



KY-555 DESIGN BUILD

Volume I: Instruction to Proposers

Project Identification

Contract No: 22-902
State Project No: FD52 0555 000-009
County: Washington
Route: KY 555

DRAFT Dated: December 29, 2022
Proposal Due Date: February 3, 2023

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ABBREVIATIONS

ATC	Alternative Technical Concept
BU	Buildable Unit
CE	Categorical Exclusion
CFR	Code of Federal Regulations, <i>See Standard Specifications</i>
DB	Design-Build
DBE	Disadvantaged Business Enterprise; <i>See Standard Specifications</i>
DBT	Design-Build Team
EEO	Equal Employment Opportunity
EIS	Environmental Impact Study, <i>See Standard Specifications</i>
FHWA	<i>See Standard Specifications</i>
FY	Fiscal Year
HDGM	Highway Design Guidance Manual
ITP	Instructions to Proposers
ITS	Intelligent Transportation System; <i>See Standard Specifications</i>
KRS	Kentucky Revised Statutes; <i>See Standard Specifications</i>
KY	Kentucky
KYDOH	Kentucky Department of Highways
KYTC	Kentucky Transportation Cabinet; <i>See Standard Specifications</i>
LOD	Limits of Disturbance
LOI	Letter of Interest
LOD	Levels of Disturbance
NEPA	National Environmental Policy Act; <i>See Standard Specifications</i>
NDAA	National Defense Authorization Act
NTI	Notice to Industry
NTP	Notice to Proceed
PDF	Portable Document Format
RFP	Request for Proposal
RID	Reference Information Documents
ROD	Record of Decision; <i>See Standard Specifications</i>
ROW	Right-of-Way
TP	Technical Provision
USACE	United States Army Corps of Engineers
USDOT	United States Department of Transportation

DEFINITIONS

Addenda/Addendum	As defined in Section 1.3.3
Alternative Technical Concept (ATC)	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
ATC Summary	As defined in this Volume 1, Section 6.2
Apparent Best Value Proposer	The Proposer that submits a responsive Proposal that, upon evaluation using the criteria set forth in this RFP, meets the standards set by KYTC, and provides the best value to, and is in the best interest of, the Commonwealth
Appendix	One of the Appendices to the Instructions to Proposers.
Attachment	One of the Attachments to Volume III.
Authorized Representative	The Proposer's authorized representative for the procurement.
Authorized KYTC Project Manager (PM)	KYTC's authorized project manager for the procurement.
Authorized KYTC Representative	KYTC's authorized representative for the procurement.
Awards Committee	A committee of KYTC representatives that are responsible for reviewing an overall proposal score and verifying the winning Design Build Team for this project.
Beech Fork Bridge	The bridge structure at KY 555 mile post 3.48.
Bid Express	KYTC's Secure Internet Bidding site for Proposers to retrieve Bid Files and electronically submitting the Price Proposal.
Bid File	The file on Bid Express specifically related to this procurement and where Shortlisted Proposers will submit the items required of the Price Proposal.
Buildable Unit	Buildable Units are portions of the projects which may be designed, reviewed and built with only limited controls and assumptions coming from the design of other portions of the project, and as further defined in Section 3.2 of the TPs.
Categorical Exclusion	A class of actions that a federal agency has determined do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is normally required.
Certificate of Eligibility	Certificate of Eligibility as provided in regulations published by the Department according to KRS 176.140
Change Order	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
Commonwealth	The Commonwealth of Kentucky
Completion Deadline(s)	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
Contract	The Design Build Agreement (DBA)
Contract Documents	Documents that comprise the Contract or the Design Build Agreement (DBA) as identified in Article 1 Sec 1.2 DBA.
Contract Notes	Additional Contract requirements included in Appendix B to the ITP.
Contract Price	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .

DB Law	The Commonwealth's enabling Design Build legislation, KRS 176.431.
DBE Utilization Plan	See Volume I ITP Appendix C
Deadline for DBT to Execute Contract	The time, no later than 15 calendar days from receiving the final version of the Contract from KYTC, when the Apparent Best Value Proposer files their fully executed contract with the Commonwealth.
Default	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
Department	See <i>Standard Specifications</i>
Design-Build Team (DBT)	The team with whom KYTC has executed the Contract for the Project, given a Notice to Proceed and comprised of the lead construction firm in charge of the portion of the DBT that physically constructs the Project, and the Lead Designer in charge of the portion of the DBT that prepares design documents – drawings, specifications, calculations, records, reports, or other documents based on Contract requirements
Effective Date	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
Eligible Security Issuer	As defined in this Volume I Section 7.4.2
Engineer	See <i>Standard Specifications</i>
Environmental Approvals	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
Final Acceptance	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
Governmental Entity	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
<i>Highway Design Manual</i>	KYTC's Highway Design Guidance Manual
Instructions to Proposers	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
Issuing Office	As defined in Section 1.10.1
Last Date for KYTC Responses to Pre-Proposal Questions	As defined in Section 1.4
Lead Contractor	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
Lead Designer	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
Letter of Interest (LOI)	A document submitted by a Proposer in response to the NTI, identifying the Major Team Members and KYTC prequalification and detailing the Proposer's capabilities and previous relevant project experience.
Long Lick Branch Bridge	The bridge structure at KY 555 mile post 8.3.
Key Personnel	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
Kentucky Transportation Cabinet (KYTC)	Kentucky Transportation Cabinet; See <i>Standard Specifications</i>
Major Team Members	The Lead Contractor and the Lead Designer for the Proposer Team
Maximum Contract Value	\$22,000,000
Notice to Industry (NTI)	The document that outlines a proposed Design Build project and requests that parties interested in bidding on the contract provide a LOI to be eligible to respond this RFP

Notice to Proceed (NTP)	After the Commissioner of Highways executes the Contract, the point at which KYTC notifies the DBT that it may begin Work.
One-on-One Meeting or One-on-One	Meetings between each of the Shortlisted Proposers and KYTC to discuss ATCs and Pre-Proposal Questions related to the RFP Documents.
Online Archive	The public website where all RFP Documents including responses to Pre-Proposal Questions are posted.
Point of Contact	The individual indicated in the Proposer's LOI as the Proposer Team contact for KYTC
Pre-Proposal Questions	Any written questions, comments or proposed documents edits submitted to KYTC using Form F following the procedure outlined in Section ARTICLE 3.
Preliminary Baseline Schedule	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
Preliminary Line and Grade	As defined in the KYTC Highway Design Guidance Manual
Price Proposal	The Proposal submittal by the Proposer that includes the price for which the Proposer offers to perform the work described in the Contract Documents.
Project	As defined in Section 1.1
Project Award	The acceptance by KYTC of a proposal.
Project Management Approach	The component of the Proposer's Technical proposal as described within this Volume I, Section 7.3.3 Part A.
Project Portal	KYTC's secure internet submittal site for the transfer of documents between the Proposers and KYTC.
Project Schedule	As defined in Section 1.4
Project Scope	The services, as specified in the Contract Documents, provided by the DBT upon NTP of the Contract.
Proposal	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
Proposal Due Date	January 27, 2023
Proposal Guaranty	The security furnished with a Proposal guaranteeing that a Proposer submitting an accepted Proposal enters into the Contract under the terms at which they propose.
Proposal Validity Period	120 days from the date KYTC receives the Proposal, during which KYTC reserves the right to hold the price of the Proposals, until such time as the Contract is executed.
Proposer	The entity submitting a Proposal to KYTC to perform the advertised work.
Proposer Team	The entities and individuals that are named as part of the Proposer's Proposal, including the Proposer's Major Team Members and Key Personnel.
Proposer Team Member	Each of the entities and individuals comprising the Proposer Team.
Quality Management Plan	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
Record of Decision	The conclusion of the National Environmental Policy Act Environmental Impact Statement process
Reference Information Document (RID)	Documents provided by KYTC for informational purposes only.

Required Personnel	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
RFP Documents	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
RFP Process	The procurement process to determine the Project Award to develop and deliver the Project, commencing with the issuance of this ITP and terminating upon the Project Award or the date that KYTC notifies the Proposers that the procurement for the Project has been terminated, whichever occurs first, and includes the various steps described in this ITP.
Right-of-Way (ROW)	See <i>Standard Specifications</i> .
Safety Management Plan	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
Scoring Committee	Representatives of KYTC charged with evaluating and scoring the responsive Technical Proposals for the RFP.
Setting Date	The date of issuance of the Final RFP.
Shortlisted Proposers	Respondents to the NTI that are qualified and eligible to respond to the RFP.
<i>Standard Specifications</i>	KYTC Standard Specifications for Road and Bridge Construction as of the Setting Date
Stipend	A fee that shall be paid to any unsuccessful but responsive Shortlisted Proposer for its Proposal to the RFP. No Stipend shall be paid for the LOI.
Stipend Payment	Shall mean the payment as described in this Volume I, Section 5.10.
Substantial Completion	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
Substantial Completion Deadline	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
Technical Review Committee	A committee of KYTC representatives that are responsible for determining the Apparent Best Value Proposer.
Technical Proposal	The first submittal of a Proposer for the RFP that includes but is not limited to the proposed design, method of construction, and procedures for addressing the environmental requirements of the Project.
Utility Adjustment Report	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
Utility Adjustment Work	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
Volume I	The Instruction to Proposers of this RFP.
Volume II	The form of the Contract or the DBA of this RFP.
Volume III	The Technical Provisions of this RFP.
Utility/Utilities	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
Utility Company	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .
Work	As defined in Volume II, <i>Exhibit 1, Abbreviations and Defined Terms</i> .

VOLUME I – INSTRUCTIONS TO PROPOSERS

ARTICLE 1. INTRODUCTION

1.1 INTRODUCTION

The Kentucky Transportation Cabinet (KYTC), on behalf of the Commonwealth of Kentucky (the “Commonwealth”), is soliciting proposals (each a Proposal) from Shortlisted Proposers (defined below) seeking to enter into a Contract (the Contract), through which a Design Build Team (DBT) performs certain contract work. The Contract is intended to be delivered utilizing a design build delivery method to deliver road and bridge improvements and rehabilitations on KY-555 (the Project) to the Commonwealth.

The Instructions to Proposers in relation to the Project (the ITP) and the accompanying documents, Volume II and Volume III and all their Appendices and Attachments, the Request for Proposal Documents, (the RFP Documents) are the second step in a two-phase procurement. KYTC issued a Notice to Industry on October 7, 2022, (the NTI), seeking Letter of Interest (each an LOI). On October 28, 2022, the Commonwealth received one (1) response to the NTI that is qualified and eligible to respond to the RFP (each a “Shortlisted Proposer” and collectively, the “Shortlisted Proposers”). Only Shortlisted Proposers are eligible to submit a Proposal in response to the RFP as a Proposer.

This ITP is being issued by KYTC in accordance with KRS 176.431 (the DB Law), the enabling legislation for Design Build project delivery method, and other applicable provisions of federal and Commonwealth law.

1.2 PROJECT DESCRIPTION

The Project Scope will include:

- Widening the existing two-lane roadway to a 2+1 typical section, unless otherwise permitted, for approximately 8.7 miles from US 150X (MP 0.0) to KY 53 (MP 8.7);
- Construction of three (3) roundabouts at the intersections of KY 555 and US 150X, KY 528, and US 150;
- Work at Long Lick Branch Bridge and Beech Fork Bridge, including:
 - Eliminating joints at both ends of the bridge, which shall mean the entire joint, not just the seals;
 - Repairing slope erosion from the top of slope to the creek and installation of rip rap around the piers;
 - Addressing the girder end spalls at the abutments (cleaning and painting/sealing the ends to protect the exposed reinforcement); and
 - Repairing any encountered potholes/delamination in the deck surface; and
- Reconstruct or widen the Long Lick Branch Bridge (MP 8.3) to accommodate the 2+1 roadway typical section.

KYTC’s Project goals are:

- Minimize traffic impacts during construction by:
 - Limiting lane closure times to facilitate commercial truck traffic on KY 555 between Bluegrass Parkway and I-65
 - Maintaining 10-foot minimum lane widths

- Maintaining traffic movements, particularly for trucks, at proposed roundabout intersections
- Minimize impacts to the environment, ROW, Utilities, and local businesses and residents
- Safely introduce roundabouts to the surrounding community
- Coordinate with contemporaneous and future work on the segment of KY 555 from KY 53 to Bluegrass Parkway (currently under procurement)
- Complete construction by October 2024
- Deliver the Project at or below budget
- Provide high quality design and construction
- Deliver the Project with zero lost-time incidents
- Provide high quality design and construction
- Minimize impacts to local businesses, property owners, utilities and railroads
- Meet set DBE goal as outlined in Volume II for the DBE-applicable provisions and requirements for this Project.

