

# Commonwealth of Kentucky

## SOLICITATION

**TITLE:** Asbestos and Dioxin Testing for Water Samples

|                                  |                                                                                |                                               |
|----------------------------------|--------------------------------------------------------------------------------|-----------------------------------------------|
| <b>DATE ISSUED</b><br>2009-01-06 | <b>SOLICITATION CLOSES</b><br><b>Date:</b> 2009-01-28<br><b>Time:</b> 13:30:00 | <b>SOLICITATION NO.</b><br>RFB 758 0800003491 |
|----------------------------------|--------------------------------------------------------------------------------|-----------------------------------------------|

|                                                         |                                      |                                                               |                                                                                                 |
|---------------------------------------------------------|--------------------------------------|---------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| <b>I<br/>S<br/>S<br/>U<br/>E<br/>D<br/><br/>B<br/>Y</b> | Room 096 Capitol Annex<br>Jodyi Hall | <b>A<br/>D<br/>D<br/>R<br/>E<br/>S<br/>S<br/><br/>T<br/>O</b> | Please see the Terms and Conditions<br>For Information on where to submit<br>Your Bid/Proposal. |
|                                                         |                                      |                                                               |                                                                                                 |
| <b>V<br/>E<br/>N<br/>D<br/>O<br/>R</b>                  | <b>Name:</b>                         | <b>R<br/>E<br/>M<br/>I<br/>T<br/><br/>T<br/>O</b>             | <b>Name:</b>                                                                                    |
|                                                         | <b>Address:</b>                      |                                                               | <b>Address:</b>                                                                                 |
|                                                         | <b>City, State Zip Code:</b>         |                                                               | <b>City, State Zip Code:</b>                                                                    |
|                                                         | <b>Phone #:</b>                      |                                                               | <b>Phone #:</b>                                                                                 |
|                                                         | <b>Email Address:</b>                |                                                               | <b>Email Address:</b>                                                                           |
|                                                         | <b>Contact Name:</b>                 |                                                               | <b>Contact Name:</b>                                                                            |
|                                                         | <b>Contact Email:</b>                |                                                               | <b>Contact Email:</b>                                                                           |
|                                                         | <b>Vendor Customer (VC) #:</b>       |                                                               | <b>Vendor Customer (VC) #:</b>                                                                  |

**FOR INFORMATION CALL:**  
Jodyi Hall  
502-564-8625

**ONLINE BIDDING PROHIBITED**  
Yes

**OWNERSHIP TYPE:**  
☐ Sole Proprietorship   ☐ Partnership   ☐ Corporation

SIGNATURE OF AUTHORIZED AGENT IS REQUIRED UNLESS RESPONSE IS SUBMITTED ELECTRONICALLY

FAILURE TO SIGN SHALL RENDER THE BID INVALID.

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

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

Line Items

| Line Group: Default Commodity Group |                |          |          |            |           |                            |
|-------------------------------------|----------------|----------|----------|------------|-----------|----------------------------|
| Line                                | CL Description | Due Date | Quantity | Unit Issue | Unit Cost | Line Total Or Contract Amt |

1      Dioxin - Laboratory Analysis

| Comm Code | Comm Description                                                | Manufacturer | Model # | Man Part # |
|-----------|-----------------------------------------------------------------|--------------|---------|------------|
| 96148     | Laboratory and Field Testing<br>Services (Not Otherwise Classif |              |         |            |

Extended Description

Dioxin - Laboratory Analysis

Analysis Method: EPA 1613

All bidders must submit pricing for Dioxin analysis with each of the following reporting terms:

- 30 day TAT (Turn around time) with Standard Report      \$ \_\_\_\_\_ each
- 30 day TAT with Complete Report Package      \$ \_\_\_\_\_ each
- 3 day TAT with Standard Report      \$ \_\_\_\_\_ each
- 1 day TAT with Standard Report      \$ \_\_\_\_\_ each

All bidders must comply with the requirements stated in the Terms and Conditions (under "Scope of Work", "Special Terms and Conditions").

