



# Commonwealth of Kentucky CONTRACT

**DOC ID NUMBER:**

PON2 540 2400001180

Version: 1

Record Date:

Document Description: Executive Search Firm, KY Dept of Education Commissioner

Cited Authority: FAP111-43-00-STD  
Personal Services Contracts-Standard

Reason for Modification:

**Issuer Contact:**Name: Raven Miller  
Phone: 502-564-1979  
E-mail: raven.miller@education.ky.gov**Vendor Name:**

McPherson &amp; Jacobson, L.L.C.

11725 Arbor St.

Omaha NE 68144

**Vendor No.**

KS0020324

**Vendor Contact**Name: Norman Ridder  
Phone: 4029917031  
Email: mail@macnjake.com**Effective From:** 12/05/2023**Effective To:** 06/30/2024

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
1		0.00000		Executive Search Firm Services	\$0.000000	\$42,000.00	\$42,000.00

**Extended Description:**

Contractor will locate and identify individuals who are qualified to be candidates for the position of Commissioner of Education for the Commonwealth.

**Effective From:** 12/05/2023**Effective To:** 06/30/2024

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
2		0.00000		Travel Expenses, Search Firm	\$0.000000	\$4,000.00	\$4,000.00

**Extended Description:**

Travel Expenses, Search Firm - not to exceed \$4,000.

Cost for all search firm travel expenses including but not limited to airfare, lodging, meals, parking, and rental car.

**Effective From:** 12/05/2023**Effective To:** 06/30/2024

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract	Total Price
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						Amount	
3		0.00000		Travel Expenses, Candidate(s)	\$0.000000	\$5,000.00	\$5,000.00

**Extended Description:**

Travel Expenses, Candidate(s) - not to exceed \$1,000 per candidate.

The actual number of candidates chosen for an interview will be determined at a later date. Travel expenses for all candidates include but are not limited to airfare, lodging, meals, parking, and rental car.

**Effective From:** 12/05/2023

**Effective To:** 06/30/2024

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
4		0.00000		Background Check	\$0.000000	\$1,250.00	\$1,250.00

**Extended Description:**

Background Check - not to exceed \$250 per candidate.

Each candidate selected for interview, including but not limited to criminal history, employment history, and public controversies.

**Effective From:** 12/05/2023

**Effective To:** 06/30/2024

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
5		0.00000		Advertising and Marketing	\$0.000000	\$2,500.00	\$2,500.00

**Extended Description:**

Advertising and Marketing not to exceed \$2,500.

**Effective From:** 12/05/2023

**Effective To:** 06/30/2024

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
6		0.00000		Optional Negotiated Services	\$0.000000	\$10,500.00	\$10,500.00

**Extended Description:**

Optional Negotiated Services:

Attending Candidate Interviews - not to exceed \$1,500 per day, per consultant.

Creating a Brochure for the Vacancy - \$250 for two-page brochure and \$500 for a four-page brochure. The fees will be waived by Contractor if the information for the brochure is provided to the Contractor no later than three weeks prior to the closing date for applications.

Assistance in Hiring the Selected Candidate - \$250 per hour, per consultant.

Additional Advertising and Marketing - not to exceed \$500 per venue/publication.

Shipping Information:	Billing Information:
KDE - Division of Financial Management 300 Sower Blvd, 5th Floor, CSW  Frankfort KY 40601	KDE - Division of Financial Management 300 Sower Blvd, 5th Floor, CSW  Frankfort KY 40601

<b>TOTAL CONTRACT AMOUNT:</b>	<b>\$65,250.00</b>
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PERSONAL SERVICE CONTRACT FOR

Executive Search Firm, KY Dept. of Education Commissioner

BETWEEN

THE COMMONWEALTH OF KENTUCKY

KENTUCKY DEPARTMENT OF EDUCATION

AND

McPherson & Jacobson, LLC  
11725 Arbor St., Suite 220  
Omaha, NE 68144

This Personal Service Contract (PSC) is entered into, by and between the Commonwealth of Kentucky, Kentucky Department of Education (KDE) (“the Commonwealth”) and McPherson & Jacobson, LLC (“the Contractor”) to establish a contract for Executive Search Firm, KY Dept. of Education Commissioner. The initial PSC is effective from December 5, 2023, through June 30, 2024.

