



Commonwealth of Kentucky CONTRACT

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Document Description:	Reimbursement for purchase of voting equipment
Cited Authority:	PL107-252 Help America Vote Act (HAVA)of 2002
Reason for Modification:	

Issuer Contact:	
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Vendor Name:	Vendor No.	KY0003032
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200 EAST MAIN STREET	Phone:	859-489-9870
	Email:	chancock@lexingtonky.gov
LEXINGTON	KY	40507

Effective From: 2022-07-01 **Effective To:** 2023-06-30

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
1		0.00000		Voting equipment purchase	\$0.000000	\$575,370.00	\$575,370.00

Extended Description:

Reimbursement for the purchase of voting equipment.

Purchases must be in accordance with local procurement procedures set forth in state law and adopted by the County. County must follow all procedures for purchasing voting equipment outlined in KRS 117.105, 117.115, 117.125 and 117.135.

Beginning Start Date: July1, 2022

Expiration Date: June 30, 2023

Shipping Information:			Billing Information:		
KY Board of Elections 140 Walnut Street			KY Board of Elections 140 Walnut Street		
Frankfort	KY	40601	Frankfort	KY	40601

TOTAL CONTRACT AMOUNT:	\$575,370.00
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Memorandum of Agreement Terms and Conditions
Revised December 2019

This Memorandum of Agreement (MOA) is entered into, by and between the Commonwealth of Kentucky, the **State Board of Elections** (“the Commonwealth”) and the **Lexington-Fayette Urban County Government** (“the Contractor”) to establish an agreement for Election Security funds for reimbursement of the purchase of voting equipment. The initial MOA is effective from **07/01/2022** through **06/30/2023**.

Scope of Services:

WHEREAS, both parties desire that all citizens of the Commonwealth have access to the polls in order to cast their vote on Election Day for candidates for public office and on public questions;

WHEREAS, both parties seek to increase and improve the voting equipment of the Commonwealth in order to provide better access to the citizens;

WHEREAS, the Help America Vote Act (HAVA) of 2002, codified at 42 U.S.C. 15301 *et seq.*, placed requirements upon the states to meet federal voting systems standards by January 1, 2006;

WHEREAS, Section 251 of HAVA allows states and local governments to use HAVA funds to improve the administration of elections for Federal office when the State certifies that one of two conditions is met: (1) the state has met the requirements of Title II; or (2) the state notifies the Election Assistance Commission (EAC) of its intention to use an amount not to exceed the amount of the minimum payment that the state either did or could have received under the Section 252 formula for that purpose;

WHEREAS, on February 2, 2006, the Commonwealth of Kentucky certified to the United States Department of Justice that the state had met the requirements of Title II of HAVA;

WHEREAS, on January 16, 2007, the Commonwealth of Kentucky certified to the EAC that the State had implemented the requirements of Title III by the first Federal election and that the State intends to use the remainder of the Title II requirements payments to carry out other activities to improve the administration of elections for Federal office under Section 251(b)(2);

WHEREAS, the counties must continue to meet the requirements of HAVA and continue to use one accessible unit per precinct at each election pursuant to Section 301 of HAVA;

WHEREAS, Election Security Funds were appropriated to the Commonwealth in 2018 and 2020 under Title I Section 101 of the Help America Vote Act (HAVA) of 2002; and

WHEREAS, the Commonwealth chooses to use these election security funds to further improve the administration of elections by reimbursing the counties for purchasing voting equipment:

The Commonwealth of Kentucky State Board of Elections and Fayette County do hereby agree as follows:

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A. **OBJECTIVES AND FUNDING FOR THIS AGREEMENT**
VOTING EQUIPMENT PURCHASES

Purchase voting equipment, maximum amount of reimbursement will be equal to the number of precincts in existence in the county as of the 2019 General Election, multiplied by \$2,500.00 per precinct, for a total of \$1,215,000.00 for the County.

B. **PURCHASE OF VOTING MACHINES AND UPGRADES**

1. Any voting systems purchased must be on the state certified list approved by the State Board of Elections.
2. All purchases must be in accordance with the local procurement procedures set forth in state law and adopted by the County.
3. The County must follow all procedures for purchasing voting equipment outlined in KRS 117.105, 117.115, 117.125, and 117.135.

C. **SOURCE OF FUNDS**

It is understood by the parties that the funds disbursed under this agreement are Federal Election Security Funds granted to the Commonwealth in 2018 and 2020 under Title I Section 101 of the Help America Vote Act (HAVA) of 2002.

