



# Commonwealth of Kentucky SOLICITATION

**TITLE:** LEGAL & INVESTIGATIVE SERVICES

<b>DATE ISSUED</b> 05/23/2016	<b>SOLICITATION CLOSES</b> <b>Date:</b> 06/02/2016 <b>Time:</b> 12:00:00	<b>SOLICITATION NO.</b> RFP 750 1600000471
<b>RECORD DATE</b> 05/23/2016		

<b>I S S U E D  B Y</b>	FIN-OAS Holly Callaghan	<b>A D D R E S S  T O</b>	FINADM Procurement Division of Administrative Support 702 Capital Av Room 195  FRANKFORT KY 40601 US

**V E N D O R**

<b>O R D E R  A D D R E S S</b>	<b>Name:</b>	<b>P A Y M E N T  A D D R E S S</b>	<b>Name:</b>
	<b>Address:</b>		<b>Address:</b>
	<b>City, State Zip Code:</b>		<b>City, State Zip Code:</b>
	<b>Phone #:</b>		<b>Phone #:</b>
	<b>Fax #:</b>		<b>Fax #:</b>
	<b>Email Address:</b>		<b>Email Address:</b>
	<b>Contact Name:</b>		<b>Contact Name:</b>
	<b>Contact Email:</b>		<b>Contact Email:</b>
<b>Vendor Customer (VC) #:</b>	<b>Vendor Customer (VC) #:</b>		

**FOR INFORMATION CALL:** Holly Callaghan 502-564-4932

**ONLINE BIDDING PROHIBITED**  yes

**OWNERSHIP TYPE:**  Sole Proprietorship  Partnership  Corporation

**SIGNATURE OF AUTHORIZED AGENT IS REQUIRED UNLESS RESPONSE IS SUBMITTED ELECTRONICALLY  
FAILURE TO SIGN SHALL RENDER THE BID INVALID.**

Signature X \_\_\_\_\_ FEIN# \_\_\_\_\_ DATE \_\_\_\_\_

*All offers subject to all terms and conditions contained in this solicitation.*

**Line Items**

<b>Line Group:</b> Default						
Line	CL Description	Due Date	Quantity	Unit Issue	Unit Cost	Line Total Or Contract Amt

1	LEGAL & INVESTIGATIVE SERVICES		0.00			
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Comm Code	Comm Description	Manufacturer	Model #	Manuf Part #
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99052	Investigative Services			
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**Extended Description**

In order to assist with the investigation of potential violations of state laws governing the behavior of elected officials and public servants in conducting the affairs of the state, the FAC's Office of Inspector General seeks proposals for the provision of legal and investigative services. This Request for Proposals (RFP) includes, but is not limited to, investigative assistance related to possible violations of the KMPC and alleged coercion of state employees for campaign contributions in violation of campaign finance laws. The investigatory scope of the contract may be expanded, at the option of the FAC, to include additional alleged violations of the public trust and applicable statutes and regulations reported or discovered as part of this or other ongoing investigations or referred by other agencies to FAC for investigation. Firms responding to this RFP should be prepared to provide investigative services anywhere within the Commonwealth.

<b>B</b>	512160			<b>S</b>
<b>I</b>	FAC OFFICE OF GENERAL COUNSEL			<b>H</b>
<b>L</b>	702 CAPITOL AVENUE			<b>I</b>
<b>L</b>				<b>P</b>
<b>T</b>	FRANKFORT	KY	40601	<b>T</b>
<b>O</b>	US			<b>O</b>

**Evaluation Criteria**

*The following criteria will be used when determining the award of this solicitation*

<b>Code</b>	<b>Criteria Description</b>	<b>Points</b>	<b>Vendor Response</b> <i>(DO NOT LIST PRICES IN THIS SECTION. UNIT PRICES AND TOTAL PRICES MUST BE FILLED IN ADJACENT TO THEIR LINE ITEMS.)</i>
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Background and Relevant Experience	600	
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Organizational Capability	100	
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Cost Proposal	300	
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### proposal SUBMISSION CHECKLIST

The offeror **MUST** include the following with the proposal submission.  
If the items highlighted below are not submitted with the proposal submission,  
**the Agency MUST deem the proposal non-responsive and SHALL NOT consider for award.**

All other items **MUST** be submitted prior to award.

