

**STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 ACQUISITION SERVICES
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933**

May 1, 2002

**NOTICE
 OF
 CONTRACT NO. 071B2001463
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR KWS, Inc. P.O. Box 389 812 Court Street Cheboygan, MI 49721	TELEPHONE John Kling (231) 627-7982
	VENDOR NUMBER/MAIL CODE
	BUYER (517) 241-1145 Lymon C. Hunter
Contract Administrator: Tim Jones Pedestal Frames – Base Plate & Conventional Post – Michigan Dept. of Transportation	
CONTRACT PERIOD: From: May 1, 2002 To: May 1, 2007	
TERMS <p style="text-align: center;">Net 30 Days</p>	SHIPMENT <p style="text-align: center;">60 Days ARO</p>
F.O.B. <p style="text-align: center;">Delivered</p>	SHIPPED FROM <p style="text-align: center;">Cheboygan, MI</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">4 frames</p>	

THIS CONTRACT IS AVAILABLE FOR LOCAL UNITS OF GOVERNMENT.

The terms and conditions of this Contract are those of **ITB #071I2000134**, this Contract Agreement and the vendor's quote dated **2/7/02**. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: \$92,500.00

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THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the [ITB No. 071I2000134](#). Orders for delivery of equipment will be issued directly by the [Michigan Department of Transportation](#) through the issuance of a Purchase Order Form.

All terms and conditions of the invitation to bid are made a part hereof.

FOR THE VENDOR:

FOR THE STATE:

 Firm Name

 Authorized Agent Signature

 Authorized Agent (Print or Type)

 Date

 Signature
Lymon C. Hunter, Buyer

 Name
Acquisition Services

 Title

 Date

CONTRACT NO. 071B2001463
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SECTION I - REQUIREMENTS

I-A INTRODUCTION

The purpose of this contract is to establish an agreement for pedestal frames, both conventional and base plate post. Section I is designed to provide all concerned parties with information on requirements associated with this contract.

I-B SPECIFIC REQUIREMENTS

A. SPECIFICATIONS

PEDESTAL FRAME - BASE PLATE POST

Frame, permanent, pedestal picnic table, rectangular supported by a single central steel post measuring 5 3/8" x 5 3/8" x 3/16". Central post length shall be made to provide 28" to 30" of clearance form the base plate to the underside of the top of the frame. Base plate for surface mounting pedestal base shall be 3/8" x 16" A-36 plate with 4 holes located on a 12" square hole pattern punched nominally for 1/2" diameter anchors. Base plate shall be creased down 1/8" around the perimeter at 1 1/2" in to assure positive bearing of the base to the slab.

The table frame shall be delivered to the site in a knocked down manner to allow independent installation of the central post by the installer. The top frame shall be constructed from a formed channel that shall field install to the pedestal base and maintain a tight fitting connection without any exposed fasteners to make a theft resistant installation. Top frame shall include a cross tube to stabilize the top, and the top frame shall provide additional support for recycled plastic planks. Frame shall be designed to be able to accommodate two (2) lag bolt fasteners per each of the three (3) top planks at the center, and both angle iron attachments near the table ends.

The two seat supports shall each be 3 1/2" diameter steel members secured to the central post with grade 5 fasteners and alloy backing plate designed to: fit inside the central steel post, resist lateral torsion/deflection, and secure to resist removal. Plate shall be 1/4" A-36. Tube members shall be of sufficient gauge, strength, and chemistry to resist deflection and lateral torsion when fully loaded.

2" x 2" x 3/16" angle attachments shall have continuous welds to the table top and seat supports. All angle attachments shall be punched nominally for 3/8" fasteners.

SHIPPING:

Frames shall be shipped to the delivery points as shown. Vendor shall contact the MDOT contract personnel at least 48 hours in advance of shipment to arrange delivery of frames. Frames shall be shipped so as to prevent marring of the finish, denting, or any other abnormality. The MDOT reserves the right to reject and refuse any frames showing defects upon arrival from the manufacturer.



FINISH:

All frame components, including fasteners shall be hot-dipped galvanized to ASTM A-123.

PEDESTAL FRAME - CONVENTIONAL POST

Frame, permanent, pedestal picnic table, rectangular supported by a single central steel post measuring 5 3/8" x 5 3/8" x 3/16". Central post shall be a minimum of 3' 6" in length. Central post shall have 4 (one per side) 1/2" diameter rod anchors roughly 4" from the bottom designed for casting into concrete.

The table frame shall be delivered to the site in a knocked down manner to allow independent installation of the central post by the installer. The top frame shall be constructed from a formed channel that shall field install to the pedestal base and maintain a tight fitting connection without any exposed fasteners to make a theft resistant installation. Top frame shall include a cross tube to stabilize the top, and the top frame shall provide additional support for recycled plastic planks. Frame shall be designed to be able to accommodate two (2) lag bolt fasteners per each of the three (3) top planks at the center, and both angle iron attachments near the table ends.

