



Commonwealth of Kentucky

CONTRACT

IMPORTANT
Show Doc ID number on all packages, invoices and correspondence.

Doc Description: State Manager, Breathitt Co School District	
Doc ID No: PON2 540 1300001396 2	Procurement Folder: 2726403
Procurement Type: Personal Service Contract	
Administered By: Tom Stratton	Cited Authority: FAP111-09-00-12
Telephone: 502-564-2351	Issued By: Thomas Stratton

Reason For Modification: ADMINISTRATIVE MODIFICATION to correct commodity lines 1 and 3 accounting object codes. Changed from E150 to E363. No changes in scope of work or cost.

C O N T R A C T O R	Larry Hammond P. O. Box 245 Mt. Vernon KY 40456 US
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Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	Services FY2013		0.00		0.00000	101,500.00	101,500.00

Extended Description

This line is for FY2013
 Acct Temp: E7425 Fund: 0100 Function: D570 Sub-Function: 7425
 Contractor shall be paid \$700.00 per day for a maximum of 145 days during FY2013.

The State Manager shall act as the Commissioners designee in implementing the provisions of KRS 158.785(7) in Breathitt County School District. These responsibilities include the following:

The State Manager shall exercise all administrative, operational, financial, personnel, and instructional aspects of the management of the school district.

The State Manager shall facilitate the development and implementation of a district improvement plan that identifies the deficiencies and the corrective actions necessary to improve school district governance and administration in accordance with 702 KAR 3:205, Section 5.

The State Manager shall coordinate the submission of timely and accurate monthly reports to the Commissioner on the status of school improvement activities in the school district, in accordance with 702 KAR 3:205, Section 6.

In addition, the State Manager shall prepare a draft annual report by July 15 of each year, for the Commissioner submission to the State Board of Education, in accordance with KRS 158.785(8). The report shall focus on the status of school improvement activities in the school district for the most recently completed school year.

The State Manager shall also perform any other duties as assigned by the Commissioner to properly implement KRS 158.780, KRS 158.785 and 703 KAR 3:205.

Extended Description

B I L L T O	339005 KDE FINANCIAL MGT 500 MERO ST FRANKFORT KY 40601 US	S H I P T O	339005 KDE FINANCIAL MGT 500 MERO ST FRANKFORT KY 40601 US
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Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
2	Housing, Travel, Other FY2013		0.00		0.00000	10,500.00	10,500.00

Extended Description

This line is for FY2013
 Acct Temp: E7425 Fund: 0100 Function: D570 Sub-Function: 7425
 Contractor shall be reimbursed up to \$1,500.00 per month for housing, travel, and other expenses.

B I L L T O	339005 KDE FINANCIAL MGT 500 MERO ST FRANKFORT KY 40601 US	S H I P T O	339005 KDE FINANCIAL MGT 500 MERO ST FRANKFORT KY 40601 US
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Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
3	Services FY2014		0.00		0.00000	182,000.00	182,000.00

Extended Description

This line is for FY2014
 Acct Temp: E7425 Fund: 0100 Function: D570 Sub-Function: 7425
 Contractor shall be paid \$700.00 per day for a maximum of 260 days during FY2014.

The State Manager shall act as the Commissioners designee in implementing the provisions of KRS 158.785(7) in Breathitt County School District. These responsibilities include the following:

The State Manager shall exercise all administrative, operational, financial, personnel, and instructional aspects of the management of the school district.

The State Manager shall facilitate the development and implementation of a district improvement plan that identifies the deficiencies and the corrective actions necessary to improve school district governance and administration in accordance with 702 KAR 3:205, Section 5.

The State Manager shall coordinate the submission of timely and accurate monthly reports to the Commissioner on the status of school improvement activities in the school district, in accordance with 702 KAR 3:205, Section 6.

In addition, the State Manager shall prepare a draft annual report by July 15 of each year, for the Commissioner submission to the State Board of Education, in accordance with KRS 158.785(8). The report shall focus on the status of school improvement activities in the school district for the most recently completed school year.

Extended Description

The State Manager shall also perform any other duties as assigned by the Commissioner to properly implement KRS 158.780, KRS 158.785 and 703 KAR 3:205.