Delivery of all test results will be to Frankfort, KY 40601.

|                           |                                         |                                |                                         |
|---------------------------|-----------------------------------------|--------------------------------|-----------------------------------------|
| B<br>I<br>L<br><br>T<br>O | 220137                                  | S<br>H<br>I<br>P<br><br>T<br>O | 398626                                  |
|                           | VARIOUS                                 |                                | VARIOUS                                 |
|                           | SEE EXTENDED DESCRIPTION                |                                | SEE EXTENDED DESCRIPTION                |
|                           | FRANKFORT                      KY<br>US |                                | SEE BELOW                      KY<br>US |

| Line | CL Description | Due Date | Quantity | Unit Issue | Unit Cost | Line Total Or Contract Amt |
|------|----------------|----------|----------|------------|-----------|----------------------------|
|------|----------------|----------|----------|------------|-----------|----------------------------|

2      Asbestos - Laboratory Analysis

| Comm Code | Comm Description                                                | Manufacturer | Model # | Man Part # |
|-----------|-----------------------------------------------------------------|--------------|---------|------------|
| 96148     | Laboratory and Field Testing<br>Services (Not Otherwise Classif |              |         |            |

Extended Description

Asbestos - Laboratory Analysis

Analysis Method: EPA 100.1 or EPA 100.2

All bidders must submit pricing for Dioxin analysis with each of the following reporting terms:

- 30 day TAT (Turn around time) with Standard Report      \$ \_\_\_\_\_ each
- 30 day TAT with Complete Report Package      \$ \_\_\_\_\_ each

**Extended Description**

3 day TAT with Standard Report\$ \_\_\_\_\_ each

1 day TAT with Standard Report\$ \_\_\_\_\_ each

All bidders must comply with the requirements stated in the Terms and Conditions (under "Scope of Work", "Special Terms and Conditions").

Delivery of all test results will be to Frankfort, KY 40601.

|                           |                          |    |                                |                          |    |
|---------------------------|--------------------------|----|--------------------------------|--------------------------|----|
| B<br>I<br>L<br><br>T<br>O | 220137                   |    | S<br>H<br>I<br>P<br><br>T<br>O | 398626                   |    |
|                           | VARIOUS                  |    |                                | VARIOUS                  |    |
|                           | SEE EXTENDED DESCRIPTION |    |                                | SEE EXTENDED DESCRIPTION |    |
|                           | FRANKFORT                | KY |                                | SEE BELOW                | KY |
|                           | US                       |    |                                | US                       |    |

| Evaluation Criteria                                                                 |                      |        |                                                                                                                                       |
|-------------------------------------------------------------------------------------|----------------------|--------|---------------------------------------------------------------------------------------------------------------------------------------|
| The following criteria will be used when determining the award of this solicitation |                      |        |                                                                                                                                       |
| Code                                                                                | Criteria Description | Points | Vendor Response<br>(DO NOT LIST PRICES IN THIS SECTION. UNIT PRICES AND TOTAL PRICES MUST BE FILLED IN ADJACENT TO THEIR LINE ITEMS.) |

|  |                                                                    |   |
|--|--------------------------------------------------------------------|---|
|  | Can the Vendor meet the MANDATORY delivery schedule for reporting? | 0 |
|--|--------------------------------------------------------------------|---|

|       |                               |     |
|-------|-------------------------------|-----|
| PRICE | Lowest Bidder Receives Points | 100 |
|-------|-------------------------------|-----|

|            |                                |                                                                              |                     |
|------------|--------------------------------|------------------------------------------------------------------------------|---------------------|
| 0800003491 | <b>Document Phase</b><br>Final | <b>Document Description</b><br>Asbestos and Dioxin Testing for Water Samples | <b>Page 5 of 22</b> |
|------------|--------------------------------|------------------------------------------------------------------------------|---------------------|

**MODIFICATION-12/6/2009**

Modification to clarify testing methods required.