The two seat supports shall each be 3 1/2" diameter steel members secured to the central post with grade 5 fasteners and alloy backing plate designed to: fit inside the central steel post, resist lateral torsion/deflection, and secure to resist removal. Plate shall be 1/4" A-36. Tube members shall be of sufficient gauge, strength, and chemistry to resist deflection and lateral torsion when fully loaded.

2" x 2" x 3/16" angle attachments shall have continuous welds to the table top and seat supports. All angle attachments shall be punched nominally for 3/8" fasteners.

The center square base shall have two (2) 3" x 16" pieces of flat stock welded on the outside of the bottom of the pedestal to extend 14", or (4) pieces of #8(1/2") x 16" rebar welded in each inside corner extending 14" past bottom of pedestal.

SHIPPING:

Frames shall be shipped to the delivery points as shown. Vendor shall contact the MDOT contract personnel at least 48 hours in advance of shipment to arrange delivery of frames. Frames shall be shipped so as to prevent marring of the finish, denting, or any other abnormality. The MDOT reserves the right to reject and refuse any frames showing defects upon arrival from the manufacturer.



FINISH:

All frame components, including fasteners shall be hot-dipped galvanized to ASTM A-123.

1. RESEARCH AND PRODUCT DEVELOPMENT

Bidder shall discuss their ability to invest in new product development and research to stay current with ongoing demands.

2. QUALITY ASSURANCE PROGRAM

Bidders to provide detail regarding any Quality Assurance Program(s) that are currently in place within their organization.

3. WARRANTY/SERVICE

Bidders shall discuss all aspects of their warranty. This shall include the warranty associated with the actual product being proposed, as well as the warranty associated with any service work performed under the contract. Bidders shall also discuss how they will handle any repairs that need to be made due to damaged or defective product, how installation problems will be rectified, and the process State agencies should follow to report warranty issues.

B. DELIVERY

1. TIME FRAMES

It is requested that all orders be delivered within 60 calendar days after receipt of order.

2. MINIMUM ORDER

The minimum order is 4 *frames*.

3. F.O.B. POINT

Prices are "F.O.B. Delivered" with transportation charges prepaid on all orders of 4 frames or more to the State.

Freight Charges - Should an agency order below the minimum order requirement of a Contract, or should a vendor quote F.O.B. Shipping Point on one-time purchases, one of the following carriers must be used by the Contractor for shipping products. Orders being shipped from or to in the State of Michigan or the States of Illinois, Indiana, Ohio, and Wisconsin, use Alvan Motor Freight (Tel: (800) 632-4172, attention Earl Batenburg); orders being



shipped from or to ALL other states, use Roadway Express, Inc. (Tel: (800) 253-3193, attention David Lewis).

United Parcel Service (UPS) must be used in instances where the weight of the shipment is less than 150 lbs., or where shipments could be separated into smaller parcels such as three (3) 50 lb. packages. Also if the shipment weighs less than 150 lbs. but costs \$3000 or more, it must be sent by the appropriate carrier listed above.

If the Contractor fails to follow these shipping instructions, the State shall pay the carrier used and deduct the difference from the Contractor's invoice for the amount which was charged and the amount which would have been charged if the requested carrier had been used.

4. PACKAGING

The pack sizes indicated on the Item Listing reflects the sizes currently used by the industry.

Packaging and containers, etc., shall be in accordance with supplier's commercial practice and shall meet the requirements of Department of Transportation (D.O.T.) and rail and motor carrier freight classifications in effect at time of shipment, which will permit application of the lowest freight rate.

5. PALLETIZING

Shipments shall be palletized whenever possible and shall conform to the following:

- Manufacturers standard 4-way shipping pallets are acceptable.
- Maximum height: 5'6"; including pallet.
- Maximum weight: 3500 pounds; including pallet.
- Pallets are to be securely banded or shrink-wrapped.
- The cost of palletizing must be included in the unit price.

C. PRICING

See attached Item Listing.



SECTION II - GENERAL CONTRACT PROVISIONS

II-A GENERAL

The Contract is for pedestal frames, both conventional and base plate post for the State of Michigan. Exact quantities to be purchased are unknown, however the Contractor will be required to furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities. Orders for delivery will be issued directly to the Contractor by various State Agencies on the Purchase Order Contract Release Form and by Acquisition Services on the Purchase Order Form.

The Contract will be a Unit Price Contract.

Indicated on the delivery point listing is the "ship to" address for the participating agency. However, if the Contractor and the State agree, additional State agencies may participate should the need develop.

II-B ISSUING OFFICE

The Contract is issued by Acquisition Services, State of Michigan, Department of Management and Budget, hereinafter known as Acquisition Services, for the Michigan Department of Transportation hereinafter known *as MDOT*. Where actions are a combination of those of Acquisition Services and MDOT, the authority will be known as the State.