B I L L T O	339005 KDE FINANCIAL MGT 500 MERO ST FRANKFORT KY 40601 US	S H I P T O	339005 KDE FINANCIAL MGT 500 MERO ST FRANKFORT KY 40601 US
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Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
4	Housing, Travel, Other FY2014		0.00		0.00000	18,000.00	18,000.00

Extended Description

This line is for FY2014
 Acct Temp: E7425 Fund: 0100 Function: D570 Sub-Function: 7425
 Contractor shall be reimbursed up to \$1,500.00 per month for housing, travel, and other expenses.

B I L L T O	339005 KDE FINANCIAL MGT 500 MERO ST FRANKFORT KY 40601 US	S H I P T O	339005 KDE FINANCIAL MGT 500 MERO ST FRANKFORT KY 40601 US
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Total Order Amount:	312,000.00
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**PERSONAL SERVICE CONTRACT FOR
STATE MANAGER FOR BREATHITT COUNTY SCHOOL DISTRICT**

BETWEEN

THE COMMONWEALTH OF KENTUCKY

Kentucky Education and Workforce Development Cabinet

Kentucky Department of Education

AND

LARRY B. HAMMOND

PO BOX 245

MT. VERNON, KY 40456

larrybhammond@gmail.com

VENDOR # VC0000150115

This Personal Service Contract (PSC) is entered into, by and between the Commonwealth of Kentucky, Kentucky Education and Workforce Development Cabinet, Kentucky Department of Education (“the Commonwealth”) and Larry B. Hammond to establish a Contract for a State Manager for Breathitt County School District. This PSC is effective 12/13/2012 and expires 6/30/2014.

The Commonwealth and Contractor agree to the following:

I. Scope of Contract

The Kentucky Board of Education (KBE) met on December 5, 2012 and unanimously approved designating Breathitt County school district a “state managed” district. The purpose of this contract is to appoint a “State Manager” for Breathitt County school district. The State Manager

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shall act as the Commissioner’s designee in implementing the provisions of KRS 158.785(7) in Breathitt County School District. These responsibilities include the following:

The State Manager shall exercise all administrative, operational, financial, personnel, and instructional aspects of the management of the school district.

The State Manager shall facilitate the development and implementation of a district improvement plan that identifies the deficiencies and the corrective actions necessary to improve school district governance and administration in accordance with 702 KAR 3:205, Section 5.

The State Manager shall coordinate the submission of timely and accurate monthly reports to the Commissioner on the status of school improvement activities in the school district, in accordance with 702 KAR 3:205, Section 6.

In addition, the State Manager shall prepare a draft annual report by July 15 of each year, for the Commissioner’s submission to the State Board of Education, in accordance with KRS 158.785(8). The report shall focus on the status of school improvement activities in the school district for the most recently completed school year.

The State Manager shall also perform any other duties as assigned by the Commissioner to properly implement KRS 158.780, KRS 158.785 and 703 KAR 3:205.

II. Contract Components

The contract shall consist of this written agreement and any mutually agreed-upon and properly executed modifications to this contract thereof.

III. Negotiated Items

N/A

IV. Pricing

The Contractor shall be paid a daily rate of \$700.00, plus housing, travel, and other expenses.

V. Personal Service Contract Standard Terms and Conditions

Whereas, the first party, the state agency, has concluded that either state personnel are not available to perform said function, or it would not be feasible to utilize state personnel to perform said function; and

Whereas, the second party, the contractor, is available and qualified to perform such function; and

Whereas, for the abovementioned reasons, the state agency desires to avail itself of the services of the second party;

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

010.00 Effective Date:

This agreement is not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the Legislative Research Commission, Government Contract Review Committee (“LRC”).

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.

010.10 LRC Policies:

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

010.15 Choice of Law and Forum:

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

010.20 Cancellation:

The state agency shall have the right to terminate and cancel this agreement at any time not to exceed thirty (30) days' written notice served on the contractor by registered or certified mail.

010.25 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.

010.30 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 contract will be reduced by the amount specified in that document.

010.35 Authorized to do Business in Kentucky:

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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.

010.40 Registration with the Secretary of State by a Foreign Entity.

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by [KRS 14A.9-010](#) to obtain a certificate of authority to transact business in the Commonwealth (“certificate”) from the Secretary of State under [KRS 14A.9-030](#) unless the person produces the certificate within fourteen (14) days of the bid or proposal opening. Therefore, foreign entities should submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate as provided in [KRS 14A.9-010](#), the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within [KRS 14A.1-070](#).