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

**This PSC is effective 12/05/2023 and expires 06/30/2024.**

RFP 540 2400000109

INITIAL CONTRACT: PON2 540 2400001180 – 12/05/2023-6/30/2024

The Commonwealth and Contractor agree to the following:

**I. Scope of Contract**

Contractor will locate and identify individuals who are qualified to be candidates for the position of Commissioner of Education for the Commonwealth.

Services to be provided by the Contractor shall include, but are not limited to:

1. Identify potential candidates in accordance with criteria established by the Kentucky Board of Education (KBE).
2. Assimilating, reviewing and screening candidate submission for qualifications and eligibility.
3. Meeting and/or consulting with the KBE to select candidates for interview;
4. Conduct detailed background checks on each candidate selected for interview, including but not limited to criminal history, employment history, and public controversies.
5. Work with the KBE through the interview process; coordinating and scheduling candidate interviews; and preparing written recommendations and evaluations for each candidate.

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Prior to the Contractor beginning its search, the vendor will work with KBE Members to define desired profiles and qualifications of candidates.

The Commonwealth anticipates a selection of a candidate for Commissioner no later than June 1, 2024.

## **II. 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. Any written Agreement between the Parties.
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.

## **III. Negotiated Items**

The Commonwealth reserves the right to utilize any optional services as determined necessary by the Commonwealth in its sole discretion.

### **Attending Candidate Interviews**

Upon request from the Commonwealth, Contractor's consultants will attend the candidate interview sessions for an additional fee not to exceed \$1,500 per day, per consultant.

### **Creating a Brochure for the Vacancy**

Upon request from the Commonwealth, Contractor will prepare a full-color two or four-page brochure to advertise the vacancy. The fees are \$250 for a two-page brochure and \$500 for a four-page brochure. These fees will be waived by Contractor if the information for the brochure is provided to the Contractor by the Commonwealth no later than three weeks prior to the closing date for applications. Any requested brochure will be posted on the Contractor's website and will be provided to the Commonwealth for posting on its website and social media. The brochure will be emailed to all of the Contractor's consultants requesting leads for candidates and sent to the applicants registered with Contractor to receive notifications of openings.

### **Personality/Strengths Assessments Option**

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Upon request from the Commonwealth, Contractor will obtain and provide personality strength tests for identified candidates utilizing the Birkman International Signature Reports. The fee for this service shall not exceed \$700 per identified candidate.

#### **Assistance in Hiring the Selected Candidate**

Upon request from the Commonwealth, Contractor will provide assistance in the hiring of a selected candidate, including assisting the board in revising and updating the Commissioner of Education job description, assisting the board in developing an effective contract with the selected candidate/finalist, and providing assistance in negotiating the contract with the selected candidate/finalist. The fee is \$250 per hour, per consultant.

#### **Advertising and Marketing**

In the event the Commonwealth requests advertising and marketing of the position in venues/publications beyond those included in the Contractor's proposal, Contractor will provide such additional advertising and marketing of the positions in the venues/publications identified by the Commonwealth for the direct fee charged by the venue/publication, not to exceed \$500 per venue/publication.

#### **Retention Guarantee**

If the selected candidate leaves the position, for whatever reason, within the two (2) year guarantee period, Contractor agrees to repeat the process set forth in this contract at no additional charge except for actual travel expenses for the Contractor and candidates, background check fees, and actual expenses for advertising/marketing.

#### **IV. Pricing**

The total contract shall not exceed \$65,250 FY24.

Executive Search Firm Services - not to exceed \$42,000.

Travel Expenses, Search Firm - not to exceed \$4,000.

Cost for all search firm travel expenses including but not limited to airfare, lodging, meals, parking, and rental car.

Travel Expenses, Candidate(s) - not to exceed \$1,000 per candidate.

The actual number of candidates chosen for an interview will be determined at a later date.

Travel expenses for all candidates include but are not limited to airfare, lodging, meals, parking, and rental car.

Background Check - not to exceed \$250 per candidate.

Each candidate selected for interview, including but not limited to criminal history, employment history, and public controversies. The actual number of background checks will be determined at a later date.

Advertising and Marketing - not to exceed \$2,500.

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**Optional Negotiated Services:**

Attending Candidate Interviews - not to exceed \$1,500 per day, per consultant.