Acquisition Services is the sole point of contact in the State with regard to all procurement and contractual matters relating to the commodities and/or services described herein. Acquisition Services is the only office authorized to change, modify, amend, alter, clarify, etc., the specifications, terms, and conditions of the Contract. Acquisition Services will remain the **SOLE POINT OF CONTACT** throughout the procurement process. All communications covering this procurement must be addressed to:

Department of Management and Budget
 Acquisition Services
 Attn: Lymon C. Hunter
 2nd Floor, Mason Building
 P.O. Box 30026
 Lansing, Michigan 48909
 (517) 241-1145
HunterL@michigan.gov



II-C CONTRACT ADMINISTRATOR

Upon receipt at Acquisition Services of the properly executed Contract Agreement(s), the person named below will be allowed to administer the Contract on a day-to-day basis during the term of the Contract. However, administration of the Contract implies no authority to change, modify, clarify, amend, or otherwise alter the terms, conditions, and specifications of such Contract(s). That authority is retained by Acquisition Services. The Contract Administrator for this project is:

Tim Jones
Michigan Department of Transportation
Maintenance Division
6333 Old Lansing Road
Lansing, MI 48917
517.322.3327
JonesTi@michigan.gov

II-D CONTRACT TERM

The term of this contract will be for a five year period and will commence with the issuance of a Contract. This will be approximately [May 1, 2002](#) through May 1, 2007. At the sole option of the State, the Contract may be extended for up to 2 (two) additional years. Contractor performance, quality of products, price, and the Contractor’s ability to deliver on time are some of the things that will be used as a basis for any decision by Acquisition Services to extend the Contract.

II-E ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

The following documents constitute the complete and exclusive agreement between the parties. The following order of precedence shall apply (in descending order):

- A. Contract No. 071B2001463
- B. Any addenda to that ITB.
- C. The Contractor’s response to that ITB.

The State of Michigan shall not be bound by any part(s) of the bidder's response to the ITB which contains information, options, conditions, terms, or prices neither requested nor required in the ITB. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the Contractor, those of the State take precedence. The contract supercedes all proposals or other prior agreements, oral or written, and all other communications between the parties relating to this subject.

II-F NO WAIVER OF DEFAULT

The failure of a party to insist upon strict adherence to any term of the Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term or any other term of the Contract.



II-G REVISIONS, CONSENTS, AND APPROVALS

The Contract may not be modified, amended, extended, or augmented except by a writing executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in writing signed by the other party.

II-H SEVERABILITY

Each provision of the Contract shall be deemed to be severable from all other provisions of the Contract and, if one or more of the provisions of the Contract shall be declared invalid, the remaining provisions of the Contract shall remain in full force and effect.

II-I SURVIVOR

Any provisions of the Contract that impose continuing obligations on the parties including, but not limited to the Contractor’s indemnity and other obligations shall survive the expiration or cancellation of the Contract for any reason.

II-J GOVERNING LAW

The Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.

II-K RELATIONSHIP OF THE PARTIES (INDEPENDENT CONTRACTOR)

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.

II-L HEADINGS

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of this Contract.

II-M INCURRING COSTS

The State of Michigan is not liable for any cost incurred by the Contractor prior to signing of the Contract. The State fiscal year is October 1st through September 30th. The Contractor(s) should realize that payments in any given fiscal year are contingent upon enactment of legislative appropriations. Total liability of the State is limited to terms and conditions of the Contract.



II-N NEWS RELEASES

News releases (including promotional literature and commercial advertisements) pertaining to the ITB and Contract or project to which it relates shall not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the ITB and Contract are to be released without prior written approval of the State and then only to persons designated.

II-O CONTRACTOR RESPONSIBILITIES

The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider the prime Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from this Contract. If any part of the work is to be subcontracted, the Contract must include a list of subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve subcontractors and to require the primary Contractor to replace subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the subcontractor to all provisions of the Contract. Any change in subcontractors must be approved by the State, in writing, prior to such change.

II-P PERFORMANCE REVIEWS

Acquisition Services in conjunction with the MDOT may review with the Contractor their performance under the Contract. Performance reviews shall be conducted quarterly, semi-annually or annually depending on Contractor’s past performance with the State. Performance reviews shall include, but not limited to, quality of products being delivered, timeliness of delivery, percentage of completion of orders, the amount of back orders, status of such orders, accuracy of billings, customer service, completion and submission of required paperwork, the number of substitutions and the reasons for substitutions, and other requirements of the Contract.

Upon a finding of poor performance, which has been documented by Acquisition Services, the Contractor shall be given an opportunity to respond and take corrective action. If corrective action is not taken in a reasonable amount of time as determined by Acquisition Services, the Contract may be canceled for default. Acquisition Services reserves the right to cancel the Contract immediately at any time for default, if the Office documents that unsafe and/or adulterated or off-condition products are being delivered to any State agency by the Contractor.