SIGNED AND COMPLETED SOLICITATION (Section 1.03 of this RFP)

LATEST ADDENDUM SIGNED (Section 1.03 of this RFP)

\*PROPOSED SOLUTION (TECHNICAL UNDER SEALED COVER) AND BY CLOSING DATE  
(Section 1.02 of the RFP)

\*PROPOSED SOLUTION (COST UNDER SEALED COVER) AND BY CLOSING DATE  
(Section 1.02 of the RFP)

TRANSMITTAL LETTER (Section 1.03 of this RFP)

PROOF OF REGISTRATION WITH SECRETARY OF STATE BY A FOREIGN ENTITY  
(PSC STANDARD TERMS AND CONDITIONS of this RFP)

REQUIRED AFFIDAVIT/S (Section 1.03 of this RFP)

*\*The Agency defines SEALED as "a closure that must be broken to be opened and that thus reveals tampering." (Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/seal>).*

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**REQUEST FOR PROPOSAL  
FOR  
PERSONAL SERVICE CONTRACT**

**Finance and Administration Cabinet  
Office of Inspector General  
Legal and Investigative Services  
RFP 750 160000471**

This document constitutes a Request for Proposals for a Personal Service Contract from qualified individuals and organizations to furnish those services as described herein for the Finance and Administration Cabinet, Office of Inspector General.

Offerors are advised that any personal service contract resulting from this RFP must comply with all applicable provisions of KRS 45A and KRS 12.210 prior to becoming effective.

A contract, based on this RFP, may or may not be awarded. Any contract award from this RFP is invalid until properly approved by the Finance and Administration Cabinet and filed with the Legislative Research Commission, Government Contract Review Committee.

**1.00 Purpose and Background**

Recognizing that the holding of public office is a public trust, it is the public policy of this Commonwealth that (i) a public servant shall work for the benefit of the people, (ii) be independent and impartial, and (iii) not use public office to obtain private benefits. Only when government policy and decisions are made through established, transparent processes can the people of the Commonwealth maintain confidence in the integrity of their government and of the public officers who serve them.

To retain public trust in the governmental and electoral institutions of this state and protect state employees from political pressures, Kentucky's campaign finance laws prohibit the use of coercive means to pressure state employees in both classified and non-classified positions to contribute to political campaigns. In addition, campaign finance laws forbid the awarding of no-bid contracts to persons or entities whose campaign contributions have exceeded allowable limits or who have personally raised significant funds for a public official's campaign during the previous election cycle. See KRS 121.320, 121.330. These rules (in conjunction with others discussed below) are intended to prevent unscrupulous public servants from using their access to state government employees as a political fundraising machine and from handing out state government contracts as political patronage.

Similarly, the Kentucky Model Procurement Code (KMPC) was enacted to (i) increase public confidence in the procedures followed in public procurement; (ii) ensure fair and equitable treatment of all persons who deal with the procurement system of the Commonwealth; (iii) promote effective competition; and (iv) provide safeguards for the maintenance of a procurement system of quality and integrity. See KRS 45A.010. When the provisions of the KMPC are violated, public confidence in the procurement process is undermined, causing vendors to question whether there is a level playing field when competing for the Commonwealth's business.

Responsibility for ensuring that a level playing field exists through enforcement of the provisions of the KMPC rests with the Secretary of the Finance and Administration Cabinet (FAC). As the state's chief purchasing officer, the FAC Secretary is responsible for all procurement by the Commonwealth (except that related to turnpikes, highways, bridges and tunnels pursuant to KRS Chapters 175, 176, 177 and 180). See KRS 45A.030(3), 45A.050(1). Under KRS Chapter 45, the Secretary of the FAC is charged with investigating any alleged mismanagement of any of the affairs of the state, including the carrying out of any state function or the management of state funds, by any officer, employee, or governing body within the executive branch of government. For the purpose of enforcing the provisions of KRS Chapter 45, the Secretary of the FAC is granted free access to relevant public records and other broad investigatory powers. See KRS 45.131, 45.142. Pursuant to a delegation of concurrent authority from the Secretary of the FAC, the FAC's Office of Inspector General has been charged with investigating allegations of mismanagement of the affairs of state within the executive branch.

In order to assist with the investigation of potential violations of state laws governing the behavior of elected officials and public servants in conducting the affairs of the state, the FAC's Office of Inspector General seeks proposals for the provision of legal and investigative services. This Request for Proposals (RFP) includes, but is not limited to, investigative assistance related to possible violations of the KMPC and alleged coercion

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of state employees for campaign contributions in violation of campaign finance laws. The investigatory scope of the contract may be expanded, at the option of the FAC, to include additional alleged violations of the public trust and applicable statutes and regulations reported or discovered as part of this or other ongoing investigations or referred by other agencies to FAC for investigation. Firms responding to this RFP should be prepared to provide investigative services anywhere within the Commonwealth.