KYTC has determined the last acceptable Substantial Completion Deadline for the project shall be the Substantial Completion Deadline set forth in Section 1.4.

1.3 REQUEST FOR PROPOSALS

1.3.1 Procurement Overview

Proposers and submitted Proposals must comply with the requirements of this ITP, the DB Law and other applicable law. By submitting a Proposal, the Proposer agrees to the terms, conditions, and requirements contained in this ITP, the DB Law, and other applicable law.

KYTC intends to execute the Contract with the Proposer that submits a responsive Proposal that, upon evaluation using the criteria set forth in this ITP, meets the standards set by KYTC, and provides the best value to, and is in the best interest of, the Commonwealth (the “Apparent Best Value Proposer”).

1.3.2 Responsibility and Liability

The Proposer will be solely responsible for:

- a) investigating and analyzing the Project, as more fully described in Section 1.8.1;
- b) preparing its Proposal; and
- c) complying with all requirements of this ITP.

1.3.3 RFP Documents

The RFP consists of the documents described below and any other documents that may be issued by addendum (each, an Addendum and collectively, or a group thereof, Addenda) (in each case, as such documents may be revised, amended, supplemented, or otherwise modified):

- a) Volume I: this ITP (including all Appendices and forms attached hereto);
- b) Volume II: the form of the Contract (including all exhibits attached to the form of the Contract);
- c) Volume III: the form of Project Technical Provisions (TPs) (including all Attachments attached to the form of the TPs)

1.4 PROJECT SCHEDULE

Below is a schedule of dates for the submittal:

Table 1, Schedule

Date	Milestone
November 18, 2022	Issue Draft #1 Request for Proposal (RFP)
November 28, 2022	ATC Submittals Opening
November 30, 2022	1 st One-on-One Agenda Submission
December 7-8, 2022	1 st One-on-One Meeting
[TBD]	Utilities Coordination Meetings
December 13, 2022	2 nd One-on-One Agenda Submission
December 16, 2022	2 nd One-on-One Meeting
January 11, 2023, 4PM ET	Deadline for ATC Submittals
January 13, 2023	Bid File Release Date
January 6, 2023	Deadline for Pre-Proposal Questions Incorporated in Final RFP
January 9, 2023	Changes in Organization Deadline
January 18, 2023	KYTC Final ATC Responses
January 13, 2023	Final RFP Issued (Setting Date)
January 20, 2023	Last Date for KYTC Responses to Pre-Proposal Questions
January 25, 2023	Last Date for KYTC to Issue Addenda
February 3, 2023, 2pm ET]	Technical and Price Proposals Due
February 17, 2023	Apparent Best Value Proposer Announced (Public Opening)
[March 3, 2023]	Project Award
[April 3, 2023]	Deadline for DBT to Execute Contract
[May 3, 2023]	Deadline for KYTC to Execute Contract and Notice to Proceed
October 31, 2024	Substantial Completion Deadline

1.5 AVAILABLE PUBLIC FUNDS

The Project is programmed in the KYTC 2022-2028 Six Year Highway Plan. As such, funding for the Project has been built into KYTC’s financial plan for the Project and by federal statute and Commonwealth policy.

To date, study activities have included project planning and pre-development work, including environmental analysis and documentation, preliminary engineering, geotechnical investigation, utility investigation, public outreach, administrative costs and other activities.

Project costs will be funded through a combination of state and federal funds dedicated to the Washington County region through the Statewide Transportation Improvement Plan. No Proposer-provided financing is required.

1.6 MAXIMUM CONTRACT VALUE

The Proposer's Price Proposal may be rejected by KYTC if the Price Proposal for the Project exceeds the Maximum Contract Value.

1.7 ENVIRONMENTAL REVIEW PROCESS

KYTC and the United States Department of Transportation Federal Highway Administration (Federal Highway Administration or FHWA) shall retain control and responsibility for the National Environmental Policy Act of 1969 (National Environmental Policy Act or NEPA) process for the Project in accordance with the procedures set forth under the Contract.

KYTC, in coordination with FHWA, is finalizing the Categorical Exclusion (CE) for the Project (assumed be to a CE I). The estimated approval date for the NEPA document is January 1, 2023. Further information as relates to the NEPA process for the Project can be found in the Reference Information Documents (RIDs). KYTC makes no commitments as to any Alternative Technical Concept (ATC) under evaluation for the Project NEPA processes, including the no-build alternative, until a CE Re-evaluation has been published for that ATC.

Each Proposer shall familiarize itself with the environmental- and NEPA-related requirements, terms, and conditions set forth in the Contract, and take such requirements, terms, and conditions into full consideration in preparing its Proposal. In preparing its Proposal, each Proposer may use the Project boundaries established by the NEPA limits of disturbance (LOD) set forth in the RIDs.

1.8 PROJECT-RELATED INFORMATION

The RFP Documents are available for review and use by the Proposer in the [Online Archive](#). The RFP Reference Information Documents (RIDs) access were provided at the NTI. The location and access for the RIDs remain the same during this RFP.

1.8.1 Reference Information Documents

The RIDs may be updated during the procurement period if additional information becomes available. The RIDs are included in the RFP for the purpose of providing information that is in KYTC's possession to proposers. The RIDs will not form a part of the Contract between KYTC and the DBT.

1.8.1.1 Disclaimer Related to RIDs

The RIDs are provided for reference purposes only.

Except to the extent expressly provided under the Contract, neither the DBT nor any person or entity of any Proposer Team Member (or subcontractor or subconsultant under any Contract), is entitled to rely on the RIDs as accurately describing existing conditions, presenting design, engineering, operating, or maintenance solutions or other directions, means, or methods for complying with the requirements of the Contract, governmental approvals, or applicable law.

Each Proposer acknowledges that, except to the extent expressly provided in the Contract:

- a) KYTC makes no representation or warranty with respect to the relevance, completeness, accuracy, or fitness for any purpose of any of the information contained in the RIDs or that such information conforms with the requirements of the Contract(s), governmental approvals, or applicable law;

- b) Neither KYTC nor any of its constituents will have any liability to the Proposer, any Proposer Team Member, any DBT or any Development Entities, and will not be entitled to any extension of time, relief from obligations, or compensation, with respect to:
 - i. any inaccuracy, omission, lack of fitness for any purpose, or inadequacy of any kind whatsoever in the RIDs;
 - ii. any failure to make available to the Proposer any materials, documents, drawings, plans, or other information relating to the Project as part of the RIDs; or
 - iii. any causes of action, claims, or losses whatsoever suffered by Proposer, any Proposer Team Member, the DBT, and the Development Entities by reason of any use of the information contained in, or any action or forbearance in reliance on, the RIDs; and
- c) Each Proposer is obligated to conduct studies, analyses, and investigations as permitted under this ITP and as it deems advisable to verify and supplement information in the RIDs or otherwise as may be required to prepare its Proposal or in the performance of its obligations if such Proposer enters into the Contract as the DBT. Any use of information in the RIDs in preparing a Proposal or in performance of the contract, without verification or supplement, is entirely at the Proposer and DBT's own risk (as applicable).

1.8.2 Site Tour

KYTC will not be conducting site tours pursuant to this ITP. KYTC has performed certain site investigation work prior to issuing this ITP and material relating to the site investigations carried out by KYTC has been included in the RIDs.

1.9 COMPLIANCE WITH THE ITP

Proposers must comply, and ensure that each Proposer Team Member complies, with this ITP throughout the RFP Process. Failure by a Proposer or a Proposer Team Member to comply with any of the terms of this ITP may result in:

- a) disqualification of such Proposer, Proposer Team Member, or all such parties from the RFP Process; and/or
- b) a draw by KYTC on such Proposal Guaranty (as defined in Section 7.4.2), but only under the circumstances described in Section 7.4.2.

1.10 AUTHORIZED REPRESENTATIVES

1.10.1 Authorized KYTC Representative

KYTC's Division of Construction Procurement (Issuing Office) has designated the following individual to be its authorized representative for the procurement (Authorized KYTC Representative):

Erika Drury, Alternative Delivery Program Manager
Kentucky Transportation Cabinet
200 Mero Street
Frankfort, KY 40622
Email: Erika.Drury@ky.gov

The Authorized KYTC Representative will be the sole point of contact for Proposers during the procurement for the following items as outlined in this ITP:

- Decisions on conflict of interest
- Queries on rules of contact
- Requests for Proposal withdrawal
- Confirmation of receipt of Proposal

From time to time during the RFP Process, the Issuing Office may designate another representative to carry out some or all of KYTC Authorized Representative's obligations pertaining to the Project. If the Authorized KYTC Representative is replaced at any time during the RFP Process, the Issuing Office will notify the Proposers.

1.10.2 Authorized KYTC Project Manager

KYTC's Division of Construction Procurement (Issuing Office) has designated the following individual to be its authorized project manager for the procurement (Authorized KYTC Project Manager (PM)):

Chris Smith, KY-555DB Project Manager
Kentucky Transportation Cabinet, District 4
634 E Dixie Ave
Elizabethtown, KY 42701
Email: KY555DB@ky.gov

The Authorized KYTC PM will be the sole point of contact for Proposers during the procurement for the following items as outlined in this ITP:

- Submission of Pre-Proposal Questions
- Request for changes to the Lead Contractor or Lead Designer (each a Major Team Member)
- Submission of One-on-One Meeting agendas
- Submission of Alternative Technical Concepts

If the Authorized KYTC PM is replaced at any time during the RFP Process, the Issuing Office will notify the Proposers.

1.10.3 Authorized Representative

The Authorized Representative of the Proposer is the Point of Contact designated in the Proposer's LOI. If a Proposer Team changes its Authorized Representative, the Proposer shall provide the Issuing Office in writing with the same information requested in Section 3.3.1.1(B) of the NTI for the new Authorized Representative.

Each Proposer is responsible for ensuring that the name and contact information for its Authorized Representative is accurate and current at all times during the RFP Process. Failure by a Proposer to follow the requirements set forth in this Section 1.10.3 may result in such Proposer failing to receive important communications from KYTC. KYTC is not responsible for any such failure.

1.11 NON-COLLUSION; LOBBYING; TITLE VI ASSURANCES; EQUAL OPPORTUNITY; BUY AMERICA

1.11.1 Non-Collusion Affidavit

Each Proposer and Major Team Member shall submit Form A (Non-Collusion Affidavit), certifying that it has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the Proposal.

1.11.2 Certification Regarding Use of Contract Funds for Lobbying

Each Proposer and Proposer Team Member should have an up to date (submitted annually) Certification Regarding Use of Contract Funds for Lobbying on file with KYTC. The Proposer Team Member must submit as part of its Technical Proposal the certificate set out in Form B (Certification Regarding Use of Contract Funds for Lobbying) if the Proposer Team Member does not currently have an up to date Certification Regarding Use of Contract Funds for Lobbying on file with KYTC.

1.11.3 Title VI Assurances

Each Proposer must submit as part of its Technical Proposal the form set out in Form C (Title VI Assurances).

1.11.4 Equal Employment Opportunity Certification

The Equal Employment Opportunity Act of 1978 applies to all Commonwealth government projects with an estimated value exceeding \$250,000. The Proposers shall refer to Volume II for other Equal Employment Opportunity (EEO)-related provisions and requirements for this Project.

Each Proposer must submit as part of its Technical Proposal the certificate set out in Form D (Equal Employment Opportunity Certification).

1.11.5 Build America, Buy America Certification

Each Proposer must submit as part of its Technical Proposal the certificate set out in Form E (Build America, Buy America Certification).

ARTICLE 2. ONE-ON-ONE MEETINGS

KYTC will offer the opportunity to conduct one or more One-on-One Meetings (each a One-on-One) with each Proposer on the dates set forth in Section 1.4 to discuss issues and clarifications regarding the Project and the Project-related documents or communications provided by KYTC or the Proposer, including Pre-Proposal Questions submitted by the subject Proposer in accordance with Section 3.1. These meetings will also be used to discuss Alternative Technical Concepts (ATCs) as discussed in Section 6.3. KYTC reserves the right to call for One-on-Ones additional to those outlined in Section 1.4.