II-Q PROHIBITED PRODUCTS

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Acquisition Services has approved a change.



II-R AUDIT OF CONTRACT COMPLIANCE

The Contractor agrees that the State may, upon 24-hour notice, perform an audit at Contractor’s location(s) to determine if the Contractor is complying with the requirements of the Contract. The Contractor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.

II-S SAFETY AND ACCIDENT PREVENTION

In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such safety requirements, rules, laws or regulations shall be a material breach of the Contract and shall be grounds for cancellation of the Contract in accordance with the Cancellation provisions contained herein.

II-T ASSIGNMENT

The Contractor shall not have the right to assign the Contract or to assign or delegate any of its duties or obligations under the Contract to any other party (whether by operation of law or otherwise), without the prior written consent of the State. Any purported assignment in violation of this Section shall be null and void. Further, the Contractor may not assign the right to receive money due under the Contract without the prior written consent of the State Acquisition Services Director.

II-U DELEGATION

The Contractor shall not delegate any duties or obligations under the Contract to a subcontractor other than a subcontractor named and approved in the bid unless the State Acquisition Services Director has given written consent to the delegation.

II-V DISCLOSURE

All information in a bidder’s proposal and the Contract is subject to the provisions of the Freedom of Information Act. 1976 Public Act No. 442, as amended, MCL 15.231, et seq.

II-W TAXES

- A. Sales Tax: For purchases made directly by the State of Michigan, the State is exempt from State and Local Sales Tax. Prices shall not include such taxes. Exemption Certificates for State Sales Tax will be furnished upon request.
- B. Federal Excise Tax: The State of Michigan may be exempt for Federal Excise Tax, or such taxes may be reimbursable, if articles purchased under this Contract are



used for the State’s exclusive use. Certificates exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent to the Contractor upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices shall not include the Federal Excise Tax.

- C. Contractors are expected to collect and pay all applicable federal, state, and local employment taxes for all persons involved in the resulting Contract. Also, bidders shall maintain appropriate payroll information on a system that can produce any reports that may be needed by Acquisition Services.

II-X PRICE

Prices are the maximum for a period of 365 days from the date the Contract becomes effective.

Prices are subject to change at the end of each 365 day period. Such changes shall be based on changes in actual costs incurred. Documentation of such changes must be provided with the request for price change in order to substantiate any requested change. Acquisition Services reserves the right to consider various pertinent information sources to evaluate price increase requests (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics). Acquisition Services also reserves the right to consider other information related to special economic and/or industry circumstances, when evaluating a price change request. Changes may be either increases or decreases, and may be requested by either party. Approved changes shall be firm for the remainder of the contract period unless further revised at the end of the next 365 day period.

Requests for price changes shall be RECEIVED IN WRITING AT LEAST TEN DAYS PRIOR TO THEIR EFFECTIVE DATE, and are subject to written acceptance before becoming effective. In the event new prices are not acceptable, the CONTRACT may be cancelled. The continued payment of any charges due after September 30th of any fiscal year will be subject to the availability of an appropriation for this purpose.

II-Y ADDITIONAL PRODUCTS

The State reserves the right to add an item(s) that is not described on the item listing and is available from the Contract vendor. The item(s) may be included on the Contract, only if prior written approval has been granted by Acquisition Services.

II-Z RECYCLED CONTAINERS

Bidders are encouraged to offer products packaged in containers using recovered materials suitable for the intended use. 'Recovered material' is defined as post-consumer waste (any products generated by a business or consumer which have served their intended end use, and which have been separated or diverted from solid waste for the purpose of collection, recycling, and disposition) and 'secondary waste' (industrial by-products and wastes generated after completion of a manufacturing process that would normally not be reused).



II-AA CONTRACTOR'S LIABILITY INSURANCE

The Contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the Contractor's operations under the Contract (Direct Purchase Order), whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- A. Claims under workers' compensation, disability benefit and other similar employee benefit act. A non-resident Contractor shall have insurance for benefits payable under Michigan's Workers' Compensation Law for any employee resident of and hired in Michigan; and as respects any other employee protected by workers' compensation laws of any other state the Contractor shall have insurance or participate in a mandatory state fund to cover the benefits payable to any such employee.
- B. Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees.
- C. Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees, subject to limits of liability of not less than \$300,000 each occurrence and, when applicable \$300,000 annual aggregate, for non-automobile hazards and as required by law for automobile hazards.
- D. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom, subject to a limit of liability of not less than \$50,000 each occurrence for non-automobile hazards and as required by law for automobile hazards.
- E. Insurance for Subparagraphs (3) and (4) non-automobile hazards on a combined single limit of liability basis shall not be less than \$300,000 each occurrence and when applicable, \$300,000 annual aggregate.