Dioxin - EPA Method 1613

Asbestos - EPA Method 100.1 or EPA 100.2

**NOTE TO VENDORS: Vendors must acknowledge ALL ADDENDA in the section provided for such in the Terms and Conditions, page 9 in each vendor's submitted bid package.**

## COMMONWEALTH OF KENTUCKY

FINANCE AND ADMINISTRATION CABINET  
Office of Procurement Services  
Capitol Annex  
702 CAPITOL AVE RM 096  
FRANKFORT KY 40601  
(502) 564-8625  
Fax: (502) 564-1434

Commonwealth Buyer: Jodyi Smith Hall  
Email: [jodyi.hall2@ky.gov](mailto:jodyi.hall2@ky.gov)

**SOLICITATION FOR THE ESTABLISHMENT OF A MASTER AGREEMENT FOR:**

### **WATER SAMPLE TESTING FOR DIOXIN AND ASBESTOS**

**Written Questions Due: January 21, 2009 1:30p**

**Solicitation Closes: January 28, 2009 1:30p**

**\*\*\*Please make note of new required form listed under "Registration for Sales and Use Tax" section below. This form is now required to be completed and submitted with every bid submission.**

Vendors are cautioned that changes made to the Solicitation other than in the designated fields for response shall render the response invalid and result in rejection of the bid. Any exceptions to the item description or extended description shall be indicated only in the space reserved for those exceptions.

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|------------|--------------------------------|------------------------------------------------------------------------------|-------------------------|
| 0800003491 | <b>Document Phase</b><br>Final | <b>Document Description</b><br>Asbestos and Dioxin Testing for Water Samples | <b>Page 6<br/>of 22</b> |
|------------|--------------------------------|------------------------------------------------------------------------------|-------------------------|

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

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

All bidders are cautioned to be aware of security in the Capitol Annex in Frankfort. In-person or courier delivered bids/proposals in response to a Commonwealth Solicitation should be delivered before the published closing. Delays due to building security checks shall not be justification for acceptance of a late bid or proposal. Vendor attention to this advisory is encouraged.

## **Solicitation Terms and Conditions**

### **Scope of Contract**

Federal Regulation (40 CFR 142.10 (b)(4)) requires that states have a State Principal Laboratory capable of analyzing every contaminant included in the drinking water regulations. The Commonwealth of Kentucky does not have the capacity to provide all analyses required and is therefore soliciting for EPA or KY certified laboratories willing and capable of providing Dioxin and/or Asbestos testing on water samples in accordance with EPA Drinking Water Regulations and Methods.

### **SPECIAL TERMS AND CONDITIONS OF THIS SOLICITATION:**

It is the intent of the Commonwealth of Kentucky to award from this solicitation "**By Line Item**".

**Laboratories bidding on this solicitation MUST meet ALL of the following at the time of solicitation and throughout any resulting contract period(s):**

**Must be certified by EPA to perform the analysis of the contaminant using at least one of the stated EPA approved methods.**

**Must provide any and all certification documentation requested by the Commonwealth.**

**Must retain all sample data necessary to reconstruct the reported results for a period of not less than 12 years.**

**Must contact the Commonwealth of Kentucky (prior to the actual action) if they intend to "go out of business" or merge with another laboratory.**

**Must be directly responsible to the Commonwealth of Kentucky for the contracted services.**

**Must perform the analyses in-house and are NOT permitted to sub-contract the analyses to another laboratory.**

**Must understand there is no guaranteed usage associated with any subsequent contract. Usage**

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|------------|--------------------------------|------------------------------------------------------------------------------|---------------------|
| 0800003491 | <b>Document Phase</b><br>Final | <b>Document Description</b><br>Asbestos and Dioxin Testing for Water Samples | <b>Page 7 of 22</b> |
|------------|--------------------------------|------------------------------------------------------------------------------|---------------------|

may actually be zero annually.