## 2.00 Scope of Work

Investigations will be assigned to the selected Firm by the FAC Secretary, including the following:

1. Initiating and conducting investigations into potential violations of the Kentucky Model Procurement Code, compiling evidence of violations, if any, and providing a written report(s) through the FAC Office of Inspector General to the FAC Secretary;
2. Initiating and conducting investigations into potential violations of state campaign finance laws, compiling evidence of violations, if any, and providing a written report(s) through the FAC Office of Inspector General to the FAC Secretary;
3. Possibly assisting with investigations into unjustified monetary awards (e.g. grants, loans, other benefits), the compilation of evidence of potential unjustified awards of public funds, if any, and the completion of a written report(s) through the FAC Office of Inspector General to the FAC Secretary; and
4. Conducting or assisting with investigations of additional alleged violations of state law reported or discovered as part of this or other ongoing investigations, including matters referred by other agencies to FAC for investigation, as assigned by the FAC Secretary.

Services that may be required of the selected Firm acting under the direction and supervision of the FAC Office of Inspector General include:

- reviewing contracts along with bid, solicitation, and other procurement or contract-related documents, and interviewing witnesses regarding the procurement process that is the subject of each investigation assigned to the selected Firm;
- reviewing documents and interviewing witnesses regarding possible violations of state campaign finance and other laws prohibiting the use of coercive means to pressure state employees and/or contractors to contribute to or participate in political campaigns;
- communicating with state entities through the Office of the FAC Secretary (or at the Secretary's direction), the FAC Office of Inspector General or the FAC Office of General Counsel;
- preparing itemized lists as well as detailed summaries of the evidence collected and the interviews conducted in the course of each investigation assigned to the selected Firm;
- drafting reports setting forth the methods used, evidence collected, witnesses interviewed and findings and conclusions reached during the course of each investigation assigned to the selected Firm;
- cooperating with law enforcement officials and any other investigatory bodies who may be conducting their own investigation into the alleged violations that are the subject of each investigation assigned to the selected Firm;
- participating in any administrative or court proceedings that might result from or be related to the alleged violations that are the subject of each investigation assigned to the selected Firm, including but not limited to providing evidence and testimony when appropriate; and
- providing detailed information regarding hours worked, services performed and costs incurred on a regular basis or upon request.

Any reports compiled and evidence collected by the selected Firm may be referred by the FAC Office of Inspector General to federal, state or local law enforcement agencies or any other investigatory bodies for further investigation, prosecution, or administrative action, as appropriate.

Respondents should possess the necessary investigative experience to properly determine, compile, and assist the FAC Office of Inspector General with the referral of all information obtained in the course of the investigation(s) to the appropriate federal, state, and local law enforcement agencies or any other investigatory bodies that handle the adjudication of administrative, criminal, and civil complaints such as those at issue in each investigation assigned to the selected Firm.

Respondents should not have any interest, direct or indirect, which would conflict in any manner or degree with the performance of services hereunder.

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An attorney-client relationship will exist between and among the selected Firm and the FAC Secretary, the FAC Office of Inspector General, the FAC Office of General General, and other state entities with whom the selected Firm communicates during the course of each investigation assigned to it as may be necessary and appropriate.

**Notwithstanding any other provisions of this RFP, nothing set forth herein is intended or should be construed to operate as a waiver of the Commonwealth’s attorney-client privilege in regard to its communications with the selected Firm.**

### 3.00 Evaluation Criteria

Proposals will be evaluated using a total of 1,000 points based on the following evaluation factors:

Background and Relevant Experience---60%	600 points
Organizational Capability---10%	100 points
Cost Proposal---30%	300 points

#### 1. Background and Relevant Experience – 600 Points

Each respondent’s proposal should contain the following:

- A detailed description of relevant investigative experience of the respondent. Experience investigating public corruption and white collar crime strongly preferred.
- A statement that the respondent, or an appropriate number of the responding firm’s members, are properly licensed to practice law in Kentucky and in good standing with the Kentucky Bar Association.
- A detailed summary of the respondent’s knowledge of and experience with statutes, regulations and policies governing the legal and ethical expectations of elected officials and public servants in Kentucky, if any.
- A list of potential subcontractors, including a description of the proposed services to be provided by and a summary of the relevant experience of each potential subcontractor. Subcontractors not identified in the respondent’s proposal may be retained only with the prior written approval of the agency.
- A list of any contract or other engagement the respondent and any proposed subcontractors have had with the Commonwealth of Kentucky or any agency thereof during the past twelve years, together with a statement explaining why such prior engagement(s) by the Commonwealth does not constitute a conflict of interest in regard to the services sought in this RFP.
- Disclosure as to whether the respondent or any proposed subcontractors have been named as a defendant in a legal malpractice action, been the subject of a bar complaint or been investigated by any other regulatory body, and, if so, the details regarding same, including the final disposition, any monetary awards against the respondent or its proposed subcontractors and any disciplinary action taken against the respondent or its proposed subcontractors.
- Any other experience, qualifications or information the respondent deems relevant to its suitability to perform the required services.

