualifiedBidderStatus1.xml" should be reviewed by all vendors and submitted only by those vendors who qualify for this status. (This affidavit would be in addition to the Revised Affidavit above)

The "AffidavitforClaimingResidentBidderStatus.xml" should be reviewed by all vendors and submitted only by those vendors who qualify for this status. (This affidavit would be in addition to the Revised Affidavit above)

Please read the Terms and Conditions carefully regarding these new laws and documents.

NEW REQUIREMENT – PLEASE NOTE!

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 - "Foreign entity" means a corporation, not-

for-profit corporation, cooperative, association, business or statutory trust, partnership, limited partnership, or limited liability company not:

- (a) Organized pursuant to the laws of the Commonwealth of Kentucky; or
- (b) As to its internal affairs, governed by the laws of the Commonwealth of Kentucky.

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 may 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>.

Any exceptions to the item description or extended description shall be indicated only in the space reserved for those exceptions.

Unless the exceptions are noted as instructed, the Vendor shall be expected to deliver as specified in the Solicitation. Responses that include terms and conditions not in conformity with the terms and conditions of the Solicitation as issued or the Statutes of the Commonwealth of Kentucky may be rejected.

In the event of any conflict or variation between the Solicitation or modification as issued by the Commonwealth and the Vendor's response, the version as issued shall prevail.

All bidders are cautioned to be aware of security in the Capitol Annex in Frankfort. In-person or courier delivered bids/proposals in response to a Commonwealth Solicitation should be delivered a minimum of thirty (30) minutes to one (1) hour earlier than the published closing time to allow for a security check-in. Delays due to building security checks shall not be justification for acceptance of a late bid or proposal. Vendor attention to this advisory is encouraged.

Acknowledgment of Addenda to Solicitations

It is the Vendor's responsibility to check the web site for any modifications to this Solicitation.

If modifications have been made, the Vendor's signature is required on the latest addendum.

Receipt of an addendum to a Solicitation shall be acknowledged by the Offeror in writing.

Acknowledgment should be received prior to the hour and date specified for receipt of offers.

Verbal acknowledgment shall not be accepted.

Failure to acknowledge addenda may cause the bid to be deemed non-responsive.

Solicitation Terms and Conditions

Section 1

Scope of Contract

The Office of Procurement Services issues this Solicitation to establish a **one-time purchase Award Contract** for: Forklifts

Section 2

Purpose

The purpose of this Solicitation is to request Vendor responses in order to provide these items as a one-time purchase.

Section 3

General

This Solicitation specifies requested items. It is not the intention of this Solicitation to eliminate Vendors or manufacturers of similar or equal equipment of the types specified. It should be noted, however, that these requested items are written around specific needs of State agencies. The Commonwealth reserves the right to consider bids non-responsive if they do not comply with the specifications contained herein.

Section 4

Exceptions to Specifications

Any exceptions to the specifications must be clearly pointed out. Otherwise, it will be considered that items/services offered are in strict compliance with these specifications, and the successful bidder shall be held responsible for delivering materials/services that meet these specifications. Any exceptions shall be marked as such within the body of the bid and explained on a separate page. The Commonwealth is not bound to accept any exceptions and exceptions taken may cause the bid to be deemed non-responsive.

Section 5

Alternate Brands/Specifications

Unless otherwise specified, brands and specifications referenced in this Solicitation are meant to establish a minimum standard of quality only. Bidders may bid brands/specifications they consider to be equal by specifying the brand(s)/specifications and inserting the brand name(s), model number(s), etc. on which they are bidding. Bids offering "equal" products/specifications will be considered for award if such products are clearly identified in the bid and are determined by the State to meet or exceed fully the minimum essential specifications and salient characteristics referenced in the Solicitation. Bids that contain products/specifications that fail to meet the minimum essential requirements shall be categorized as unacceptable.

Bidders who propose alternate brands/specifications should enclose descriptive literature with their bids so that the equality can be verified. Failure to enclose sufficient literature may result in a non-responsive bid. If the brands are not changed, the Contract will be written accordingly and the successful bidder shall be required to deliver the brands/specifications stated in the Solicitation.

