

Final 7/14/08



Commonwealth of Kentucky

PURCHASE ORDER

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

Doc Description: Greenwood & Associates executive presidential search firm	
Doc ID No: PON2 415 0800009740 1	Procurement Folder: 980713 <i>Final 7/14/2008</i>
Procurement Type: Personal Service Contract	
Administered By: DENNIS TAULBEE	Cited Authority: FAP111-43-00-STD
Telephone: 502-573-1555	Issued By: Jennifer Jackson

C O N T R A C T O R	GREENWOOD & ASSOCIATES
	42 BUSINESS CENTER DR
	SUITE 206
	MIRAMAR BEACH FL 32550
	US

Effective From: 2008-07-14 **Effective To:** 2009-06-30

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	Executive search for a chief executive officer (president)		0.00		0.00000	130,000.00	130,000.00

Extended Description

The Council on Postsecondary Education issued a "Request for Proposal" soliciting proposals for the purpose of establishing a personal services contract with an executive search firm to assist the Council in selecting a chief executive officer (president).

Greenwood/Asher & Associates, Inc. (G/A&A) will furnish executive search services to assist The Kentucky Council on Postsecondary Education (CPE) in their search for a President.

The G/A&A professional fee will be based on 33 1/3% of the first year/Es estimated cash compensation. Compensation includes base salary plus any bonus or deferred compensation that is paid during the first year of the contract. The professional fee is set at a not-to-exceed amount of \$130,000 and will be assessed at the lesser of 33 1/3 percent or \$130,000. Professional fees for this search will be billed in thirds during the first three months of the engagement. The first 1/3, or retainer fee (\$43,300.00), will be due upon execution of this agreement. The second 1/3 fee will be billed in October 2008, and the third and final fee payment upon conclusion of the contract.

Source of funds: Agency Receipts

B I L L T O	435834	S H I P T O
	COUNCIL ON POSTSECONDARY ED	
	1024 CAPITAL CENTER DR STE 320	
	FRANKFORT KY 40601	
	US	

Effective From: 2008-07-14 Effective To: 2009-06-30

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
2	Expenses related to presidential search		0.00		0.00000	35,000.00	35,000.00

Extended Description

Additional expenses not included in Greenwood/Asher & Associates fees and expenses will include the following:

All costs associated with consultant travel, phone/video/web based technology outreach, faxes, postage, report reproduction, and supplies.

Items such as candidate travel, candidate background work (degree and education verification, etc.), advertising, and on-line research for newspaper articles, etc. Additionally, services of a private investigator to perform extensive background checks beyond our reference checking and normal background work on 3-5 candidates can be arranged through us, but are charged and billed directly to the institution. These expenses will be invoiced by Greenwood/Asher & Associates on a monthly basis.

Expenses not to exceed \$35,000.

Source of funds: Agency Receipts.

B I L L T O	435834 COUNCIL ON POSTSECONDARY ED 1024 CAPITAL CENTER DR STE 320 FRANKFORT KY 40601 US	S H I P T O
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Personal Service Contract Terms and Conditions

Whereas, 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 is available and qualified to perform such function, and whereas, for the hereinbefore-stated reasons, the state agency desires to avail itself of the services of the second party.

Invoices for fees:

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

Travel expenses, if authorized:

The contractor shall be paid for no travel expenses unless and except as specifically authorized by the specifications of the contract.

Other expenses, if authorized herein:

The contractor shall be reimbursed for no other expenses of any kind, unless and except as specifically authorized within the specifications of the contract.

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.

I. 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.

II. 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.

III. 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.

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 Government Contract Review Committee.

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.

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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

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.

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.

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 (KRS45A.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.

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.

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

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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, 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.

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.

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Certification.

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(7), 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. 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 which would otherwise be subject to public release if a state government agency was providing the services.

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

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Agreement for Executive Search Services

In accordance with the terms and conditions set forth herein, unless otherwise noted in writing and agreed to by both parties, Greenwood/Asher & Associates, Inc. (G/A&A) will furnish executive search services to assist The Kentucky Council on Postsecondary Education (CPE) in their search for a President.

The G/A&A professional fee will be based on 33 1/3% of the first year's estimated cash compensation. Compensation includes base salary plus any bonus or deferred compensation that is paid during the first year of the contract. The professional fee is set at a not-to-exceed amount of \$130,000 and will be assessed at the lesser of 33 1/3 percent or \$130,000. Professional fees for this search will be billed in thirds during the first three months of the engagement. The first 1/3, or retainer fee (\$43,300.00), will be due upon execution of this agreement. The second 1/3 fee will be billed in October 2008, and the third and final fee payment upon conclusion of the contract.

Expenses associated with the search will be billed on a monthly basis. In addition, should other placements occur within one year, from the conclusion of this search, a fee will be assessed based on those hired position(s).

The professional fees do not include expenses incurred on behalf of the agency. Therefore, our monthly invoices would include the following expenses:

- ✂ **Greenwood/Asher & Associates Expenses:** All costs associated with consultant travel, phone/video/web based technology outreach, faxes, postage, report reproduction, and supplies.
- ✂ **Client Expenses:** Additional expenses not included in Greenwood/Asher & Associates fees and expenses will include the following: Items such as candidate travel, candidate background work (degree and education verification, etc.), advertising, and on-line research for newspaper articles, etc. Additionally, services of a private investigator to perform extensive background checks beyond our reference checking and normal background work on 3-5 candidates can be arranged through us, but are charged and billed directly to the institution. These can be invoiced through Greenwood/Asher & Associates but are client expenses.
- ✂ Expenses shall not exceed \$35,000.00

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Either party has the right to cancel this assignment at any time, with 30 days written notice. Should you cancel this engagement, your only obligation is for accrued fees and expenses, except that a cancellation during the first month will incur an obligation of one third (1/3) of total amount stated above plus expenses.

We will not recruit any direct report to the President for a period of one year, from the date this contract is signed, unless we receive approval for an exception.

G/A&A agrees to make every possible effort to present you with the best candidates. However, we cannot guarantee the performance of a candidate ultimately selected by you. G/A&A agrees that if a person is hired for the presidential position and within one year of employment is terminated for cause by the Kentucky Council on Postsecondary Education and or reasons that should have been identified by G/A&A during the search assignment, we will conduct a replacement search and will apply the original fee towards such search. However, expenses associated with the replacement search will be invoiced to the Kentucky Council.

Further, Greenwood/Asher & Associates affirms, without reservation, the principles of equal opportunity in employment. We will not discriminate against qualified candidates for any unlawful reasons, including race, religion, gender, national origin, age, or disability. We expect our clients to comply with non-discrimination policies and practices also.

An invoice for the first payment in the amount of \$43,000.00 will follow soon after this agreement is signed. Payment will be remitted to:

Greenwood/Asher & Associates, Inc.
42 Business Center Dr., Suite 206
Miramar Beach, Florida 32550

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Authorizing Signatures

We, the undersigned, hereby acknowledge our agreement to the terms and conditions contained in this document and that we are authorized to obligate our respective organizations accordingly.

Council on Postsecondary Education (1st party)

Richard A. Crofts
Richard A. Crofts, Interim President

7-14-05
Date

Approved as to form and legality

Dennis Taulbee
Dennis Taulbee, General Counsel

Greenwood/Asher & Associates, Inc. (2nd party)

Attached
Signature

Date

Printed Name: _____
Title: _____

Approved as to form and legality (optional)

Legal or General Counsel

Other – 3rd party (optional)

Signature

Date

Printed Name: _____
Title: _____