#### 2. Organizational Capability – 100 points

Each respondent’s proposal should contain the following:

- A detailed description of the respondent’s ability to provide the services requested herein, including the number of employees at respondent’s place of business/office location that will have primary responsibility for providing services under this contract.
- A detailed explanation of the respondent’s capacity to manage multiple investigations.
- A list of personnel who will, or are expected to be, directly involved with the provision of services under this contract along with a brief statement of the role and experience of each individual expected to perform said work. Include full resumes of key personnel as attachments to the proposal.
- A detailed description of the respondent’s investigative approach and methodology. For example, respondents should state whether they plan to appoint a project manager for each investigation assigned to the selected Firm.

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### 3. Cost Proposal – 300 Points

Respondents are required to provide the hourly rates for the attorneys (including a breakdown of hourly rates for partners/members and associates) and paralegals they expect to use in connection with this contract, not to exceed a blended average rate of \$250.00/hour.

Respondents should also indicate the types of expenses for which they will be seeking reimbursement. The Commonwealth will reimburse certain expenses, including travel expenses in accordance with the travel policy of the government contracts review committee. Expense-related issues will be addressed in the contract between the parties.

**The Commonwealth reserves the right to negotiate any item within the cost proposal prior to execution of the contract.**

#### 4.00 Schedule of RFP Activities

The following schedule presents the major activities associated with the RFP distribution, written questions and proposal submission. The Agency reserves the right at its sole discretion to change the Schedule of Activities, including the associated dates and times.

Release of RFP	05/23/2016
Proposals Due by: 12:00 pm EST	06/02/2016
All offerors are cautioned to be aware of the security in the Capitol Annex located at 702 Capital Avenue, Rm 195, Frankfort, KY 40601. All proposals shall be time stamped in the Office of Administrative Services no later than the due date and time defined in this Solicitation. In person or courier delivered proposals in response to this Solicitation shall be delivered to Office of Administrative Services, Room 195. Delays due to building security checks shall not be justification for acceptance of a late proposal.	

\*NOTE: ALL TIME REFERENCES ARE TO THE EASTERN TIME ZONE.

#### 5.00 Deleted

#### 6.00 Point of Contact

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

**Holly Callaghan**  
**702 Capitol Avenue**  
**Capitol Annex, Room 195**  
**Frankfort, KY 40601**  
**(502) 564-4932**  
[Holly.callaghan@ky.gov](mailto:Holly.callaghan@ky.gov)

From the issue date of this RFP until a Offeror(s) is selected and the selection is announced, Offerors shall not communicate with any other Agency staff concerning this RFP.

#### 7.00 Questions Regarding this RFP

Questions must be submitted in writing to the Agency Contact. The Agency will respond to salient questions in writing by issuing an Addendum to the Solicitation. The Addendum shall be posted to the eProcurement page.

#### 8.00 Proposal Submission

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

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

Proposals shall be submitted in two (2) parts: the technical proposal and the cost proposal.

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The RFP technical response shall include one (1) marked original and 5 copies and 2 CDs (in Microsoft Word, Microsoft Excel or PDF). (Do not submit thumb drives, flash drives, etc.) under separate sealed cover.

The RFP cost proposal shall include one (1) marked original and 1 copies and 1 CDs (in Microsoft Word, Microsoft Excel or PDF). (Do not submit thumb drives, flash drives, etc.) under separate sealed cover.

**All proposals must be received no later than 12:00 pm EST and June 2, 2016.**

Proposals shall be submitted to the Agency Contact. The outside cover of the package containing the technical proposal shall be marked:

**Legal and Investigative Services**  
**RFP 750 1600000471**  
**TECHNICAL PROPOSAL**  
**Name of Offeror**

The outside cover of the package containing the cost proposal shall be marked:

**Legal and Investigative Services**  
**RFP 750 1600000471**  
**COST PROPOSAL**  
**Name of Offeror**

ELECTRONIC OR FACSIMILE PROPOSALS SHALL NOT BE CONSIDERED.

