



Commonwealth of Kentucky SOLICITATION MODIFICATION

Addenda: Yes

Addenda #: 2

Line Items

Commodity Group: Default

Line	CL Description	Quantity	UOM	Unit Cost	Line Total or Contract Amnt
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1	K-12 School COVID-19 Testing Services
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Comm Code	Comm Description	Manufacturer	Model #	Manuf Part #
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94855PS	PSC-Medical and Laboratory Services (Non-Physician)			
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Extended Description

The vendor(s) will provide Coronavirus Disease 2019 (COVID-19) Polymerase Chain Reaction (PCR) diagnostic testing for students in kindergarten through grade 12 (K-12 school districts) and private/charter schools within Kentucky.

Shipping Information	Billing Information
	CHFS DPH Commissioners Office 275 E Main Street HS1GW-A Frankfort KY 40621



Commonwealth of Kentucky SOLICITATION MODIFICATION

Addenda: Yes

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Submission Checklist

The following items will be required to be submitted with bid:

Item

Short Form Response with attachments (Pass/Fail)

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ADDENDUM HISTORY
Addendum 1
July 9, 2021

This addendum is to answer vendor questions, and to modify Scope Of Work, Section 2.00, and CHFS STANDARD TERMS AND CONDITIONS FOR PERSONAL SERVICE CONTRACTS, section 11.01.10. Questions and answers can be found beginning on page 26 and ending on page 36 of this document.

Revised February 2021
PROPOSAL SUBMISSION CHECKLIST

The vendor **MUST** include the following with the proposal submission.
If the items highlighted below are not submitted with the proposal submission,
the Commonwealth MUST deem the proposal non-responsive and

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SHALL NOT consider for award.

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

SIGNED AND COMPLETED SHORT FORM APPLICATION

_____ PROOF OF CLINICAL LABORATORY IMPROVEMENT AMENDMENTS (CLIA) OR COLLEGE OF AMERICAN PATHOLOGY (CAP) CERTIFICATION

_____ INDEPENDENT PCR VALIDATION STUDY THAT INCLUDES AT LEAST FIVE (5) SPECIMEN ASSAYS FOR COVID-19

_____ PROOF OF INSURANCE

_____ PROOF OF REGISTRATION WITH SECRETARY OF STATE BY A FOREIGN ENTITY (Section 8.01 of the Personal Service Contract Terms and Conditions of this RFP)

_____ REQUIRED AFFIDAVIT(S) – Section 8.10 of this RFP

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

REQUEST FOR PROPOSAL
FOR
PERSONAL SERVICE CONTRACT

Kentucky Cabinet for Health and Family Services / Department for Public Health

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**COVID-19 Testing Services for K-12 Schools
RFP 728 2100000308**

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 Commonwealth of Kentucky, Cabinet for Health and Family Services on the behalf of the Department for Public Health (DPH).

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 and executed by the Finance and Administration Cabinet and filed with the Legislative Research Commission, Government Contract Review Committee.

1.00 Purpose and Background

The Department for Public Health seeks contracts for Laboratory Service Providers for Coronavirus Disease 2019 (COVID-19) Polymerase Chain Reaction (PCR) diagnostic testing for students in kindergarten through grade 12 (K-12 school districts) and private/charter schools within Kentucky. COVID-19 testing supports safe, in-person instruction, and provides another layer of prevention to protect students, teachers, and staff and slow the spread of SARS-CoV-2, the virus that causes COVID-19. This additional capacity will complement local health departments and other testing providers.

Vendors and any subcontractors should be entities that have demonstrated competency in COVID-19 PCR specimen collection and handling, and customer service.

It is the intent to award one (1) multiprovider contract from this solicitation. Authorized vendors will be added as proposals are determined to meet the requirements and the vendors sign the contract. The contract total will reflect all available funding and does not represent any guarantee to any individual vendor award of the contract. Funds will be disbursed on a first come, first serve basis.

2.00 Scope of Work

Laboratory Service Provider requirements:

1. Testing will be limited to staff and students of Kentucky K-12 public schools and K-12 private/charter schools to include school district employees and staff (contracted or otherwise) to include but not limited to bus drivers, maintenance, office staff or as determined by the school administrator.
2. Responsible for contracting directly with Kentucky school districts, individual schools and/or private/charter schools to provide testing for K-12 students and staff consistent with the terms specified in this request for proposals.
3. Provide or ensure all necessary resources to provide COVID-19 diagnostic testing in kindergarten through grade 12 (K-12) school districts and private/charter schools within Kentucky to include:
 - a. Collaborate with schools to obtain and maintain records of consent from students/guardians and staff who are tested;
 - b. Onsite personnel, such as a testing coordinator, sample collector(s), and/or other additional staff needed to implement test programs;
 - c. Providing all necessary equipment, barriers, signage, etc. necessary to provide the testing service;
 - d. Logistical and operation support;
 - e. Providing own Personal Protective Equipment (PPE) to perform specimen collection or testing;
 - f. Providing and/or ensuring all supplies necessary for the collection, storage, shipping, and testing of specimens (collection devices, coolers, shippers, lab kits, reagents, consumables, etc.);
 - g. Providing and/or ensuring specimen collection; and
 - h. Providing an online, secure, The Health Insurance Portability and Accountability Act of 1996 (HIPAA) compliant patient portal to students/guardians and staff to access test results.
4. Any clinical personnel supplied by the vendor(s) will be required to demonstrate the necessary qualifications to perform any medical services required under the contract.

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5. Laboratory service provider shall ensure all workers who perform these services on District property shall have background checks done prior to commencing any work. The Vendor is responsible for all fees associated with obtaining background checks. A copy of each back ground check shall be supplied to school administrator upon request.

No employee of the Vendor shall be assigned or allowed on school district property who is a registered sex offender or who is otherwise prohibited by law from being on school district property.

6. Laboratory service provider shall maintain HIPAA compliant unique patient identifier as it relates to all test results, negative or positive, completed Centers for Disease Control (CDC) and DPH required forms. DPH reserves the right to review and audit file.

7. Provide testing with an approved Centers for Disease Control (CDC) test.

a. CDC recommends collecting and testing upper respiratory tract specimens (naso-pharyngeal swab or US Food and Drug Administration (FDA)-approved saliva swab). Any additional specimen collection method explicitly approved by the FDA requires submitting supporting documentation.

b. Allowable testing includes FDA authorized or approved SARS-CoV-2 PCR, nucleic acid amplification (NAAT), and antigen testing. Serology (i.e. antibody) testing is not allowable.

c. Pooled testing using an FDA authorized PCR test and methodology must be approved by DPH prior to implementation. Individual results must be reported for all persons evaluated using pooled testing. All specimens contained in positive pools must be promptly re-tested individually using an FDA authorized PCR test to identify the positive individuals contained within the positive pool. Reimbursement will be provided as a single fee per single specimen collected; no additional reimbursement shall be provided for reflex testing of positive pools.

2.10 Reporting Requirements

1. Vendor will use an LIS system, capable of submitting COVID HL7 labs (v. 2.5.1 preferred), validated by KHIE and the Department of Public Health/National Electronic Disease Surveillance System, aligning with their format/content requirements. The required data elements for COVID labs include:

- o Patient first name
- o Patient last name
- o Patient middle name *
- o Patient date of birth
- o Patient sex
- o Patient address (street address, city, state, zip)
- o Patient phone number
- o Patient email *
- o Patient race
- o Patient ethnicity
- o Patient Medical Record Number
- o Placer Order Number
- o Filler Order Number
- o Order Status*
- o Ordering Provider and/or Ordering Facility
- o Name (NPI if Provider)
- o Address
- o Phone
- o Lab Test Universal Service ID (LOINC-Coded)
- o Observation Date/Time
- o Result Status Change Date/Time
- o Result Status
- o Observation Result (SNOMED-Coded)
- o Observation Result Status
- o Observation Date/Time
- o Performing Organization
- o Name
- o Address
- o Specimen Type (SNOMED-Coded)
- o Specimen Collection Date

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o Specimen Received Date

* Denotes Optional data elements

Vendor will leverage their existing connection to KHIE/DPH/NEDSS to transmit the Lab data. KHIE/DPH/NEDSS staff will setup the new locations in UAT or PMT region for testing and KHIE personnel will provide MSH 4.1, MSH 4.2, PID 3.4 and other values for the Vendor to populate their HL7 Lab messages. After data validation is complete KHIE/DPH/NEDSS staff will setup the new location in Production environment of KHIE for the Vendor to send Reportable Lab/COVID Lab data.

2. Laboratory service provider shall submit weekly aggregated test data through DPH's online portal. The report will be due by close of business each Monday for specimens collected the previous week, unless otherwise directed by DPH. Reports will be due on Tuesday for weeks where Monday is a state or federal holiday. Required supporting documentation shall be uploaded along with the report in the form of an excel spreadsheet. The format of the spreadsheet will be provided by DPH and will contain information documenting complete list of specimen collection number (or other unique identifier), dates of service tested, and total numbers of positive or negative test results broken down by site of service.

3. Provide DPH the following information for each school/school district contract within five (5) business days following execution:

- County
- Private/Public
- District/School Name

2.20 Subcontractors

Subcontractors are allowed for this Contract.

2.30 Pricing and Payment Requirements

The Vendor will receive a service fee of \$96.00 per test performed.

Invoices for payment shall be submitted electronically via DPH's online portal. Invoices must be submitted no later than **thirty** (30) days after completion of the service.

Payment shall be conditioned upon receipt of appropriate, accurate, and acceptable invoices submitted in a timely manner.

Invoices will be auto generated in the DPH online portal and shall contain two parts:

1. Legislative Research Commission's Government Contract Review Committee Invoice Form; and
2. Supporting documentation.

Invoices that do not contain the requirements above will be rejected and sent back to the Vendor for re-invoicing.

2.40 CHFS Responsibilities

DPH is responsible for:

1. Setting up and maintaining an online reporting and invoicing portal; and
2. Monitoring Vendor activities for compliance with contract and grant requirements.

3.00 Evaluation Criteria

The Commonwealth will evaluate the proposals based on the following evaluation factors:

1. Technical– Pass/Fail

The Vendor shall:

- A. Be regularly and continuously engaged in the business of providing medical health care, testing (including biomedical and/or molecular biology related research), or lab services for at least one (1) year.
- B. Have Clinical Laboratory Improvement Amendments (CLIA) or College of American Pathology (CAP) certification in order to be considered. Vendor must submit a copy of certification(s) as proof of documentation.
- C. Submit an Independent PCR Validation Study that includes at least five (5) specimen assays for COVID-19.