**Must be willing and able to meet the any or all of the delivery / reporting requirements in the event of usage.**

**Must be willing and able to provide comprehensive report packages as required for litigation purposes should the need arise.**

### **Purpose**

**The purpose of this Solicitation is to request Vendor responses in order to provide these items under Contract to the specified agency as needed.**

### **General**

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

### **Initial Contract Period**

The Contract established from this Solicitation shall be for the initial period of one (1) year from the date of award.

### **Renewal Clause – Optional Renewal Period**

This Contract may be extended at the completion of the initial Contract period for four (4) additional one-year periods. This extension must have the written approval of the Vendor and the Office of Procurement Services. If the Contract resulting from this Solicitation provides for an optional renewal period, the Commonwealth of Kentucky reserves the right to renegotiate any terms and/or conditions as may be necessary to meet requirements for the extended period. The Vendor will be advised of any proposed revisions prior to the renewal periods. In the event proposed revisions cannot be agreed upon, either party shall have the right to withdraw without prejudice from either exercising the option or continuing the contract in an extended period.

### **Basis of Price Revisions**

**PRICE ADJUSTMENTS:** Unless otherwise specified, the prices established by the Contract resulting from this Solicitation shall remain firm for the contract period subject to the following:

A: Price Increases: A price increase will not be allowed during the first twelve (12) months of the contract. Only one (1) price increase will be allowed during the Contract period. The price increase must be based on industry wide price changes. The Contract holder must request in writing a price increase at least thirty (30) days prior to the effective date, and shall provide firm proof that the price increase(s) is justified. The Office of Procurement Services may request additional information or justification. If the price increase is denied, the Contract holder may withdraw from the Contract without prejudice upon written

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|------------|--------------------------------|------------------------------------------------------------------------------|-------------------------|
| 0800003491 | <b>Document Phase</b><br>Final | <b>Document Description</b><br>Asbestos and Dioxin Testing for Water Samples | <b>Page 8<br/>of 22</b> |
|------------|--------------------------------|------------------------------------------------------------------------------|-------------------------|

notice and approval by the Office of Procurement Services. Provided, however, that the Vendor must continue service, at the Contract prices, until a new Contract can be established (usually within sixty (60) days).

B: Price Decreases: The Contract price shall be reduced to reflect any industry wide price decreases. The Contract holder is required to furnish the Office of Procurement Services with notice of any price decreases as soon as such decreases are available.

C: Extended Contract Periods: If the Contract provides for an optional renewal period, a price adjustment may be granted at the time the Contract is renewed, subject to price increase justification as required in Paragraph A "Price Increases" as stated above.

### **Exceptions to Specifications**

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

### **Alternate Brands/Specifications**

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

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

### **Registration for Sales and Use Tax**

In accordance with administrative regulation 200 KAR 5:390, any entity awarded a contract by the Commonwealth to provide goods or services subject to sales and use tax pursuant to KRS 139.200 and 139.310, shall - for the entity itself, and each affiliate as defined in KRS 45A.067 – perform the following:

- (1) For each entity and each affiliate, which is already registered to pay sales and use tax, submit a copy of the appropriate sales and use tax permit or a permit update form. Registered vendors should already have access to these forms; or
- (2) **For each entity and each affiliate, which is not already registered to pay sales and use tax,**

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|------------|--------------------------------|------------------------------------------------------------------------------|---------------------|
| 0800003491 | <b>Document Phase</b><br>Final | <b>Document Description</b><br>Asbestos and Dioxin Testing for Water Samples | <b>Page 9 of 22</b> |
|------------|--------------------------------|------------------------------------------------------------------------------|---------------------|

**submit a copy of Revenue Form 10A100, "Kentucky Tax Registration Application." This form is an attachment to this solicitation and is also located at:**

[http://eprocurement.ky.gov/NR/rdonlyres/6D54BB36-2773-4EA2-B68E-48F051111C28/0/10A100\\_0608.pdf](http://eprocurement.ky.gov/NR/rdonlyres/6D54BB36-2773-4EA2-B68E-48F051111C28/0/10A100_0608.pdf).