**8.10 Format of Technical Proposal**

The Technical Proposal must be arranged and labeled in the manner set forth below.

**Transmittal Letter** – a Transmittal letter shall be submitted on Offeror’s letterhead and signed by an agent authorized to bind the Offeror. The Transmittal letter shall include the following:

- a. A statement that deviations are included, if applicable
- b. A statement that proprietary information is included, if applicable
- c. A statement that, if awarded a contract as a result of this Solicitation, the Offeror shall comply in full with all the requirements of the Kentucky Civil Rights Act and shall submit all data required by KRS 45.560 to 45.640.
- d. A sworn statement that, pursuant to KRS 11A.040, that Offeror has not knowingly violated any provisions of the Executive Branch Code of Ethics.
- e. A statement certifying that the price in this proposal was arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to such prices with any other Offeror or with any competitor.
- f. A statement affirming that the Offeror is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing with the Office of the Kentucky Secretary of State for the duration of any awarded contract resulting from this Solicitation.
- g. The name, address, telephone number, fax number and email address and website address, if available, of the contact person to serve as a point of contact for day-to-day operations.
- h. Subofferor information to include the name of company, address, telephone number and contact name, if applicable.
- i. Foreign entity’s organization number issued by the Secretary of State in a certificate of authority or a statement of foreign qualification, if applicable.

**Completed and Signed Solicitation and Addenda** – An authorized representative MUST complete and sign the Solicitation form and include the following:

- a. “Vendor” box and “Remit To” box must be completed.
- b. Offeror shall indicate ownership type.
- c. Offeror shall provide “FEIN” if applicable.
- d. Offeror shall provide date the form is completed and signed.
- e. Signed face of most recent Addenda, if applicable.

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**Signed and Notarized Required Affidavit for Bidders or Offerors** (available at the following link: <http://finance.ky.gov/services/forms/Pages/default.aspx>)

**Signed and Notarized Required Affidavit for Bidders, Offerors and Offerors Claiming Resident Bidder Status** (available at the following link: <http://finance.ky.gov/services/forms/Pages/default.aspx>).

\*Offerors not claiming Resident Bidder Status need not submit this affidavit.

**Signed and Notarized Required Affidavit for Bidders, Offerors and Bidders Claiming Qualified Bidder Status** (available at the following link: <http://finance.ky.gov/services/forms/Pages/default.aspx>).

\*Offerors not claiming Qualified Bidder Status need not submit this affidavit.

**Response to the Technical Portion of the RFP** – Please provide a detailed response to the technical requirements outlined in the Evaluation Criteria. No cost information shall be provided in the technical portion.

## 8.20 Format of Cost Proposal

The Cost Proposal must be submitted under separate cover from the Technical Proposal and must be arranged and labeled in the manner specified. The proposal with the lowest price receives the maximum score. The remaining proposals with the next lowest price receive points by dividing the lowest price by the next lowest price and multiplying that percentage by the available points.

## 8.30 Certification Regarding Debarment and Suspension

In accordance with Federal Acquisition Regulation 52.209-5, the Offeror shall certify, by signing the Solicitation, that to the best of its knowledge and belief, the Offeror and/or its Principals is (are) not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency.

For the purposes of this certification, “Principals” means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of subsidiary, division, or business segment, and similar positions).

## 9.00 Rules of Procurement

To facilitate this procurement, various rules have been established. These are described in the following paragraphs.

Offerors should review and comply with the General Conditions and Instructions for Solicitation/Contract listed under “Response to Solicitation” located on the eProcurement web page at <http://finance.ky.gov/services/eprocurement/Pages/OfferorServices.aspx>.

The procurement process will provide for the evaluation of proposals and selection of the winning proposal in accordance with state law and regulations. KRS Chapter 45A of the Kentucky Model Procurement Code provides the regulatory framework for the procurement of services by state agencies.

## 9.10 Technical Proposal Evaluation

The Office of General Counsel will evaluate the proposal based on the technical portion of the Evaluation Criteria. Each Offeror is responsible for submitting all relevant, factual and correct information with their offer to enable the evaluators(s) to afford each Offeror the maximum score based on the available data submitted by the Offeror. Past Offeror Performance may be considered in the award of this Contract. Offerors with a record of poor performance in the last twelve (12) months may be found non-responsible and ineligible for award.

## 9.20 Cost Proposal Evaluation

The Office of General Counsel will evaluate the proposal based on the cost portion of the Evaluation Criteria.