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D. Have an existing LIS system, capable of submitting COVID HL7 labs (v. 2.5.1 preferred), validated by KHIE and the Department of Public Health/National Electronic Disease Surveillance System.

E. **NOT** be excluded from participation in, terminated from, or under payment suspension by, any federally or state funded health care programs, as defined in § 1128B(f) of the Social Security Act. 42 U.S.C. § 1320a–7b. This includes but is not limited to exclusion by HHS/OIG; termination from Medicare, Kentucky Medicaid, or any other state Medicaid program; or under payment suspension by same. No payment shall be made under the contract with respect to any item or service furnished by such excluded, terminated, or suspended individual or entity.

F. Supply Proof of Insurance documenting proof of appropriate professional liability insurance.

G. Provide confirmation that the vendor can perform all required services as outlined in the Request for Proposal Scope of Work.

2. Cost

Cost is set per Section 2.30.

3. Oral Presentations/Demonstrations – Not Applicable

4.00 Schedule of RFP Activities

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

Release of RFP	June 2, 2021
Written Questions due by:	As Necessary
Anticipated Commonwealth Response to Written Questions	Monthly, if deemed material by the buyer
As an open-ended RFP, proposals will be accepted through the posting period.	
*NOTE: ALL TIME REFERENCES ARE TO THE EASTERN TIME ZONE.	

5.00 Offeror’s Conference

The Offeror’s Conference will be held at **June 9, 2021 from 10:00 – 10:45** am via Microsoft Teams. Attendance is highly encouraged. This will be the only opportunity to ask oral questions. The Commonwealth shall not be bound by any oral answers to the questions presented at the Conference or oral statements made at any other time by any member of the Commonwealth’s staff. Salient questions asked at the Offeror’s Conference and the responses will be reduced to writing and issued in an Addendum that shall be posted to the eProcurement website. In the event of a conflict between oral answers or statements presented at the Conference and written responses in the Addendum, written responses in the Addendum shall control.

All vendors wishing to participate in the Offeror’s Conference are to email the Commonwealth Buyer at Marianne.Johns@ky.gov with “**COVID Testing K-12 Schools Offeror’s Conference**” in the subject line by the **Close of Business (COB) June 7, 2021**. The email is to include any known questions which will allow the Cabinet’s team to gather the appropriate information for the discussion.

Instructions and additional information will be emailed to the participants.

6.00 Point of Contact

The Agency Contact named below shall be the sole point of contact throughout the procurement process. All email communications concerning this procurement shall be addressed to:

Marianne Johns
Cabinet for Health and Family Services
Office of Administrative Services
Division of Procurement and Grant Oversight
Marianne.Johns@ky.gov

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

7.00 Questions Regarding this RFP

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

8.00 Proposal Submission

Each qualified offeror shall submit only **one (1) proposal**. **Alternate proposals shall not be allowed.** Failure to submit as specified shall result in a non-responsive proposal.

The vendor should complete the "Vendor" box on the face of the solicitation. An authorized representative of the vendor shall sign where indicated on the face of the solicitation. If the solicitation is not signed the proposal shall be deemed non-responsive.

Acknowledgment of Addenda

It is the vendor's responsibility to check the web site for any modifications to this solicitation. Vendors are encouraged to acknowledge each addendum by signing and submitting the latest addendum with their response. However, signing the face of the solicitation as indicated above constitutes the vendor's acknowledgement of and agreement to be bound by the terms of all addenda issued.

Failure to specifically acknowledge addenda will not excuse the vendor from adhering to all changes to the requirements of the solicitation set forth therein nor provide justification for any pricing changes.

All submitted Technical Proposals (RFP Short Form) 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 (RFP Short Form)** and the **Proprietary Information, if applicable. Please LABEL all files accordingly.**

All proposals must be received no later than the close time and date listed in Section 4.00.

All proposal submissions must be sent via Secure File Transfer on <https://ftp.ky.gov>

Complete Instructions for submission are attached to the header.

8.10 Format of Technical Proposal

Signed and completed RFP Short Form.

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

- a. "Vendor" box and "Payment" box should be completed.
- b. Vendor shall indicate ownership type.
- c. Vendor shall provide "FEIN" if applicable.
- d. Vendor shall provide date the form is completed and signed.
- e. Signed face of the most recent Addenda, if applicable.

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 Contractors Claiming Resident Bidder Status – if applicable. 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 Contractors Claiming Qualified Bidder Status – if applicable. 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.

8.20 Format of Cost Proposal

Not applicable.

8.30 Certification Regarding Debarment and Suspension

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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/policies/Documents/FAP%20110-10-00.pdf>

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

CHFS 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 evaluator(s) to afford each vendor 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

Not applicable.

9.30 Right to Reject/Waiver of Minor Irregularities

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

9.40 Clarification of Proposals

The Commonwealth 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 Commonwealth 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 Commonwealth 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 Vendor Response and Public Inspection

This RFP specifies the format, required information and general content of proposals to be submitted in response to the RFP. CHFS shall not disclose any portions of the proposals prior to contract award to anyone outside CHFS, representatives of the agency for whose benefit the contract is proposed, representatives of the federal government, if required, and the members of the evaluation committee. After a contract is awarded in whole or in part, the Commonwealth shall have the right to duplicate, use, or disclose all proposal data submitted by Offerors in response to this RFP as a matter of public record.

Any and all documents submitted by an 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 Commonwealth 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,"

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

9.70 Reciprocal Preference for Kentucky Resident Bidders and Preferences for a Qualified Bidder

The scoring of bids/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).

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

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 the attached Required Affidavit for Bidders, Offerors and Contractors Claiming Resident Bidder Status as part of its response. CHFS 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.

As part of its response, a nonresident bidder shall submit its certificate of authority to transact business in 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 Qualified Bidder or the Department of Corrections, Division of Prison Industries (200 KAR 5:410)

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 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. New Vision Industries, 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 bidder claiming “qualified bidder” status, other than New Vision Industries, 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 bidder or contract termination.

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

The Commonwealth reserves the right at its discretion to require Oral Presentations by some or all of the Offerors to verify or expand on the Technical or Cost Proposals.

9.85 Oral Presentation Evaluation Criteria

The highest ranking vendors 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 oral presentation shall be scheduled at the discretion of the Commonwealth. The Commonwealth 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, CHFS 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, CHFS reserves the right to proceed to the next highest ranked proposal. Other terms and conditions relating to the technical and/or cost proposals may be negotiated at the sole discretion of the Commonwealth.

9.95 Best Interests of the Commonwealth

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The Commonwealth will rank all proposals in the manner set forth in the Evaluation Criteria. However, the Commonwealth 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 Commonwealth.

CONTRACT AWARD, TERMS, AND CONDITIONS

10.00 Notification of Award

To view the award of contract(s), including the contractor(s) receiving the award(s) for this solicitation, access the Kentucky Vendor Self Service Site at:

<https://emars311.ky.gov/webapp/vssprdonline3111d/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 Contractor 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.

10.20 Contract Components and Order of Precedence

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

1. Procurement Statutes, Regulations and Policies
2. The resulting written agreement awarded from this solicitation and any subsequent written amendments.
3. Any Addenda to the Solicitation.
4. The Solicitation and all attachments
5. Any Best and Final Offer.
6. Any clarifications concerning the Contractor's proposal in response to the Solicitation.
7. The Contractor's proposal in response to the Solicitation.

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

10.30 Contract Term and Renewal Option

The initial term of each Contract will be effective upon award through July 31, 2022.

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 Commonwealth reserves the right to renew this contract for up to two (2) additional one (1) year periods.

Renewal shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet, or this 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 Contractor and the Commonwealth, and incorporated as a written amendment by CHFS prior to the effective date of such modification or change. Modification shall be subject to prior approval from the Secretary of the Finance and

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Administration Cabinet, or this 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.

CHFS STANDARD TERMS AND CONDITIONS FOR PERSONAL SERVICE CONTRACTS

11.00 General Provisions

11.00.01 Headings

The section headings in this Contract are for reference and convenience only and shall not have any effect on the construction or legal effect of this Contract.

11.00.02 Assignment

This Contract shall be binding upon and inure to the benefit of the respective legal successors of the Parties. However, neither this Contract nor any rights or obligations hereunder may be assigned, in whole or in part, without the prior written consent of CHFS, Division of Procurement and Grant Oversight, and the Division of Accounting Services.

11.00.03 No Required Use of Contract

This contract does not guarantee any minimum use of services. The Cabinet reserves the right to leave all, or any portion, of the contract unused and/or to establish other contracts for additional and/or related services.

The Commonwealth of Kentucky may undertake or award other contracts for additional or related work, services, supplies, or commodities, and the Contractor shall fully cooperate with such other Contractors and Commonwealth employees. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other Contractor or by Commonwealth employees.

11.00.04 Severability

It is understood and agreed by the Parties that if any part, term, or provision of this Contract is held by the courts to be illegal or in conflict with any law of the Commonwealth of Kentucky or of the United States of America, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular part, term, or provision held to be invalid, if the remainder of the Contract is capable of performance.

11.00.05 Indemnification

The Contractor shall indemnify and hold harmless CHFS and its agents, representatives, officers, directors, employees, insurers, successors, and assigns from and against any and all expenses, costs (including attorneys' fees), causes of action, liability, loss and/or damages suffered or incurred by it or any of them, that results from or arises out of (a) this Contract; (b) any and all acts of the Contractor and or its Subcontractor(s); (c) the policies and procedures of the Contractor, specifically including all Contractor employment practices employed by Contractor during the term of this or any prior Contract with CHFS; (d) any dishonest, fraudulent, criminal, or negligent or unauthorized acts or errors or omissions which are committed by Contractor or any of Contractor's employees or agents or Subcontractors; (e) the publication translation, reproduction, delivery, performance, use or disposition of any data produced by CHFS in an unauthorized manner, provided that such action was not taken by Contractor or as a result of the express written request of CHFS; or (f) Contractor's failure to comply with any applicable state or federal laws or regulations.

Provided, however, in the event the Contractor is an agency of the Commonwealth of Kentucky, the state agency's liability shall be governed instead by KRS 49.010 through KRS 49.180 and limited to any award from the Kentucky Claims Commission up to the jurisdictional amount.