**Please include this information with your bid. This documentation must be submitted to the contracting agency.** The contracting agency will forward a copy of the paperwork to the Department of Revenue (DOR) and DOR will coordinate with the vendor as appropriate.

If an entity or affiliate is not registered but an application for registration has been made, any contract awarded to the person shall be conditional upon the registration process being completed. Failure to complete this process and become registered, or to remain registered and in compliance with the sales and use tax filing and remittance requirements of KRS 139.540 and KRS 139.550, throughout the duration of the contract shall constitute a material breach of the contract, with all legal consequences thereto.

### **Recycle Requirements**

Prospective bidders are required to comply with Recycle Requirements for the purchase of goods, supplies, equipment, materials and printing with a minimum recycled content to the extent practicable per 200 KAR 5:330.

### **Signing Solicitation**

An authorized representative shall complete and sign where indicated on the Solicitation sheet that is the front page of this Solicitation and elsewhere as identified in this Solicitation. FAILURE TO DO SO MAY RESULT IN A NON-RESPONSIVE BID/PROPOSAL.

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

It is the Vendor's responsibility to check the web site for any modifications to this Solicitation. If modifications to the solicitation have been made to add addenda, the Vendor's signature is required to acknowledge each addendum. The lines below are to be used to acknowledge all existing addenda. Each new addendum will be attached to the solicitation as a separate document in the attachments section. A modification reason for that addendum will be cited at the beginning of these terms and conditions for each. Acknowledgment shall be received prior to the hour and date of the solicitation's closing. Verbal acknowledgment shall not be accepted. Failure to acknowledge addenda may cause the bid to be deemed non-responsive.

Addendum # \_\_\_\_ dated \_\_\_\_\_ Signature \_\_\_\_\_

Addendum # \_\_\_\_ dated \_\_\_\_\_ Signature \_\_\_\_\_

Addendum # \_\_\_\_ dated \_\_\_\_\_ Signature \_\_\_\_\_

|                   |                                       |                                                                                 |                                |
|-------------------|---------------------------------------|---------------------------------------------------------------------------------|--------------------------------|
| <b>0800003491</b> | <b>Document Phase</b><br><b>Final</b> | <b>Document Description</b><br>Asbestos and Dioxin Testing for Water<br>Samples | <b>Page</b><br><b>10 of 22</b> |
|-------------------|---------------------------------------|---------------------------------------------------------------------------------|--------------------------------|

Addendum # \_\_\_\_\_ dated \_\_\_\_\_ Signature \_\_\_\_\_

### **Agencies to be Served**

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

Kentucky Department of Environmental Protection

### **Extending the Contract Use to Other Agencies**

The Office of Procurement Services reserves the right, with the consent of the Vendor, to offer the Master Agreement resulting from this Solicitation to other state agencies requiring the product(s) or service(s).

### **Solicitation Submission Requirements**

Vendors shall submit the bid response under sealed cover, which shall be received no later than the date and time indicated on the face of this Solicitation. Faxed and emailed bid responses shall not be accepted. Any bid proposal received after this date and time shall be rejected. Vendors should provide descriptive literature, catalogs, sample materials, and complete specifications covering the products offered. Bids not meeting this requirement may be considered non-responsive.

### **Responses shall be submitted to:**

Bid Clerk  
COMMONWEALTH OF KENTUCKY  
FINANCE AND ADMINISTRATION CABINET  
Office of Procurement Services  
Capitol Annex  
702 CAPITOL AVE RM 096  
FRANKFORT KY 40601

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

Name of solicitation  
Name of Vendor Submitting Bid  
Opening Date  
Solicitation Number

### **Written Questions**

All questions must be submitted in written form via email to the issuing buyer of record for this solicitation.  
**Written questions for this solicitation are due by: Jan 21, 2009 at 1:30pm.**

### **Firm Offer 60 days**

All offers submitted in response to this solicitation shall be valid for a minimum of 60 days from closing pending evaluation of offers received and any resulting award of Contract.