## 9.30 Right to Reject/Waiver of Minor Irregularities

The Agency reserves the right at its discretion to reject any and all offers. The Agency also reserves the right at its discretion to waive informalities and minor irregularities in offers received.

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#### 9.40 Clarification of Proposals

The Agency reserves the right at its discretion to request additional information as may reasonably be required for selection and to reject any proposals for failure to provide additional information on a timely basis.

The Agency reserves the right to conduct discussions with any Offeror who has submitted a proposal to determine the Offeror's qualifications for further consideration. Such discussions shall not disclose any information derived from proposals submitted by other Offerors.

#### 9.50 Best and Final Offers

The Agency reserves the right at its discretion to request a Best and Final Offer (BAFO) for technical and/or cost proposals. Offerors are cautioned to propose their best possible offers at the outset of the process, as there is no guarantee that any Offeror will be allowed an opportunity to submit a Best and Final technical and/or cost offer.

#### 9.60 Offeror Response and Public Inspection

This RFP specifies the format, required information and general content of proposals to be submitted in response to the RFP. The Finance and Administration Cabinet, Office of General Counsel shall not disclose any portions of the proposals prior to contract award to anyone outside the Finance and Administration Cabinet, Office of General Counsel, 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 Agency shall have the right to duplicate, use, or disclose all proposal data submitted by Offerors in response to this RFP as a matter of public record.

Any and all documents submitted by a Offeror in response to the RFP shall be available for public inspection after contract award pursuant to the Kentucky Open Records Act, KRS 61.870 to 61.884 ("the Act"). When responding to a request to inspect records submitted in response to this RFP, the Agency will not redact or withhold any information or documents unless the records sought are exempt from disclosure pursuant to KRS 61.878 or other applicable law. Similarly, no such documents shall be exempt from public disclosure, regardless of the Offeror's designation of the information contained therein as "proprietary," "confidential," or otherwise, except in cases where the requested documents (or information contained therein) would be excluded from application of the Act under KRS 61.878(1)(c).

The Agency 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.

#### 9.70 Reciprocal Preference for Kentucky Resident Offerors and Preferences for a Qualified Offeror

The scoring of proposals/proposals is subject to the reciprocal preference for Kentucky resident bidders and preferences for a Qualified Bidder or the Department of Corrections, Division of Prison Industries (See KRS 45A.490(1), (2), 45A.492, 45A.494, and KAR 200 5:410).

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

#### **Determining the residency of a offeror for purposes of applying a reciprocal preference**

Any individual, partnership, association, corporation, or other business entity claiming resident Bidder status shall submit the attached Required Affidavit for Bidders, Offerors, and Offerors Claiming Resident Bidder Status as part of its response. The AGENCY reserves the right to request documentation supporting a offeror's claim of resident Bidder status. Failure to provide such documentation upon request may result in disqualification of the offeror or contract termination.

As part of its response, a nonresident offeror shall submit 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 Offeror. If the Offeror is not required by law to obtain said certificate, the state of residency for that Offeror shall be deemed to be that which is identified in its mailing address as provided in its proposal.

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

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Pursuant to KRS 45A.470 and 200 KAR 5:410, Kentucky Correctional Industries will receive a preference equal to twenty (20) percent of the maximum points awarded to a Offeror 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 Offeror in a solicitation: New Vision Enterprises, Inc., 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). Any Offeror claiming “qualified bidder” status, other than New Vision Enterprises, Inc., shall submit a notarized affidavit affirming that it meets the requirements to be considered a qualified bidder as part of its response to the solicitation (affidavit form included as part of this RFP). If requested, Failure to provide documentation proving qualified Bidder status to a public agency, if requested, may result in disqualification of the offeror or contract termination.

### **9.80 Right to Use Oral Presentations to Verify/Expand on Proposal**

The Agency reserves the right at its discretion to require oral presentations by the highest ranking offerors to verify or expand on the technical or cost proposals.

### **9.85 Oral Presentation Evaluation Criteria**

The highest ranking offerors may be requested to provide oral presentations/demonstrations to answer questions or to clarify the understanding of the evaluators in accordance with the requirements of this RFP. The Agency reserves the right not to require oral presentations/demonstrations at its discretion or in the event that they would not affect the final rankings.

### **9.90 Negotiation**

After conducting the evaluation to determine the best proposal received, the Office of General Counsel reserves the right to negotiate a fair and reasonable compensation based on the pricing submitted in the Offeror’s proposal. If the negotiations fail to reach an agreement on a fair and reasonable compensation rate, the Office of General Counsel reserves the right to proceed to the next highest rated proposal. Other terms and conditions relating to the technical and/or cost proposals may be negotiated at the sole discretion of the Agency.