Each One-on-One will be held at a time and location as determined by KYTC in its sole discretion. One-on-One(s) may be conducted in-person, virtually or a hybrid of the two. KYTC shall notify each Proposer in writing of the scheduled time, place, date and duration of any One-on-One. One-on-Ones are at the request of the Proposer Teams and are not mandatory unless KYTC raises its own questions and issues for discussion per Section 2.1 at which point the One-on-Ones become mandatory. By submitting an agenda for the One-on-One, a Proposer is submitting their request for a One-on-One.

Proposers will choose the topics for discussion and prepare a detailed meeting agenda, which will be submitted according to the deadlines outlined in Section 1.4. Meeting agendas must include the topics (including ATCs as set forth in Section 6.3), schedule, appropriate Pre-Proposal Question references, and an attendee list to allow KYTC to identify the appropriate decision-makers and support personnel to participate in the One-on-One and ensure each attends at the appropriate time in accordance with the meeting schedule.

The One-on-One discussion is intended to enable the Proposer to ask questions, confidential or otherwise, concerning the Proposer's specific approach to the Project and to allow KYTC to provide feedback on those questions prior to the Proposer submitting their Technical Proposal. KYTC's verbal feedback, comments, voiced concerns, and answered questions concerning the Proposer's approach to the project shall be non-binding.

The One-on-One shall be two (2) hours in length, and the Proposer can decide how to allocate the time of the One-on-One between ATCs and other Pre-Proposal Question-related topics. This should be identified in the submitted agenda.

2.1 ONE-ON-ONE RULES

The One-on-Ones are subject to the following rules:

- The One-on-One is intended to provide Proposers with a better understanding of the Project and the Project-related documents or communications provided by KYTC.
- KYTC may raise its own questions and issues for discussion at One-on-Ones.
- During a One-on-One, Proposers may ask questions, and KYTC may provide responses; provided, however, that any responses provided by KYTC during such One-on-One may not be relied upon by the subject Proposer. Nothing stated at any One-on-One will modify this ITP unless it is incorporated as part of the Final RFP Documents or an Addendum.
- KYTC, except as provided in this ITP, will not discuss with any Proposer any information submitted by any other Proposer as part of this procurement (including other Proposals or other Proposers' innovative technical and financial solutions) other than the Proposer's own Proposal.
- At KYTC's sole discretion, KYTC may set mandatory agenda items for a One-on-One at which point the One-on-Ones becomes mandatory for the Proposer Teams. KYTC shall endeavor to

provide notice of any mandatory agenda items not less than five (5) days before the relevant meeting.

- KYTC reserves the right to limit the subject matter of a One-on-One as it, in its sole discretion, deems appropriate.
- Proposers shall not seek to obtain commitments from KYTC in a One-on-One or otherwise seek to obtain an unfair competitive advantage over any other Proposer.
- No aspect of any One-on-One is intended to provide any Proposer with access to information that is not similarly available to other Proposers. Material information about the Project or procurement that KYTC reveals or discusses in response to questions raised in a One-on-One may, except as provided in this ITP, be revealed to the other Proposers by KYTC, in its sole discretion, if KYTC believes such disclosure is necessary in the interest of maintaining a fair procurement process or complying with any applicable law.
- The discussions or any statements made by either party in a One-on-One shall not be binding on such entity.
- No part of the evaluation of Proposals will be based on the conduct or discussions that occur during a One-on-One.
- Proposer participation at all One-on-Ones will not be mandatory. By submitting an agenda for the One-on-One by the deadline in Section 1.4, the Proposer has submitted a request for a One-on-One slot to be appointed to them by KYTC.

2.2 ONE-ON-ONE MINUTES

The Proposer must not prepare for submission to KYTC, and KYTC will not accept, any meeting minutes or notes of any kind from any One-on-One Meeting. Recording of any One-on-One Meeting is not allowed and a Proposer who does so may be subject to sanctions, including being barred from any future One-on-One Meeting. For the avoidance of doubt, Proposers may take notes at One-on-One Meetings for their own records and internal use.

ARTICLE 3. ADDENDA PROCESS

Addenda to this solicitation may be necessary prior to the closing date and will be furnished to all Proposers prior to receipt date and to the Apparent Best Value Proposer determined to be eligible for Project Award if after receipt date.

3.1 PRE-PROPOSAL QUESTIONS

Proposers may submit Pre-Proposal Questions regarding the RFP Documents at any time prior to the applicable deadlines set forth in the Project Schedule. If a Proposer wishes to discuss any of the submitted Pre-Proposal Questions during a One-on-One Meeting, such Pre-Proposal Questions need to be submitted by the deadline for submitting an agenda for such One-on-One Meeting, as indicated in this ITP or otherwise clarified in writing by KYTC. All Pre-Proposal Questions prior to the Last Date for KYTC Responses to Pre-Proposal Questions shall be submitted electronically on Form F (see Appendix A). All Proposer submittals shall be electronic and uploaded to KYTC's secure SharePoint submittal site (Project Portal). Each Proposer will receive separate instructions for accessing their exclusive Project Portal. After uploading Form F to the Project Portal, Proposers shall send an email to the Authorized KYTC PM, at the email address given in Section 1.10.2, formally transmitting the submittal, with a link to the submitted file. No telephone or oral requests will be considered.

Pre-Proposal Questions included on Form F must:

- be listed separately
- not identify the Proposer in the body of the comment
- be sequentially numbered
- specifically reference the relevant RFP document, section and page number, unless it is a general question
- address a single issue per Pre-Proposal Question
- clearly indicate why the Pre-Proposal Question has been made
- conspicuously identify whether the Proposer views its Pre-Proposal Question or comment as confidential or proprietary in nature by beginning the Pre-Proposal Question with the word "CONFIDENTIAL". The Pre-Proposal Question should explain why the Proposer considers the Pre-Proposal Question to be confidential.
- identify the comment/question as either "Technical", "Legal", "Commercial", "Procurement" or "Financial" (Discipline)
- indicate whether the Pre-Proposal Question is a Category 1, 2, 3 or 4 question as described below.

Proposers may also, at their option, elect to submit with their Pre-Proposal Questions revised drafting, redline, or similar markup of the applicable document as part of their Pre-Proposal Question via the file upload function of the Project Portal. Wholesale revisions, rather than edits, may be disregarded by KYTC.

KYTC's responses to confidential Pre-Proposal Questions are non-binding. The Proposer shall submit the Pre-Proposal Question non-confidentially if they want a binding response.

KYTC reserves the right to disagree with the Proposer's assessment regarding confidentiality of information in the interest of maintaining a fair process. Under such circumstances, KYTC will inform the Proposer and may allow the Proposer to withdraw the Pre-Proposal Question, rephrase it, or have the Pre-Proposal Question request answered non-confidentially or, if KYTC determines that it is

appropriate to provide a general response, KYTC will modify the Pre-Proposal Question to remove information that KYTC determines is confidential.

As used above,

- “Category 1” means a potential “go/no-go” issue that, if not resolved in an acceptable fashion, may preclude the Proposer from submitting a Proposal;
- “Category 2” means an issue that, if not resolved in an acceptable fashion, will significantly affect value for money or, taken together with the entirety of other issues, may preclude the Proposer from submitting a Proposal;
- “Category 3” means an issue or clarification that is minor in nature and that is not likely to affect the Proposer’s approach to a Proposal; and
- “Category 4” means corrections of typographical errors, incorrect cross references or internal inconsistencies within or among the RFP Documents.

KYTC intends to provide responses to Pre-Proposal Questions that KYTC deems to be general in nature, material or not otherwise adequately addressed in the RFP within a reasonable time following receipt, except that KYTC intends to respond individually to those Pre-Proposal Questions or communications identified by a Proposer and deemed by KYTC as containing confidential information. KYTC may rephrase RFCs as it deems appropriate and may consolidate similar Pre-Proposal Questions. KYTC may issue multiple sets of responses at different times during the procurement process. Pre-Proposal Questions and responses (if any) will be posted on the Online Archive. KYTC may, in its sole discretion, change the maximum number of comments/questions for future RFP versions by Addendum.

KYTC may elect, in its sole discretion, not to respond to any such Pre-Proposal Questions. KYTC’s formal, written responses to Pre-Proposal Questions will be deemed part of this ITP and will be relevant in interpreting the Contract Documents. Addenda to this solicitation may be necessary prior to the Technical Proposal submittal date and will be furnished by Online Archive to all Proposers.

ARTICLE 4. DESIGN-BUILD TEAM

4.1 PREQUALIFICATION

As detailed in the Notice to Industry (NTI) and the Proposer’s Letter of Interest (LOI), it is a requirement of the RFP that the Proposer Team consist of a KYTC pre-qualified Contractor who has engaged the services of KYTC pre-qualified design consultant(s) to perform all work required in this RFP. If the design consultant(s) submitted does not meet all the required qualifications, KYTC may reject the Proposer’s proposal. All sub-consultants and subcontractors utilized by the Apparent Best Value Proposer on this project shall be pre-qualified to perform work for KYTC or their services shall not be allowed.

To respond to the Project listed in this RFP the Proposal Team must be prequalified in the specified areas by the response due date of the advertisement. If there are questions concerning design prequalifications, contact Mr. Eric Pelfrey, PE at (502) 564-4555. See Section 4.1.2 for additional information. For questions regarding contractor pre-qualifications, contact Rachel Mills PE at 502-564-3500. See Section 4.1.1 for additional information. Submitted Proposals that do not have all mandatory areas of prequalification fulfilled will be returned.

4.1.1 Contractor Prequalification

Consistent with Section 102.01 of Kentucky's 2019 Standard Specifications for Road and Bridge Construction (“*Standard Specifications*”) all organizations and individuals bidding on Department projects and accepting subcontracts on Department of Highways (“Department”) projects shall apply for and receive Department prequalification and possess a Certificate of Eligibility as provided in regulations published by the Department according to KRS 176.140.

As part of the Technical Proposal provided by the Proposer, the Proposer shall identify the members of the Proposer Team that are to perform the following expected major work items:

Table 4.1, Prequalification Requirements

Expected major work items	Required Proposer Prequalifications
Grade and Drain	A
Asphalt Pavement	C2
Bridges over 100ft Span	E3
Demolition	E4 or I27

In order to be registered as an eligible bidder for the project, all construction team members for the Proposer Team that are to be used for major work items shall be prequalified by KYTC and possess a Certificate of Eligibility prior to submission of the Technical Proposal response to this RFP. Organizations and individuals providing other services shall be prequalified by KYTC and possess a Certificate of Eligibility prior to performing the work.

4.1.2 Professional Services Prequalification

As part of the Technical Proposal provided by the Proposer, the Proposer shall identify the members of the Proposer Team that are to perform the following items of work:

Geotechnical	Engineering Services
Highway Design	Rural Roadway Design
Highway Design	Urban Roadway Design
Highway Design	Surveying
Utility Design	Utility Preconstruction Coordination
Structure Design	Spans Under 500 Ft

The following pre-qualifications are not required with the submittal of a Technical Proposal response to this RFP. Should any of these design services be needed, the Apparent Best Value Proposer shall utilize team members with KYTC pre-qualifications in place prior to performing the work.

Geotechnical	Laboratory Testing Services
Geotechnical	Drilling Services
Utility Design	Communication
Utility Design	Electric Level 2
Utility Design	Gas Level 1
Utility Design	Water and Sewer Level 1
Utility Design	Water and Sewer Level 2
Utility Design	Utility Construction Inspection
Traffic Operations	Traffic Engineering Services
Traffic Operations	Electrical Engineering Traffic Signal Services

The Proposers shall be aware that changes to the preliminary design documents may require the Apparent Best Value Proposer to be prequalified in additional areas. Design firms shall be sufficiently staffed and capable of performing the required work on this Contract. These design firms may be subcontractors responsible for the design and engineering of the project.

There may be multiple design consultants included on the Proposer Team. However, one design consultant shall be designated as the Lead Designer. The Proposer Team shall include qualified engineers and surveyors to be in direct responsible charge of engineering and surveying endeavors and who are professionally registered in the Commonwealth. Designs prepared for the project shall be signed and stamped by a licensed Kentucky Professional Engineer. To qualify for selection, interested Proposers shall be prequalified through KYTC for the performance of the work. Licensure shall be acquired prior to performing any work when prequalification requires work be performed by a licensed individual. Services requiring prequalification may only be performed by firms prequalified for those services at the time of performance of the services. The Proposer shall identify the Lead Designer in its Proposal.