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|------------|--------------------------------|------------------------------------------------------------------------------|-------------------------|
| 0800003491 | <b>Document Phase</b><br>Final | <b>Document Description</b><br>Asbestos and Dioxin Testing for Water Samples | <b>Page</b><br>11 of 22 |
|------------|--------------------------------|------------------------------------------------------------------------------|-------------------------|

## Deliveries

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

## Method of Award

### Best Value – Ranking Approach

The Commonwealth intends to award a Contract to the Vendor or Vendors, whose offer(s), conforming to the Solicitation, is/are the most advantageous on the basis of "best value" for all products, services, and requirements contained herein. It is the intent of the Commonwealth of Kentucky to award from this solicitation "By Line Item".

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

### Measurable Criteria:

**Price 100 Points**

**TOTAL POINTS 100 Points**

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

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

#### Price (100 points)

The bidder with the lowest Price receives the maximum score. The bidder with the next lowest Price receives points by dividing the lowest Price by the next lowest price and multiplying that percentage by the available points. For example, 100 points is allocated to the lowest Price criteria for this procurement, Bidder "A" bids \$3.00 as the lowest bidder and receives the maximum 100 points ( $\$3.00 / \$3.00 = 1.00 \times 100 = 100$ ). Assume Bidder "B" is the next lowest bidder at \$4.00, then "B" receives 75 points ( $\$3.00 / \$4.00 = .75 \times 100 = 75$ ).

### Tax Exempt Status

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

### Vendor Terms and Conditions

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|------------|--------------------------------|------------------------------------------------------------------------------|-------------------------|
| 0800003491 | <b>Document Phase</b><br>Final | <b>Document Description</b><br>Asbestos and Dioxin Testing for Water Samples | <b>Page</b><br>12 of 22 |
|------------|--------------------------------|------------------------------------------------------------------------------|-------------------------|

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

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

### **Post Contract Agreements**

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

### **Equipment / Condition**

Unless otherwise indicated in the bid, it is understood and agreed that any item offered or shipped on this bid shall be new and the latest or current year model and be in first class condition. Any unit failing to meet the foregoing requirements shall be returned to the contractor, at their expense, and replaced with a new unit. The Commonwealth recognized the rapid advancement of technology. If the bidder can provide new equipment of advanced technology after the award of the Contract, the Commonwealth and the bidder may choose, by mutual agreement, to install such equipment. The price of the new technology equipment cannot exceed the cost of the award Contract.

### **Quantity Basis of Contract – Estimated Quantities**

Any and all quantities mentioned in this Solicitation are purely estimates, and are not to be implied nor inferred as being guarantees. The State is obligated to buy only that quantity needed by its agencies during the term of the contract. Requirements may exceed the quantities shown and the contractor will be required to furnish all requirements shown on Delivery Orders dated during the life of the contract.

### **FOB Basis of Shipment – Vendor Responsible**

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

### **Cancellation Clause – 30 Days Notice**

The Commonwealth may cancel the contract established from this Solicitation by giving written notice thirty (30) days prior to effective cancellation date. In the event such action is taken, the contract shall be

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|------------|---------------------------------------|------------------------------------------------------------------------------|--------------------------------|
| 0800003491 | <b>Document Phase</b><br><b>Final</b> | <b>Document Description</b><br>Asbestos and Dioxin Testing for Water Samples | <b>Page</b><br><b>13 of 22</b> |
|------------|---------------------------------------|------------------------------------------------------------------------------|--------------------------------|

null and void upon receipt of a Modification from the Office of Procurement Services canceling the contract.

### **Exception to Required Use of Contract**

The establishment of this Master Agreement is not intended to preclude the use of similar products when requested by the agency. The Commonwealth of Kentucky reserves the right to contract for large requirements by using a separate solicitation.

### **Service Performance**

All services performed under contract shall be in accordance with the terms and provisions of the contract. It will be the agency's responsibility to ensure that such services rendered are performed and are acceptable.