### **9.95 Best Interests of the Agency**

The Agency will rank all proposals in the manner set forth in the Evaluation Criteria. However, the Agency reserves the right to reject any or all proposals in whole or in part before, during, or after negotiation based on the best interests of the Agency.

## **CONTRACT AWARD, TERMS, AND CONDITIONS**

### **10.00 Notification of Award**

To view the award of contract(s), including the Offeror(s) receiving the award(s) for this solicitation, access the Kentucky Offeror Self Service site at <https://emars.ky.gov/webapp/vsonline/AltSelfService>. Offerors can search for the solicitation title or number in the keyword search field or 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 Offeror’s responsibility to review this information in a timely fashion. No other notification of the results of an Award of Contract will be provided to unsuccessful Offerors.

### **10.10 Beginning of Work**

This Contract is not effective and binding until approved by the Secretary of the Finance and Administration Cabinet and filed with the Legislative Research Commission’s Government Contract Review Committee. The Offeror shall not commence any billable work until a valid Contract has been fully executed. This Contract, including the components referenced in Section 10.20, shall represent the entire agreement between the parties. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this Contract.

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## 10.20 Contract Components and Order of Precedence

The Agency's acceptance of the Offeror's offer in response to the Solicitation, indicated by the issuance of a Contract Award, 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 hereto.
4. Any Best and Final Offer.
5. Any clarifications concerning the Offeror's proposal in response to the Solicitation.
6. The Offeror'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.

## 10.30 Contract Term and Renewal Option

The initial term of the Contract is anticipated to be from 7/1/2016 through 6/30/2018.

This agreement is not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been filed with the Legislative Research Commission, Government Contract Review Committee.

The Agency reserves the right to renew this contract for up to one (1) additional two (2) year period.

Renewal shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet, or his authorized designee, and the LRC Government Contract Review Committee in accordance with KRS 45A.695 and KRS 45A.705.

## 10.40 Changes and Modifications to the Contract

Pursuant to 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 Offeror and the Agency, and incorporated as a written amendment by the Office of General Counsel prior to the effective date of such modification or change. Modification shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet, or his authorized designee, and the LRC Government Contract Review Committee. Memoranda of Understanding, written clarification, and/or other correspondence shall not be construed as amendments to the Contract.

## 10.50 Notices

Unless otherwise instructed, all notices, consents, and other communications required and/or permitted by the Contract shall be in writing. After the award of the Contract, all communications of a contractual or legal nature are to be made to the Agency Contact.

## 11.00 Personal Service Contract Standard Terms and Conditions

**Whereas**, the first party, the state agency, has concluded that either state personnel are not available to perform said function, or it would not be feasible to utilize state personnel to perform said function; and  
**Whereas**, the second party, the Contractor, is available and qualified to perform such function; and  
**Whereas**, for the abovementioned reasons, the state agency desires to avail itself of the services of the second party;

**NOW THEREFORE**, the following terms and conditions are applicable to this contract:

### Effective Date:

This contract is not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the Legislative Research Commission ("LRC"), Government Contract Review Committee. However, in accordance with KRS 45A.700, contracts in aggregate amounts of \$10,000 or less are exempt from review by the committee and need only be filed with the committee within 30 days of their effective date for informational purposes.

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KRS 45A.695(7) provides that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after Government Contract Review Committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

**Renewals:**

Upon expiration of the initial term, the contract may be renewed in accordance with the terms and conditions in the original solicitation. Renewal shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet or his authorized designee and the LRC Government Contract Review Committee in accordance with KRS 45A.695 and KRS 45A.705, and contingent upon available funding.

**LRC Policies:**

Pursuant to KRS 45A.725, LRC has established policies which govern rates payable for certain professional services. These are located on the LRC webpage (<http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>) and would impact any contract established under KRS 45A.690 et seq., where applicable.

**Choice of Law and Forum:**

All questions as to the execution, validity, interpretation, construction, and performance of this contract shall be governed by the laws of the Commonwealth of Kentucky. Furthermore, the parties hereto agree that any legal action which is brought on the basis of this contract shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

**Cancellation:**

The state agency shall have the right to terminate and cancel this contract at any time not to exceed thirty (30) days' written notice served on the Contractor by registered or certified mail. (See KRS 45A.695(1); see also 200 KAR 5:312).

**Funding Out Provision:**

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the Contractor thirty (30) calendar days' written notice of termination of the contract due to lack of available funding.