For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity’s solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.

Businesses can register with the Secretary of State at <https://secure.kentucky.gov/sos/ftbr/welcome.aspx>

010.41 REQUIREMENT FOR REPORTING TO KENTUCKY TEACHERS RETIREMENT SYSTEM

Please note that if the contractor is a current retiree of the Kentucky Teachers Retirement System (“KTRS”), 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, the contractor is strongly encouraged to check with KTRS to determine what requirements apply. The KTRS help desk number is 1.800.618.1687.

-Furthermore, 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.

The contractor agrees to indemnify and hold the Kentucky Department of Education harmless, for any failure by such current or potential retirees to properly report information concerning their retirement status, during the life of any contract awarded.

010.42 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

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regulations, 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. The confidentiality agreement and affidavits will then become part of this original agreement as Attachments B and C of this agreement.

010.45 Invoices for fees:

The contractor shall maintain supporting documents to substantiate invoices and shall furnish same if required by state government.

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

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

010.50 Travel expenses, if authorized:

Contractor shall be reimbursed travel expenses per 200 KAR 2:006 [http://finance.ky.gov/services/statewideacct/Pages/travel.aspx]. It is anticipated that travel, housing, and other expenses shall not exceed \$1,500.00 a month.

010.55 Other expenses, if authorized herein:

Housing allowance and other miscellaneous expenses shall be reimbursed. It is anticipated that travel, housing, and other expenses shall not exceed \$1,500.00 a month.

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 state government.

Invoicing for fee: the contractor's fee shall be original invoice(s) and shall be documented by the contractor. The invoice(s) must conform to the method described in the specifications of the contract.

Invoicing for travel expenses: the contractor must follow instructions described in the specifications of the contract. Either original or certified copies of receipts must be submitted for airline tickets, motel bills, restaurant charges, rental car charges, and any other miscellaneous expenses.

Invoicing for miscellaneous expenses: the contractor must follow instructions prescribed in the specifications of the contract. Expenses submitted shall be documented by original or certified copies.

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010.60 Purchasing and specifications:

The contractor certifies that he will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he 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" 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" is construed to mean any person with an interest therein.

010.65 Conflict-of-interest laws and principles:

The contractor certifies that he is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing this contract 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.

010.70 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.

010.75 Access to Records:

The contractor, as defined in KRS 45A.030 (9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004. (See attachment)

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010.80 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 Master Agreement or Contract.

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

Lori H. Flanery, Secretary

Commonwealth of Kentucky
 Finance and Administration Cabinet
 Room 383, New Capitol Annex
 702 Capitol Avenue
 Frankfort, KY 40601
 Phone #: (502) 564-4240
 Fax #: (502) 564-6785

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.

010.85 Social security: (check one)

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

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

010.90 Violation of tax and employment laws:

KRS 45A.485 requires the contractor to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes

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relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the contractor shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the contractor shall be in continuous compliance with the provisions of those statutes which apply to the contractor's operations, and that the contractor's failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and the contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

Contractor must check one:

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

_____ the contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). A list of such determination(s) is attached.

010.95 Discrimination:

Discrimination (because of race, religion, color, national origin, sex, age, or disability) prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex 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, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on

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behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, age or disability.

3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

4. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

7. The contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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VI. Approvals

This contract is subject to the terms and conditions as stated. By affixing signatures below, the parties agree that electronic approvals may serve as electronic signatures. In addition, the parties verify that they are authorized to bind this agreement between parties and that they accept the terms of the agreement.

Kentucky Department of Education:

Signature Title

Printed Name Date

Larry B. Hammond:

Signature Title

Printed Name Date

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Attachment A

SECRETARY'S ORDER 11-004

FINANCE AND ADMINISTRATION CABINET

Vendor Document Disclosure

WHEREAS, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary to conduct a review of the records of a private vendor that holds a contract to provide goods and/or services to the Commonwealth; and

WHEREAS, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary during the course of an audit, investigation or any other inquiry by an Executive Branch agency that involves the review of documents; and

WHEREAS, KRS 42.014 and KRS 12.270 authorizes the Secretary of the Finance and Administration Cabinet to establish the internal organization and assignment of functions which are not established by statute relating to the Finance and Administration Cabinet; further, KRS Chapter 45A.050 and 45A.230 authorizes the Secretary of the Finance and Administration Cabinet to procure, manage and control all supplies and services that are procured by the Commonwealth and to intervene in controversies among vendors and state agencies; and