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

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

### **Addition or Deletion of Items or Services**

The Office of Procurement Services reserves the right to add new and similar items, with the consent of the Vendor, to any contract awarded from this Solicitation. The Office of Procurement Services to effect this change will issue a Contract Modification. Until such time as the Vendor receives a Modification, the Vendor shall not accept Delivery Orders from any agency referencing such items or services.

### **Agreement Between Parties**

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

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

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

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|------------|--------------------------------|------------------------------------------------------------------------------|-------------------------|
| 0800003491 | <b>Document Phase</b><br>Final | <b>Document Description</b><br>Asbestos and Dioxin Testing for Water Samples | <b>Page</b><br>14 of 22 |
|------------|--------------------------------|------------------------------------------------------------------------------|-------------------------|

### Governmental Restrictions

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

### Payments

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

### Inspection

All supplies, equipment and services shall be subject to inspection or tests by the Commonwealth prior to acceptance. In the event supplies, equipment or services are defective in material or workmanship or otherwise not in conformity with specified requirements, the Commonwealth shall have the right to reject the items or services or require acceptable correction at the Vendor's expense.

### Sole Point of Contact- Commonwealth Buyer

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

Jodyi Smith Hall, CPPB  
COMMONWEALTH OF KENTUCKY  
FINANCE AND ADMINISTRATION CABINET  
Office of Procurement Services  
Capitol Annex  
702 CAPITOL AVE RM 096  
FRANKFORT KY 40601  
(502) 564-8625  
Fax: (502) 696-1979  
[jodyi.hall2@ky.gov](mailto:jodyi.hall2@ky.gov)

### Restrictions on Communications

From the issue date of this Solicitation until a Contractor(s) is selected and the selection is announced, Offerors are not allowed to communicate with any Commonwealth Staff concerning this Solicitation except the Commonwealth Buyer cited in this Solicitation. All questions regarding this Solicitation MUST be submitted via email to the Commonwealth Buyer only.

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|-------------------|-------------------------------------------|--------------------------------------------------------------------------------------|------------------------------------|
| <b>0800003491</b> | <b>Document Phase</b><br><br><b>Final</b> | <b>Document Description</b><br><br>Asbestos and Dioxin Testing fo r Water<br>Samples | <b>Page</b><br><br><b>15 of 22</b> |
|-------------------|-------------------------------------------|--------------------------------------------------------------------------------------|------------------------------------|

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

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

### **Federal Tax Exempt Purchases by the Commonwealth of Kentucky**

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

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

### **Governing Law**

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

### **Protest**

Pursuant to KRS 45A.285, The Secretary of the Finance and Administration Cabinet, or his designee, shall have authority to determine protests and other controversies of actual or prospective Offerors in connection with the solicitations or selection for award of a contract.

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

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

The Secretary of Finance and Administration Cabinet shall promptly issue a decision in writing. A copy of

|                   |                                       |                                                                                  |                                |
|-------------------|---------------------------------------|----------------------------------------------------------------------------------|--------------------------------|
| <b>0800003491</b> | <b>Document Phase</b><br><b>Final</b> | <b>Document Description</b><br>Asbestos and Dioxin Testing fo r Water<br>Samples | <b>Page</b><br><b>16 of 22</b> |
|-------------------|---------------------------------------|----------------------------------------------------------------------------------|--------------------------------|

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.

### **General Conditions**

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

ALL PROVISIONS OF THIS SOLICITATION SHALL BE PART OF ANY RESULTING CONTRACT.

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|------------|--------------------------------|---------------------------------------------------------------------------------|-------------------------|
| 0800003491 | <b>Document Phase</b><br>Final | <b>Document Description</b><br>Asbestos and Dioxin Testing for Water<br>Samples | <b>Page</b><br>17 of 22 |
|------------|--------------------------------|---------------------------------------------------------------------------------|-------------------------|

Solicitation #: \_\_\_\_\_

# **REQUIRED AFFIDAVIT FOR BIDDERS OR OFFERORS**

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

I have fully informed myself regarding the accuracy of the statements made above.