**Reduction in Contract Worker Hours:**

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, this contract will be reduced by the amount specified in that document.

**Authorized to do Business in Kentucky:**

Businesses can register with the Secretary of State at <https://secure.kentucky.gov/sos/ftbr/welcome.aspx>. The Contractor affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded.

If a foreign entity, the Contractor shall maintain a 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 pursuant to the process outlined below.

**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

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proposal 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.**

**Invoices for fees:**

The Contractor shall maintain supporting documents to substantiate invoices and shall furnish same if required by state government. The invoice must conform to the method described in this contract.

**Pursuant to KRS 45A.695, no payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee.**

\*Invoice form is available on the Legislative Research Commission, Government Contract Review Committee website: <http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>

**Travel expenses, if authorized:**

The Contractor shall be paid for no travel expenses, unless and except as specifically authorized by the specifications of this contract, or authorized in advance and in writing by the Agency. Either original or certified copies of receipts must be submitted for airline tickets, hotel bills, restaurant charges, rental car charges, and any other miscellaneous expenses.

**Other expenses, if authorized herein:**

The Contractor shall be reimbursed for no other expenses of any kind, unless and except as specifically authorized within the specifications of this contract, or authorized in advance and in writing by the Agency. If the reimbursement of such expenses is authorized, the reimbursement shall be only on an out-of-pocket basis. Request for payment of same shall be processed upon receipt from the Contractor of valid, itemized statements submitted periodically for payment at the time any fees are due. The Contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish copies of same in support of requests for payment submitted to the Agency.

**Purchasing and specifications:**

The Contractor certifies that he/she will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he/she attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph and the following paragraph that pertains to conflict-of-interest laws and principles, "he/she" is construed to mean "they" if more than one person is involved. If a firm, partnership, corporation, or other organization is involved, then "he/she" is construed to mean any person with an interest therein.

**Conflict-of-interest laws and principles:**

The Contractor certifies that he/she is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing this contract, he/she will not be violating any conflict-of-interest statute (KRS 45A.330-45A.340, 45A.990, 164.390), nor KRS 11A.040 of the executive branch code of ethics relating to the employment of former public servants.

**Campaign finance:**

The Contractor certifies that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this contract has contributed more than the amount specified in KRS 121.056(2) to the campaign of the gubernatorial candidate elected at the election last preceding the date of this contract. The Contractor further swears under the penalty of perjury, as provided by KRS 523.020, (i) that neither he/she nor the company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and (ii) that the award of a contract to him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

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**Access to Records:**

The Contractor, as defined in KRS 45A.030(8) and (10), 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 a financial audit or program review. 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. Records and other prequalification information confidentially disclosed as part of the proposal 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).

**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 contractors in connection with the solicitation or selection for award of a contract.

Any actual or prospective contractor, who is aggrieved in connection with the 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:

**William M. Landrum III, Secretary**  
Commonwealth of Kentucky  
Finance and Administration Cabinet  
Room 383, New Capitol Annex  
702 Capitol Avenue  
Frankfort, KY 40601

The Secretary of Finance and Administration Cabinet, or his designee, 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.

**Social security: (check one)**

\_\_\_\_\_ The parties are cognizant that, pursuant to 42 U.S. Code, section 418, the state is not liable for social security contributions relative to the compensation of the second party for this contract.

\_\_\_\_\_ The parties are cognizant that, pursuant to 42 U.S. Code, section 418, the state is liable for social security contributions relative to the compensation of the second party for this contract.

**Violation of tax and employment laws:**

KRS 45A.485 requires the Contractor and all subcontractors performing work under the contract to reveal to the Agency, prior to the award of a contract, any final determination of a violation by the Contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the Contractor and all subcontractors performing work under the contract shall report any such final determination(s) of violation(s) to the Agency by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the Contractor and all subcontractors performing work under the contract shall be in continuous compliance with the provisions of those statutes, which apply to their operations, and that their failure to reveal a final determination, as described above, or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Agency's

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cancellation of the contract and their disqualification from eligibility for future state contracts for a period of two (2) years.

**Discrimination:**

This section applies only to contracts disbursing federal funds, in whole or part, when the terms and conditions for receiving those funds mandate its inclusion. Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity or age. The Contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The Contractor agrees to provide, upon request, needed reasonable accommodations. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
2. In all solicitations or advertisements for employees placed by or on behalf of the Contractor, the Contractor will state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.
3. The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding a notice advising the said labor union or workers' representative of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.
4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions that may be imposed and remedies invoked as provided in or as otherwise provided by law.
7. The Contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.