ARTICLE 5. RESTRICTIONS ON PARTICIPATION IN DESIGN-BUILD CONTRACTS

To facilitate this procurement, various rules have been established and are described in the following paragraphs. Refer to Appendix B – Contract Notes for specific instructions.

5.1 [NOT USED]

5.2 CONFLICT OF INTEREST

No firm that is ineligible for Commonwealth or KYTC contracts may participate as a member of any Proposer Team. Any questions regarding eligibility should be directed to the Authorized KYTC Representative.

Proposers must identify potential conflicts of interest and real or perceived competitive advantages they enjoy related to procurement. These may arise from prior or existing contractual obligations between a company and a federal, state, or local agency relative to the Project or KYTC's Design Build program. Proposers must disclose all relevant facts concerning any past, present, or currently planned interests which may result in an organizational conflict of interest upon Project Award. If a potential conflict of interest or competitive advantage is identified, the Proposer must submit relevant information to the Authorized KYTC Representative.

KYTC is solely responsible for deciding if conflicts of interest or a real or perceived competitive advantage exist and whether a Proposer Team can mitigate their effects. When KYTC finds a participating entity has a conflict of interest or holds competitive advantage that cannot be mitigated, it must be excluded from the Proposer Team. In their Proposals, Proposers must outline a contingency plan if KYTC finds a conflict of interest is present. Failure to abide by this decision may result in a proposal being judged non-responsive. See 23 CFR 636.116 for more information on conflicts of interest.

KYTC has determined that the following firms and their affiliates would present a conflict of interest or the appearance of a conflict of interest in the event of their participation on a Proposer Team. Accordingly, Proposers are prohibited from teaming with, receiving any advice from, or discussing any aspect of the Project or the procurement of the Project with:

- WSP USA, Inc.
- Gresham Smith
- EA Partners, PLC

The Proposer Teams certify through Bid Express, by the signature of the Authorized Representative, that they are legally entitled to enter into this solicitation and Contract and that they shall not be violating, either directly or indirectly, any conflict of interest statute under KRS Chapters 45A or 11A or ethical provisions under KRS Chapter 11A. Forms shall be signed and submitted by the Authorized Representative of the Proposer Team with the Price Proposal on the Proposal Due Date set forth in Section 1.4.

By submitting its response to this ITP, each Proposer agrees that, if a conflict of interest is thereafter discovered, the Proposer must make an immediate and full written disclosure to the Authorized KYTC Representative that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflict. If a conflict of interest that the Proposer knew or should have known about but failed to disclose is determined to exist during the RFP Process or any time prior

thereto, KYTC may disqualify the Proposer. If a conflict of interest exists that the Proposer knew or should have known about but failed to disclose and the Proposer has entered into the Contract as the DBT, KYTC may terminate the Contract for a Default. In any case, KYTC reserves all legal rights and remedies.

5.3 POTENTIAL CONFLICTS OF INTEREST

As a general matter, any person or firm previously under contract with the Commonwealth in connection with the Project (including, without limitation, the preparation of preliminary plans, planning reports, or other project development products for the Project) may be able to participate on a Proposer Team if such person or firm first submits a written request to the Authorized KYTC Representative, accompanied by an opinion of legal counsel explaining that a conflict of interest does not exist and seeking a determination of no conflict from KYTC.

KYTC will review requests for conflicts of interest determinations received from Proposers and the specific details to determine whether a conflict of interest exists or where the appearance of a conflict of interest exists with respect to KYTC's current and past contractor relationships. As a general matter, KYTC will look to see whether any unfair advantage has been or will be gained by looking at the following example scenarios:

- a) where a contractor has influenced the specifications or statement of work for the Project;
- b) where the contractor's prior work product afforded an opportunity for the contractor to make or influence findings with respect to the Project;
- c) where the contractor would be in a position to evaluate its own work product as part of the Project; and
- d) whether the contractor received confidential information as part of work/services performed for KYTC (or otherwise) which provide the contractor with an unfair competitive advantage to obtain the Contract or another contract with KYTC.

The above scenarios are provided as examples only. KYTC may review other circumstances relating to individual conflicts determination requests.

5.4 REQUESTS FOR CONFLICTS DETERMINATION

No person or firm required to obtain KYTC's prior approval for participation pursuant to Section 5.3 may participate on a Proposer Team following submission of any such request until that person or firm receives written confirmation from KYTC that they may participate or may conditionally participate on a Proposer Team. KYTC may elect, in its sole discretion to place conditions upon any such determination of no conflict to assure compliance with applicable state and federal law and the policy set forth in this Section 5.4, and to serve the best interests of the procurement and the Project. KYTC will use good faith efforts to provide its response to a Proposer's request promptly following receipt. Proposers should submit their request to the Authorized KYTC Representative at the email address given in Section 1.10.1.

Upon written request, KYTC may grant exceptions to this policy only where KYTC determines that the person's or firm's involvement does not violate federal or state law, is in the best interest of the public and does not constitute an unfair advantage. Proposers seeking such exception shall submit such written request as soon as possible because KYTC shall not extend the Proposal Due Date or be responsible for any inability or failure to respond to any such request prior to the Proposal Due Date.

As part of any conflicts determination requests, Proposers shall provide information concerning any potential or apparent organizational conflicts of interest and disclose all relevant facts concerning any

past, present, or currently planned interests that may present an organizational conflict of interest. The Proposer shall state how its interests or those of any of its team members, consultants, contractors, or subcontractors, including the interests of any chief executives, directors, or Key Personnel thereof, may result in, or could be viewed as, an organizational conflict of interest. At a minimum, the relevant information must include detailed information about the scope of services provided to KYTC, identification of the contract or basis for having provided such services, the names of the persons involved in providing such services (as relates to the Proposer), and the dates within which such services were performed (if not ongoing). The Proposer shall also expressly state how such prospective team member's interests or those of any of its team members, consultants, contractors or subcontractors, including the interests of any chief executives, directors or Key Personnel thereof, may result in, or could be viewed as, a conflict of interest.

By continuing to participate in the Project procurement pursuant to its submitted LOI and by submitting a Proposal, each Proposer agrees that, if an organizational conflict of interest is discovered with respect to any Proposer Team Member included in or involved with the preparation of the LOI or Proposal at any time following their respective submissions, the Proposer must make an immediate and full written disclosure to KYTC that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest that the Proposer knew or should have known about but failed to disclose is determined to exist during the procurement, KYTC may, at its sole discretion, disqualify the Proposer. If the Proposer or its personnel receive written communication from KYTC for conditional participation in the procurement for the Program and the Proposer or its personnel do not abide by the conditions placed by KYTC, KYTC may, at its sole discretion, disqualify the Proposer. If an organizational conflict of interest that the Proposer knew or should have known about, but failed to disclose, is discovered by KYTC and the Proposer subsequently enters into the Contract, KYTC may, at its sole discretion, terminate the Contract. If the Proposer or its personnel receive written communication from KYTC for conditional participation in the procurement for the Project and KYTC discovers the Proposer or its personnel did not abide by the conditions placed by KYTC and the Proposer entered into the Contract, KYTC may, at its sole discretion, terminate the Contract. In any case, KYTC reserves all legal rights and remedies.

5.5 RESTRICTIONS ON PROPOSER TEAM

5.5.1 Licensing Requirements

Prior to execution of the Contract, all Proposer Team Members, including the Key Personnel and all other staff working on behalf of the Apparent Best Value Proposer's team must be qualified to do business in the Commonwealth, and each must have obtained all required licenses, including any professional engineer registrations (unless an earlier date for such qualification or license is required under the procurement documents, in which case such requirement shall be applicable).

The Lead Construction Contractor and Lead Designer that are performing construction activities must be prequalified contractors at the time of LOI submission.

5.5.2 Participation On More Than One Team

Major Team Members are prohibited from participating, in any capacity, on more than one Proposer Team during the RFP Process.

If a Proposer is not selected as the Apparent Best Value Proposer, any member of an unsuccessful Proposer Team is not prohibited from participating on the DBT's team following execution of the Contract, subject to the terms of this ITP and the Contract, as may be applicable.

Any Proposer or Proposer Team Member that fails to comply with the prohibition contained in this Section 5.5.2 may be disqualified from further participation in this procurement, including the RFP Process, at the sole discretion of KYTC as a Proposer or member of a Proposer Team for the Project.

5.6 CHANGES IN PROPOSER'S ORGANIZATION

In order for a Proposer to remain qualified to submit a Proposal after it has been placed on the shortlist, unless otherwise approved in writing by KYTC, the Proposer's organization and Proposer's team as identified in its LOI must remain intact for the duration of the RFP Process (i.e., until the execution of the Contract). During the RFP Process, KYTC anticipates that the Proposer's organization and Proposer's team will remain intact, unless KYTC has approved a change in Proposer's organization pursuant to this Section 5.6. Following the RFP Process, the Proposer's organization and Proposer's team must remain intact in accordance with the requirements set out in the Contract.

A Proposer may not request approval of any changes to Major Team Members identified in its LOI after the deadline set forth in Section 1.4, Changes in Organization Deadline.

If a Proposer wishes to make changes in a Major Team Member identified in its LOI including, without limitation, additions, deletions, reorganizations, changes in equity ownership interests, or role changes in or of any of the foregoing, the Proposer shall submit to the Authorized KYTC PM a written request for its approval of the change as soon as possible, but in no event later than the date and time set forth in the Project Schedule for submission of Pre-Proposal Submittals. Any such request shall be addressed to the Authorized KYTC PM by the email given in Section 1.10.2, accompanied by the information specified for such entities or individuals in the LOI and this ITP.

If a Proposer requests KYTC's approval to change any Major Team Member identified in its LOI, such Proposer shall submit such information as may be required by KYTC to demonstrate that the changed team has qualifications, capability, and experience that are equal to or better than the Major Team Member being replaced.

KYTC will evaluate the qualifications provided by the Proposer and advise in KYTC's sole discretion as to whether any such request is approved. KYTC is under no obligation to approve such requests and may approve or disapprove, in writing, a portion of the request or the entire request.

KYTC will use reasonable efforts to respond to the submittal by the Proposer within ten (10) business days after receipt thereof.

5.7 NO CONTINGENT FEES

No person or selling agency shall be employed or retained or given anything of monetary value to solicit or secure this Contract, excepting bona fide employees of the Proposer Team Members or bona fide established commercial or selling agencies maintained by the Proposer Team Members for the purpose of securing business. For breach or violation of this provision, the KYTC shall have the right to reject the proposal, annul the Contract without liability, or, at its discretion, deduct from the Contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee or other benefit.

5.8 RESTRICTIONS ON COMMUNICATION WITH KYTC STAFF

From the date of advertisement of the RFP until Project Award, Proposers are not allowed to communicate with any KYTC staff concerning this project except:

- A. Via written emails to the Authorized KYTC Representative at erika.drury@ky.gov
- B. Via written emails to the Authorized KYTC PM at ky555DB@ky.gov as related to items outlined in Section 1.10
- C. Prequalification questions as outlined in Section 4.1
- D. One-on-One meetings as outlined in Sections 2 and 6.2

For violations of this provision, KYTC may reject the proposal.

5.8.1 No Improper Influence

Proposers and Proposer Team Members are expected to conduct themselves with professional integrity and to refrain from all lobbying activities related to the Project, this ITP, or the RFP Process. Any substantiated allegation that a Proposer; any Proposer Team Member; or any personnel of any such entity has engaged in prohibited communications or attempted to unduly influence the selection process may be cause for KYTC to (i) disqualify the Proposer and cause the Proposer to forfeit its Proposal Security pursuant to Section 7.4.2, or (ii) disqualify the Proposer's or any Major Team Member's (as applicable) personnel from participating with the Proposer, in each case, in the sole discretion of KYTC.

5.8.2 Additional Rules of Contact

The following rules of contact shall apply during the RFP Process, effective as of the date of shortlisting notification until the execution of the Contract. These rules are designed to promote a fair and competitive procurement process. Additional rules or modifications to these rules may be issued by the Issuing Office in connection with the RFP Process and in this RFP. For the avoidance of doubt, contact includes face-to-face, telephone, texting, social media, facsimile, electronic media, or formal written communication, either directly or indirectly by any personnel of the Proposer.