Section 6

Recycle Requirements

Prospective bidders are required to comply with Recycle Requirements for the purchase of goods, supplies, equipment, materials and printing with a minimum recycled content to the extent practicable per 200 KAR 5:330. This regulation can be viewed on the Internet at <http://www.lrc.state.ky.us/kar/200/005/330.htm>.

Section 7

Signing Solicitation

An authorized representative shall **complete and sign** where indicated on the Solicitation sheet that is the front page of this Solicitation for Phase one (1) and elsewhere as identified in this Solicitation.

Phase two (2) An authorized representative shall **complete and sign** the Bid Certification Page. This page is to be returned immediately following the auction event with the lowest price your company bid during the online auction. This paperwork is required regardless if you were the lowest bidder or not.

FAILURE TO COMPLETE AND SIGN THE SOLICITATION AND BID CERTIFICATION PAGE MAY RESULT IN A NON-RESPONSIVE BID/PROPOSAL.

Section 8

Agencies to be Served

This Contract shall be for use by the following agency of the Commonwealth of Kentucky:

Kentucky Transportation Cabinet

Section 9

Solicitation Submission Requirements

***As stated on the first page of these Terms and Conditions, the following is a **NEW REQUIREMENT FOR ALL FOREIGN ENTITIES SUBMITTING BIDS:**

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 - "Foreign entity" means a corporation, not-for-profit corporation, cooperative, association, business or statutory trust, partnership, limited partnership, or limited liability company not:

- (a) Organized pursuant to the laws of the Commonwealth of Kentucky; or
- (b) As to its internal affairs, governed by the laws of the Commonwealth of Kentucky.

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>

OTHER SUBMISSION REQUIREMENTS:

Vendors shall submit **one (1) signed original of the solicitation response under sealed cover**, which shall be received no later than the date and time indicated on the face of this solicitation. Any response received after this date and time **shall be rejected** and returned unopened to the Bidder. Any response not under sealed cover **shall be rejected**.

A bidder shall identify their response to a solicitation on the response envelope for a hard copy bid. Any response not sufficiently identified on the sealed cover, requiring it to be opened for identification, shall be rejected.

Bid Responses shall be addressed and submitted to:

**BID CLERK
COMMONWEALTH OF KENTUCKY
OFFICE OF PROCUREMENT SERVICES
Capitol Annex
702 Capitol Avenue, Room 095
FRANKFORT KY 40601**

The outside cover of the package containing the Bid Response shall be marked with:

**NAME OF SOLICITATION
SOLICITATION NUMBER
NAME OF VENDOR SUBMITTING RESPONSE
CLOSING DATE**

Fax Bid Response copies and Electronic Bid Responses are NOT acceptable for Phase One (1) of the Multistep Competitive Sealed Bid.

Phase two (2) The reverse auction, will be a real-time, structured bidding process during which multiple suppliers, anonymous to each other, submit revised lower bids to provide the equipment specified herein.

Vendors should provide descriptive literature, catalogs, sample materials, and complete specifications covering the products offered. Bids not meeting this requirement may be considered non-responsive.

Section 10 Warranty

Successful bidder shall be an authorized dealer of make and model being submitted. The complete unit shall be covered under manufacturer's standard warranty and be warranted against defective materials and workmanship, 100% parts and labor, for a minimum period of one- (1) year / 2,000 hours and the powertrain shall be covered for an additional two- (2) years / 4,000 hours. The warranty shall begin the date unit is placed in service. A warranty card shall be provided with unit. All warranted parts and service shall be provided at a location by the successful bidder within the State of Kentucky. Vendor is responsible for the pick-up and delivery of the equipment. The using agency shall not be responsible for shipping equipment to any location.

Bidders shall state their concurrence of refusal of the above stated warranty:

_____ Yes, I concur the warranty above
_____ No, I do not concur with the warranty above

**Section 11
Deliveries**

As provided in this Solicitation, the bidder shall clearly state in the bid the time required for delivery upon receipt of the contract. Delivery time must be specific and such phrases as, "as required", "as soon as possible", or "prompt" have no meaning and may result in a non-responsive bid.