The insurance shall be written for not less than any limits of liability herein specified or required by law, whichever is greater, and shall include Contractual liability insurance as applicable to the Contractor's obligations under the Indemnification clause of the Contract (Direct Purchase Order).

BEFORE THE CONTRACT IS EXECUTED BY ACQUISITION SERVICES, THE CONTRACTOR MUST FURNISH TO ACQUISITION SERVICES, CERTIFICATE(S) OF INSURANCE VERIFYING LIABILITY COVERAGE. THE CONTRACT OR DIRECT PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING. These Certificates shall contain a provision that coverage afforded under the policies will not be cancelled until at least fifteen days prior written notice bearing the Contract No. or Direct Purchase Order No. has been given to the Director of Acquisition Services.



II-BB INDEMNIFICATION

A. General Indemnification

The Contractor shall indemnify, defend and hold harmless the State, its departments, divisions, agencies, sections, commissions, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

1. any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Contract.
2. any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Contract;
3. any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;
4. any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;
5. any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

B. Patent/Copyright Infringement Indemnification

The Contractor shall indemnify, defend and hold harmless the State, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or



its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or the operation thereof, become or in the Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

C. Indemnification Obligation Not Limited

In any and all claims against the State of Michigan, or any of its agents or employees, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefits acts, or other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in subclauses, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other subclause.

D. Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect notwithstanding the expiration or early termination of the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

II-CC RIGHT TO KNOW ACT (Act 80 of 1986)

The "Right to Know Act" is intended to provide protection and information to employees who encounter hazardous substances in the workplace. To comply with this act, it is necessary that you fulfill the following:

Labels on all incoming containers of hazardous chemicals must (1) clearly State the identity of the contents, (2) display appropriate hazard warning(s), (3) include first aid information, and (4) list the name and address of the chemical manufacturer, importer, or other responsible party.

Material Safety Data Sheets must be included with shipment of chemical or hazardous material to the receiving State agency. It is necessary to send this document only on the



first shipment for each chemical formulation or hazardous material ordered by a specific agency except when there has been a change in the formulation of the specified chemical or hazardous material, in which case, a revised material safety data sheet shall accompany the first shipment of the changed formulation. It is the responsibility of the shipping vendor to maintain this record. The receiving agency will not accept first shipment unless the above is complied with. It is recommended that OSHA Material Safety Data Sheet No. 174 be used.

II-DD CONTRACT DISTRIBUTION

Acquisition Services shall retain the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by the purchasing office.

II-EE ACCOUNTING RECORDS

The Contractor and all subcontractors shall maintain all pertinent financial and accounting records and evidence pertaining to the Contract in accordance with generally accepted principles of accounting and other procedures specified by the State of Michigan. Financial and accounting records shall be made available, upon request, to the State of Michigan, its designees, or the Michigan Auditor General at any time during the Contract period and any extension thereof, and for three years from expiration date and final payment on the Contract or extension thereof.

II-FF NON-DISCRIMINATION CLAUSE

In the performance of a Contract or purchase order, the contractors agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental handicap or disability. The contractor further agrees that every subcontract entered into for the performance of any Contract or purchase order resulting herefrom will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 Public Act 453, as amended, MCL 37.2201, et seq, and the Michigan Handicapper’s Civil Rights Act, 1976 Public Act 220, as amended, MCL 37.1101, et seq, and any breach thereof may be regarded as a material breach of the Contract or purchase order.

II-GG CANCELLATION

- A. Material Breach by the Contractor. In the event that the Contractor breaches any of its material duties or obligations under the Contract, which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State, or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of cancellation to the Contractor, cancel this Contract in whole or in part, for cause, as of the date specified in the notice of cancellation.



In the event that this Contract is cancelled for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Contractor shall be responsible for all costs incurred by the State in canceling the Contract, including but not limited to, State administrative costs, attorneys fees and court costs, and any additional costs the State may incur to procure the services required by this Contract from other sources. All excess re-procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in the Contract.

In the event the State chooses to partially cancel this Contract for cause charges payable under this Contract will be equitably adjusted to reflect those services that are cancelled.

In the event this Contract is cancelled for cause pursuant to this section, and it is therefore determined, for any reason, that the Contractor was not in breach of contract pursuant to the provisions of this section, that cancellation for cause shall be deemed to have been a cancellation for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in the Contract for a cancellation for convenience.

- B. Cancellation For Convenience By the State. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.

- C. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.



- D. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Contractor’s business integrity.

- E. In the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Article 11, Section 5 of the Michigan Constitution of 1963 and Chapter 7 of the Civil Service Rules. Notwithstanding any other provision of this Contract to the contrary, the State Personnel Director is authorized to disapprove contractual disbursements for personal services if the Director determines that the Contract or the disbursements under the Contract violate Article 11, Section 5 of the Constitution or violate applicable Civil Service rules or regulations. Cancellation may be in whole or in part and may be immediate as of the date of the written notice to the Contractor or may be effective as of the date stated in such written notice.