NOW, THEREFORE, pursuant to the authority vested in me by KRS 42.014, KRS 12.270, KRS 45A.050, and 45A.230, I, Lori H. Flanery, Secretary of the Finance and Administration Cabinet, do hereby order and direct the following:

Upon the request of an Executive Branch agency, the Finance and Administration Cabinet ("FAC") shall formally review any dispute arising where the agency has requested documents from a private vendor that holds a state contract and the vendor has refused access to said documents under a claim that said documents are not directly pertinent or relevant to the agency's inquiry upon which the document request was predicated.

Upon the request of an Executive Branch agency, the FAC shall formally review any situation where the agency has requested documents that the agency deems necessary to conduct audits, investigations or any other formal inquiry where a dispute has arisen as to what documents are necessary to conclude the inquiry.

Upon receipt of a request by a state agency pursuant to Sections I & II, the FAC shall consider the request from the Executive Branch agency and the position of the vendor or party opposing the disclosure of the documents, applying any and all relevant law to the facts and circumstances of the matter in controversy. After FAC's review is complete,

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FAC shall issue a Determination which sets out FAC's position as to what documents and/or records, if any, should be disclosed to the requesting agency. The Determination shall be issued within 30 days of receipt of the request from the agency. This time period may be extended for good cause.

If the Determination concludes that documents are being wrongfully withheld by the private vendor or other party opposing the disclosure from the state agency, the private vendor shall immediately comply with the FAC's Determination. Should the private vendor or other party refuse to comply with FAC's Determination, then the FAC, in concert with the requesting agency, shall effectuate any and all options that it possesses to obtain the documents in question, including, but not limited to, jointly initiating an action in the appropriate court for relief.

Any provisions of any prior Order that conflicts with the provisions of this Order shall be deemed null and void.

ATTACHMENT – B

(For Contractor) Contractor's Employee or Contractor Affidavit of Nondisclosure – FERPA; and Contractor's Employee or Contractor Affidavit of Nondisclosure – Free and Reduced Price Lunch Information

**KENTUCKY DEPARTMENT OF EDUCATION
CONTRACTOR'S EMPLOYEE OR CONTRACTOR AFFIDAVIT OF
NONDISCLOSURE**

Contractor Name _____ Title _____
 Address _____
 Telephone _____

I understand that the performance of my duties as an employee or contractor, of a contractor for the Kentucky Department of Education (KDE), may involve a need to access and review confidential information, including data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA) and its implementing federal regulations found at 34 C.F.R. Part 99; that my request for access to this information will be evaluated under the federal and state requirements under FERPA; and, that I am required to maintain the confidentiality of this information and prevent any redisclosure prohibited under the law as stated below.

Access to Confidential FERPA-Protected Information

By signing this document I acknowledge my responsibility to maintain the confidentiality of this information and agree to the following:

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By signing this document I acknowledge my responsibility to maintain the confidentiality of this information and agree to the following:

- I will not permit access to confidential free and reduced price lunch information to persons not authorized by the KDE and the KDE contractor.
- I will maintain the confidentiality of the data.
- I will not reveal any individually identifiable information furnished, acquired, retrieved or assembled by me or others for any purpose other than statistical purposes specified in the KDE survey, project, or proposed research.
- I will report any known instances of missing data, data that has been inappropriately shared, or data taken off site to the KDE Division of Child Nutrition Programs and to the contractor.

I understand that procedures must be in place for monitoring and protecting confidential information.

I understand and acknowledge that children's free and reduced price meal and free milk eligibility information obtained under provisions of the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq)(NSLA) or Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.)(CNA) and the regulations implementing these Acts is confidential information.

I understand that any unauthorized disclosure of confidential free and reduced price lunch information is illegal as provided in the NSLA and CNA and in the implementing of federal regulation 7 C.F.R 245.6. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

I understand that any personal characteristics, that could make the student or his/her family's identity traceable, are protected.

In addition, I understand that any data sets or output reports that I may generate using confidential data are to be protected. I will not distribute to any unauthorized person any data sets or reports that I have access to or may generate using confidential data. I understand that I am responsible for any computer transactions performed as a result of access authorized by use of sign-on/password(s).

Contractor's employee or contractor signature

Date

Contractor's authorized agent signature

Date