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

**Section 12
Method of Award**

Best Value – Ranking Approach

The Commonwealth intends to award a Contract to the Vendor, whose offer, conforming to the Solicitation, is the most advantageous on the basis of "best value" for all products, services, and requirements contained herein.

An evaluation committee, or a designated individual, will evaluate the information provided by the Vendor in response to the established measurable criteria contained in the Solicitation.

Measurable Criteria:

Phase 1 Product Evaluation Pass/Fail

Price	95 Points
Delivery	5 Points
TOTAL POINTS	100 Points

Each Vendor is responsible for submitting all relevant, factual and correct information with their offer to enable the evaluator(s) to afford each Vendor the maximum score based on the available data submitted by the Vendor. **VENDOR SHALL NOT ENTER A PRICE ON THE BID SHEET. BIDDERS ARE TO SUBMIT UNPRICED TECHNICAL OFFERS ONLY.** If adequate space is not available, the Vendor must attach additional information that clearly cross-references the appropriate location in the solicitation (i.e. page number, paragraph, subject, etc.).

Vendors responding with the minimum Best Value requirements in this Solicitation shall not be credited with Best Value points. Vendors responding with greater than the minimum requirements shall receive Best Value points. Failure to provide adequate information will impact the evaluated points awarded to the Vendor.

Price (95 points)

PRICING WILL BE DETERMINED BY PHASE TWO (2) – REVERSE AUCTION. VENDOR SHALL NOT ENTER A PRICE ON THE BID SHEET. BIDDERS ARE TO SUBMIT UNPRICED

TECHNICAL OFFERS ONLY.

All proposed pricing shall remain valid for a minimum of sixty (60) calendar days after the bid due date.

The bidder with the lowest Price receives the maximum score. The bidder with the next lowest Price receives points by dividing the lowest Price by the next lowest price and multiplying that percentage by the available points. For example, 95 points is allocated to the lowest Price criteria for this procurement, Bidder "A" bids \$3.00 as the lowest bidder and receives the maximum 95 points ($\$3.00 / \$3.00 = 1.00 \times 95 = 95$). Assume Bidder "B" is the next lowest bidder at \$4.00, then "B" receives 71.3 points ($\$3.00 / \$4.00 = .75 \times 95 = 71.25$).

Delivery (5 points)

BIDDERS ARE TO SUBMIT DELIVERY TIME ON THE UNPRICED TECHNICAL OFFER.

The bidder with the best delivery time receives the maximum score. The bidder with the next best delivery time receives points by dividing the best delivery by the next best delivery and multiplying that percentage by the available points. For example, 5 points is allocated to the best delivery time for this procurement, Bidder "A" bids 10 days as the best delivery time and receives the maximum 5 points ($10 / 10 = 1.00 \times 5 = 5$). Assume Bidder "B" bids the next best delivery time 15 days, then "B" receives 3.33 points ($10 / 15 = .67 \times 5 = 3.33$).

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.

Bidder's delivery in calendar days after receipt of order (ARO) _____

Best Value scoring is subject to **Reciprocal preference for Kentucky resident bidders and Preferences for a Qualified Bidder or the Department of Corrections, Division of Prison Industries (KAR 200 5:410).**

***Vendors not claiming resident bidder or qualified bidder status need not submit the corresponding affidavit.**

KRS 45A.490 Definitions for KRS 45A.490 to 45A.494.

As used in KRS 45A.490 to 45A.494:

- (1) "Contract" means any agreement of a public agency, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item; and
- (2) "Public agency" has the same meaning as in KRS 61.805.

KRS 45A.492 Legislative declarations.

The General Assembly declares:

- (1) A public purpose of the Commonwealth is served by providing preference to Kentucky residents in contracts by public agencies; and
- (2) Providing preference to Kentucky residents equalizes the competition with other states that provide preference to their residents.

KRS 45A.494 Reciprocal preference to be given by public agencies to resident bidders -- List of states -- Administrative regulations.

- (1) Prior to a contract being awarded to the lowest responsible and responsive bidder on a contract by a public agency, a resident bidder of the Commonwealth shall be given a preference

against a nonresident bidder registered in any state that gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder.