Creating a Brochure for the Vacancy - \$250 for two-page brochure and \$500 for a four-page brochure. The fees will be waived by Contractor if the information for the brochure is provided to the Contractor no later than three weeks prior to the closing date for applications.

Assistance in Hiring the Selected Candidate - \$250 per hour, per consultant.

Additional Advertising and Marketing – not to exceed \$500 per venue/publication.

**V. Invoicing**

The Contractor should submit invoices setting forth the hours worked and the expenses for which reimbursement is sought on a monthly basis.

Either original or certified copies of receipts must be submitted for all travel and other expenses.

**Kentucky Department of Education  
Terms and Conditions for PSC**

**Requirement for Reporting to Kentucky Teachers Retirement System**

Please note that, if any bidder to this solicitation is a current retiree of the Kentucky Teachers Retirement System (“KTRS”), or proposes to use a current or potential retiree of KTRS to perform any work under any contract, this may have an adverse impact upon retirement benefits for that retiree. This would occur, regardless of whether a contract is awarded to the individual directly, or to another legal entity for which the individual works.

Accordingly, if a potential bidder proposes to use such individuals to perform the work, the bidder is strongly encouraged to check with KTRS to determine what requirements apply, before submitting a response. The KTRS help desk number is 800-618-1687.

Furthermore, as a condition of any successful contract award, any information on such retirees (as defined and required by KTRS) must be submitted prior to any services being performed by said individuals under this contract.

As a firm condition of this contract, any contractor agrees to be financially responsible for any failure by such current or potential retirees to properly report information concerning their retirement status during the life of any contract awarded.

**Family Educational Rights and Privacy Act**

If during the course of this agreement, KDE discloses to the contractor any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended, and its regulations,

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and data protected by the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq) (NSLA) and Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.)(CNA) the contractor is bound by the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA and will enter into a confidentiality agreement and ensure its employees and contractors execute affidavits of nondisclosure as required by KDE.

### **Data Security and Breach Protocols**

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, et seq., (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.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

An account number, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;

A Social Security number;

A taxpayer identification number that incorporates a Social Security number;

A driver's license number, state identification card number or other individual identification number issued by an agency;

A passport number or other identification number issued by the United States government; or

Individually identifiable health information as defined in 45 C.F.R. sec. 160.013, except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" means "any person or entity that has a contract or agreement with the Commonwealth and receives (accesses, collects or maintains) personal information from the Commonwealth pursuant to the contract or agreement."

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, the Kentucky Attorney General, 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

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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 to report, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site

to my immediate supervisor, Associate Commissioner, and

to the KDE Office for whom I perform work under the contract with KDE.

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.

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:

[Security Policies, Standards and Procedures - Commonwealth Office of Technology \(Kentucky\)](#)

### **Student Data Security**

Pursuant to KRS 365.734 (House Bill 232 (2014)), if contractor is a known cloud computing service provider (as defined in KRS 365.734(1)(b) as “any person or entity other than an educational institution that operates cloud computing services”), or, through service to agency, becomes the equivalent of a cloud computing service provider, contractor does further agree that:

Contractor shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the provider receives express permission from the student’s parent. The contractor shall work with the student’s school and district to determine the best method of collecting parental permission. KRS 365.734 defines “process” and “student data”.

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With a written agreement for educational research, contractor may assist an educational institution to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C.sec.1232g.

Pursuant to KRS 365.734, contractor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.

Pursuant to KRS 365.734, contractor shall not sell, disclose, or otherwise process student data for any commercial purpose.

Pursuant to KRS 365.734, contractor shall certify in writing to the agency that it will comply with KRS 365.734(2).

**KDE Terms on Discrimination**

The contractor agrees to comply with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504), and applicable federal regulations relating thereto set forth at 34 C.F.R. Part 104 prohibiting the exclusion of participation, denial of benefits, or discrimination of any qualified individual under any program or activity.

Vendor hereby warrants that the products or services to be provided under this contract comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194.1. Vendor further warrants that the products or services to be provided under this contract comply with existing federal standards established under Section 255 of the Federal Telecommunications Act of 1996 (47 U.S.C. § 255), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194.2, to the extent the vendor's products or services may be covered by that act. Vendor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention.