11.00.06 Sovereign Immunity

The Parties expressly agree that no provision of this Contract constitutes a waiver by CHFS or the Commonwealth of Kentucky of any immunities from suit or from liability that CHFS or the Commonwealth of Kentucky may have by operation of law.

11.00.07 Force Majeure

Neither Party shall be liable for public utility performance (e.g., Postal Service, Telephone, or Water Company) or for the consequence of public utility non-performance. Events or conditions beyond the

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reasonable control of the Parties, such as natural disasters, fires, floods, elements, transportation crashes, a pandemic requiring the issuance of a State of Emergency Declaration by the Governor of the Commonwealth of Kentucky, or utility failures shall not be construed as non-performance, nor shall reductions be applied as a result of such events, provided that CHFS shall have the right to obtain the necessary services elsewhere in the event of such non-performance by The Contractor and the Parties shall negotiate in good faith any appropriate offset to the compensation payable under this Contract. The Contractor shall cooperate and shall require that any Subcontractor cooperate with CHFS in such event. The existence of such causes of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Each Party must inform the other, orally or in writing, as soon as possible of the existence of a force majeure event. In order to preserve this right as a defense each Party must inform the other in writing, with confirmation of receipt, within twenty (20) business days of the existence of a force majeure event or otherwise waive this right as a defense.

11.00.08 Maintenance of Insurance

During the term of this Contract, the Contractor shall maintain and shall require any Subcontractor to maintain their directors and officers liability insurance, workers' compensation insurance, employer liability insurance, and such other liability insurance as reasonably necessary in the Contractor's business judgment to provide adequate coverage against losses and liabilities attributable to the respective acts or omissions of the Contractor and the Subcontractor(s) in the performance of this Contract. The Contractor shall provide or cause to be provided and shall require any Subcontractor to provide or cause to be provided evidence of such coverage upon request.

To the extent that the Contractor and any Subcontractor are not self-insured, each shall, in any event, name CHFS as an additional insured on any policy of coverage, with the exception of the workers compensation and any reinsurance. The Contractor and any Subcontractor shall notify CHFS of the evidence of insurance coverage within five (5) business days of coverage. Notice shall be sent in writing to the Department.

CHFS shall not be responsible for any premiums or assessments on the policy or policies held by the Contractor or any Subcontractor under this Contract. CHFS may, at its sole option, pay one or more premiums, if it decides that to do so would be in the best interest of the Cabinet. Should CHFS exercise this option, it shall be fully reimbursed by the Contractor, either by Contractor directly or by an offset against future payments.

The Certificate of Insurance for any policy other than self-insurance or any reinsurance must require that the insurer shall not cancel the coverage without thirty (30) days prior written notice to CHFS.

Contractor shall notify CHFS within five (5) business days of any cancellation or interruption of Contractor or Subcontractor's insurance coverage. CHFS shall require in any subcontracts that the Subcontractor provide such notice within five (5) business days to the Contractor and CHFS. Contractor shall ensure and require that any Subcontractor ensure that insurance is in effect at all times during the life of this Contract. If their respective insurance coverage expires at any time during the term of this Contract, the Contractor and any Subcontractor shall provide at least thirty (30) calendar days prior to the expiration date, to the extent possible, a new Certificate of Insurance evidencing coverage as provided herein for not less than the remainder of the term of this Contract.

11.00.09 Licensure, Certification, and Registration

The Contractor shall:

1. Ensure that all appropriate licenses, registrations, and/or certifications necessary are maintained at all times to the extent such are required for performance under this Contract;
2. Ensure that it has readily accessible copies of licenses, registration, and/or certifications necessary; and
3. Produce copies of any required license, registration, and/or certification at the request of CHFS or the Cabinet's designee.

11.00.10 Permits, Licenses, Taxes, and Laws

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

To the extent required by law, the Contractor shall pay any sales, use, personal property and income taxes arising out of this Contract and the transaction contemplated hereby. Any other taxes levied upon this Contract, the transaction, or the equipment or services delivered pursuant hereto shall be borne by the Contractor.

Contractor shall be responsible for all applicable Federal (including FICA), State and Local tax withholdings.

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11.00.11 Legal Proceedings

Except as specifically disclosed in writing to CHFS by the Contractor, prior to the date of this Contract, Contractor certifies there are no suits, investigations, or other proceedings pending or threatened against Contractor or any subcontractor that would have a material effect on Contractor's ability to perform under this Contract, or on Subcontractors ability to perform under their respective subcontracts, if applicable. Further, the Contractor shall use its best efforts to notify CHFS within one (1) business day, and in writing within three (3) business days, of all suits, investigations, or other proceedings involving Contractor related to this Contract. The Contractor shall send written notice to the Department.

11.00.12 No Grant of Employment or Agency

Nothing in this Contract shall be construed, in any way, as granting to any individual providing services under the Contract any of the claims, privileges, or rights established or recognized under [KRS Chapter 18A](#) or [KAR Title 101](#).

At no point shall any individual providing services under this Contract be considered a full-time or part-time employee of CHFS, for any purpose, including but not limited to unemployment, taxes, withholding, health insurance, liability, retirement, Workers' Compensation, vacation, sick or other leave, the Family Medical Leave Act, accrued benefits, evaluations, or any other purpose. At all times, any such individual shall be considered and deemed to be an employee, volunteer, or independent contractor of the Contractor.

In no event shall any employee, volunteer, or independent contractor of the Contractor be deemed to be a third-party beneficiary of this Contract or an agent or an employee of the Commonwealth.

11.00.13 CHFS Discrimination Prohibited in Service Provision (Because of Race, Religion, Color, National Origin, Sex, Disability, Age, Political Beliefs or Reprisal or Retaliation for prior Civil Rights Activity or other Federal, State, or Local Protected Class)

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 anyone applying for or receiving assistance or services based on race, religion, color, national origin, sex, disability, age, political beliefs or reprisal or retaliation for prior civil rights activity or any other protected class identified in federal, state or local laws. The Contractor agrees to comply with the provisions of the [Kentucky Civil Rights Act](#), the Americans with Disabilities Act of 1990 as Amended (ADA), , Section 1557 of the Patient Protection and Affordable Care Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, as applicable, and all other applicable federal, state and local regulations relating to prohibiting discrimination.
2. The Contractor will take action to ensure that service applicants and recipients are given services in the same manner, based on eligibility, and are not based on membership in a protected class: denied aid, care, services, or other benefits provided under this contract; subjected to segregation or different treatment in any matter related to receipt of assistance; restricted in any way in the enjoyment of any advantages or privileges enjoyed by others receiving similar services; given different treatment in determining eligibility; or meeting other requirements or conditions that must be met to receive benefits.
3. The Contractor agrees to post in conspicuous places, available to program or service applicants or recipients, notices setting forth the provisions of this non-discrimination clause.
4. In all program or service solicitations or advertisements placed by or on behalf of the Contractor, the Contractor will state that they will not discriminate against anyone applying for or receiving assistance or services based on race, religion, color, national origin, sex, disability, age, political beliefs, or reprisal or retaliation for prior civil rights activity, or any other protected class identified in federal, state, or local laws.
5. 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 such other sanctions that may be imposed and remedies invoked as provided in or as otherwise provided by law.
6. In compliance with the prohibition against Disability discrimination and in compliance with the implementing guidance for the Americans with Disabilities Act issued by the Department of Justice, the Contractor agrees to provide, free of charge, appropriate accommodations for applicants or recipients with disabilities, including auxiliary aids and services for persons with disabilities who require alternative means of communication.
7. In compliance with the prohibition against National Origin discrimination and, by extension discrimination based on Limited English Proficiency (LEP), the Contractor agrees to provide meaningful language

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assistance measures free of charge to program or service applicants or recipients with Limited English Proficiency. The language services shall:

- a. Be consistent with the general guidance document issued by the Department of Justice, which sets forth the compliance standards recipients of federal financial assistance must follow to ensure that LEP persons have meaningful access to the program's services and activities;
- b. Have a method of identifying LEP individuals; and
- c. Provide language assistance measures (e.g., oral interpretation and written translation services; training of staff; note to LEP persons of availability of language access assistance; monitoring compliance, etc.).

11.01 Contract Performance

11.01.01 Service Delivery Requirements

All services provided by the Contractor under the terms and conditions of this Contract shall be delivered in accordance with:

1. All applicable federal and state statutes and regulations as they are currently in effect;
2. All commitments and assurances as set forth in all CHFS grant awards with respect to goals, strategies, funding, and outcomes made by the Commonwealth as required by and contained in grant applications to federal agencies, foundations, and other agencies providing grant funding and in the resulting award notices from those agencies; and
3. All final federally-funded grant award terms and conditions, including federal reporting and expenditure requirements, for any federally-funded proposed project developed jointly by the Contractor and CHFS and submitted to a federal agency.

11.01.02 Total Amount of Funds and Budget Revisions

In addition to Sections 10.00-12.00, CHFS shall have the right to recoup the amount of any overpayment, regardless of the reason for the overpayment. Any reconciliation or settlement of fund balances contained in the Summary Line Item Section of this Contract shall be negotiated between CHFS and the Contractor and determined as soon as feasible before the end of the scope of work as set forth under the Contract.

The Contractor shall not request a budget revision within the last sixty (60) days of the contract period.

11.01.03 Subcontractors

Unless identified in the Contractor's proposal and pre-approved at the Cabinet level, the Contractor shall make no subcontract with any other party for furnishing any of the work or services herein. This provision shall not require the approval of contracts of employment between the Contractor and personnel assigned for services thereunder. The Contractor shall be solely responsible for performance of the entire Contract whether or not subcontractors are used.

Before engaging a Subcontractor not identified in the Contractor's response or replacing a Subcontractor identified in the Contractor's response, the Contractor will notify the agency and provide the agency with information regarding the proposed Subcontractor, including but not limited to, the proposed Subcontractor's relevant qualifications, experience, and key personnel. The agency reserves the right to approve or disapprove any Subcontractor proposed by the prime Contractor; such approval shall not be unreasonably withheld.

All references to the Contractor shall be construed to encompass both the Contractor and any subcontractors of the Contractor.