II-HH NOTICE AND RIGHT TO CURE

In the event of a curable breach by the Contractor, the State shall provide the Contractor written notice of the breach and a time period to cure said breach described in the notice. This section requiring notice and an opportunity to cure shall not be applicable in the event of successive or repeated breaches of the same nature or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage or destruction of any real or tangible personal property.

II-II ELECTRONIC FUNDS TRANSFER

Electronic transfer of funds is available to State contractors. Vendors are encouraged to register with the State of Michigan Office of Financial Management so the State can make payments related to this Contract electronically.

II-JJ MODIFICATION OF CONTRACT

Acquisition Services reserves the right to modify this contract at any time during the contract term. Such modification may include changing the locations to be serviced, additional locations to be serviced, method or manner of performance of the work, number of days service is to be performed, addition or deletion of tasks to be performed, addition or deletion of items, and/or any other modifications deemed necessary. Any changes in pricing proposed by the Contractor resulting from the proposed changes are subject to acceptance by the State. Changes may be increases or decreases. **IN THE EVENT PRICES ARE NOT ACCEPTABLE TO THE STATE, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATION.**



II-KK UNFAIR LABOR PRACTICES

Pursuant to 1980 Public Act 278, as amended, MCL 423.231, et seq, the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to Section 2 of the Act. A Contractor of the State, in relation to the Contract, shall not enter into a Contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to Section 4 of 1980 Public Act 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of the Contractor as an employer, or the name of the subcontractor, manufacturer or supplier of the Contractor appears in the register.

II-LL FORM, FUNCTION, AND UTILITY

If the Contract is for use of more than one State agency and if the good or service provided under this Contract do not the meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the good or service from another source.

II-MM CONTRACT PAYMENT SCHEDULE

The specific payment schedule for the Contract(s) will be mutually agreed upon by the State and the Contractor(s). The schedule should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy statements shall be forwarded to the designated representative by the 15th day of the following month.



NON-STATE AGENCY STATEMENT:

Act Number 431 of the Public Acts of 1984 permits the State of Michigan, Department of Management and Budget, to provide purchasing services to local units of government and school districts. As a result of the enactment of this legislation, the Extended Purchasing Program has been developed. This program extends the use of State contracts to program members. The governmental agency must enter into an agreement with the State of Michigan to become authorized to participate, thus ensuring that local units of government secure a greater return for the expenditure of public funds. It is the policy of Acquisition Services, Department of Management and Budget, that the final approval to utilize any such Contract in this manner must come from the Contract vendor.

In such cases, Contract vendors supply merchandise at the established State of Michigan Contract prices and terms. Inasmuch as these are non-State agencies, all purchase orders will be submitted by, invoices will be billed to, and payment will be remitted by the authorized Extended Purchasing member on a direct and individual basis in accordance with Contract terms.

Therefore, it is required that all bidders indicate, by checking the appropriate box below, whether they will (first box) or will not (second box) honor orders on any Contract resulting from this Request for Quotation from State of Michigan authorized Extended Purchasing members. It is the responsibility of the Contractor to ensure the non-State agency is an authorized Extended Purchasing member prior to extending the State Contract price.

BIDDER MUST CHECK ONE BOX BELOW

- [X] Commodities and/or services on this Request for Quotation will be supplied to State of Michigan departments and agencies, and authorized Extended Purchasing Program members in accordance with the terms and prices quoted. Upon request, a complete listing of eligible participants in the Extended Purchasing Program will be provided if this option is selected.
- [] Commodities and/or services on the Request for Quotation will not be supplied to State of Michigan authorized Extended Purchasing members. We will supply to State of Michigan departments and agencies only.

KWS, Inc.
Vendor Name

John W. Kling
Authorized Agent Name (print or type)

Authorized Agent Signature



ITEM LISTING

Vendor shall contact the following MDOT personnel a minimum of 48 hours in advance to schedule delivery. Deliveries are accepted between the hours of 8:00am and 3:00pm.

Item No.	NIGP Code	Unit	Location	Unit Price
1.	650-36	EA	Permanent Pedestal Picnic Table Frames Delivered to: MDOT 301 Winter St. L'Anse, MI 49946 Contact: John Dault (906) 524-6124	<u>\$185.00</u>
2.	650-36	EA	Permanent Pedestal Picnic Table Frames Delivered to: MDOT 500 Ferry Lane St. Ignace, MI 49781 Contact: Louis Litzner (906) 643-8700	<u>\$185.00</u>
3.	650-36	EA	Permanent Pedestal Picnic Table Frames Delivered to: MDOT 13490 M-32/M-33 Atlanta, MI 49709 Contact: Mary Grohl (989) 785-3514	<u>\$185.00</u>
4.	650-36	EA	Permanent Pedestal Picnic Table Frames Delivered to: MDOT 725 Seneca Place Cadillac, MI 49601 Contact: Wilma Genzink (231) 775-3581	<u>\$185.00</u>



ITEM LISTING

Vendor shall contact the following MDOT personnel a minimum of 48 hours in advance to schedule delivery. Deliveries are accepted between the hours of 8:00am and 3:00pm.

