



Commonwealth of Kentucky

CONTRACT

IMPORTANT
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Doc Description: EE14003 - Lexington-Fayette Urban County Government ESPC	
Doc ID No: PON2 112 1400001059 1	Procurement Folder: 3228060
Procurement Type: Memorandum of Agreement	
Administered By: MELANIE LANE	Cited Authority: FAP111-44-00
Telephone: 502-573-2382	Issued By: MELANIE LANE

C O N T R A C T O R	LEXINGTON FAYETTE URBAN COUNTY GOV
	ACCOUNTING
	200 E. MAIN ST.
	LEXINGTON KY 40507
	US

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	EE14003- LFUCG Detention Center ESPC		0.00		0.00000	100,000.00	100,000.00

Extended Description

Implement energy savings measures at the Fayette County Detention Center through an energy savings performance contract.

Service from: 3/10/14
 Service to: 6/30/14

B I L L T O	473164	S H I P T O	473164
	GG GOLD - DIVISION OF GRANTS		GG GOLD - DIVISION OF GRANTS
	1024 CAPITAL CTR DR, SUITE 340		1024 CAPITAL CTR DR, SUITE 340
	DIVISION OF GRANTS		DIVISION OF GRANTS
	FRANKFORT KY 40601		FRANKFORT KY 40601
US	US		

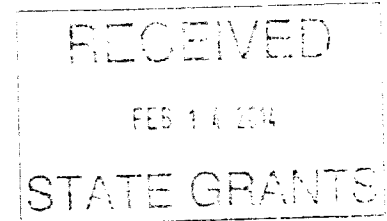
Total Order Amount: 100,000.00

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MEMORANDUM OF AGREEMENT

between the

COMMONWEALTH OF KENTUCKY
OFFICE OF THE GOVERNOR
DEPARTMENT FOR LOCAL GOVERNMENT



and the

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

THIS GRANT AGREEMENT, hereinafter "Agreement", is made and entered into this 24th day of January, 2014 by and between Lexington-Fayette Urban County Government with an address of 200 East Main Street, Lexington, KY 40507 hereinafter "Recipient", and the Commonwealth of Kentucky, Department for Local Government with an address of 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, hereinafter "DLG", for the sum of \$100,000.00.

WHEREAS, the Kentucky Energy and Environment Cabinet has awarded DLG funds resulting from a settlement agreement between the U.S. Environmental Protection Agency and the Tennessee Valley Authority over Clean Air Act violations in four states, including Kentucky, to be used to fund the Energy Efficiency and Conservation for Local Governments grants program;
NOW, THEREFORE, in consideration of the mutual covenants, commitments, and conditions contained herein, DLG and the Recipient agree as follows:

1 - OBLIGATIONS OF DLG

DLG covenants and agrees, conditioned upon the timely performance by the Recipient of its obligations herein, to undertake the following obligations:

A. DLG shall, subject to the availability of appropriate funds, pay the Recipient a sum not to exceed \$100,000.00 (One Hundred and 00/100) in accordance with the submission of a request for disbursement. Recipient has attached to this request all supporting documentation (cost estimates, invoices, and/or receipts, etc.) deemed

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necessary by DLG, in its sole discretion, for the amount of the disbursement requested. Because of the match requirements of this grant, Recipient will only be reimbursed 80% of submitted eligible documentation.

B. DLG may, but is not required to, make periodic inspections of the Project and may send inspection reports to the Recipient. Deficiencies identified in an inspection report shall be corrected by the Recipient and their correction reported in writing to DLG within two weeks of receipt of the inspection report.

C. DLG shall cooperate fully with the Recipient in order to facilitate the obligations set out in this Agreement.

D. DLG shall close out the Project upon satisfactory completion of the Project by the Recipient in accordance with the terms and conditions of this Agreement and submission of an acceptable project completion report in the form prescribed by DLG.