(2) A resident bidder 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:

(a) Is authorized to transact business in the Commonwealth; and

(b) Has for one (1) year prior to and through the date of the advertisement, filed Kentucky corporate income taxes, made payments to the Kentucky unemployment insurance fund established in KRS 341.490, and maintained a Kentucky workers' compensation policy in effect.

(3) A nonresident bidder is an individual, partnership, association, corporation, or other business entity that does not meet the requirements of subsection (2) of this section.

(4) If a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder.

(5) This section shall apply to all contracts funded or controlled in whole or in part by a public agency.

(6) The Finance and Administration Cabinet shall maintain a list of states that give to or require a preference for their own resident bidders, including details of the preference given to such bidders, to be used by public agencies in determining resident bidder preferences. The cabinet shall also promulgate administrative regulations in accordance with KRS Chapter 13A establishing the procedure by which the preferences required by this section shall be given.

(7) The preference for resident bidders shall not be given if the preference conflicts with federal law.

(8) Any public agency soliciting or advertising for bids for contracts shall make KRS 45A.490 to 45A.494 part of the solicitation or advertisement for bids.

The reciprocal preference as described in KRS 45A.490-494 above shall be applied in accordance with 200 KAR 5:400.

Determining the residency of a bidder for purposes of applying a reciprocal preference

Any individual, partnership, association, corporation, or other business entity claiming resident bidder status shall submit along with its response the attached Required Affidavit for Bidders, Offerors, and Contractors Claiming Resident Bidder Status. 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.

A nonresident bidder shall submit, along with its response, its certificate of authority to transact business in the Commonwealth as filed with the Commonwealth of Kentucky, Secretary of State. The location of the principal office identified therein shall be deemed the state of residency for that bidder. If the bidder is not required by law to obtain said certificate, the state of residency for that bidder shall be deemed to be that which is identified in its mailing address as provided in its bid.

Preferences for a Qualified Bidder or the Department of Corrections, Division of Prison Industries (KAR 200 5:410).

Pursuant to 200 KAR 5:410, and KRS 45A.470, Kentucky Correctional Industries will receive a preference equal to twenty (20) percent of the maximum points awarded to a bidder in a solicitation. In addition, the following "qualified bidders" will receive a preference equal to fifteen (15) percent of the maximum points awarded to a bidder in a solicitation: Kentucky Industries

for the Blind, any nonprofit corporation that furthers the purposes of KRS Chapter 163 and any qualified nonprofit agencies for individuals with severe disabilities as defined in KRS 45A.465(3). Other than Kentucky Industries for the Blind, a bidder claiming "qualified bidder" status shall submit along with its response to the solicitation a notarized affidavit which affirms that it meets the requirements to be considered a qualified bidder- affidavit form included. If requested, failure to provide documentation to a public agency proving qualified bidder status may result in disqualification of the bidder or contract termination.

Past Vendor Performance may be considered in the award of this Contract. Vendors with a record of poor performance in the last 12 months may be found non-responsible and ineligible for award.

Section 13

Tax Exempt Status

Do not include Federal Excise Tax, Kentucky Sales or Use Tax in prices quoted in response to this Solicitation.

Section 14

Vendor Terms and Conditions

Solicitation or quotation forms that include terms and conditions not in conformity with the terms and conditions of this Solicitation or the Statutes of the Commonwealth of Kentucky may be deemed non-responsive.

The Commonwealth of Kentucky shall not be bound by any part(s) of the bidder's response to this Solicitation that contains information, options, conditions, terms, or prices neither requested nor required in the Solicitation. In the event of any conflicts between the specifications, terms and conditions indicated by the Commonwealth and those indicated by the Contractor, those of the Commonwealth take precedence. The Contract supersedes all bids or other prior agreements, oral or written, and all other communications between the parties relating to this subject.

Section 15

Post Contract Agreements

The resulting Contract shall constitute the entire agreement between the State and awarded Contractor. Unless contractually provided, State agencies utilizing this Contract will not be required to enter into nor sign further agreements, leases, company orders or other documents to complete or initiate the terms of a Contract resulting from this Solicitation or offer. Any such documents so obtained will be non-binding on the State and agents of the State and will be cause for breach of contract.