Item No.	NIGP Code	Unit	Location	Unit Price
5.	650-36	EA	Permanent Pedestal Picnic Table Frames Delivered to: MDOT 1240 Front Avenue, N.W. Grand Rapids, MI 49504 Contact: Tom Turner (616) 451-4557	<u>\$185.00</u>
6.	650-36	EA	Permanent Pedestal Picnic Table Frames Delivered to: MDOT 3510 E. Washington Ave. Saginaw, MI 48601 Contact: Ponce Esparza (989) 754-0061	<u>\$185.00</u>
7.	650-36	EA	Permanent Pedestal Picnic Table Frames Delivered to: MDOT 800 Chanter Jackson, MI 49201 Contact: Bob Dubois (517) 783-2871	<u>\$185.00</u>
8.	650-36	EA	Permanent Pedestal Picnic Table Frames Delivered to: MDOT 2945 Lapeer Rd. (M-24) Auburn Hills, MI 48326 Contact: Jeff Wood (248) 373-4900	<u>\$185.00</u>



Item No.	NIGP Code	Unit	Location	Unit Price
9.	650-36	EA	Permanent Pedestal Picnic Table Frames Delivered to: MDOT 6345 American Ave. Portage, MI 49002 Contact: Jeff Wood (248) 373-4900	<u>\$185.00</u>

ADDITIONAL INFORMATION:

MINIMUM ORDER

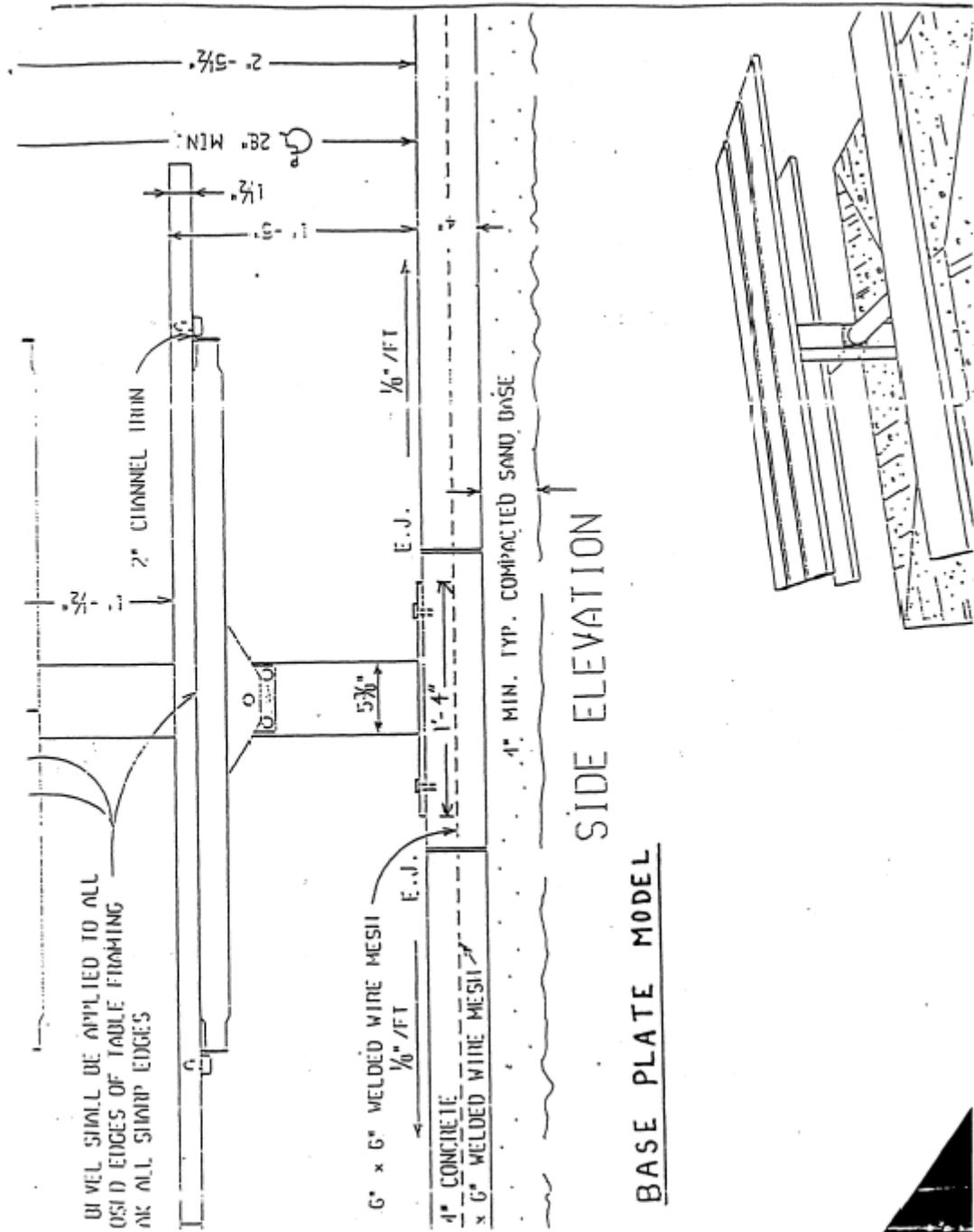
The minimum order is 4 frames.