Vendor will use the W3C's Web Content Accessibility Guidelines (WCAG) 2.0 Levels A and AA and the Web Accessibility Initiative Accessible Rich Internet Applications Suite (WAI-ARIA) 1.0 for web content, which are incorporated by reference.

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**Personal Service Contract Standard Terms and Conditions  
Revised June 2023**

**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:

<https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=40424> 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: <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=44318>, the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within KRS 14A.1-070: <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=50474>

Businesses can register with the Secretary of State at:  
<https://www.sos.ky.gov/bus/business-filings/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  
Office of the Secretary  
200 Mero Street, 5th Floor  
Frankfort, KY 40622

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**

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.

Any exceptions to this stipulation require an attachment or exhibit that explicitly addresses, and provides a basis for, payment of second party's social security contributions by the state, pursuant to 42 U.S. Code, section 418.

#### **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 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. Disclosure of any violations is required prior to the award of any state contract and throughout the duration the contract.

Failure to disclose violations, shall be grounds for the Commonwealth's disqualification of a contractor or subcontractor from eligibility for future state contracts for a period of two (2) years.

To comply with KRS 45A.485, the Contractor and all subcontractors performing work under this contract shall report any such final determination(s) of any violation(s) within the previous five (5) years to the Commonwealth by providing a list of the following information regarding any violation(s): (1) specific KRS violated, (2) date of any final determination of a violation, and (3) state agency which issued the final determination.

A list of any disclosures made prior to award of a contract shall be attached to the contract. The Contractor affirms that it has not violated any of the provisions of the above statutes within the previous five (5) year period, aside from violations explicitly disclosed and attached to this contract. Contractor further affirms that it will (1) communicate the above KRS 45A.485 disclosure requirements to any subcontractors and (2) disclose any subcontractor violations it becomes aware of to the Commonwealth.

#### **20.00 Discrimination**

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,

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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.

**21.00 Bidder, Offeror, or Contractor Mandatory Representations Compliance with Commonwealth Law**

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The contractor represents that, pursuant to [KRS 45A.485](#), they and any subcontractor performing work under the contract will be in continuous compliance with the KRS chapters listed below and have revealed to the Commonwealth any violation determinations within the previous five (5) years:

- [KRS Chapter 136](#) (CORPORATION AND UTILITY TAXES)
- [KRS Chapter 139](#) (SALES AND USE TAXES)
- [KRS Chapter 141](#) (INCOME TAXES)
- [KRS Chapter 337](#) (WAGES AND HOURS)
- [KRS Chapter 338](#) (OCCUPATIONAL SAFETY AND HEALTH OF EMPLOYEES)
- [KRS Chapter 341](#) (UNEMPLOYMENT COMPENSATION)
- [KRS Chapter 342](#) (WORKERS' COMPENSATION)

#### **Boycott Provisions**

The contractor represents that, pursuant to [KRS 45A.607](#), they are not currently engaged in, and will not for the duration of the contract engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which Kentucky can enjoy open trade. **Note:** The term Boycott does not include actions taken for bona fide business or economic reasons, or actions specifically required by federal or state law.

#### **Lobbying Prohibitions**

The contractor represents that they, and any subcontractor performing work under the contract, have not violated the agency restrictions contained in [KRS 11A.236](#) during the previous ten (10) years, and pledges to abide by the restrictions set forth in such statute for the duration of the contract awarded.

The contractor further represents that, pursuant to [KRS 45A.328](#), they have not procured an original, subsequent, or similar contract while employing an executive agency lobbyist who was convicted of a crime related to the original, subsequent, or similar contract within five (5) years of the conviction of the lobbyist.

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VI. Approvals

This contract is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this contract and that they accept and consent to be bound by the terms and conditions stated herein. In addition, the parties agree that (i) electronic approvals may serve as electronic signatures, and (ii) this contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single contract.

\_\_\_\_\_  
*Print Name and Title*

\_\_\_\_\_  
*Signature*  
 McPherson & Jacobson, LLC  
 11725 Arbor St., Suite 220  
 Omaha, NE 68144

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
 Karen Wirth, Director  
 Kentucky Department of Education  
 Division of Budget and Financial Management  
 300 Sower Boulevard 5<sup>th</sup> Floor, CSW  
 Frankfort, KY 40601

\_\_\_\_\_  
*Date*

**Approved as to form and legality:**  
**Approved in eMars**  
 Kentucky Department of Education Attorney