Section 16

Equipment

All equipment must be a new and current model. The Commonwealth recognizes the rapid advancement of technology. If the bidder 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.

Section 17

Equipment / Condition

Unless otherwise indicated in the bid, it is understood and agreed that any item offered or

shipped on this bid shall be new and the latest or current year model and be in first class condition. Any unit failing to meet the foregoing requirements shall be returned to the contractor, at their expense, and replaced with a new unit.

Section 18
Manuals

Instruction and operating manuals shall be furnished for all equipment installed.

Section 19
Distribution of Literature

Upon request, the Vendor shall furnish State agencies and other public bodies with descriptive literature and service information for items awarded.

Section 20
FOB Basis of Shipment – Vendor Responsible

Quotations of unit prices on this Solicitation shall be F.O.B. Destination Freight Prepaid and Allowed (Included). The Vendor shall be fully responsible for all shipments and freight charges involved to the ordering agency.

Section 21
Service Performance

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

Major deviations of services performed will not be made without the written approval of the Office of Procurement Services. Problems that arise under any aspect of performance should first be resolved between the Vendor and the agency. Either party should refer in writing any such problems and/or disagreements that cannot be resolved to the Office of Procurement Services for settlement.

Section 22
Agreement between Parties

By submitting a bid, the bidder acknowledges and agrees to be bound by the terms and conditions of the Solicitation.

The bidder agrees that a resulting contract is the complete and exclusive statement of the agreement between the parties, which supersedes all prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Solicitation. It is further agreed between the parties, that any valid modification of contractual agreement must be formalized by issuance of a Contract Modification from the Office of Procurement Services.

Purchase or Sales Agreements, supplied by the bidder making an offer, in reply to the Solicitation, will not be accepted. The only terms and conditions acceptable to the Commonwealth of Kentucky are as outlined in the Solicitation. Bids not conforming may be

considered as non-responsive.

Section 23

Governmental Restrictions

In the event any Governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship, or performance of the items offered on this proposal prior to delivery, it shall be the responsibility of the successful bidder to notify the Office of Procurement Services in writing, indicating the specific regulation which requires such alterations. The Commonwealth reserves the right to accept any such alterations, including any subsequent price adjustments, or to cancel the contract.

Section 24

Payments

The vendor shall be paid, upon the submission of proper invoices to the receiving agency at the prices stipulated for the supplies delivered and accepted, or services rendered. Unless otherwise specified, payment will not be made for partial deliveries accepted. Payments will be made within thirty (30) working days after receipt of goods or a vendor's invoice in accordance with KRS 45.453 and KRS 45.454.

Section 25

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.

Section 26

Inquiries

All questions shall be submitted in writing to the Commonwealth Buyer.

Sole Point of Contact- Commonwealth Buyer

The Commonwealth Buyer listed below shall be the sole point of contact throughout the procurement process. **All communications, oral and written (regular, express, or electronic mail, or fax), concerning this procurement shall be addressed to:**

Richard Mize
Commonwealth Buyer
Commonwealth of Kentucky
Finance and Administration Cabinet
Office of Procurement Services
Capitol Annex
702 Capital Avenue, Room 095
Frankfort, KY 40601
PH: (502) 564-4510
Email: Richard.Mize@ky.gov
Fax: (502) 564-1434

Restrictions on Communications

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

this Solicitation except:

The Commonwealth Buyer cited in this Solicitation via written questions submitted to the Commonwealth Buyer.

Potential bidders should clearly understand that any verbal representatives made or assumed to be made during any oral discussions held between representatives of potential bidders and any state employee or official are not binding on the Commonwealth of Kentucky.

For violation of this provision, the Commonwealth shall reserve the right to disqualify the bid/proposal.

Section 27 Subcontracts

The bidders shall make no contract with any other party for furnishing any of the work or services contracted herein, without the consent, guidance and approval of the Commonwealth. Any subcontract hereunder entered into, subsequent to the execution of the contract with the prime vendor, must be annotated and approved by the Commonwealth. Name and address of subcontractors must be submitted with the bid response for approval by the Commonwealth. This provision will not be taken as requiring the approval of contracts of employment between the bidder and personnel assigned for services hereunder.