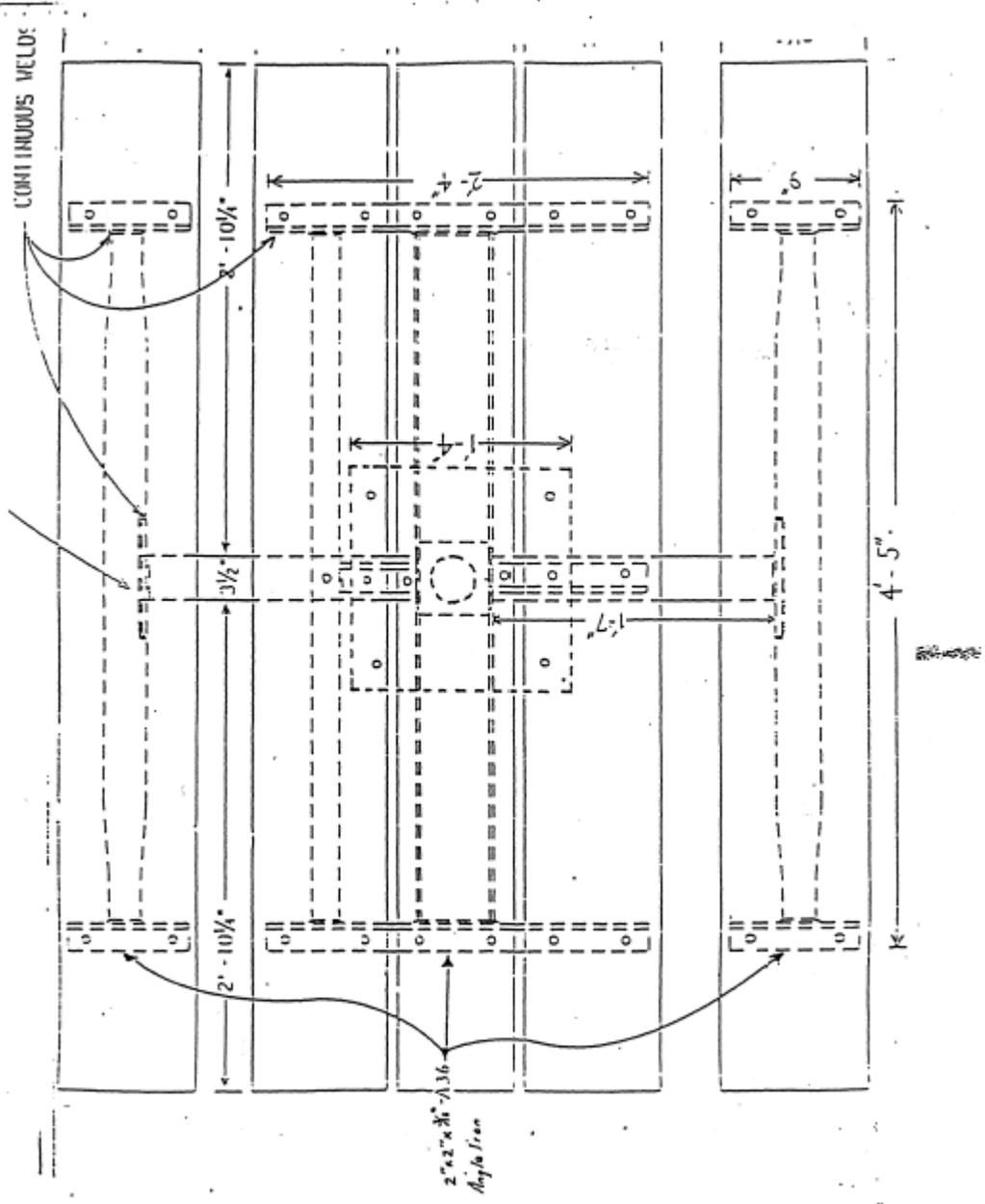
Contact Person for KWS, Inc.:

NAME: John W. Kling

TITLE: President

PHONE: 231.627.7982





Base
plate
Model