11.01.03.01 Responsibility for Subcontractor Contract Requirements

The Contractor shall have a Contract with any subcontractor that the Contractor contracts with to meet the statement of work, method of payment, and deliverables of this Contract that specifies the responsibilities of the parties and the cost. In addition, the Contractor's Contract with the subcontractor shall specify that all requirements of this Contract are applicable and binding on the subcontractor. Any plan to subcontract any of the provisions of this Contract must be set forth in the Contractor's proposal for the delivery of products or services and included in the body of the contract in the subcontractor's section. The subcontractor must make available to the Contractor and to CHFS, if requested, copies of personnel records and documentation of employees' compliance with the terms and conditions of this Contract.

No obligation or right of the Contractor under this Contract shall be subcontracted to another, without prior written approval, of CHFS after CHFS has had the opportunity to review all contract

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documents setting forth the terms and conditions for the subcontract. The Contractor, upon the cabinet's request, shall submit the subcontract for approval to the Contract Specialist listed on page 1.

11.01.03.02 Subcontractor Monitoring Requirements

The Contractor shall monitor subcontractors for programmatic and fiscal compliance with the terms and conditions of this Contract and those specific provisions set out under the Contractor's contract with the subcontractor. The Contractor agrees to utilize restraints or requirements imposed by such factors as generally accepted sound business practices, arm's length bargaining, Federal and State laws regulations, and terms and conditions of the federal grant award in contracting with subcontractors.

Contractor further understands and agrees, and shall ensure that any Subcontractor understands and agrees, that CHFS and any of its duly authorized agents or representatives shall have access to any books, documents, papers, records, or any other materials that are pertinent to this contract or Subcontract, for the purposes of making monitoring, auditing, examination, excerpts, and transcriptions.

11.01.04 Indirect Cost

Except as otherwise authorized by this contract, no indirect costs shall be reimbursed.

11.01.05 Financial Record Retention

The Contractor agrees to maintain all records pertaining to this contract for a period of not less than three (3) years after all matters pertaining to this contract (e.g., audit, settlement of audit exceptions, disputes, etc.) are resolved in accordance with applicable federal and/or state laws, regulations, and policies (except as may otherwise be specified in this contract).

11.01.06 Confidential Information

The Contractor shall comply with the state and federal rules and regulations governing access to and use of information and data provided by CHFS or collected by the Contractor, and will use such information or data only for those purposes expressly delineated, defined, and authorized in this Contract. The Contractor agrees to ensure that all confidential information and data shall remain confidential. The Contractor shall have an appropriate agreement with its employees to that effect.

Any dissemination of information about projects funded and the scope of work described in the terms and conditions of this Contract, must be fully documented and reviewed by the Cabinet's project manager before any representation, electronic or otherwise, of projects, their funding sources, use of data, or data analyses may be posted to a web page or otherwise published.

The Contractor shall permit unrestricted access on demand to personnel of the Cabinet, the Office of the Attorney General, the Office of the Auditor of Public Accounts, and any representative of a government funding agency authorized to review records for audit or investigation purposes to its current policies and procedures for ensuring compliance with these confidentiality requirements, the confidentiality agreements with its personnel, and subcontractor confidentiality assurances.

The foregoing will not apply to:

1. Information that the Commonwealth has released in writing from being maintained in confidence;
2. Information that at the time of disclosure is in the public domain by having been printed and published and available to the public in libraries or other public places where such data is usually collected; or
3. Information that, after disclosure, becomes part of the public domain as defined above, through no act of the Contractor; or
4. Information required to be disclosed by law.

The Contractor shall have an appropriate agreement with its Subcontractors extending these confidentiality requirements to all Subcontractors' employees.

11.01.07 HIPAA Confidentiality Compliance

The Contractor agrees to abide by the "HIPAA Privacy Rule," [45 CFR Parts 160](#) and [164](#), established under the Health Insurance Portability and Accountability Act, Public Law 104-191 ([42 USC 1320d](#)).

11.01.08 Response/Compliance with Audit Findings

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The Contractor shall take action to ensure its or a subcontractor's compliance with or correction of any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle relating to the services and deliverables or any other deficiency contained in any audit, review, or inspection conducted under this section. This action will include Contractor's delivery to CHFS, for CHFS' approval, a Corrective Action Plan that addresses deficiencies identified in any audit(s), review(s), or inspection(s) within thirty (30) calendar days of the close of the audit(s), review(s), or inspection(s).

The Contractor shall bear the expense of compliance with any finding of noncompliance under this section that is:

1. Required by a Kentucky or Federal law, regulation, rule, or other audit requirement relating to Contractor's business;
2. Performed by Contractor as part of this Contract; or
3. Necessary due to Contractor's noncompliance with any law, regulation, rule, or audit requirement imposed on Contractor; or
4. Deficiencies may also result in the assessment of penalties as described in Section 11.01.10 - Performance-Based Penalties.

11.01.09 Research Project Approval and Institutional Review Board Requirements

Any proposed research project undertaken under the terms and conditions of this Contract shall follow the procedures and protocols established under [920 KAR 1:060](#) that provide for a Cabinet review of research projects supported or funded in whole or in part through CHFS. If the proposed research project involves human subjects, it shall comply with federal regulations [45 CFR 46](#) and the requirements of the Cabinet's Institutional Review Board for the Protection of Human Subjects, which CHFS is required to establish and maintain to protect the rights and welfare of human subjects of research conducted or sponsored by CHFS. The project manager assigned by CHFS will provide all documentation and protocols for review and approval by the CHFS Institutional Board. No research may begin until such time as the Board reviews and approves the project.

11.01.10 Performance-Based Penalties

Upon a determination of failure to perform services outlined in Section 2 - Scope of Work, the Cabinet may issue penalties up to five percent (5%) of the total amount of **their portion of the Contract of contract** for each instance of non-performance.

If the Cabinet elects not to exercise any of the penalty clauses herein in a particular instance, this decision shall not be construed as a waiver of the Department's right to pursue the future assessment of any performance standard requirement and associated penalties. In addition, a Corrective Action Plan may be issued as outlined below (Section 11.01.10(1)(b)).

The Department will work with the Contractor to resolve performance issues at all times.

1. Requirement of Corrective Action:

a. Letter of Concern

Should the Department determine that the Contractor or any Subcontractor is in violation of any requirement of this Contract, the Department shall notify the Contractor of the deficiency through a "Letter of Concern." The Contractor shall contact the Department's representative designated by the Department within two (2) business days of receipt of the Letter of Concern and shall indicate how such concern is unfounded or how it will be addressed. If the Contractor fails to timely contact the designated representative regarding a Letter of Concern, the Department shall proceed to the additional enforcement contained in this Contract.

b. Corrective Action Plan

Should the Cabinet determine that the Contractor or any Subcontractor is not in substantial compliance with any material provision of this Contract, the Cabinet shall issue a written deficiency notice and require a corrective action plan be filed by the Contractor within ten (10) business days following the date of the notice.

A corrective action plan shall delineate the time and manner in which each deficiency is to be corrected. The plan shall be subject to approval by Finance or the Department, which may accept the plan as submitted, may accept the plan with specified modifications, or may reject the plan within ten (10) business days of receipt. Cabinet

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may reduce the time allowed for corrective action depending upon the nature of the deficiency.

c. Failure to Respond to Letter of Concern or Corrective Action Plan Notice

Failure of the Contractor to respond to a Letter of Concern within two (2) business days of receipt of the Letter of Concern may result up to a \$500.00 per day penalty for each day until the response is received. Failure of the Contractor to submit a Corrective Action Plan within ten (10) business days following the date of the written deficiency notice may result up to \$1,000.00 per day penalty for each day until the Corrective Action Plan is received.

d. Request for Extension

Upon request, CHFS may extend the time allowed for both a response to the Letter of Concern and a Corrective Action Plan depending upon the nature of the deficiency. The Contractor shall request an extension of time in writing from the representative designated in the Letter of Concern or the written deficiency notice. The written request shall contain a justification and proposed extension period. If an extension is granted, the penalty per day for both a late Letter of Concern or a late Corrective Action Plan would begin after the expiration of the extension period.

2. Failure to Correct any identified deficiency may result in action pursuant to Section 6.00- Cancellation of the contract.

3. Upon timely resolution of all performance based issues outlined in the Correction Action Plan, the Contractor shall receive reimbursement of a percentage of the amount withheld based on the following tier schedule:

- a. Resolution within 30 days: at least 75% will be reimbursed to Contractor;
- b. Resolution within 60 days: at least 50% will be reimbursed to Contractor;
- c. Resolution within 90 days: at least 25% will be reimbursed to Contractor;
- d. Resolution after 90 days: total penalty withholdings are forfeited.

11.01.11 Performance and Evaluation

CHFS may complete a Performance Evaluation (PE) once a year to document contract performance. PE documents will be entered into the Commonwealth’s electronic financial system (eMARS). Performance documented by PE may be considered when making future awards. To obtain a copy of the PE documents completed for this contract, contact the Contract Specialist listed on page 1.

11.01.12 Business Continuity, Disaster Recovery, and Information Security Requirements

Upon request, the Contractor shall provide a Business Continuity Plan, Disaster Recovery Plan and Information Security Plan, which shall detail the steps the Contractor will take in the event of an outage or failure of either the Contractor’s or CHFS’ data or communication or technical support system. Such plans shall enable the Contractor to continue to meet all requirements of CHFS.

All costs associated with activating and sustaining execution all plans shall be borne solely by the Contractor.

Test all backup procedures no less than quarterly.

11.01.12.01-Information Security Plan

The Vendor shall:

- A. Submit a detailed Information Security Plan, for the Department’s approval and prior to implementing, within thirty (30) calendar days of execution of the Contract.
- B. Review the Information Security Plan annually, at a minimum, or in the event of a significant system change (as defined by the Centers for Medicare and Medicaid Services (CMS)), update as needed. The annual Information Security Plan shall be submitted to the Department during the yearly contract monitoring review.
- C. Ensure all software and hardware components used to deliver this solution are supported by the Original Equipment Manufacturer (OEM) of that particular software or hardware and all other technologies used are uncompromised/secure.