Section 28 Federal Tax Exempt Purchases by the Commonwealth of Kentucky

Contracts Direct With Manufacturer: In the event a manufacturer bids direct and is awarded a contract, the Office of Procurement Services shall request the contractor to furnish evidence of registration with the U.S. Internal Revenue Service. This registration shall be in accordance with the "Temporary Rules, 1958 Excise Tax Act". After such registration, individual Excise Tax Exemption Certificates are not necessary on each individual order issued against the contract by the Office of Procurement Services. Therefore, quoted prices must be exclusive of Federal Excise Taxes.

Contract With Other Than Manufacturer: If successful bidder is other than the manufacturer, the Office of Procurement Services will furnish a Tax Exemption Certificate with each individual order issued against this contract. Therefore, quoted prices must be exclusive of Federal Excise Taxes.

Section 29 Governing Law

This Solicitation shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky and any litigation with respect to this Solicitation shall be brought in state or federal court in **Franklin County, Kentucky**.

Section 30 Access to Records

The contractor, as defined in KRS 45A.030 (9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The

contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

In the event of a dispute between the contractor and the contracting agency 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)

Section 31

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."

Section 33

Funding Limitations

If any or all responses received exceed the amount of funding available, then the Finance and Administration Cabinet, Office of Procurement Services, reserves the right to cancel this RFB.

Section 34

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.

Section 35

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. 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**

**702 Capital Avenue, Room 383
Frankfort, Kentucky 40601**

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.

**Section 36
General Conditions**

The General Conditions and Instructions for Solicitations and Contracts shall be incorporated by reference in each solicitation and resulting contract. Therefore, it is the vendor's responsibility to access and read these General Conditions at <http://eprocurement.ky.gov> under Standard Attachments and General Terms or request a copy by contacting the Office of Procurement Services. Every person submitting a bid to the Commonwealth shall be deemed to have assented to these conditions by the act of bidding.

**Section 37
ALL PROVISIONS OF THIS SOLICITATION SHALL BE PART OF ANY RESULTING AWARD CONTRACT.**

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.

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

PAGE 2 OF 2

- 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: _____

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: _____

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: _____

*** CURRENT OR FORMER STATE EMPLOYEE SEEKING ***
*** TO DO BUSINESS WITH THE STATE? ***

* YOU SHOULD KNOW ABOUT THESE LAWS. *

In the 1992 regular legislative session, the General Assembly passed Senate Bill 63 (codified as KRS Chapter 11A), the Executive Branch Code of Ethics, which applies to current and, in part, former state officials and employees of the executive branch.

The Executive Branch Code of Ethics is intended to promote public confidence in the integrity of state government and to declare as public policy the idea that state employees should view their work as a public trust and not a way to obtain private benefits.

If you work for the executive branch of state government or worked for the executive branch of state government within the past year, or were elected to an executive branch term of office which expired within the past year, you may be subject to the prohibitions of the law.

1. CURRENT PUBLIC SERVANTS SEEKING TO DO BUSINESS WITH THE STATE:

KRS 11A.040(4) provides:

(4) A public servant shall not knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:

- (a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or
- (b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or
- (c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises; or
- (d) Purchases from a state agency that are available on the same terms to the general public or that are made at public auction; or
- (e) Sales of craft items to a state park by interim state employees designated as craftpersons under KRS 148.257.

2. FORMER OFFICERS AND ELECTED OFFICIALS SEEKING TO DO BUSINESS WITH THE STATE:

KRS 11A.040(6) provides:

(6) A former officer or public servant listed in KRS 11A.010(9)(a) to (g) shall not, within six (6) months of termination of his employment, knowingly by himself or through any business in which he owns or controls an interest of at least five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he was employed. This provision shall not apply to a

contract, purchase, or good faith negotiation made under KRS Chapter 416 relating to eminent domain or to agreements that may directly or indirectly involve public funds disbursed through entitlement programs. This provision shall not apply to purchases from a state agency that are available on the same terms to the general public or that are made at public auction. This provision shall not apply to former officers of the Department of Public Advocacy whose continued representation of clients is necessary in order to prevent an adverse effect on the client.