The specific rules of contact are as follows:

- i. No Proposer or any Proposer Team Members may communicate with another Proposer or any of its Proposer Team Members about the RFP or either team's Proposal, including preparation thereof;
- ii. KYTC shall be the sole Commonwealth contact for this procurement, including the RFP Process. Proposers shall correspond with KYTC regarding the RFP only through their respective Authorized Representatives as set forth in Section 1.10;
- iii. Commencing with the issuance of this RFP and continuing until expiry of the Proposal Validity Period, no Proposer or representative thereof shall have any ex parte communications regarding the RFP, the Contract, its Proposal submission, or the procurement described herein with:
 - a) any KYTC personnel;
 - b) any Commonwealth staff; and
 - c) any other Commonwealth constituents, including those retained for, or otherwise involved with, the procurement, including but not limited to those entities and persons identified in Section 5.2,

except for communications expressly permitted by the RFP or otherwise as approved in writing in advance by the Authorized KYTC Representative, given in his or her sole discretion.

The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP, the RFP Documents or the RFP Process or otherwise limit participation in public meetings related to this RFP;

- iv. Except as may be coordinated pursuant to (c)(iv) below, Proposers shall not contact the following identified stakeholders regarding the Project, including constituents of the entities listed below:
 - a) any political subdivision of the Commonwealth or local government body or locality within the Commonwealth that, in each case, may have an interest in the Project;
 - b) any office within USDOT, including FHWA, the Build America Bureau and the Office of the Secretary for any office within USDOT;
 - c) U.S. Army Corps of Engineers;
 - d) environmental, regulatory and permitting agencies, including specifically the U.S. Environmental Protection Agency and the U.S. Fish & Wildlife Service;
 - e) Utility Owners and other utility providers; and
 - f) railroads.
- v. To the extent not prohibited by Applicable Law or regulation, in the event that a Proposer or a Proposer Team Member is presented with (a) a request for documents by any administrative agency or required by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or other process and, in the case of a Proposer Team Member that is an accounting firm, the applicable professional standards of the American Institute of Certified Public Accountants, Public Company Accounting Oversight Board or state boards of accountancy or obligations thereunder or (b) a subpoena duces tecum regarding any RFP Documents which may be in its possession, Proposer or a Proposer Team Member shall immediately give notice to KYTC and with the understanding that KYTC shall have the opportunity, at KYTC's expense, to contest such process by any means available to it before such records or documents are submitted to a court or other third party, provided, however, that Proposer or such Proposer Team Member shall not be obligated to withhold such delivery beyond that time as may be ordered or requested by the court or administrative agency, unless the subpoena or request is quashed or the time to produce it otherwise extended. If a protective order or the receipt of a waiver hereunder has not been obtained, or if prior notice is not permitted by Applicable Law or regulation or is not otherwise practicable, and Proposer or such Proposer Team Member are, on the advice of counsel, compelled or reasonably required pursuant to customary regulatory procedures to disclose any RFP Documents, Proposer or such Proposer Team Member are permitted to disclose that portion of the RFP Documents that its counsel advises that it is compelled or reasonably required pursuant to customary regulatory procedures to disclose. Proposers shall cooperate with KYTC in any action brought by KYTC to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the RFP Documents.

5.8.3 Consequences; sources; disclaimer

Consequences; sources; disclaimer as follows:

- i. Any Proposer engaging in communications that KYTC determines in its sole discretion to be prohibited by this ITP may be disqualified from further participation in this procurement.
- ii. Any official information and all official correspondence regarding the Project will be disseminated from either the Authorized KYTC Representative, the Issuing Office or the Authorized KYTC PM.

- iii. KYTC will not be responsible for, and Proposers and its Proposer Team Members may not rely on, any oral or written exchange or any other information or exchange that occurs outside the official process specified herein.
- iv. KYTC will provide any necessary coordination during the RFP Process with such entities in order that, among other things, the procurement is implemented in a fair, competitive and transparent manner and with uniform information.

5.9 PROPOSAL PREPARATION

The Proposers shall follow any pertinent sections of this RFP, in the preparation of their proposal. A Proposer's failure to provide any of the data required may result in its proposal being excluded from further evaluation.

The Proposal shall be executed and delivered by a representative of the Proposer, duly authorized by all necessary corporate action.

5.10 PAYMENT AND CONDITIONS OF STIPEND

Subject to the conditions of the RFP, KYTC will provide a payment of \$50,000 to each non-selected, responsive, Proposer. The term "Stipend Payment" as used in this section shall mean \$50,000.

By submitting its Technical Proposal for this project, the Proposer forms a Contract and agreement with KYTC for its technical proposal, conceptual design, and any approved Alternate Technical Concepts, whether submitted with the technical proposal or not. Furthermore, by submitting its Technical Proposal for this project, the Proposer acknowledges that it is eligible for payment if the Proposer's proposal is not selected. The payment shall be payable by the KYTC to the unsuccessful Proposer(s) after KYTC enters into Contract with the Apparent Best Value Proposer, unless payment is waived by the unsuccessful Proposer.

The payment shall be due only if the unsuccessful Proposer submits a Technical Proposal that is responsive to the RFP as defined herein. The payment shall be full and final consideration for all documents submitted in the Technical Proposal and Approved Technical Concepts. Except for that intellectual property developed apart from or prior to the Proposer commencing work on the Technical Proposal for this project, Proposer shall assign to KYTC all rights, title and interest and intellectual property submitted with the Technical Proposal. In addition, by accepting the payment, each Proposer waives any and all claims against KYTC for use of all products of the Proposal received from the Proposer.

If Technical Proposals have been submitted, but KYTC does not award the Contract, all responsive Proposers shall receive a payment, unless payment is waived by the Proposer. If KYTC withdraws the Contract prior to Technical Proposal submission, no payment shall be made.

A Proposer may elect to waive the payment with Proposal submission, and retain its rights to its Technical Proposal and approved Alternate Technical Concepts. The Proposer must submit in writing with their Technical Proposal their election to waive the payment by the Technical and Price Proposals Due. If a Proposer does not submit a waiver or accepts payment of the Stipend, Proposers agree to waive all claims and causes of action against the KYTC related to the project in any way.

5.11 DISPOSITION OF PROPOSALS

All proposals, approved concepts, and preliminary plans become the property of the Commonwealth of Kentucky, unless an unsuccessful Proposer waives the Stipend Payment to retain its rights to its technical proposal and Alternate Technical Concepts as identified in Section 5.10.

5.12 BONDING REQUIREMENTS

A five percent (5%) Proposal Guaranty per Section 102.09 of the Standard Specifications submitted through Bid Express shall be required to propose on this project.

5.13 PROPOSER RESPONSE AND PROPRIETARY INFORMATION

Except as required by law, KYTC shall not disclose any portion of any proposal prior to Project Award to anyone outside KYTC and KYTC advisors, other than representatives of the federal government, if required, and the members of the Awards Committee or their designates. After Project Award, in whole or in part, KYTC shall have the right to duplicate, use, or disclose all proposal data, except proprietary data as described below, submitted by Proposers in response to this solicitation as a matter of public record. Although KYTC recognizes the Proposer's possible interest in preserving selected data which may be part of a proposal, KYTC shall treat such information as provided by the Proposer pursuant to Kentucky's Open Records Act, KRS 61.870 et seq.

Information areas which normally might be considered proprietary shall be limited to individual personnel data, customer references, selected financial data, formulae, and financial audits, which if disclosed would permit an unfair advantage to competitors. If a proposal contains information in these areas that a Proposer declares proprietary in nature, each sheet containing such information shall be clearly designated as proprietary at the top and bottom of the page and shall be submitted under separate cover marked "PROPRIETARY DATA". Proposals containing information declared by a Proposer to be proprietary, either in whole or in part, outside the areas listed above, may be deemed unresponsive to the solicitation and may be rejected.

Except as provided in Section 5.10 KYTC shall have the right to use all ideas, or adaptations of those ideas, contained in any proposal received in response to the solicitation. Selection or rejection of the proposal shall not affect this right.

5.14 PROPOSAL ADDENDA AND RULES FOR WITHDRAWAL

Prior to the date specified for receipt of offers, a submitted proposal may be withdrawn by submitting a written request for its withdrawal to the Authorized KYTC Representative with a cc to the Authorized KYTC Project Manager. Withdrawal of the proposal by the Proposer shall forfeit any payment of the Stipend that the Proposer may have been entitled to receive.

KYTC shall accept addenda, revisions, or alterations to its proposal from any Proposer until close of business (c/o/b) on the due date. Should any addenda, revisions, or alterations to a proposal be submitted, upon upload of the addenda, revisions or alterations, the Proposer must submit an email to the Authorized KYTC Representative apprising her of this updated Proposal. KYTC shall not accept any unsolicited addenda, revisions, or alterations to any proposal after the c/o/b on the due date. If KYTC issues an addendum to the solicitation after c/o/b on the due date, then any Proposer may respond. A Proposer's response shall precisely respond to the contents of KYTC's addendum.

KYTC reserves the right to request clarification or additional information.

5.15 DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

It is the policy of KYTC that DBEs shall have the opportunity to participate in the development and performance of highway construction projects financed in whole or in part by federal funds in order to create a level playing field for all businesses who wish to contract with the Cabinet. To that end, the Cabinet will comply with the regulations found in 49 CFR Part 26, and the definitions and requirements contained therein shall be adopted as if set out verbatim herein.

The Cabinet, consultants, contractors, subcontractors, and sub-recipients shall not discriminate on the basis of race, color, national origin, or sex in the performance of work performed pursuant to Cabinet contracts. DBT shall carry out applicable requirements of 49 CFR 26 in the award and administration of federally assisted highway construction projects. DBT will include this provision in all its subcontracts and supply agreements pertaining to contracts with the Cabinet.

Failure by the DBT to carry out these requirements is a material breach of its Contract with the Cabinet, which may result in the termination of the Contract or such other remedy as the Cabinet deems necessary.

Proposers are directed to Volume II for the DBE-applicable provisions and requirements for this Project.

As part of its Proposal, the Proposers shall develop a draft DBE Utilization Plan, in accordance with the requirements of the Contract Documents.

5.16 PROTESTS

The Secretary of the Kentucky Transportation Cabinet, or their designee, shall have authority to determine and resolve protests and other controversies of Proposers in connection with the solicitations or selection for Project Award.

Any Proposer, who is aggrieved in connection with solicitation or selection for Project Award, may file a protest with the Secretary of the Kentucky Transportation Cabinet. A protest or notice of other controversy shall be filed promptly, and in any event within two calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies shall be in writing to:

Secretary, Transportation Cabinet
c/o State Highway Engineer
200 Mero Street; 6th Floor
Frankfort, KY 40622

The Secretary of the Kentucky Transportation Cabinet shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reason for the decision. The decision by the Secretary of the Kentucky Transportation Cabinet shall be final.

5.17 VIOLATION OF TAX AND EMPLOYMENT LAWS

KRS 45A.485 requires the Apparent Best Value Proposer to reveal to KYTC, prior to the Project Award of a contract, any final determination of a violation by the Apparent Best Value Proposer 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 Apparent Best Value Proposer shall report any such final determination(s) of violation(s) to KYTC 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.

Proposers shall attest commitment to comply with and any necessary revelations with regards to these provisions in the Bid File.

5.18 FHWA 1273

The Project shall be under the laws and regulations of the Commonwealth. This is a federal-aid highway Contract and all federal laws and regulations, including F6HWA-1273 and civil rights must be complied with by the DBT.

The DBT shall outline, undertake and complete the work as described in the Contract Documents in a manner consistent with Appendix F - FHWA Form 1273 and all applicable state and federal laws and regulations.

5.19 NOT USED

5.20 REGISTRATION WITH THE SECRETARY OF STATE BY A FOREIGN ENTITY

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by KRS 14A.9-00 to obtain a certificate of authority to transact business in the Commonwealth (“certificate”) from the Secretary of State under KRS 14A.9-030 unless the person produces the certificate within fourteen (14) days of the bid or proposal opening. Therefore, foreign entities shall submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate as provided in KRS 14A.9-010, the foreign entity shall identify the applicable exception in its solicitation response. Foreign entity is defined within KRS 14A.1-070. For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity’s solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.

Businesses can visit <https://www.sos.ky.gov/Pages/default.aspx> to register with the Secretary of State.