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- D. Ensure access to all sensitive information (such as Personally Identifiable Information [PII], Protected Health Information [PHI], etc.) is restricted to vetted United States personnel only.
- E. Ensure all data, including backups and archives, are maintained at all times within the contiguous United States. All sensitive data, as defined by CMS, shall be encrypted in-transit and at rest at all times.
- F. The Contractor shall notify their CHFS point of contact and CHFS Information Security on all Security incidents within one (1) hour of their discovery.
- G. All databases/spreadsheets containing sensitive data such as PII and PHI shall be monitored for any breaches. The Contractor shall set up alerts based on triggers that fire when a predetermined threshold is reached.
- H. Cyber Insurance: The Contractor shall hold Cyber Insurance policies to cover the business liability that includes, but is not limited to, costs of cyber security breaches, unauthorized data disclosure, data tampering, data loss, credit monitoring, system restoration/repair, follow-on lawsuits, and other damages during the entire life of this contract, including any renewals. While it is prudent to own Cyber Insurance, it is not a substitute for a robust security program.
- I. No production data shall exist in any other environment other than production. All non-production environments shall be designed to use data masking routines to transform personal and confidential data, while retaining its contextual meaning and referential integrity. The authorized Commonwealth management staff and CHFS Security shall approve any exceptions.

11.01.12.02-Independent Security Review

The Contractor shall perform an Infrastructure Vulnerability Assessment and full-scale Penetration Testing annually with Commonwealth Office of Technology (COT) and an independent security assessment company agreed upon with Commonwealth, at no additional cost to the Commonwealth. The Contractor shall submit a copy of the Infrastructure Vulnerability Assessment and industry standard Penetration Test Report to the Commonwealth within fourteen (14) business days of its execution. The Contractor shall provide a Risk Mitigation Plan outlining options and recommending actions to enhance opportunities and reduce identified project risks.

11.01.13 Protection of Personal Information Security and Breach Investigation Procedures and Practices Act

Contractors that receive Personal Information as defined by and in accordance with Kentucky’s Personal Information Security and Breach Investigation Procedures and Practices Act, [KRS 61.931](#), [KRS 61.932](#), [KRS 61.933](#), and [KRS 61.934](#), (the “Act”), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

The Contractor hereby agrees to cooperate with the Commonwealth in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The Contractor shall notify as soon as possible, but not to exceed seventy-two (72) hours, the contracting agency, the Commissioner of the Kentucky State Police, the Auditor of Public Accounts, and the Commonwealth Office of Technology of a determination of or knowledge of a breach, unless the exception set forth in [KRS 61.932\(2\)\(b\)2](#) applies and the Contractor abides by the requirements set forth in that exception. If the agency is a unit of government listed in [KRS 61.931\(1\)\(b\)](#), the Contractor shall notify the Commissioner of the Department of Local Government in the same manner as above. If the agency is a public school district listed in [KRS 61.931\(1\)\(d\)](#), the Contractor shall notify the Commissioner of the Department of Education in the same manner as above. If the agency is an educational entity listed under [KRS 61.931\(1\)\(e\)](#), the Contractor shall notify the Council on Postsecondary Education in the same manner as above. Notification shall be in writing on a form developed by the Commonwealth Office of Technology.

The Contractor hereby agrees that the Commonwealth may withhold payment(s) owed to the Contractor for any violation of the Identity Theft Prevention Reporting Requirements.

The Contractor hereby agrees to undertake a prompt and reasonable investigation of any breach as required by [KRS 61.933](#).

Upon conclusion of an investigation of a security breach of Personal Information as required by [KRS 61.933](#), the Contractor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

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In accordance with [KRS 61.932\(2\)\(a\)](#) the Contractor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth Office of Technology:

<http://technology.ky.gov/ciso/Pages/InformationSecurityPolicies,StandardsandProcedures.aspx>

11.01.14-Staffing

Any individual providing services under this Contract must not be included on any formal registry or listing that is required by law and which relates to abuse, neglect, sexual offenses, or other inappropriate practices or which, in any way, prohibits their employment for or performance of the services required herein, including but not limited to the nurse aid abuse registry and the Child Abuse Prevention and Treatment Act registry. In the event of any such listing or registration, the Contractor shall immediately notify CHFS.

Any individual providing services under this Contract must not be prohibited or debarred from providing services or participating in any state or federal governmental program, including but not limited to the Medicare and Medicaid programs. In the event of any such prohibition or debarment, the Contractor shall immediately notify CHFS.

11.02 Breach and Contract Termination

11.02.01 Remedies for Breach

It is agreed by the Parties that in the event of breach of contract by the Contractor, CHFS may pursue any remedy available to it pursuant to this Contract, or to the provisions of [KRS Chapter 45A](#), or any remedy that is available to it by law. The remedies available to CHFS may be invoked without regard to the existence of any other available remedy, and may include the enforcement of any holdback provision or payment of any specified liquidated damages by the Contractor to CHFS for noncompliance as provided for in this Contract.

11.02.02 Transition/Turnover

In the event CHFS requires a transition after a non-renewal or termination by either party, CHFS shall notify the Contractor at the same time CHFS serves notice of the non-renewal or termination, as the case may be.

Upon receipt of notice of termination of the Contract from CHFS, the Contractor shall provide any turnover assistance reasonably necessary to enable CHFS or its designee to effectively close out the Contract and move the work to another Contractor or to perform the work by itself.

The Contractor shall:

The Vendor shall, at no additional cost to the Department:

A. Provide detailed transition documents at no additional cost to CHFS.

B. Be responsible for the orderly transition of work and the accuracy of data in coordination with the new contractor. CHFS shall ensure the cooperation of the new contractor to facilitate a smooth transition.

C. Within ten (10) calendar days after written notification by CHFS of the initiation of transition, provide a detailed Transition Document. Upon receipt of the detailed Transition Document by CHFS, CHFS shall review the document and within fourteen (14) calendar days provide written instructions to the Contractor as to the packaging, documentation, delivery location, and delivery date of all records, as needed to provide orderly transition. If CHFS determines upon review that the Transition Document is missing necessary information, CHFS shall provide the Contractor written instructions as to the information that is still needed, and the Contractor shall amend the Transition Document to include the necessary information.

D. Deliver a full and complete accounting and report as of the date of termination about the status of services. This report shall be provided to CHFS within twenty-one (21) days of the effective date of termination.

E. Transfer all documents and records of every kind, including electronic, microfilm, paper, or otherwise, in their possession that pertain to this contract, including but not limited to, all those listed in the contract, within twenty-one (21) days of the effective date of termination. All documents shall be in a CHFS-approved format.

F. Provide reasonable and appropriate assistance to CHFS and its designee(s) regarding the contents of such documents and records, and shall provide reasonable and appropriate reference materials,

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including data models and file documentation. This assistance shall be provided to CHFS within twenty (20) days of the effective date of termination.

G. Pay any and all additional costs incurred by CHFS that are the result of the Contractor's failure to provide the requested records, documents, data or materials within the time frames agreed to in the Transition Document.

11.02.02.01-Data Conversion Plan

The Conversion Plan shall define the strategy, preparation, and specifications for converting data from the source system(s) to the target system(s). The Conversion Plan shall include any security or privacy considerations associated with the conversion, including but not limited to, compliance to regulations regarding standards for privacy, security, and individually identifiable health information, as identified in the HIPAA. The Contractor shall work with the CHFS to determine file format and transmission method.

11.02.02.02-Turn Over

The Contractor shall plan and implement a coordinated transfer of system data, licenses, and operations duties to another entity upon direction of CHFS. Knowledge transfer and turnover activities shall include, at a minimum:

- A. Standard policies, procedures, business processes, and organizational contacts necessary for day-to-day operations;
- B. Transfer of, and assistance on, all existing documentation;
- C. Conversion or migration of all work in progress; and,
- D. Data conversion and migration assistance.

11.03 Miscellaneous Provisions

11.03.01 Advertising Award Prohibition

The Contractor shall not refer to the Award of Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky.

11.03.02 Bankruptcy

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

- 1. Promptly cures all defaults under this Contract;
- 2. Promptly compensates the Commonwealth for the monetary damages incurred as a result of such default; and
- 3. Provides adequate assurance of future performance, as determined by the Commonwealth.

11.03.03 Code of Ethics

The Contractor and all professional personnel who may provide services under this contract or any subcontract with the Contractor shall be familiar with and abide by any and all code of ethics or conduct as designated by CHFS that have been established by a national or regional association and are generally recognized as being applicable. Failure of the Contractor to abide by the applicable code of ethics shall result in the immediate termination of the contract.

11.03.04 Notices and Pamphlets

All notices, employment, advertisements, information pamphlets, research reports, and similar public notices prepared and released by the Contractor, pursuant to this Contract, shall include a statement identifying the appropriate source of funds, for the project or service, including but not limited to, identifying whether the funding is in whole or in part from federal, CHFS, or other state funds.

11.03.05 Scientific Misconduct

The Contractor shall set out a procedure for the inquiry, investigation, appeal, and disposition of complaints alleging misconduct in activities involving any and all research projects funded, in whole or in part, with federal funds included in this Contract, and as authorized under the Public Health Services research grants. Such policies and procedures shall be in accordance with the provisions of 42 CFR Part 50 and [900 KAR 1:080](#), as amended, and shall be made available, upon request, to CHFS. The

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Contractor shall immediately report to CHFS any activity reported to the Contractor under these terms and conditions. Notice shall be sent in writing to the Department.

11.03.06 Intellectual Property

The Contractor agrees that any formulae, methodology, or other reports and compilations of data provided by the Department to the Contractor for the purposes of meeting the terms and conditions of this Contract shall be the exclusive property of CHFS, unless the specific ownership of any proposed or developed formulae, methodology, or other reports and compilations of data is otherwise identified in any Attachment(s). The Contractor further agrees that any formulae, methodology, other reports and compilations of data prepared or produced by the Contractor during the course of work pursuant to this Contract shall be made available to CHFS for the Cabinet’s use upon request and without charge. Any use of these materials other than for the purposes of meeting the terms and conditions of this Contract must be reviewed and approved in advance by CHFS.

If any of these materials are included in any publication, training materials, or presentations, or for any other type of release of this material other than for the purposes of meeting the terms and conditions of this Contract, appropriate credit for the funding source must be given. This provision shall be included in any subcontract, including contracting for staff, issued by the Contractor under this Contract.

Any proposed project under the scope of work for any of the Projects set forth under the Summary Line Item Section in this Contract shall include specific documentation and justification for titles of ownership as:

1. Patents;
2. Trademarks as proposed or registered with the U.S. Patent and Trademark Office; or
3. Copyrights proposed or certified with the Library of Congress, U.S. Copyright Office.

