

PARTICIPATING ADDENDUM
NASPO ValuePoint
Public Safety Communication Equipment 06913
Lead by the State of Washington (hereinafter "Lead State")

MASTER AGREEMENT

Avtec, Inc.
(hereinafter "Contractor")

And

Commonwealth of Kentucky
(hereinafter "Participating State")

Page 1 of 3

1. **Scope:** This addendum covers the purchase of public safety communication equipment and is for use by state agencies and other entities located in the Commonwealth of Kentucky authorized by that state's statutes to utilize **Commonwealth of Kentucky** contracts with the prior approval of the state's chief procurement official.

Contractor has been awarded the following categories:

Dispatch Consoles

2. **Participation:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use **state/entity** contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. **Participating State Modifications or Additions to Master Agreement:**
(These modifications or additions apply only to actions and relationships within the Participating Entity.)

MA 758-1900000397 Attachment A is hereby incorporated.

4. **Primary Contacts:** The primary contact individuals for this participating addendum are as follows (or their named successors):

Contractor

Name	Bob Kramer
Address	100 Innovation Place Lexington, SC 29702
Telephone	(803) 358-3427
Fax	(803) 358-3636
E-mail	bkramer@avtecinc.com

Participating Entity

Name	Don Robinson, CPPO, CPPB
Address	702 Capitol Ave. Annex Room 095
Telephone	502-564-6525
Fax	502-564-1434
E-mail	DonE.Robinson@ky.gov

5. Subcontractors:

All [contactor] dealers/resellers/distributors authorized in the State of Kentucky, as shown on the WSCA ValuePoint website, are approved to provide sales and service support to participants in the NASPO Master Agreement. The [contractors] dealer's/resellers/distributors participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

6. Purchase Order Instructions:

All orders should contain the following (1) Mandatory Language "PO is subject to WSCA ValuePoint Contract # 06913 (2) Your Name, Address, Contact, & Phone-Number (3) Purchase order amount. Please channel your PO through one of our authorized dealers/resellers/distributors so they can arrange for proper ordering and installation of your equipment. During Contract performance, Contractor shall identify and make available to Purchasers upon request a list of subcontractors, dealers, and distributors who will supply products or perform services in fulfillment of Contract requirements. Information shall include their name, the nature of services to be performed or products to be sold by product category/subcategory, address, telephone, facsimile, email, and federal tax identification number (TIN) (if the company is authorized to sell and invoice for products and services).

7. Price Agreement Number:



All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include the Participating State contract number: Ky. Master Agreement MA 758-190000397 and the Lead State Master Agreement number: 06913.

8. Individual Customer:

Each State agency and political subdivision, as a Participating Entity, that purchases products/services will be treated as if they were Individual Customers. Except to the extent modified by a Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Master Agreement; and they will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency and political subdivision will be responsible for their own charges, fees, and liabilities. Each agency and political subdivision will have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor will apply the charges to each Participating Entity individually.

This Participating Addendum and the Master Agreement number 06913 (administered by the State of Washington) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State: Commonwealth of Kentucky	Contractor: Avtec, Inc.
By: 	By: 
Name: Joan Graham	Name: Bob Kramer
Title: Executive Director	Title: Program Manager
Date: 8/14/18	Date: 8/7/2018

If you have questions about this Participating Addendum or the participation process, please contact:

NASPO ValuePoint Cooperative Purchasing Organization

Name	Tim Hay, Cooperative Development Coordinator
Telephone	503-428-5705
E-mail	thay@naspovalupoint.org

[Fully executed PDF copy of this document should be emailed to PA@NASPO.org to support documentation of participation and posting in appropriate data bases]

Attachment A
Terms and Conditions
MA 758-1900000394
AVTEC, Inc. NASPO PA# 06913

Vendor POC: Bob Kramer
Phone: 803-358-3427
E-Mail: bkramer@avtecinc.com

Buyer of Record: Don Robinson, CPPO, CPPB
Phone: 502-564-6525
E-Mail: DonE.Robinson@ky.gov

All Terms, Conditions, Addendums (excluding other participants' addendums) and Provisions of the NASPO Value Point Public Safety Communication Equipment – Radios AVTEC, Inc. Cooperative Master Pricing Agreement # 06913 are hereby incorporated.

Section 1

Scope of Contract

The Office of Procurement Services issues this Master Agreement for: AVTEC, Inc. Dispatch Consoles , Accessories and Services as identified in the Motorola / NASPO Value Point Cooperative Master Agreement # 06913

Section 2

Agencies to be Served

This Contract shall be for use by All State Agencies.