5.21 EXECUTIVE BRANCH CODE OF ETHICS

See Appendix G – Executive Branch Code of Ethics for restrictions relating to former KYTC employees.

5.22 CERTIFICATION REGARDING RESPONSIBILITY MATTERS

In accordance with Federal Acquisition Regulation 52.209-5, the Proposer shall certify with bid response, that to the best of its knowledge and belief, the Proposer, Proposer Team Members and Key Personnel is (are) not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any State or Federal agency. "Principals", for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of subsidiary, division, or business segment, and similar positions).

In addition, each Proposer must submit as part of its Technical Proposal the certificate set out in Form G (Debarment Certification).

5.23 PROPOSER COMMONWEALTH LAWS CERTIFICATION

Each Proposer and Proposer Team Member must submit as part of its Technical Proposal the affidavit set out in Form N (Commonwealth Campaign Finance Affidavit).

ARTICLE 6. ALTERNATIVE TECHNICAL CONCEPTS

6.1 DEFINITION

An Alternative Technical Concept (ATC) is a change to the Project Scope that provides a solution that is equal to or better than the required scope as determined by KYTC. The ATC process allows for innovation, increased flexibility, time reductions, and cost savings to deliver the best value for the public. Where the Contract Documents reference specific patented, proprietary material; or semi-finished or finished article, product, or item for incorporation into the work, the Proposer may submit an ATC for approval of an alternative material, article, product, or item that meets or exceeds the requirements and intent of the Contract work, provided that the material, article, product, or item is equal or better in quality, performance, life cycle, and function, based upon documented engineering analysis. ATCs are not intended to replace Pre-Proposal Questions.

KYTC will not consider any proposed ATCs that will:

- Eliminate the roundabouts at US 150X, KY 528, and US 150
- reduce the Project Scope or the long-term performance, quality or reliability of the Project
- modify the risk allocation between KYTC and the DBT set forth in the Contract
- impose an additional burden on KYTC for maintenance (including, for example, the purchase of specialized equipment)
- require a reduction in pavement design life,
- require a reduction in design speed,
- require a reduction in number of lanes or lane widths
- require a reduction of shoulder widths north of US 150,
- increase the amount of time for Substantial Completion Deadline.

Additionally, KYTC shall not consider proposed changes to KYTC design standards and practices proposed solely for the purpose of relaxing a more stringent standard, unless KYTC, in its sole discretion, determines that such proposed changes are directly associated with, and required to implement, an ATC for a unique design concept. KYTC, in its sole discretion, reserves the right to reject, approve with conditions, or approve a proposed ATC prior to submittal of Proposals.

6.1.1 Limitations of ATC Process

KYTC, in its sole discretion, will determine whether to make modifications to the RFP Documents as a result of any approved ATC. In most cases, the RFP Documents will not be modified when approved ATC(s) include acceptable location-specific design exceptions, acceptable design waivers, and acceptable deviations from RFP Volume III (Technical Provisions). However, where an ATC approval contemplates a significant scope change or widespread inclusions of design exception(s) and/or waiver(s), KYTC, in its sole discretion, may amend the RFP. Proposers shall base their Proposals on the terms and conditions of the RFP Documents included in the latest issued Addendum. Prior to approving any ATCs that would result in the issuance of an Addendum, the Proposer submitting the ATC will be given the option to withdraw the proposed ATC.

Proposers are required to submit each alternative concept as a separate ATC. A concept may include multiple interrelated parts, but an ATC with multiple unrelated parts shall be rejected.

. The purpose of the second ATC Meeting is for Proposers to present any new ATCs and/or to discuss any outstanding matters or questions relating to ATCs submitted to KYTC on or before the relevant deadline shown in Section 1.4.

If the Contract Documents incorporate any ATCs and the DBT, for whatever reason: (a) does not comply with one or more KYTC conditions of pre-approval for the ATC; (b) does not obtain required third-party approval for the ATC; or (c) fails to implement the ATC, then the DBT shall (i) provide written notice thereof to KYTC and (ii) comply with the requirements in the Contract Documents that would have applied in the absence of such ATC. Such compliance shall be without any increase in the Contract Price or extension to the Substantial Completion Deadline. For the avoidance of doubt, the DBT shall not be entitled to any increase in the Contract Price or extension of the Contract Time(s) as a result of any delay, inability or cost associated with the acquisition of any property that may be required to implement any ATC.

6.2 ATC MEETINGS

KYTC intends to conduct one-on-one meetings with each Proposer on the dates set forth in Section 1.4 (Project Schedule) to discuss ATCs and other Pre-Proposal Question-related topics (each, a One-on-One Meeting or One-on-One) as set forth in Section 2. Each One-on-One will be private in that only one Proposer will meet with KYTC at a time. One purpose of the One-on-Ones is for the Proposer to present and discuss conceptual ATCs. The meetings are also intended to enable KYTC to express, among other things, whether the Proposer is pursuing an approach that is unacceptable to KYTC and, when possible, to establish whether a proposed concept meets the definition of an ATC (thereby requiring a formal ATC submittal).

A minimum of two (2) working days before the date and time shown in Section 1.4 (Project Schedule) for the relevant One-on-One, the Proposer shall submit to the Authorized KYTC PM an agenda for the meeting (as set forth in Section 2) and an ATC Summary, consisting of no more than four (4) pages (in the form set forth in Form H) (each, an “ATC Summary”), for each ATC the Proposer wishes to discuss. The ATC Summary should provide a narrative overview describing the ATC and its benefits to KYTC.

6.3 SUBMISSION REQUIREMENTS

6.3.1 ATC Submission Process

If the Proposer wishes to submit a formal ATC proposal (each, an ATC Submittal), the Proposer shall do so by completing and submitting to the Authorized KYTC PM the form set forth in Form I and otherwise conforming to the requirements set forth below.

Each ATC Submittal shall be in writing, with a cover sheet identifying the Proposer and stating “KY555 Design Build Project – Confidential ATC”. The Proposer shall identify clearly the submittal as a request for review of an ATC under this RFP.

Proposers may submit ATC Submittals for consideration by KYTC beginning on the date set forth in Section 1.4. KYTC will review all ATCs submitted by the KYTC Final ATC Responses Deadline set forth in Section 1.4. Each ATC may include multiple issues to be considered by KYTC. The Proposers shall clearly identify each individual portion of the ATC proposal that is a proposed change to the Project Scope.

A Proposer shall submit electronic files of the ATC Submittal as follows:

- A. One (1) electronic searchable single file PDF which does not restrict printing or copying text, images, and other content.
- B. One (1) electronic password protected single file PDF which restricts copying of text, images, and other content.

All Proposer ATC Submittals shall be electronic and uploaded to KYTC's secure Project Portal submittal site. Each Proposer will receive separate instructions for accessing their exclusive Project Portal submittal site. After uploading submittals to the Project Portal, Proposers shall send an email to the Authorized KYTC PM, at the email given in Section 1.10.2 formally transmitting the ATC, with a link to the uploaded file. No telephone or oral requests will be considered.

ATCs shall be received no later than 4:00 p.m., Eastern Time, on the Deadline for ATC Submittals. KYTC shall reject any ATC received after aforementioned date and time. In order to be considered, the ATC PDF file shall be electronically signed with date stamp by the Authorized Representative of the Proposer.

The electronic submittal shall be addressed to the Authorized KYTC PM. The cover of the document shall be marked:

Alternate Technical Concept for
KY 555 Design Build
Item No. 4-169.10
CID No. 22-9002
Design-Build: FY 2023 Design Build #2

6.3.2 ATC Submittal Contents

The ATC Submittals shall be sequentially numbered, reference the document, section and page number the ATC refers to if applicable, and shall identify the Proposer and the ATC number (multi-part or multi-option ATCs shall be submitted as separate individual ATCs with unique sequential numbers). Each ATC Submittal shall include:

- a) all references to requirements of the Project Scope and RFP that are inconsistent with the proposed ATC, an explanation of the nature of the deviations from said requirements and a request for approval of such deviations;
- b) the locations where, and an explanation of how, the ATC will be used on the Project;
- c) an analysis justifying the ATC and clearly demonstrating why modifications or revisions to requirements of the Project Scope are equal or better and should be allowed. Include information on how the ATC meets or exceeds the project goals.
- d) the reduction, if any, in the Contract Time(s) resulting from implementing the ATC, including, as appropriate, a description of method and commitments;
- e) an estimate of any savings that would accrue to the Project should the ATC be approved and implemented and/or any additional KYTC, DBT and third-party costs associated with implementation of the ATC;
- f) additional right-of-way, if any, that will be required to implement the ATC (Proposers shall be solely responsible for the acquisition of any such right-of-way as per the Technical Provisions, including the cost thereof and obtaining any necessary Environmental Approvals);
- g) any changes in operations associated with the ATC, including improvements in safety;
- h) any changes in routine and capital maintenance requirements associated with the ATC, including ease of maintenance;
- i) any changes in the anticipated service life of the item(s) comprising the ATC;
- j) a discussion of the impacts the ATC will have on maintenance of traffic during construction including any impacts on other roadways due to diversion of traffic on proposed or potential detour.
- k) preliminary analysis of potential impacts on life-cycle costs (including the impacts on the cost of repair, maintenance and operation);

- l) preliminary analysis and quantitative discussion of potential impacts on vehicular traffic (both during and after construction);
- m) A discussion of decreased or additional utility (public and private) impacts as a result of ATC implementation, if applicable;
- n) a description on how the ATC is in accordance with the approved Environmental Approvals and permits and a preliminary analysis of environmental permitting and community impacts;
- o) a description of added risk to KYTC or third parties associated with the ATC's implementation;
- p) any additional testing and inspection requirements;
- q) a description of other projects on which a similar ATC has been used, the degree of success or failure of such usage and names and contact information, including phone numbers and e-mail addresses, for project owner representatives that can confirm such statements; and
- r) preliminary drawings of the configuration of the ATC or other appropriate descriptive information, including specification and a traffic operational analysis, if appropriate.

6.4 EVALUATION OF ATCS

ATCs are approved by KYTC at its discretion and KYTC reserves the right to reject any ATC submitted. KYTC shall attempt to evaluate all ATCs and ATC reconsiderations within ten 10 Working Days of receipt. However, this timeframe cannot be guaranteed, particularly for complex or unusual concepts. KYTC shall not consider any change that would require excessive time or cost for review, evaluation, or investigation.

6.4.1 Errors, Ambiguities or Mistakes

If KYTC determines, based on a proposed ATC, communications, or otherwise, that the RFP contains an error, ambiguity or mistake, KYTC reserves the right to revise the RFP to correct the error, ambiguity or mistake, regardless of any impact on a proposed ATC.

6.4.2 Proposer Acknowledgement of ATC Submission Opportunity

By submitting a Proposal, each Proposer acknowledges that it received the opportunity to submit ATCs and, therefore, waives any right to object to KYTC's determination regarding any ATC. KYTC's rejection of any ATC shall not entitle the Proposer that submitted the ATC to an extension of the Technical Proposal Submission Date; provided however, the foregoing shall not limit KYTC's right to modify the Technical Proposal Due date as shown in Section 1.4 or any other date in connection with this procurement.

6.4.3 KYTC Response

After KYTC completes its ATC review, KYTC will respond with one of the following determinations via Form J:

- a) The ATC is approved and may be included in the Proposer's Technical Proposal.
- b) The ATC is approved subject to conditions. The ATC may be included in the Proposer's Technical Proposal provided that all approval conditions have been met. Failure to clearly demonstrate that all conditions have been met may render the Proposer's Technical Proposal non-responsive.
- c) The ATC is not approved in its present form but may be resubmitted for reconsideration. The reconsideration request must address all KYTC comments, questions, and concerns. Reconsideration requests must meet all ATC submission and content requirements.
- d) The ATC is not approved. Inclusion of the ATC in the Technical Proposal will render the Technical Proposal non-responsive.

- e) The proposed ATC does not qualify as an ATC but may be included in the Proposer's Proposal because it appears to be within the requirements of the RFP or any pending Addendum.
- f) The proposal does not qualify as an ATC and may not be included in the Technical Proposal. Inclusion of the ATC in the Technical Proposal will render the Technical Proposal non-responsive.

KYTC may, at its discretion, request additional information or clarification regarding a proposed ATC and/or conduct one-on-one meetings with DBTs to discuss their ATC. Verbal communications regarding ATC proposals shall be considered non-binding.