11.03.07 Certification Regarding Drug-Free Workplace

The Contractor hereby certifies that it will, or will continue to, provide a drug-free workplace in accordance with 2 CFR Part 182. The Contractor shall at a minimum:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited from the Contractor’s workplace and specifying actions that will be taken against employees for violation of such prohibition;
2. Establish an ongoing drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. The Contractor’s policy of maintaining a drug-free workplace;
 - c. Available drug counseling, rehabilitation, and employee assistance programs; and
 - d. The penalties that may be imposed upon employees for drug abuse violation.

11.03.08 Business Associate Agreement

Contractor shall comply with and execute the attached Business Associate Agreement (BAA) that is in accordance with HIPAA and outlines the requirements imposed by the Health Information Technology for Economic and Clinical Health (HITECH) Act, as enacted by the American Recovery and Reinvestment Act of 2009.

For the purposes of the Business Associate Agreement the following entities are defined:

Covered Entity:

Department for Public Health
275 East Main Street
Frankfort, KY 40621

Business Associate:

(To Be Determined)

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FEDERAL REQUIREMENTS

If federal funds are utilized, the Contractor is responsible for complying with all provisions of [2 CFR Part 200, Appendix II](#), regarding Contract provisions for non-federal entity Contracts under federal award.

The following terms shall apply:

12.00 Certain Provisions Contained Within 2 CFR, Part 200, Appendix II

12.00.01 Clean Air Act and Federal Water Pollution Control Act

Contractor and subcontractors shall agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, [42 U.S.C. 7401 et seq.](#), and the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251 et seq.](#) Violations shall be reported to the HHS and the appropriate Regional Office of the Environmental Protection Agency.

12.00.02 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, Lower Tier Covered Transactions

In accordance with [Federal Acquisition Regulation 52.209-5](#), the Contractor shall certify, by signing the Solicitation, that to the best of its knowledge and belief, the Contractor 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).

The Contractor shall be compliant with [2 CFR 180](#) at the time of award and throughout the contract period.

12.00.03 Certification of Lobbying Activities

Contractor shall disclose any lobbying activities in accordance with [Section 1352, Title 31, U.S. Code](#). The Contractor certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit [Standard Form-LLL](#), "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by [Section 1352, Title 31, U.S. Code](#). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

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ADDENDUM HISTORY
Addendum 1
July 9, 2021

This addendum is to answer vendor questions, and to modify Scope Of Work, Section 2.00, and CHFS STANDARD TERMS AND CONDITIONS FOR PERSONAL SERVICE CONTRACTS, section 11.01.10.

General:

Q1: When does the state intend to begin school testing?

A1: Start of 2021-2022 school year. Starting during the summer program is possible, providing that all necessary arrangements can be made.

Q2: Can you please describe the current state involvement in school testing and the current process? What parts of this are you desiring to maintain control over?

A2: There is no school testing program currently. The Department for Public Health (DPH) will offer guidance and published resources to assist in implementation. DPH staff will oversee expenditures to ensure they align with grant deliverables, allowable expenses, and state and federal procurement guidelines.

Q3: Is testing mandatory or optional?

A3: Optional.

Q4: Is there any sense that the Health and Human Services (HHS) National Strategy providing coordination HUBs for K-12 testing will usurp this effort?

A4: No.

Q4a: Is there is a connection between the national and state efforts or will they run in parallel?

A4a: No, they are efforts that will compliment, not duplicate efforts.

Q5: Is the govt. funding mentioned earlier coming from HHS? If not, what funding were you referring to?

A5: These funds are coming from HHS through Centers for Disease Control (CDC) and are supported through the American Rescue Plan Act of 2021.

Q6: If one vendor can meet the requirements in every county, will you consider a master vendor model?

A6: No.

Q7: What translation services / Limited English Proficiency (LEP) languages are required?

A7: Vendors should work with the schools to determine which translation services are needed for the student population.

Q8: Where can we get more information on the Health Level 7 (HL7) Lab formats, registrations formats, and drug administration formats?

A8: The information is located via the following links:

https://hl7-definition.caristix.com/v2/HL7v2.5.1/TriggerEvents/ORU_R01

https://hl7-definition.caristix.com/v2/HL7v2.5.1/TriggerEvents/OUL_R21

<https://khie.ky.gov/COVID-19/Pages/Reporting-Requirements-COVID-19.aspx>

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<https://khie.ky.gov/COVID-19/Pages/default.aspx>

<https://khie.ky.gov/COVID-19/Pages/Direct-Lab.aspx>

Q9: Where can we get more information on the Kentucky Health Information Exchange (KHIE)?

A9: Information is located here: <https://khie.ky.gov/Get-Started/Pages/default.aspx>

Q10: Is the vendor required to submit the "proof of registration with the Secretary Of State by a foreign entity" form prior to contract execution, or 14 days after bid opening, as mentioned in section 9.00 of the Personal Service Contract Standard Terms and Conditions?

A10: The vendor will not be marked as responsive until the proof of registration with the Secretary of State is submitted. The vendor should submit a copy of their certificate with their solicitation response.

The Test:

Q11: Who provides the tests - State or vendor?

A11: Vendor.

Q12: Administration: who will be responsible for the administration of each test to students? Teachers or outsourced medical teams?

A12: The vendor will be responsible for providing/ensuring/subcontracting staff to administer the test. Individuals must be trained and competent to administer the test.

Q13: Would you consider self-administered Food and Drug Administration (FDA) approved kits for specimen collection?

A13: Yes, provided that the vendor can ensure that direct observation of self-administered tests occurs to ensure that specimens are collected appropriately from the correct individual. It would not be permitted to submit specimens collected without direct observation by the vendor or subcontractor. Specimens must be collected on site, with the vendor or subcontractor directly observing collection in person.

Q14: Will you schedule for students, teachers, and staff one at a time or in batches?

A14: That is a decision the vendor will make.

Q15: Desired type of test?

Polymerase Chain Reaction (PCR) / Antigen?

Pooled vs. individual?

Saliva, Nasopharyngeal, Oropharyngeal, Anterior Nares?

A15: Any FDA authorized PCR or Antigen test is permissible. Pooled testing is not desirable.

Q16: Does a vendor have to provide antibody testing?

A16: No. The vendor should be providing diagnostic testing only, not antibody testing. Antibody testing is not permissible.

Q17: Is the approved testing method only Nasopharyngeal, or can we provide Nasal and Saliva testing as well?

A17: As long as the specimen source has been validated for use in an FDA authorized test, it is permissible.

Q18: Would a hybrid COVID-19 testing strategy be considered as follows?

1. Screen using Point of Care (POC) Antigen Test onsite offering:
 - Sample Type - Oral Lavage (Swab)

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- 97.5 Specificity and 100% Sensitivity.

2. If POC test is positive, reflex sample to PCR lab for confirmation.

A18: Yes.

Q19: The state wants a plan that includes rapid tests too? As the state has stockpiles of Binax NOW cards will those be provided at the school level by the state and awardees provide the testing of those?

A19: Any diagnostic, FDA authorized test, including rapid tests, are permissible. DPH no longer has reserves of BinaxNOW cards. Vendors interested in using BinaxNOW cards will have to purchase those from the manufacturer.

Q20: The RFP lists PCR testing. We use the Acccula Point of Care PCR test (Clinical Laboratory Improvement Amendments) CLIA Waived at our airport facility to deliver 30 minutes PCRs. This is a newer system but seems to be within the guidelines of the Request for Proposal (RFP) (FDA Authorized). This test is heavily preferred by most entities because the results are fast and accurate (some countries now refuse RT-PCRs and only want this PCR for travel). We also perform 15 minute antigen tests using the BD Veritor Plus System. These are all CLIA Waived tests that do not have an independent PCR validation study (this process is only used for high complexity labs- usually for RT-PCR). How do we meet the requirement of the RFP if our CLIA does not have this process available? Do we list as N/A?

A20: The vendor or lab must have CLIA license to be eligible. Vendors must perform all verification and validation studies required by FDA to ensure that results are accurate.

Q21: We have many CLIAs. As an operator that provides CLIA Waived testing, the certificates are issued by location. Would you like us to submit our airport one to show we have one or understand the process? If we are selected, we would apply for a mobile CLIA in KY using the Centers for Medicare & Medicaid Services (CMS) 116 form which is a simple process that usually only takes a day to issue.

A21: This would be acceptable as proof of CLIA.

Q22: If you require an RT-PCR (high complexity lab) will you accept a joint venture?

A22: The vendor is able to subcontract with labs that are able to perform an RT-PCR. Other test methods (antigen, rapid diagnostic tests, etc.) are also permissible.

Q23: Will a subcontractor's CLIA be acceptable if submitted by a prime vendor that provides testing services and subcontracts laboratory services?

A23: Yes.

Q24: Do you require the primary contractor to have a CLIA certification? We do not have a CLIA certification, but our laboratory partner does.

A24: The lab performing the testing is the entity that must have a CLIA certificate.

Q25: What if a Vendor can provide various types of PCR and Antigen at a significantly lower cost than the \$96 service fee listed within 2.30?

A25: DPH is reimbursing vendors at a rate of \$96 per test administered. It is up to the vendors to establish a fee scale with subcontractors.

Q26: Can you please elaborate more on the Five (5) Specimen assay validation study?

A26: Under Emergency Use Authorization for SARS- CoV2 by FDA, Labs are required to verify assays in-house prior to offering testing services. FDA Emergency Use Authorized (EUA) guidance asks for a minimum of 5 positive and 5 negative samples to be compared with another platform in-house that has already been verified or with another CLIA lab that has a verified EUA in place. This requirement is to comply with what FDA is already requiring.

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Q27: xxxxxx is a CHFS Recognized Lab providing PCR testing through the state contract for its Long Term Care Community utilizing The Yale School of Public Health SalivaDirect™ PCR testing which is approved and reimbursed under that contract, will SalivaDirect™ PCR testing be recognized and reimbursed under this contract?

A27: Yes.

Q28: To help us clarify. As the CDC states in its published guidelines for the BinaxNow Antigen test “When the pretest probability for receiving positive SARS-CoV-2 test results is elevated (e.g. for symptomatic persons or for persons with a known COVID-19 exposure) a negative antigen test result should be confirmed by Nucleic Acid Amplification Test (NAAT). Asymptomatic persons who receive a positive BinaxNOW antigen test result in a setting with a high risk for adverse consequences resulting from false-positive results (e.g. in long-term care facilities) should also receive confirmatory testing by NAAT (1;)” will symptomatic negatives tested with BinaxNow be followed by a PCR and will Asymptomatic Positives tested with BinaxNow be followed by a PCR as recommended by the CDC?