Section 3

Political Subdivisions

Under Kentucky Statutes, political subdivisions of this State including counties and school districts may participate in All State Agency Contract Agreements to the same extent as agencies of the Commonwealth

Section 4

Initial Contract Period

This Contract shall be for the initial period expiring June 30, 2021.

Section 5

Renewal Clause – Optional Renewal Period

The Contract may only be extended at the completion of the initial Contract period if there are extensions incorporated by NASPO. Any extension must have the written approval of the Vendor and the Office of Procurement Services. 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. Additional renewal periods may be incorporated to remain concurrent with NASPO VP # 06913. 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.

Section 6

Basis of Price Revisions

Pricing is based on the AVTEC / NASPO Value Point Cooperative Master Agreement 06913. Contract pricing may never exceed the AVTEC / NASPO Value Point Cooperative Master Agreement # 06913 pricing. Pricing may be changed only when the AVTEC / NASPO Value Point Cooperative Master Agreement # 06913 pricing changes. A copy of any NASPO Value Point approved price changes must be delivered to the buyer of record, Office of Procurement Services 30 days prior to proposed effective date. If specified notification is timely provided, changes will become effective concurrent with the AVTEC / NASPO Value Point Cooperative Master Agreement # 06913 price change effective date.

The discounted pricing offered, through the AVTEC / NASPO Value Point Cooperative Master Agreement #06913 is considered to be minimum pricing. Additional discounts for volume purchases, competitive reasons or special promotions are permitted on any specific order.

Section 7

Administrative Fee

The Contractor agrees to provide a quarterly administrative fee to the Commonwealth of Kentucky as a part of the Contractor's unit prices and is not to be charged directly to the customer in the form of a separate line item. The administrative fee percentage is only applicable to the net amounts actually received by the Contractor during the quarter and is not applicable to the amounts ordered by customers but not yet paid. The administrative fee shall be paid in the form of a check payable to the Commonwealth of Kentucky – Office of Procurement Services for an amount equal to 1.0% of the net sales (less any return, credits or adjustments) under this PA for the period. Fees shall be paid 45 days after the close of the quarter. Check is to be mailed to the Office of Procurement Services, 702 Capitol Avenue, New Capitol Annex, Room 095, Frankfort,

KY 40601.

**Section 8
Quarterly Reports**

If requested, the Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report is to show the quantities and dollar volume of purchases by each state agency and political subdivision. The quarterly report is to be provided, in secure electronic format and submitted electronically to the buyer of record.

**Section 9
Tax Exempt Status**

Federal Excise Tax, Kentucky Sales or Use Tax are not applicable

**Section 10
Agreement between Parties**

Any valid modification of this contractual agreement must be formalized by issuance of a Contract Modification from the Office of Procurement Services.

**Section 11
Post Contract Agreements**

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 the Contract. 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.

**Section 12
Cancellation Clause – 30 Days Notice**

The Commonwealth may cancel the contract by giving written notice thirty (30) days prior to effective cancellation date. In the event such action is taken, the contract shall be null and void upon receipt of a Modification from the Office of Procurement Services canceling the contract.

All Contract Cancellations / Terminations shall be in accordance with 200KAR 5:312

**Section 13
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.

Section 14

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.

Section 15

Indemnity

GENERAL INDEMNITY BY CONTRACTOR. Contractor will indemnify and hold Commonwealth harmless from any and all liability, expense, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against Commonwealth to the extent it is caused by the negligence of Contractor, its subcontractors, or their employees or agents, while performing their duties under this Agreement, if Commonwealth gives Contractor prompt, written notice of any the claim or suit. Commonwealth will cooperate with Contractor in its defense or settlement of the claim or suit. This section sets forth the full extent of Contractor's general indemnification of Commonwealth from liabilities that are in any way related to Contractor's performance under this Agreement.

PATENT AND COPYRIGHT INFRINGEMENT INDEMNITY

Contractor will defend at its expense any suit brought against Commonwealth to the extent it is based on a third-party claim alleging that the Equipment manufactured by Contractor or the Contractor Software ("Contractor Product") directly infringes a United States patent or copyright ("Infringement Claim"). Contractor's duties to defend and indemnify are conditioned upon: Commonwealth promptly notifying Contractor in writing of the Infringement Claim; Contractor having sole control of the defense of the suit and all negotiations for its settlement or compromise; and Commonwealth providing to Contractor cooperation and, if requested by Contractor, reasonable assistance in the defense of the Infringement Claim. In addition to Contractor's obligation to defend, and

subject to the same conditions, Contractor will pay all damages finally awarded against Commonwealth by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Contractor in settlement of an Infringement Claim.