\_\_\_\_\_  
SIGNATURE

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

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

Address \_\_\_\_\_

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

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

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|-------------------|---------------------------------------|----------------------------------------------------------------------------------|--------------------------------|
| <b>0800003491</b> | <b>Document Phase</b><br><b>Final</b> | <b>Document Description</b><br>Asbestos and Dioxin Testing fo r Water<br>Samples | <b>Page</b><br><b>18 of 22</b> |
|-------------------|---------------------------------------|----------------------------------------------------------------------------------|--------------------------------|

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

[*seal of notary*]

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

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|------------|--------------------------------|---------------------------------------------------------------------------------|-------------------------|
| 0800003491 | <b>Document Phase</b><br>Final | <b>Document Description</b><br>Asbestos and Dioxin Testing for Water<br>Samples | <b>Page</b><br>19 of 22 |
|------------|--------------------------------|---------------------------------------------------------------------------------|-------------------------|

Rev. (12-06)

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**\*\*\* CURRENT OR FORMER STATE EMPLOYEE SEEKING \*\*\***  
**\*\*\* TO DO BUSINESS WITH THE STATE? \*\*\***  
**\* YOU SHOULD KNOW ABOUT THESE LAWS. \***

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

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

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

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

KRS 11A.040(4) provides:

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

(a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or

(b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or

(c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises; or

(d) Purchases from a state agency that are available on the same terms to the general public or that are made at public auction; or

(e) Sales of craft items to a state park by interim state employees designated as craftspeople

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|------------|--------------------------------|------------------------------------------------------------------------------|-------------------------|
| 0800003491 | <b>Document Phase</b><br>Final | <b>Document Description</b><br>Asbestos and Dioxin Testing for Water Samples | <b>Page</b><br>20 of 22 |
|------------|--------------------------------|------------------------------------------------------------------------------|-------------------------|

under KRS 148.257.

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

KRS 11A.040(6) provides:

(6) A former officer or public servant listed in KRS 11A.010(9)(a) to (g) shall not, within six (6) months of termination of his employment, knowingly by himself or through any business in which he owns or controls an interest of at least five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he was employed. This provision shall not apply to a contract, purchase, or good faith negotiation made under KRS Chapter 416 relating to eminent domain or to agreements that may directly or indirectly involve public funds disbursed through entitlement programs. This provision shall not apply to purchases from a state agency that are available on the same terms to the general public or that are made at public auction. This provision shall not apply to former officers of the Department of Public Advocacy whose continued representation of clients is necessary in order to prevent an adverse effect on the client.

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

KRS 11A.040(7) provides:

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

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

KRS 11A.040(8) provides:

(8) A former public servant shall not act as a lobbyist or lobbyist's principal in matters in which

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|------------|--------------------------------|---------------------------------------------------------------------------------|-------------------------|
| 0800003491 | <b>Document Phase</b><br>Final | <b>Document Description</b><br>Asbestos and Dioxin Testing for Water<br>Samples | <b>Page</b><br>21 of 22 |
|------------|--------------------------------|---------------------------------------------------------------------------------|-------------------------|

he was directly involved during the last thirty-six (36) months of his tenure for a period of one (1) year after the latter of:

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

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

KRS 11A.040(9) provides:

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

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

#### \*\*\* DEFINITIONS \*\*\*

"PUBLIC SERVANT" means:

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

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

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|------------|--------------------------------|---------------------------------------------------------------------------------|----------------------------|
| 0800003491 | <b>Document Phase</b><br>Final | <b>Document Description</b><br>Asbestos and Dioxin Testing for Water<br>Samples | <b>Page</b><br>22 of<br>22 |
|------------|--------------------------------|---------------------------------------------------------------------------------|----------------------------|

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

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

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

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

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

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

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

Prepared by the  
EXECUTIVE BRANCH ETHICS COMMISSION  
December 2006