A28: Symptomatic individuals should not be attending school. However, unless information about symptom presence/absence is collected and communicated, there will be no way for public health agencies to recommend follow up testing for symptomatic individuals with negative test results. Asymptomatic individuals with positive results will be isolated per current guidelines. The decision to perform repeat testing by PCR should be made by the provider, the individual and the local public health agency. This is not something DPH will oversee. However, vendors and schools/districts, ideally would follow the testing algorithms developed by CDC.

Q29: To the comment earlier from Dr. Stack, “This is a screening test. If someone is symptomatic, they should go get their own test.”? I agree with this statement but wondering how KY envisions screening to work. Does it mean all students (who give consent) are tested once a week? Typically screening is done in small (5:1 or 10:1) or large pools (>10:1), which sounds undesirable. Of course, screening is possible through individual testing but it is exponentially more expensive and time-consuming for the school. For this reason, I assume that something different is meant by screening.

A29: Screening means to systematically and randomly test a portion of the asymptomatic, apparently healthy population, preferably at a standardized cadence. Screening does not include targeted testing of symptomatic individuals, however, if the vendor and the school/district wishes to also offer testing for symptomatic individuals, this would be permissible. However, the focus must be on surveillance testing and any testing of symptomatic individuals must follow infection control procedures to ensure that others are not exposed. Determination of who will be tested (percent of the population) and how often testing will occur will be established between the vendor and school/district.

Q30: Could you clarify how the CDC grant envisions screening tests to work with individual diagnostic tests?

A30: The purpose of this funding is to rapidly identify infected, asymptomatic individuals and isolate them while infectious to reduce transmission, protect the health of students and staff, and ensure that schools can safely operate. Without individual diagnostic tests, limited public health action can be taken and action that can be taken will be broader in scope. Identification of specific, infected individuals permits implementation of targeted and specific public health and infection control measures.

Q31: How quickly do you require the response time to be for clinicians to arrive to perform the PCR test?

A31: The decision of whether or not to perform a follow-up PCR test should be made between the individual/guardian, provider, and vendor. It is not required as part of this project that a follow up PCR test be completed. However, if it is desirable to perform a follow up PCR test, it should be performed within 48 hours of specimen collection of the first positive test.

Q32: Is pooling an acceptable proposal? If pooling is acceptable, please confirm if there are any requirements (EUA approval etc.).

A32: It is not desirable.

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Q33: Does the state require reflex testing with the pool? Reflex testing is an added benefit, also free through HHS, which gives individual results in addition to the pooled result.

A33: N/A

Q34: The government discourages pooled testing” runs contradictory to previous information that I received. For example, the federal government recently released \$10B in funding strictly for pooled testing in schools. This program in KY may not be using this funding, which is completely up them, but can you clarify where is that data coming from?

A34: Pooled testing has been encouraged by the federal government in multiple settings as the question above identifies. Earlier guidance provided to the state for this specific grant expressed a strong preference for individual, rather than pooled testing. This RFP was prepared based on this understanding. Contractors submitting proposals may include their rationale and plan for pooled testing, but this methodology is not currently included in the RFP scope of work.

Q35: Understanding pooled testing requiring a follow up test is not desirable, there is a modality of pooled testing in which samples are collected individually, pooled in lab, and then positive pools are de-convoluted and reflexed to individual. Each individual receives an individual result. Does this change the preference / opinion regarding pooled testing?

A35: Earlier guidance provided to the state for this specific grant expressed a strong preference for individual, rather than pooled testing. This RFP was prepared based on this understanding. Contractors submitting proposals may include their rationale and plan for pooled testing, but this methodology is not currently included in the RFP scope of work.

Q36: Are there requirements for turn-around time for the test results?

A36: Results should be available within 48 hours; 24 hours is preferable.

Q37: How will labs be reimbursed for the Rapid tests? If so, how will that be accomplished? Via an addendum to the RFP? What will the reimbursement be? Or will schools have to pay for those if they want them utilized?

A37: Labs will be reimbursed per specimen collected/test performed. Labs will submit an invoice to DPH for reimbursement. Reimbursement is \$96/test.

Q38: Regarding the Rapid tests, can labs submit validation from the manufacturers or do they have to submit validations they themselves carried out? Since they are done on site and not in a lab, it would seem that manufacturers' validation would be appropriate. Is that the case?

A38: If the rapid or any test is CLIA waived, they just need to use manufacturer instructions and perform controls with testing as instructed by manufacturer, and no additional data/ validation is needed. If the testing is not CLIA waived, even if it is a point of care test when the machine is ambulatory and taken from one site to another, they need to perform a validation and have it signed by their CLIA Director.

Q39: If a lab submits a PCR only proposal now, once these answers are obtained, may they amend their proposal or submit a completely new proposal at a later time?

A39: The test must be an approved CDC test; as long as this requirement is met, the type of test may be changed from what was initially submitted in the proposal; a new proposal is not required.

Volume Expected

Q40: Does Kentucky have an anticipation of how many schools will be needing testing? If so, how many do they anticipate?

A40: Any public or private K-12 school of a certain size is eligible to participate. However, participation is voluntary and DPH does not have an estimate of the number of districts/schools who will opt to participate in the program.

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Q41: Is there an estimate of the relative volume of the solicitation? For example, it references this will complement existing DPH and other testing providers. Is a specific volume / allocation expected towards this RFP?

A41: No, there is no specific volume of testing related to this effort.

Q42: Do you have an estimated # of tests/week and will there be minimums?

A42: No, there is no minimum testing per week. The number of tests/week will be established by the schools and vendors.

Q43: Turnaround times for resulting are critical in providing the School systems with time sensitive information to isolate and inform contacted individuals. With Labs in different areas of the State, 2, 3, & 4 hr drive times from collection to delivery at a particular lab is relevant to time of results being provided. Will contracted Labs be given a specific region to provide service based upon their proximity to County systems?

A43: No, schools will reach out to vendors they desire to partner with. It will be up to the vendor and school/district to establish that relationship.

Q44: Please provide an estimate of testing sites, frequency of testing and quantities if available.

A44: There is currently no estimate of testing sites, frequency of testing and quantities. This will be established by the vendor and school.

Q45: Will Kentucky be seeking to limit those who can be tested by means of an eligibility file? (e.g. these employees must register with their correct employee ID or else they will not be able to schedule)

A45: No- schools and vendor will determine how school staff should register.

School Sign Up

Q46: The RFP seems to indicate that individual schools will be allowed to sign up individually for a testing program. Can you confirm that is accurate? If so, will districts be encouraged to adopt uniform enrollment procedures and testing policies?

A46: Individual schools and districts will opt to participate or not. DPH will not have any oversight into the enrollment procedures or testing policies at the district/school level.

Q47: Will the list of vendors provided to the schools/districts include specifics about the testing modalities we can provide?

A47: It would be advisable for the vendors to create materials on the services they can provide. DPH would share any of those materials with the schools.

Q47a: How will schools choose which vendor they'd like to contract with?

A47a: Schools will review the services offered and make the decision based on which vendors are available in their areas and which services work best for their community.

Q48: Who at the schools will be deciding on which vendor to use? (1400-2000 schools are a lot of potential people to contact. It would be much more efficient if we could narrow down the key person in our county or the counties we desire to serve.)

A48: This is up to the school district and individual school and will likely vary from school to school. In some schools, the superintendent may decide for the entire district, in other schools, it may be different administrators.

Q49: Is onsite staffing required? If our program was easy enough to implement without the need of outside staff would you consider it?

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A49: It is not a requirement that testing be provided onsite at the school itself. Proposals for off-site testing are permitted, but properly trained personnel must either collect or directly observe the patient self-collection of the specimen.

Q50: Will the vendor need to provide tables and chairs at each location? Will schools provide them?

A50: Set up of testing sites, including tables/chairs, will be determined by the vendor in collaboration with the school/district.

Q51: Can you provide a list of participating public/private schools w/ addresses

A51: DPH will provide a list of vendors to schools interested in participating.

Q52: Would the schools be maintaining the account registrations for students/guardians?

A52: This will be decided between the vendor and the school.

Data

Q53: Is it ok to set up Kentucky Health Exchange Information/Department for Public Health/National Electronic Disease Surveillance (KHIE/DPH/NEDSS) to transmit the Lab data at the award time?

A53: Yes, however, this is typically a lengthy process and it is recommended to start the process as soon as the award is made. Ability to transmit data electronically is a requirement of participation and the lab must follow one of the three electronic data transmission methods established at KHIE beginning with the first round of testing.

Q54: On page 4 of the RFP, the state requires the vendor to submit a copy of "independent PCR validation study that includes at least five (5) specimen assays for COVID-19. Does providing the CLIA certificates for our labs and/or EUA negate this requirement?

A54: FDA requires in-house verification by labs prior to offering any SARS-CoV2 EUA assay. This is a requirement for all labs holding a CLIA certificate. The requirement of page 4 of the RFP to provide the evidence of verification study is to ensure that the CLIA lab on the RFP is conforming to the FDA requirement.

Q55: We provide CLIA waived testing in multiple states as a physician group Laboratory Information Systems (LIS) systems are lab specific. If we are able to electronically report to the State will that meet the requirements?

A55: The lab must be able to report: individual results to the individual/guardian tested; individual, line level results electronically through KHIE; and aggregated positive and negative results electronically through GenTrack.

Q56: HL7 is not standardly used in Electronically Medical Records (EMRs). It appears you have alternate ways to report. Can we use another method to electronically report to the State?

A56: KHIE has established 3 mechanisms to report data electronically: HL7 messaging, submission of a flat file; direct data entry. Any of those three are permissible.

Q57: Do you have any software today to facilitate ordering / reporting that we should be aware of that we would need to integrate with?

A57: All labs are required to report individual test data electronically via KHIE and aggregated test data electronically via GenTrack. There is no software to integrate with, but a connection with KHIE will need to be established.

Q58: Has the state recently discontinued its use of GenTrack for aggregate data?

A58: Use of GenTrack for aggregate long term care facility testing has been discontinued. However, GenTrack will be used to collect aggregate school testing data.

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Q59: Are vendors required to have an existing connection to KHIE?