3. FORMER OFFICERS AND ELECTED OFFICIALS SEEKING EMPLOYMENT FROM ENTITIES WHICH DO BUSINESS WITH THE STATE:

KRS 11A.040(7) provides:

(7) A present or former officer or public servant listed in KRS 11A.010(9)(a) to (g) shall not, within six (6) months following termination of his office or employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with, or is regulated by, the state in matters in which he was directly involved during the last thirty-six (36) months of his tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he was involved prior to taking office or beginning his term of employment, or for which he received, prior to his state employment, a professional degree or license, provided that, for a period of six (6) months, he personally refrains from working on any matter in which he was directly involved during the last thirty-six (36) months of his tenure in state government. This subsection shall not prohibit the performance of ministerial functions, including but not limited to filing tax returns, filing applications for permits or licenses, or filing incorporation papers, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs.

4. FORMER PUBLIC SERVANTS WHO SEEK TO ACT AS LOBBYISTS:

KRS 11A.040(8) provides:

(8) A former public servant shall not act as a lobbyist or lobbyist's principal in matters in which he was directly involved during the last thirty-six (36) months of his tenure for a period of one (1) year after the latter of:

- (a) The date of leaving office or termination of employment; or
- (b) The date the term of office expires to which the public servant was elected.

5. FORMER PUBLIC SERVANTS CONTEMPLATING REPRESENTATION OF A PERSON OR BUSINESS BEFORE A STATE AGENCY:

KRS 11A.040(9) provides:

(9) A former public servant shall not represent a person or business before a state agency in a matter in which the former public servant was directly involved during the last thirty-six (36) months of his tenure, for a period of one (1) year after the latter of:

- (a) The date of leaving office or termination of employment; or
- (b) The date the term of office expires to which the public servant was elected.

*** DEFINITIONS ***

"PUBLIC SERVANT" means:

- (a) The Governor;
- (b) The Lieutenant Governor;
- (c) The Secretary of State;

- (d) The Attorney General;
- (e) The Treasurer;
- (f) The Commissioner of Agriculture;
- (g) The Auditor of Public Accounts; and
- (h) All employees in the executive branch including officers as defined in KRS 11A.010(7) of this section and merit employees;

“OFFICER” means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, executive directors, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Kentucky Occupational Safety and Health Review Commission, the Kentucky Board of Education, the Council on Postsecondary Education, and any person who holds a personal service contract to perform on a full-time basis for a period of time not less than six (6) months a function of any position listed above.

“BUSINESS” means any corporation, limited liability corporation, partnership, limited liability partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit.

"DOES BUSINESS WITH" means contracting, entering into an agreement, leasing, or otherwise exchanging services or goods with a state agency in return for payment by the state, including accepting a grant, but not including accepting a state entitlement fund disbursement.

"DIRECTLY INVOLVED" means to work on personally or to supervise someone who works on personally.

"LOBBYIST" means any person employed as a legislative agent as defined in KRS 6.611(22) or any person employed as an executive agency lobbyist as defined in KRS 11A.201(8) as any person engaged to influence executive agency decisions or to conduct executive agency lobbying activity as one of his main purposes on a substantial basis.

"EXECUTIVE AGENCY LOBBYING ACTIVITY" means contacts made to promote, oppose, or otherwise influence the outcome of an executive agency decision by direct communication with an elected executive official, the secretary of any cabinet listed in KRS 12.250, any executive agency official, or a member of the staff of any one of the officials listed in this paragraph.

"REPRESENT" means to attend an agency proceeding, write a letter, or communicate with an employee of an agency on behalf of someone else.

IN CASE OF DOUBT, THE LAW PERMITS YOU TO REQUEST AN ADVISORY OPINION FROM THE EXECUTIVE BRANCH ETHICS COMMISSION, THE VEST-LINDSEY HOUSE, 401 WAPPING STREET, FRANKFORT, KENTUCKY 40601 (502) 564-7954.

Prepared by the
EXECUTIVE BRANCH ETHICS COMMISSION
December 2006