2 - OBLIGATIONS OF THE RECIPIENT

The Recipient covenants and agrees to undertake the following obligations:

A. The Recipient shall perform or cause to be performed all necessary acts to plan, design and complete the Project in accordance with the following Scope of Work:

Implement energy savings measures at the Fayette County Detention Center through an energy savings performance contract.

B. The Recipient shall obtain all necessary permits, licenses, and approvals required for completion of the Project from the appropriate governmental entities.

C. The Recipient shall comply with all applicable federal and state statutes, executive orders, regulatory requirements, and policies.

D. The Recipient shall use its own procurement procedures that reflect applicable state and local laws for all purchases of goods or services related to the Project.

E. The Recipient shall ensure that the work performed by any contractors and/or subcontractors shall be completed in a good and workmanlike manner and in accordance with this Agreement and all other applicable contracts. All work performed by any contractors and/or subcontractors shall be inspected and approved by Recipient.

F. Beginning upon the effective date of this agreement and regardless of whether any

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funds have been drawn, the Recipient shall submit monthly progress reports to DLG in the form prescribed by DLG until the Project is deemed closed by DLG. The reports shall be e-mailed no later than the 10th day of the month. The report shall list, at a minimum, the line items in the cost estimate and the percent of completion as well as any indication of problems or time delays. Failure to submit or fully complete the required report will place the recipient in noncompliance status at which time DLG will suspend the release of additional funds until the appropriate documentation has been submitted.

G. The Recipient shall retain all records relating to the Project until the records are audited by DLG, or for three years after the Project has been closed by DLG, whichever occurs first.

H. The Recipient certifies that the execution of this Agreement has been authorized by proper resolution, in compliance with all applicable laws and regulations. Subject to the terms and conditions of subsection 2G, the Recipient shall retain a copy of the resolution and shall produce same upon request by DLG or as otherwise required by law.

I. The Recipient shall cooperate fully with DLG and provide any documentation requested by DLG in order to facilitate the obligations set out in this Agreement.

J. The Recipient shall be responsible for the expenditure of funds in accordance with all applicable laws. Any unauthorized or improper expenditure of funds, or expenditure of funds other than in accordance with the terms of this Agreement shall be deemed a default of this Agreement by the Recipient. The Recipient shall repay DLG all funds that are not spent in accordance with this Agreement and appropriate laws.

K. The Recipient shall submit a project completion report to DLG in the form prescribed by DLG upon completion of the Project.

L. All Recipients, with the exception of 6th Class Cities covered by KRS 91A.040(2) and (3) and Districts covered by KRS 65.065(2), are subject to an independent annual audit conducted in accordance with generally accepted auditing standards, Government Auditing Standards, issued by the Comptroller General of the United States, the provisions of Office of Management and Budget Circular A-133, "Audits of State and Local Governments," if applicable, and the Audit Guide for Fiscal Court Audits issued by the Kentucky Auditor of Public Accounts. The audit report shall include a certification that the funds were expended for the purpose intended. A copy of the audit and certification of compliance shall be forwarded to DLG, Office of State Grants, no later

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than 18 months after the end of each fiscal year in which funds were received by a recipient.

Those 6th Class Cities and Districts referenced above shall be required to submit a copy of their financial statement, when applicable, to DLG, Office of State Grants, no later than 18 months after the end of each fiscal year in which funds were received by a recipient. Where a financial statement is not applicable, pursuant to the relevant statute, an audit shall be required.

3 - MUTUALITY OF OBLIGATIONS

A. The parties agree that the obligations imposed upon them are for the benefit of the parties and the timely fulfillment of each and every obligation in accordance with this Agreement is necessary. The failure of any party to fulfill its obligations under this Agreement or the failure of any event to occur by a date established by this Agreement shall constitute a breach of the Agreement unless the obligation is waived or modified by written Agreement of the parties.