6.5 INCORPORATION INTO TECHNICAL PROPOSAL

The Proposer may incorporate zero, one, or more approved ATCs (or conditionally approved ATCs, if all conditions are met) into their Technical Proposal. The Technical Proposal must clearly state which ATCs have been incorporated and indicate what, if any, conditions are met. Approved ATCs shall be clearly shown on the Technical Proposal plans. The Price Proposal shall reflect all incorporated ATCs.

6.6 DISCLOSURE

If, during evaluation of an ATC proposal, KYTC becomes aware of a deficiency in the Project Scope that would have an impact on the ability of Proposers to make a best value offer, KYTC may, at its discretion, issue an addendum to correct this deficiency.

Other than as listed in the above paragraph, all conversations related to ATC proposals between the KYTC and Proposers shall be kept confidential during the bidding process. ATC proposals may be made public after the payment of the Stipend has been tendered and/or upon Contract execution or as required by Kentucky's Open Records Act. All documents received by the KYTC are subject to KRS 61.870 to 61.884, also known as the Open Records Act, and are subject to release unless a statutory exception exists that exempts the documents from public release. If any information in an ATC or Technical Proposal is to be treated as "confidential or proprietary," the Proposer must identify each and every occurrence of the information within the Proposal by:

- A. Listing the page numbers of every occurrence of the "confidential or proprietary" information on the cover sheet submitted with the ATC or Technical Proposal; and
- B. Placing an asterisk before and after each line of the ATC or Technical Proposal that contains "confidential or proprietary" information. "confidential or proprietary" may include trade secrets.

Prior to Project Award, KYTC shall not share with, or convey to, any person the information provided by the Proposer, unless disclosure is required by law or the Proposer gives prior written approval for such disclosure. In the event the KYTC is required to disclose any information the Proposer considers confidential or proprietary, pursuant to applicable law, KYTC shall notify the Proposer in writing prior to disclosing such information. KYTC shall use reasonable efforts to give notice of disclosure at least three days in advance of release. However, upon Project Award, all information provided to KYTC that was used in the evaluation of the Proposals will be considered a public record unless the Proposer refuses to accept a Stipend (non-selected Proposers) or Project Award (Apparent Best Value Proposer). KYTC shall not be obligated to maintain in confidence any information that is not confidential or proprietary including information that: (1) is already known by the state, (2) is or comes into the public domain through no fault of the state, (3) is independently developed by the state, or (4) comes to the state from a third party in a manner not in violation of any obligation of confidentiality by such third party to the Proposer. Kentucky law generally requires that documents that contain both confidential and non-confidential information be disclosed with confidential information redacted.

By submitting a Proposal and not waiving the Stipend Payment within the specified time in Section 5.10, each Proposer agrees, if it is not selected, to disclosure of its work product by KYTC to the Apparent Best Value Proposer.

6.7 INCORPORATION OF ATC IN THE CONTRACT

Following selection of the Apparent Best Value Proposer, ATCs that were pre-approved by KYTC and incorporated in the Proposal by the Successful Proposer shall be included in the Contract. If KYTC responded to any ATC by stating that it would be acceptable if certain conditions were met, those conditions will become part of the Contract. Notwithstanding anything to the contrary herein, if the DBT does not comply with one or more KYTC conditions of pre-approval for an ATC or the DBT fails to obtain a required third-party approval for an ATC, the DBT will be required to comply with the original requirements of the RFP without adjustment to the Contract Price or Contract Time(s).

ATCs from unsuccessful Proposers may, in KYTC's discretion, be presented to the Apparent Best Value Proposer for possible incorporation into the Contract during negotiation of the final terms of the Contract and, if agreed by KYTC and the Apparent Best Value Proposer in such negotiations, incorporated into the Contract. ATCs from unsuccessful Proposers may also, in KYTC's discretion, be presented to the Apparent Best Value Proposer for possible incorporation into the Contract after negotiation of the final terms of the Contract and, if agreed by KYTC and the Apparent Best Value Proposer in such negotiations, incorporated into the Contract at such time.

6.8 ADDITIONAL GOVERNMENTAL APPROVALS, PROPERTY ACQUISITION, UTILITY WORK

If the implementation of an approved or conditionally-approved ATC requires approval of a third party (e.g., a Governmental Unit) or a re-evaluation of a previously secured approval, the DBT shall be solely responsible for obtaining the relevant approval. KYTC will provide reasonable cooperation in obtaining such approvals.

If any relevant third-party approval is not granted, then the DBT must change its Project approach to meet the original (i.e., pre-ATC) requirements in the Contract, including the Technical Requirements. The DBT shall not be eligible for a Change Order to increase the Contract Price or extend the Contract Time(s) for failure to secure any such third-party approval.

If the implementation of an approved or conditionally-approved ATC requires additional utility work, DBT shall pay for such work. DBT shall not be eligible for a Change Order to perform such utility work.

ARTICLE 7. PROPOSAL SUBMISSION AND SELECTION CRITERIA

7.1 OVERVIEW

KYTC's intent is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all applicable laws governing the RFP Process.

The Proposal evaluation process will include the following series of steps: (a) determination of whether a Proposal is responsive, (b) evaluation of the Technical Proposal (c) evaluation of the Price Proposal, and (d) computation to determine the Apparent Best Value Proposer.

For determination of the Apparent Best Value Proposer, the Proposer shall be required to submit to KYTC two separate bidding packages for the project at the same time. The first package shall be a Technical Proposal and the second package shall be a Price Proposal. The Technical Review Committee will evaluate the Technical Proposal and, after completion of review, release a Technical Proposal score. This evaluation shall be based only on the information contained in the Proposer's Technical Proposal concerning the information outlined in the below section.

After release of the Technical Proposal scores, but on the same day, the Technical Review Committee will receive the Price Proposals, compute an overall proposal score based on the formula presented in Section 7.5. The Apparent Best Value Proposer for the Project is the Proposer Team with the highest overall score. The Technical Review Committee will then give the results to the Awards Committee for confirmation of the Apparent Best Value Proposer. The intent is to determine Project Award by the date shown in Section 1.4; however, KYTC reserves the right to hold the price through the Proposal Validity Period.

All properly submitted proposals from Proposers allowed to submit a proposal shall be accepted by KYTC. However, KYTC reserves the right to request necessary amendments which may become part of the Proposer's proposal; reject all proposals; reject any proposal that does not meet mandatory requirements; or cancel this solicitation, in the best interest of KYTC. For comparison purposes, the Cabinet may prepare a cost estimate based upon information provided by the Proposer in the proposal submittal. For acceptance purposes, KYTC may use this estimate to accept or reject any or all proposals.

KYTC also reserves the right to waive minor irregularities in proposals providing such action is in the best interest of KYTC. If KYTC waives minor irregularities, such waiver shall in no way modify the solicitation requirements or excuse the Proposer from full compliance with the specifications and other contract requirements if the Proposer is conferred Project Award.

7.2 RESPONSIVENESS

KYTC will review the Proposal submitted by a Proposer (a) for the responsiveness of the Proposal to the requirements set forth in this ITP; (b) for conformance to the ITP instructions regarding organization and format; and (c) for minor nonconformities, irregularities, and apparent clerical mistakes.

If the Proposal does not (a) follow the submission date and time listed in Section 1.4; (b) fully comply with the instructions and requirements contained in this ITP, including the exhibits and forms; (c) receive a score of at least 50 for the Technical Proposal; (d) submit a Price Proposal per the requirements of Sections 1.6 and 7.4.1 (e) submit a Proposal Guaranty per the requirements laid out in Section 7.4.2 and (e) contain all Proposer information, certifications, signed statements and documents, and forms required by this ITP, it may be considered non-responsive and rejected.

Those Proposals not responsive to this ITP may be excluded from further consideration, and the Proposer will be so advised. KYTC may also exclude from consideration any Proposer whose Proposal contains a material misrepresentation.

7.3 TECHNICAL PROPOSAL

7.3.1 Submission

Proposers shall electronically submit the Technical Proposal as follows:

- A. One electronic searchable, password protected, single file PDF which does not restrict printing or copying text, images and other content
- B. One electronic searchable, non-password protected, single file PDF which does not restrict printing or copying text, images and other content.

The Technical Proposal shall be received no later than the date and time shown in Section 1.4. KYTC may reject any proposal received after aforementioned time and date and return it unopened to the Proposer. In order to be considered, the Proposal shall be signed by the Authorized Representative of the Proposer Team.

All Proposer submittals shall be electronic and uploaded to KYTC's Project Portal. Each Proposer will receive separate instructions for accessing their exclusive Project Portal. After uploading submittals to the Project Portal, Proposers shall send an email to the Authorized KYTC Representative formally transmitting the submittal, with a link to the uploaded file.

The submittal shall be addressed to the Authorized KYTC Representative.

The outside cover of the document shall be marked:

Technical Proposal for
KY555 Design Build
Item No. 4-169.10
CID No. 22-9002
Design-Build: FY 2023 Design Build #2

7.3.2 Incorporation of Technical Proposal

KYTC will incorporate by reference into the Apparent Best Value Proposer's Contract requirements the elements from the Apparent Best Value Proposer's Technical Proposal that exceed the requirements of the RFP Documents (i.e., can reasonably be interpreted as offers to provide higher quality items or additional services).

7.3.3 Technical Proposal Evaluation

The Technical Proposal score will represent 30 percent of the total score and will be determined based on the evaluation criteria listed below. The Technical Proposal shall be developed using narratives, tables, charts, plots, drawings, and sketches as appropriate. The purpose of the Technical Proposal is to document the Proposer's understanding of the Project; its selection of appropriate design criteria; and its approach for completing all design, Right-of-Way acquisition (if deemed necessary), utility adjustment work, quality management, project controls, and construction activities.

A Proposer may submit only one proposal. The format and content are as specified. Alternate proposals shall not be allowed. Each proposal shall be prepared simply and economically, providing a straightforward, concise description of the Proposer’s ability to meet the requirements of this solicitation. Colored displays or promotional materials shall receive no evaluation credit. Emphasis shall be on completeness and clarity of content. KYTC retains the right to request, receive and consider additional information and clarifications throughout the evaluation process.

The Proposer shall describe and graphically, through the use of coordinates, represent the permanent Additional ROW and limits of disturbance for the Long Lick Branch Bridge widening. This Additional ROW will be subject to Article 5.1.2.4 of the Agreement.

The Technical Proposal shall be evaluated on how well each of the following items in Table 7.1 are addressed:

Table 7.1, Technical Proposal Evaluation Criteria

Part	Evaluation Criteria	Maximum Pages	Maximum Points
A	Project Management Approach and Schedule	10	10
B	Approach to Design	50	40
C	Approach to Construction	50	40
D	DBE Plan	10	10
TOTAL			100

The Technical Proposal shall be organized in parts as indicated.

Technical Proposal content requirements are found in the following sections as well as within the Project Scope.

7.3.3.1 Part A – Project Management Approach and Schedule

7.3.3.1.1 Project Management Approach

The Proposer’s project management approach should:

- Demonstrate an integrated team approach between the team members including the contractors, designers, subcontractors, DBE firms, and KYTC. Describe how the Proposer will conform to Paragraph 2 of section 108.01 of the Standard Specifications.
- Provide a project organization chart for the Project, showing the relationships between proposed management and Key Personnel shown on the chart and the functional relationships with other critical participants on the Proposer Team. The chart shall also indicate how the Proposer intends to divide the Project into work segments to enable optimum construction performance.
- Demonstrate that the Proposer has the capability to effectively communicate and coordinate with the KYTC Office of Public Affairs and their designated representatives.
- Describe the Proposer’s concept of design management, utility relocation management, and construction management and how they interrelate with the other elements of the Proposer Team’s organization for the Project. Identify a staffing plan including specific responsible personnel and organizational units.

- Identify the Proposer’s Key Personnel, in accordance with their respective responsibilities and requirements in Volume III, DBT Personnel, Section 2.4:

The Key Personnel may not at any time be removed, replaced, or added during the Contract period without written approval of KYTC. To qualify for approval, the qualifications of the proposed replacement or addition shall be equal to or better than those of the Key Personnel submitted in this RFP. The Key Personnel shall meet the minimum requirements on Volume III, DBT Personnel, Section 2.4.