If an Infringement Claim occurs, or in Contractor's opinion is likely to occur, Contractor may at its option and expense: (a) procure for Commonwealth the right to continue using the Contractor Product; (b) replace or modify the Contractor Product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Contractor Product and grant Commonwealth a credit for the Contractor Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

Contractor will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Contractor Product with any software, apparatus or device not furnished by Contractor; (b) the use of ancillary equipment or software not furnished by Contractor and that is attached to or used in connection with the Contractor Product; (c) Contractor Product designed or manufactured in accordance with Commonwealth's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the Contractor Product by a party other than Contractor; (e) use of the Contractor Product in a manner for which the Contractor Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Commonwealth to install an enhancement release to the Contractor Software that is intended to correct the claimed infringement. In no event will Contractor's liability resulting from its indemnity obligation to Commonwealth extend in any way to royalties payable on a per use basis or the Commonwealth's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Contractor from Commonwealth from sales or license of the infringing Contractor Product.

This section provides Commonwealth's sole and exclusive remedies and Contractor's entire liability in the event of an Infringement Claim. Commonwealth has no right to recover and Contractor has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim. In addition, the rights and remedies provided in this section are subject to and limited by the restrictions set forth in the Limitation of Liability provision.

Section 16

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.

Section 17

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.

Section 18

Inspection/Evaluation

All services shall be subject to inspections, evaluations or tests by the Commonwealth. In the services are not in conformity with specified requirements, the Commonwealth shall have the right to reject the services and require acceptable correction at the Vendor's expense.

Section 19

Subcontracts

The Contractor is permitted to make subcontract(s) with any other party for furnishing any of the work or services herein. The Contractor shall be solely responsible for performance of the entire Contract whether or not subcontractors are used. The Commonwealth shall not be involved in the relationship between the prime contractor and the subcontractor. Any issues that arise as a result of this relationship shall be resolved by the prime contractor.

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

Section 20

Equal Employment Opportunity Act

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. A copy of the EEO forms may be obtained by downloading them from the Finance and Administration Cabinet's website at <http://finance.ky.gov/services/eprocurement/Pages/VendorServices.aspx>. See

Attachment #4.

Direct coordination with the EEO Office is approved to discuss EEO requirements and forms. Their phone number is (502) 564-2874 and fax (502) 564-1055.

The Commonwealth will review the EEO Forms (or equivalent, if applicable) upon receipt. If a Vendor is under-utilized or in non-compliance, the Vendor shall receive notification from the Commonwealth. The Vendor shall have five (5) days from receipt of such notice to submit an affirmative action plan. Failure to submit an affirmative action plan within the timeframe specified may result in the disqualification of the Vendor's response. In any event, a **Vendor shall not be eligible for an award of**

contract without being in compliance with the EEO requirements.

If the Vendor is exempt from submitting the EEO Forms, the Vendor must state such in the bid. Exemption from EEO Form submission, under KRS 45.590, does not obviate any other requirements of KRS 45.570.

Section 21

Governing Law

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

Section 22

Kentucky Tax Registration Application

Revenue Form 10A100, Kentucky Tax Registration Application effective July 2008, is a form to be completed by any person or entity wishing to contract with the Commonwealth to provide goods or services subject to sales and use tax pursuant to KRS 139.200. The form is located at this web-link as Attachment 5:

<http://finance.ky.gov/services/eprocurement/Pages/VendorServices.aspx>

In accordance with administrative regulation 200 KAR 5:390, this form has to be completed and submitted, before a contract can be awarded. Section 2 of the regulation also notes: "Failure to submit the required documentation 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 and the contract may be terminated."

Section 23

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. **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.

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

Section 24

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.

Section 25

Provisions for Termination of the Contract

This Contract shall be subject to the termination provisions set forth in 200 KAR 5:312

Section 26

Discrimination

Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is 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, sexual orientation, gender identity, or age. The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The contractor agrees to provide, upon request, needed reasonable accommodations. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual

orientation, gender identity, age or disability.

3. The contractor will send to each labor union or representative of workers with which he 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.

General Terms and Conditions

Assignments

Contractor will refrain from assigning any interest, right or duty in any contract with the Commonwealth to any other person without the prior written consent of the Office of Material & Procurement Services. Except that claims for sums due or to become due under a contract may be assigned to a bank, trust company or other person and may then be reassigned. Notice of any assignment shall be given by the vendor or his assignee to the using agency and the Division of Statewide Accounting Services, Office of the Controller, Capitol Annex, 702 CAPITOL AVE FRANKFORT KY 40601, immediately after the assignment is made. The invoice or voucher submitted by the vendor shall clearly show both the vendor name and address and the assignee's name and address. The warrant issued by the Division of Statewide Accounting Services shall be payable in such case jointly to the vendor and the assignee and shall be forwarded to the assignee. Any assignee shall be subject to the set-off rights of the Commonwealth provided in Kentucky Revised Statutes. See KRS 371.040 and KRS 44.030.