B. In the event of default by the Recipient, including the failure to meet any time deadlines set out in this memorandum, DLG may declare this Agreement void from the beginning without further obligation to the Recipient and may commence appropriate legal or equitable action to enforce its rights under this Agreement including action for recovery of funds expended hereunder.

C. Except as may otherwise be provided herein, the parties to this Agreement shall be solely responsible for any costs incurred in fulfilling their obligations under this Agreement and no party shall have any claim against the other party for reimbursement of costs whether or not a party is in default.

4 - MISCELLANEOUS PROVISIONS

A. This Agreement may be signed by each party upon a separate copy, and in such case one counterpart of this Agreement shall consist of a sufficient number of such copies to reflect the signature of each party hereto. This Agreement may be executed in two or more counterparts each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms and conditions hereof to produce or account for more than one of such counterparts.

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B. The headings set forth in this Agreement are for convenience or reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

C. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of the parties. This provision shall not be construed to permit assignment by any party of any of its rights and duties under this Agreement which assignment shall be prohibited except with the prior written consent of all parties hereto.

D. This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing agreements among them concerning the subject matter hereof, and may be modified only by a written instrument duly executed by each of the parties hereto.

E. If a court of competent jurisdiction adjudicates that any portion of this Agreement is unlawful or unenforceable for any reason, the remainder of the Agreement shall remain in full force and effect.

F. Performance of each of the terms and conditions of this Agreement shall be carried out in a timely manner.

G. The parties agree that any suit, action, or proceeding with respect to this Agreement may only be brought in or entered by, as the case may be, the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky or the United States District Court for the Eastern District of Kentucky, Frankfort Division.

H. All notices, requests, demands, waivers, and other communications given as provided in this Agreement shall be in writing, and shall be addressed as follows:

If to DLG: Department for Local Government
Office of State Grants
1024 Capital Center Drive, Suite 340
Frankfort, Kentucky 40601
ATTENTION: Harry Carver

If to the Recipient: Lexington-Fayette Urban County Government
200 East Main Street
Lexington, KY 40507
ATTENTION: James Bush

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I. DLG may audit or review all documentation and records of the Recipient relating to this project pursuant to the provisions of KRS 45A.150.

J. The parties agree that this Agreement is not entered into under the provisions of KRS 56.8161 et seq.

5 - MOA STANDARD TERMS AND CONDITIONS

A. Cancellation Clause

Either party may cancel the contract at any time for cause or may cancel without cause on 30 days' written notice.

B. 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.

C. 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(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.

D. Effective Date

All Memoranda of Agreements are not effective until the secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until

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the contract has been submitted to the government contract review committee. However, Memoranda of Agreements \$50,000 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 only as provided under KRS 45A.700. The Agreement shall continue in effect through June 30, 2014, unless terminated at an earlier date in accordance with the terms set forth herein. The terms of this Agreement may be renewed or extended upon mutual written agreement duly executed by the parties.

KRS 45A.695(7) Payments on personal service contracts and memoranda of agreements 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.

E. 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 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

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determination(s) of violation(s). A list of such determination(s) is attached.

F. 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.

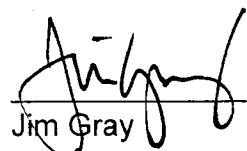
IN WITNESS WHEREOF, DLG and the Recipient have executed this Memorandum as of the dates written below.

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

COMMONWEALTH OF KENTUCKY

DATE: 2/10/14

DATE: 02/27/14



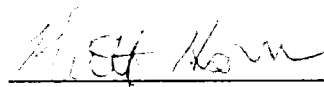
Jim Gray
Mayor



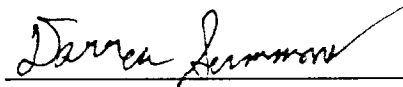
Tony Wilder, Commissioner
Department for Local Government

Examined as to form and legality only:

Examined as to form and legality only:



Counsel
Lexington-Fayette Urban County Government



Counsel
Department for Local Government