D. **AUDITS**

The parties agree that the expenditure of funds under this agreement is subject to the audit requirements under Section 902(b) Title IX of the Help America Vote Act of 2002.

E. **ACCESS TO RECORDS**

1. The parties agree that duly authorized representatives of the Federal and state governments shall have access for the purpose of audit and examination to any books, documents, papers, and records of the County that, in the opinion of the duly authorized representative, may be related or pertinent to the funds or payments under this agreement.
2. The County agrees that 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 purposes of financial audit or program review. Furthermore, any books, documents, papers, records or other evidence provided to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the contract. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information that would otherwise be

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subject to public release if a state government agency were providing the service.

F.

TITLE VI COMPLIANCE

It is the policy of the County not to discriminate on the basis of race, color, national origin, age, sex, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Memorandum of Agreement, the County certifies and warrants it will comply with this policy.

Pricing:

Upon receipt from the County of documentation verifying the purchase of voting equipment the State Board of Elections shall, within 90 (ninety) days, reimburse the County the actual cost of the voting equipment or the maximum amount, as specified in Section A, whichever amount is lower.

The documentation of the purchase of voting equipment shall contain the serial number, type, make, cost and manufacturer of the voting equipment purchased, a copy of the invoice from the vendor containing the serial numbers and the actual purchase price, and a copy of one or more of the following: (A) the contract with the voting equipment manufacturer, (B) a copy of the fiscal court resolution authorizing the purchase, or (C) a copy of the official fiscal court minutes documenting the request to purchase.

Reimbursement under this agreement shall not exceed Actual costs. Reimbursement pursuant to this agreement shall not be authorized for purchases made 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.

Record Keeping & Inventory Maintenance:

The County shall retain all records related to the purchase of voting equipment for a period of three (3) years following the last purchase date of voting equipment or until all audit findings have been resolved.

The County shall keep such records with respect to payment under this agreement as are consistent with sound accounting principles, including records which fully disclose the amount and disposition of funds, the total cost of the purchases made under this agreement for which the funds are used, and such other records as will facilitate an effective audit.

The County shall conduct an annual inventory of the voting equipment purchases with Federal funds and certify to the State Board of Elections by March 1st each year the serial number, type, make, and manufacturer of the voting equipment in the inventory of the County and make and provide documentation of any discrepancies in the inventory.

Disposition of Property:

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The County shall report and document any theft, loss, destruction, sale, or other disposition of any voting equipment purchased with funds under this agreement, pursuant to KRS 117.377. The report shall be submitted in writing to the State Board of Elections as soon as practicable after the occurrence.

Ownership:

The County shall own the voting equipment purchased under this agreement pursuant to KRS 117.105 and 117.135.

Termination:

Either party shall have the right to terminate this agreement for convenience at any time up thirty (30) days written notice served upon the other party by certified of registered mail with return receipt requested. In addition, either party may terminate the agreement immediately for cause upon written notice served upon the other party by registered or certified mail with return receipt requested. Termination of this agreement shall not diminish or in any other manner affect any other remedy that may be available to the parties for any breach of the agreement that occurs prior to termination.

Duration of Agreement:

Subject to the necessary appropriations of the General Assembly, this agreement shall be effective upon signature of the parties and through June 30, 2022.

Limitations of Funding:

Funding for this agreement is limited to the amount of Federal funds available and appropriated by the General Assembly.

Funding Out Provision:

The State Board of Elections may terminate this contract if funds are not appropriated to make payment to the County or are not otherwise available for making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The State Board of Elections shall provide the County thirty (30) calendar days written notice of termination of the contract.

Choice of Law and Forum Provision:

All questions as to the execution, validity, interpretation, 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 based on this agreement, shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

Extension/Amendments:

The terms and conditions of this agreement may be extended or amended at any time by mutual agreement of the parties in writing subject to the approval of the Secretary of the Finance and Administration Cabinet (if required).

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**Memorandum of Agreement Standard Terms and Conditions
Revised December 2019**

1.00 Effective Date:

All Memorandum of Agreements are not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the agreement and until the agreement has been submitted to the government contract review committee. However, in accordance with KRS 45A.700, memoranda of agreement in aggregate amounts of \$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.

KRS 45A.695(7) provides that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

2.00 EEO Requirements

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding \$500,000. The contractor shall comply with all terms and conditions of the Act.