COMPLIANCE WITH STATE AND FEDERAL LAW: In addition to any other remedies at law or in equity, the Office of Procurement Services may cancel any contract if there is sufficient evidence to show that:

- a. The contract was obtained by fraud, collusion, conspiracy or other unlawful means, or
- b. The contract conflicts with any statutory or constitutional provision of the Commonwealth of Kentucky or of the United States.

CONTRACT PROVISIONS BY REFERENCE:

- a. All terms, special conditions and specifications.
- b. The General Conditions stated herein.

Any contract agreement entered into with the Commonwealth of Kentucky or any of its agencies shall be governed by the laws of the Commonwealth of Kentucky.

CONTRACT CHANGES: The Commonwealth may, at any time by a written order and without notice to the sureties, make changes within the general scope of the contract. If any change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under the contract, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly.

Any claim by the contractor for adjustment under this clause shall be asserted, by the contractor, within 30 days from the date of receipt of the notification of changes, except, that if the Commonwealth decides that the facts justify such action, the Commonwealth may receive and act upon any such claim asserted at any time prior to final payment under this contract. If the cost of property may be obsolete or excess as a result of a change included in the contractor's claim for adjustment, the Commonwealth shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment may be disputed pursuant to the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the contractor from proceeding with the contract as changed.

CONTRACT DISPUTES: Except as otherwise provided in the contract, any dispute concerning a question of fact arising under the contract which is not disposed of by agreement shall be decided by the Secretary of the Finance and Administration Cabinet or a designated purchasing official, who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the contractor. The decision of the purchasing official shall be final unless, within 30 days from the date of receipt of the decision, a written appeal is received, addressed to the Secretary of the Finance and Administration Cabinet. The decision of the Secretary of the Finance and Administration Cabinet or his duly authorized representative for the determination of such appeals shall be final unless fraudulent. Pending final decision of a dispute, the contractor shall proceed diligently with the performance of the contract and in accordance with the state officer's decision.

ETHICS - 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 11A), the Executive Branch Code of Ethics, which applies, in part, to current and former state officials and employees of the executive branch. The Code was amended during the 1994 Legislative Session.

1. Current State Employees Seeking to Do Business with the State KRS 11A.040(4) Provides:

(4) No public servant shall 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, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by any state agency. This provision shall not apply to a contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain or to agreements, which may directly or indirectly involve public funds disbursed through

entitlement programs.

2. Former State Officers and Elected Officials Seeking Employment From Entities Who Do Business With the State

KRS 11A.040(6) Provides:

No present or former officer or public servant listed in KRS 11A.010(9) (a) to (i) shall, 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 the state in matters in which he was directly involved during the last 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, 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 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.

3. FORMER STATE EMPLOYEES WHO SEEK TO REGISTER AS LOBBYISTS.

KRS 11A.040(7) provides:

A former public servant shall not act as a lobbyist or lobbyist's principal for a period of one (1) year after the latter of:

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

4. FORMER STATE EMPLOYEES CONTEMPLATING REPRESENTATION OF ANOTHER BEFORE A STATE AGENCY

KRS 11A.040(8) provides:

A former public servant shall not represent a person in a matter before a state agency in which the former public servant was directly involved, 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. "OR BY ANY OTHER PERSONS FOR HIS USE OR BENEFIT" includes spouse.

***** DEFINITIONS *****

"OR BY ANY OTHER PERSON FOR HIS USE OR BENEFIT" includes spouse.

"DOES BUSINESS WITH" also includes any regulatory relationship between a state agency and a business, utility or person regulated by the state.

"MATTERS IN WHICH HE WAS DIRECTLY INVOLVED" applies only to matters on which the former employee personally worked or over which the employee had some authority.

"LOBBYIST" also includes executive agency lobbyists--those persons attempting to influence a decision of an executive agency official concerning state expenditures.

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

"IN WHICH HE WAS DIRECTLY INVOLVED" modifies the word "matter" and not the words "state agency". In other words the prohibition operates to prohibit employees from representing individuals in matters in which the employee was directly involved while the employee was at the state agency. The employee would be permitted to represent individuals before the state agency so long as the subject matter of the representation was not something in which the employee was directly involved while at the state agency.

These laws are 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 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.

IN CASE OF DOUBT, THE LAW PERMITS YOU TO REQUEST AN ADVISORY OPINION FROM THE EXECUTIVE BRANCH ETHICS COMMISSION CAPITOL ANNEX, FRANKFORT, KENTUCKY 40601 (502) 564