A59: Yes, and must be in production in order to be evaluated for award.

Q60: Are there any specific kinds of equipment or connectively needed to connect to Kentucky Health Information Exchange (KHIE)?

A60: KHIE's technical infrastructure is vendor- and technology-neutral and the KHIE team will work with you, your technical team, and your vendor to determine connectivity options. The welcome package explains the basic connection and equipment. Information may be found here:
<https://khie.ky.gov/Get-Started/Documents/KHIE%20Menu%20of%20Services%20Welcome.pdf>

Q61: Is the Kentucky Health Information Exchange vendor and technology neutral?

A61: Yes

Q62: What are the security requirements for connecting to the KHIE system?

A62: Hypertext Transfer (or Transport) Protocols (HTTPS) and Secure Hash Algorithm 2 (SHA2)

Q63: How do we register to access the KHIE system?

A63: Complete the intake form ...<https://secure.kentucky.gov/formservices/KHIE/Intake>
 An outreach coordinator will engage with the potential client.

Q64: Does the KHIE system support out-of-state vendors?

A64: Yes

Q65: What is the target system for HL7 interface? Does the commonwealth provide support for this? Does the KHIE system want the HL7 message wrapped in Simple Object Access Protocol (SOAP) message?

A65: Lab messages can be submitted via [Secure File Transfer Protocol \(SFTP\)](#) (Flat file or HL7), Virtual Private Network (VPN), or Web Services connection the SOAP wrapper.

Q66: What do the fields references on page 6: Patient Medical Record Number, Placer Order Number, and Filler Order Number, represent? Please describe these in more detail and confirm the requirements.

A66: This information is located in the document named 'HL7 Implementation Guide Version 2.5.1: Electronic Laboratory Reporting to Public Health'

Q67: What are the requirements for the validation process for LIS system referenced on page 8, item D?

A67: This information is located in the document named 'HL7 Implementation Guide Version 2.5.1: Electronic Laboratory Reporting to Public Health'

Q68: What delivery methods are accepted/available by the DPH's "online portal" referenced on page 7? What is the delivery method and endpoint (portal or POC) for this information?

A68: Vendors are required to submit aggregated testing data weekly to GenTrack. Data will be due COB Monday for the previous week. Data will be manually entered by the vendor.

Reporting

Q69: May we collect the demographics of all students, teachers, and staff in the commonwealth to preload into our portal?

A69: This would not be permissible.

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Q70: In reference to this section (Provide DPH the following information for each school/school district contract within five (5) business days following execution: County Private/Public District/School Name: does execution refer to the awarding of the state contract or would the bidder need to perform outreach, onboard schools, then notify DPH of the new school within 5 business Days?

A70: Execution refers to the contract between the vendor and the school district.

Q71: How is resulting preferred? Directly to parents, to the parents and the school, contracted specifically as requested by the school district?

A71: Individual results (positive and negative) must be provided directly to the person/guardian of the person who was tested. Individual positive and negative results also must be transmitted electronically through KHIE. Aggregated positive and negative results must be reported in GenTrack.

Q72: For results: does the vendor have to call the students and staff to notify the results in addition to the KHIE system?

A72: The vendor must provide results to the individual or guardian of the individual tested. Mechanism of notification is for the vendor to determine with the school. However, it would be preferable for the individual or guardian to receive that information in a document (either electronic or paper copy) rather than only verbally.

Q73: Is the expected turnaround time for results 48hrs? 24hrs?

A73: 24 hours is preferable.

Procurement

Q74: On page 4 of the RFP, the state requires the vendor to fill out and submit the "short form application". Is this the form that is on page 1 of the RFP or is there a different form?

A74: Go to <https://eProcurement.ky.gov> . Click into the solicitation for RFP - 728 - 2100000308 and access the attachments tab, where you will find the Short Form application for this RFP.

Q75: Where in the RFP document does the vendor describe their program?

A75: In order for a contractor to qualify for the program, Qualifications listed in Section 3 of the RFP must be met. The contractor can upload a document listing proprietary information. Reference the Short Form, Transmittal Information point #1. .

Q76: Can you provide additional documentation if any that details when the RFP is due?

A76: This is an open-ended RFP. Vendors can submit a response at any time, up to the closing date listed in the RFP.

Q77: There are a couple of references on this RFP for a "vendor customer number". Can you clarify what that is for me?

How do I get a Kentucky Vendor #?

A77: The vendor customer number is a number assigned to vendors when they register to do business with the Commonwealth through the Vendor Self Service portal. Vendors that have done business with the Commonwealth in the past, will have an existing number. Vendor's that have not contracted with the Commonwealth previously can self-register online to receive a number. <https://emars311.ky.gov/webapp/vssprdonline3111d/AltSelfService>

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COVID-19 Testing Services for K-12 Schools

The Kentucky Vendor Self Service
 This site is best viewed with Firefox
 Customer Resource Center (C
 The Help Desk is open Monday

Guest Access

- View Solicitations
- View Catalog Items

User ID

Password

Login [Password Reset](#)

- Account Maintenance
- Respond to Solicitations
- View Financial Information

Register

- Create New Account
- Activate Vendor Account
- Add Location to Existing Account

Announcements

03/03/2021

We are currently experiencing issues with
 information for a specific payment please
 number preceded by 0000000. This is
 resolve this as soon possible and apologize

01/14/2021

ONLINE BID RESPONSES: Allow 24 -
 Service (VSS) account in order to submit
 Vendor in the VSS portal. The Customer
 same day. Closing dates will not be extended.

[View All Announcements](#)

Q78: Since the RFP document indicates the price is set at \$96.00; please indicate, what would be the criteria to award the contract?

A78: All vendors that meet the qualifications listed in Section 3 will be awarded the contract.

Q79: Please inform how many contracts are intended to be awarded.

A79: One multi-provider contract will be issued. All qualified vendors that meet the qualifications listed in Section 3 of the solicitation will be added to the contract.

Q80: Page 8 of the RFP, section 4.00 - "proposals will be accepted through the posting period". Is the posting period 7/15/2022?

A80: Yes. Vendors can submit proposals throughout the entire posting period.

Q81: Can we revise our application after it has been submitted, as long as it is before July 15th?

A81: The criteria for the award of the contract is to Pass/Fail each of the requirements listed in section 3 of the RFP, if you Fail, you will be notified by the Buyer of Record, and you will be able to re-submit with the qualified documentation. Responses will be accepted through July 15, 2022.

Q81a. Is it possible to add something later to the testing options?

A81a. The test must be an approved CDC test; as long as this requirement is met, the type of test may be changed from what was initially submitted in the proposal; a new proposal is not required.

Q82: What format should we add the cost proposal in?

A82: There is no cost proposal for this RFP. The rate is set by the Commonwealth.

Q83: Are you all open to other payment structures besides only inclusive per test fees, i.e. an additional program fee or similar fee plus per test fees?

A83: No.

Q84: The due date on the bid states 7/15/22. Is the due date a year from now or is it 7/15/21?

A84: Responses will be accepted through 7/15/22.

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Q85: Will invoices be sent to individual schools or to DPH as in RFP?

A85: Invoices for payment shall be submitted electronically via DPH's online portal.

Q86: Do we submit just the short form or everything listed on Page 4? Assume everything on pg. 4 needs to be submitted?

A86: Yes, everything on page 4 needs to be submitted. Section 8 of the RFP also lists the requirements of the application submission.

Additional Comment:

Information on GenTrack Reporting and Invoicing will be given to awarded vendors.

Endnotes

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**Personal Service Contract Standard Terms and Conditions
Revised January 2020**

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:

1.00 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, Government Contract Review Committee ("LRC"). 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.

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.

2.00 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.

3.00 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 (<https://apps.legislature.ky.gov/moreinfo/Contracts/homepage.html>) and would impact any contract established under KRS 45A.690 et seq., where applicable.

4.00 Choice of Law and Forum:

This contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Any action brought against the Commonwealth on the contract, including but not limited to actions either for breach of contract or for enforcement of the contract, shall be brought in Franklin Circuit Court, Franklin County, Kentucky in accordance with KRS 45A.245.

5.00 EEO Requirements:

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding \$500,000. The contractor shall comply with all terms and conditions of the Act.

6.00 Cancellation:

The Commonwealth 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.

7.00 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.

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8.00 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, the agreement will be reduced by the amount specified in that document. If the contract funding is reduced, then the scope of work related to the contract may also be reduced commensurate with the reduction in funding. This reduction of the scope shall be agreeable to both parties and shall not be considered a breach of contract.

9.00 Authorized to do Business in Kentucky:

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.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof.

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.

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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://onestop.ky.gov/Pages/default.aspx>

10.00 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 Section V of 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: <https://apps.legislature.ky.gov/moreinfo/Contracts/homepage.html>.

11.00 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 Commonwealth. The Contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by the Commonwealth.

12.00 Other expenses, if authorized herein:

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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 Commonwealth.

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 same if requested by the Commonwealth.

13.00 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 and if a firm, partnership, corporation, or other organization is involved, then "he/she" is construed to mean any person with an interest therein.

14.00 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 either any conflict of interest statute (KRS 45A.330-45A.340, 45A.990, 164.390), or KRS 11A.040 of the executive branch code of ethics, relating to the employment of former public servants.

15.00 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, 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 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.

16.00 Access to Records:

The state agency certifies that it is in compliance with the provisions of KRS 45A.695, "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The Contractor, as defined in KRS 45A.030, 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 agreement for the purpose of 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 bid process shall not be deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

17.00 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 vendors in connection with the solicitation or selection for award of a contract.

Any actual or prospective vendor, 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

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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:

Holly M. Johnson, 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 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.

18.00 Social security: (check one)

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

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

19.00 Violation of tax and employment laws:

KRS 45A.485 requires the Contractor and all subcontractors performing work under the contract to reveal to the Commonwealth, 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 corporate and utility tax, sales and use 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 Commonwealth 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 Commonwealth's cancellation of the contract and their disqualification from eligibility for future state contracts for a period of two (2) years.

Contractor must check one:

_____ The Contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

_____ The Contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). Attached is a list of such determination(s), which includes the KRS violated, the date of the final determination, and the state agency which issued the final determination.

20.00 Discrimination:

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This section applies only to contracts disbursing federal funds, in whole or part, when the terms 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:

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.

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.

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.

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.

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.

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.

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.