3.00 Cancellation clause:

Both parties shall have the right to terminate and cancel this contract at any time not to exceed thirty (30) days' written notice served on the other party by registered or certified mail.

4.00 Funding Out Provision:

The state agency may terminate this agreement 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 agreement. The state agency shall provide the Contractor thirty (30) calendar day's written notice of termination of the agreement due to lack of available funding.

5.00 Reduction in Contract Worker Hours:

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional

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service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the agreement will be reduced by the amount specified in that document. If the contract funding is reduced, then the scope of work related to the contract may also be reduced commensurate with the reduction in funding. This reduction of the scope shall be agreeable to both parties and shall not be considered a breach of contract.

6.00 Access to Records:

The state agency certifies that it is in compliance with the provisions of KRS 45A.695, "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The Contractor, as defined in KRS 45A.030, agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this agreement for the purpose of financial audit or program review. The Contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

7.00 Violation of tax and employment laws:

KRS 45A.485 requires the Contractor and all subcontractors performing work under the agreement 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 corporate and utility tax, sales and use tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the Contractor and all subcontractors performing work under the agreement 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 and all subcontractors performing work under the agreement shall be in continuous compliance

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with the provisions of those statutes, which apply to their operations, and that their failure to reveal a final determination as described above, or failure to comply with the above statutes for the duration of the agreement shall be grounds for the Commonwealth's cancellation of the agreement and their disqualification from eligibility for future state contracts for a period of two (2) years.

[Check box section below need only be included for Contractors that are quasi-governmental entities or 501(c)3 non-profit entities.]

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). Attached is a list of such determination(s), which includes the KRS violated, the date of the final determination, and the state agency which issued the final determination.

8.00 Discrimination:

This section applies only to agreements disbursing federal funds, in whole or part, when the terms for receiving those funds mandate its inclusion. Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. During the performance of this agreement, the Contractor agrees as follows:

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

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available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

In all solicitations or advertisements for employees placed by or on behalf of the Contractor, the Contractor will, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

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

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

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

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this agreement or with any of the said rules, regulations or orders, this agreement 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.

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

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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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Approvals

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

1st Party:

Linda Gorton, Mayor
Linda Gorton, Mayor (Apr 29, 2022 10:48 EDT)

Mayor City of Lexington

Signature

Title

Linda Gorton, Mayor

04/29/22

Printed Name

Date

2nd Party:

Karen Sellers
Karen Sellers (Apr 29, 2022 11:11 EDT)

Executive Director

Signature

Title

Karen Sellers

04/29/22

Printed Name

Date

Other Party:

Signature

Title

Printed Name

Date

Approved as to form and legality:

/s/ Taylor Brown
/s/ Taylor Brown (Apr 29, 2022 11:47 EDT)

Attorney












PON2 185 2200002672 (For Signature)

Final Audit Report

2022-04-29

Created:	2022-04-29
By:	Rachel Poynter (rachel.poynter@ky.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAANhMpvAVSAdlqYwx2d0J4P_D7B6uhn9T8

"PON2 185 2200002672 (For Signature)" History

-  Document created by Rachel Poynter (rachel.poynter@ky.gov)
2022-04-29 - 2:01:07 PM GMT- IP address: 205.204.186.1
-  Document emailed to Linda Gorton, Mayor (mayor@lexingtonky.gov) for signature
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-  Document e-signed by Linda Gorton, Mayor (mayor@lexingtonky.gov)
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-  Document emailed to Karen Sellers (karen.sellers@ky.gov) for signature
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-  Email viewed by Karen Sellers (karen.sellers@ky.gov)
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-  Document e-signed by Karen Sellers (karen.sellers@ky.gov)
Signature Date: 2022-04-29 - 3:11:51 PM GMT - Time Source: server- IP address: 162.114.32.78
-  Document emailed to /s/ Taylor Brown (taylora.brown@ky.gov) for signature
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-  Email viewed by /s/ Taylor Brown (taylora.brown@ky.gov)
2022-04-29 - 3:46:44 PM GMT- IP address: 162.114.32.94
-  Document e-signed by /s/ Taylor Brown (taylora.brown@ky.gov)
Signature Date: 2022-04-29 - 3:47:13 PM GMT - Time Source: server- IP address: 162.114.32.94
-  Agreement completed.
2022-04-29 - 3:47:13 PM GMT