- At a minimum, identify Required Personnel for the Project, as identified in Volume III, DBT Personnel, Section 2.4. The DBT may assign a single person to one or more of the Required Personnel positions.

Describe the qualifications and experience of the individuals assigned to these roles, specifically how they have successfully performed these roles previous projects and how they will collaborate on the design and construction of the Project. Include information relative to each individual’s familiarity with the proposed project and similar projects.

Provide a detailed report of all current projects being worked on by the above listed Proposer Team staff and identify all areas where individuals will have significant responsibilities outside of the this potential Project.

Individuals must be currently employed by a member of the Proposer Team.

7.3.3.1.2 Preliminary Baseline Schedule

Include a detailed general schedule, in accordance with the requirements of Section 2.9 of Volume III, to clearly demonstrate the Proposer approach for completing the project by the Completion Deadlines, including the identification of the following milestones and activities, at a minimum:

- A. NTP Date, in accordance with the Project Schedule in Section 1.4 of this Volume I.
- B. Timeframe for site investigations
- C. Commencement of Design
- D. Permitting coordination and milestones
- E. Commencement of Construction
- F. Dates of Utility Adjustment Work (include all overhead and underground, including dates for critical shutdowns or “switchovers”)
- G. Proposed timeframes of design and construction for each Buildable Unit
 - Design submittal milestones with KYTC review timeframes
 - Timeframes for construction of major elements
- H. Date of Substantial Completion
- I. Date of Final Acceptance
- J. Identification of the critical path

The proposed schedule shall carry forward and be integrated to each section of the Technical Proposal.

KYTC will use the following criteria in Table 7.2 to distribute the project management approach and Preliminary Baseline Schedule points.

Table 7.2, Distribution of Points – Project Management Approach and Schedule

Part	Component of Project Management Approach and Schedule	Percentage of Proposed Points
A.1	Project Management Approach	35

Part	Component of Project Management Approach and Schedule	Percentage of Proposed Points
A.2	DBT Experience on Projects of Similar Scope	30
A.3	Preliminary Baseline Schedule	35
	TOTAL	100

7.3.3.2 Part B – Approach to Design

The DBT’s approach to the design indicated in the Technical Proposal shall demonstrate:

- A. An understanding of the Project criteria, risks, scope, and mandatory elements for the project;
- B. How the proposed design meets KYTC’s general and project-specific criteria, including Project constraints; and
- C. How the proposed design meets project goals.
- D. Any specific design features that would reduce the need for maintenance or would make inspection/maintenance procedures more efficient, safer, and/or less costly.
- E. Solutions to manage the risks associated with proposals based on limited design information.
- F. That the Proposer has considered NEPA compliance, Utilities, Right-of-Way, utility coordination, permitting, constructability, and maintenance of traffic activities in determining its design approach

At a minimum, this portion of the technical proposal shall reflect a single unified design concept for the Project and shall demonstrate, through written narratives and supplemental drawings, the Proposer’s intent for the design approach to the project. Drawings are included in the page limits.

KYTC will use the following criteria in Table 7.3 to distribute design concepts points.

Table 7.3, Distribution of Points – Approach to Design

Part	Written Approach to Design Component	Percentage of Proposed Points
B.1	Approach to structures	20
B.2	Approach to the roadway design, including approach to cross slope correction	35
B.3	Approach to incorporation of ATCs and innovations	20
B.4	Approach to NEPA Compliance, ROW, permitting, Utility Adjustment Work, including Utility Company coordination. Shall include a preliminary Utility Adjustment Report, per the requirements of Volume III.	25
	TOTAL	100

7.3.3.3 Part C – Approach to Construction

The Proposer shall demonstrate, through written narratives and supplemental drawings, the Proposer’s intent for the construction approach to the project. Drawings are included in the page limits. The Technical Proposal shall address the following construction issues:

7.3.3.3.1 Construction Sequencing and Logistics

- A. Provide a brief narrative description of the Proposer’s overall plan for constructing the Project. Describe the construction concepts that will be used for each construction phase. Specifically

describe how traffic will be maintained. Describe in general the anticipated construction work for each phase

- B. Provide a narrative description of the Proposer’s proposed major Buildable Units (Volume III, Section 3.2) and how these will be designed and constructed in the phasing described above.
- C. Describe how design and construction tasks will be performed in an efficient manner to maximize innovation, minimize constructability issues, and accelerate the project.
- D. Discuss project risks and approach to address risks.
- E. Describe the Proposer’s plans and procedures to ensure timely deliveries of materials to achieve the project schedule. Include information with respect to anticipated fabrication times. Also describe anticipated staging areas needed.

7.3.3.3.2 Construction Quality Control

- A. Describe the Proposer’s approach to design and construction quality control. Describe the relationship between the design, construction, inspection, materials sampling testing, and acceptance functions.
- B. Describe plan for relaying material certifications and documentation to KYTC as materials are delivered to project, e.g., when a delivery contains materials for more than one structure.

7.3.3.3.3 Coordination with NEPA compliance, Utilities, ROW, Permitting, and MOT

- A. Demonstrate that the Proposer has considered NEPA compliance, Utilities, Right-of-Way, utility coordination, permitting, constructability, and maintenance of traffic activities in determining the proposed construction schedule

7.3.3.3.4 Safety

- A. Describe the safety considerations specific to this Project. Discuss the firm's overall approach to safety.

KYTC shall use the following criteria in Table 7.4 to distribute construction points:

Table 7.4, Distribution of Points – Approach to Construction

Part	Component of Construction	Percentage of Construction Points
C.1	Approach to construction sequencing and logistics.	40
C.2	Approach to design and construction quality. Shall include a preliminary Quality Management Plan, per the requirements of Volume III.	20
C.3	Approach to coordination with NEPA compliance, Utilities, permitting, and maintenance of traffic	20
C.4	Approach to safety. Shall include a preliminary Safety Management Plan, per the requirements of Volume III.	20
	TOTAL	100

7.3.3.4 Part D – Disadvantaged Business Enterprise (DBE) Plan

Proposers shall include the following certification in the Technical Proposal. PROPOSALS SUBMITTED WHICH DO NOT INCLUDE CERTIFICATION OF DBE PARTICIPATION WILL NOT BE ACCEPTED. These Proposals will not be considered for Project Award by KYTC and they will be returned to the Proposer.

“The Proposer certifies that it will secure participation by Disadvantaged Business Enterprises (“DBE”) in the amount of 9% percent of the total value of this Contract and that the DBE participation will consist of both a project development component and a construction component and that the DBE participation will be in compliance with the requirements of 49 CFR.”

The Technical Proposal shall include a preliminary DBE Utilization Plan that meets the requirements of ITP Appendix C– DBE Utilization Plan and describes the Proposer’s approach to achieving the project’s goal of 9% DBE participation in the overall value of design and construction work. The intent is to ensure all participation counted toward fulfillment of the DBE goals is: (i) real and substantial; (ii) actually performed by viable, independent, DBE-owned firms; and (iii) in accordance with the spirit of the applicable laws and regulations. DBE payments and commitments shall be separate and distinct and cannot be transferred or combined in any matter.

Table 7.5, Distribution of Points – DBE Plan

Part	Component of DBE Plan	Percentage of Proposed DBE Plan Points
D.1	DBE Certification	Pass / Fail
D.2	DBE Utilization Plan	100

7.3.4 Technical Proposal Scoring

The following Table 7.6 provides a general indication of anticipated scoring of each evaluation criteria. A minimum total Technical Proposal score of 50 is required for the Technical Proposal to be considered responsive.

Table 7.6, General Scoring Criteria

		PERCENT OF MAXIMUM SCORE
Excellent (E)	<ul style="list-style-type: none"> Proposal demonstrates an approach with <u>unique or innovative</u> methods of approaching the proposed work with an <u>exceptional level of quality</u>. Proposal contains <i>many significant strengths and few minor weaknesses, if any</i>. There is <u>very little risk</u> that the Proposer would fail to satisfy the requirements of the design build contract. 	90-100
Very Good (VG)	<ul style="list-style-type: none"> Proposal demonstrates an approach offering <u>unique</u> methods of approaching the proposed work with <u>very good level of quality</u>. Proposal contains <i>many strengths that outweigh the weaknesses</i>. There is <u>little risk</u> that the Proposer would fail to satisfy the requirements of the design build contract. Weaknesses, if any, are very minor and can be readily corrected. 	70-89
Adequate (A)	<ul style="list-style-type: none"> Proposal demonstrates an approach that meets RFP requirements and/or objectives and that offers an <u>adequate level of quality</u>. Proposal contains <i>strengths that are balanced by the weaknesses</i>. 	50-69

		PERCENT OF MAXIMUM SCORE
	<ul style="list-style-type: none"> There is <u>some probability of risk</u> that the Proposer may fail to satisfy some of the requirements of the design build contract. Weaknesses are minor and can be corrected. 	
Fair (F)	<ul style="list-style-type: none"> Proposal demonstrates an approach that <u>has some deficiencies in</u> RFP requirements and/or objectives. Proposal contains <i>weaknesses that are not offset by the strengths</i>. There are questions about the likelihood of success and <u>there is a risk</u> that the Proposer may fail to satisfy the requirements of the design build contract. There are significant weaknesses and very few strengths. 	30-49
Poor (P)	<ul style="list-style-type: none"> Proposal demonstrates an approach that <u>does not meet the stated RFP requirements and/or objectives, lacked essential information, is conflicting, is unproductive, and/or increases KYTC's risk.</u> Proposal contains <i>many significant weaknesses and very minor strengths</i>, if any. There is not a reasonable likelihood of success and a <u>high risk</u> that the Proposer would fail to satisfy the requirements of the design build contract. 	0-29

7.3.5 Format of Technical Proposal

The Technical Proposal is limited to forty (40) pages 8.5” by 11” which shall include the information requested in this solicitation. The Technical Proposal must conform to the following format:

- A. Each page must be 8.5” x 11” with single-space type no smaller than 11-point font. Pages may contain graphics and photographs where applicable.
- B. All pages shall be numbered with a footer depicting, at a minimum, Proposer’s name and page number (Proposer – Page X of XX). Margins shall be at least 1” all around. Deviations from formatting requirements may result in rejection of the Technical Proposal.
- C. Covers front and back are allowed as well as a transmittal letter; however, information on the outside covers and transmittal letter may not be used for evaluating the proposal. The following and previous page of the front and back covers, respectively must be left blank. No writing, photos, graphs, etc., will be allowed on the inside of covers.
- D. Tabs between pages may be used; however, other than identification on the tab, the tab page must be blank. No writing, photos, graphs, etc., will be allowed on the tab pages other than section identification.
- E. No additional information beyond that required for the Technical Proposal as described in this Section 7.3 may be attached or made reference to via webpage or other means.
- F. The Proposer may provide unlimited 11” by 17” pages for supporting details and graphics (i.e., organization chart, flow charts, tables, schedules, plan sheets, profiles, etc.). Such 11” by 17” sheets may contain captions, labels and other similar text, but shall not only contain text. 11”x17” sheets that contain primarily text with limited graphics will be counted as two 8.5” x 11” pages.

The Technical Proposal shall include preliminary plans in accordance with the following:

Preliminary plans (plan and profile views) shall be completed at a readable minimum scale of 1"=100' on either 36" x 96" roll plots or 11"x17" sheets for plans, and 11" x 17" sheets for cover page, index, notes, typical sections, cross sections, etc.), all in PDF format. The Proposers are encouraged to be as concise as possible. Roadway plans shall, at a minimum, meet the content requirements of Preliminary Line and Grade stage plans in accordance with Section 203 of the KYTC *Highway Design Guidance Manual*, and shall at a minimum include the following:

- A. Layout sheet – including the name of the Proposer, a project map and an index of sheets
- B. Typical sections – shall be provided for each roadway and ramp that reflect the provided options for either asphalt and/or concrete pavement
- C. Plan roll plots showing the following design items:
 - a. North arrow, graphic scale and road names clearly labeled
 - b. Stationed alignments for each roadway and ramp with index stations, curve points and curve data labeled (with proposed superelevation rates to be provided). Indicate the intended design speed for each horizontal curve.
 - c. Directional arrows indicating travel direction for each existing and proposed lane
 - d. Major drainage features and storm sewer layout shown and labeled for size
 - e. Begin and End Construction labels
 - f. Roadside barrier and end treatment locations and types
 - g. Limits of Disturbance shown and labeled
 - h. Proposed Right-of-Way location and access control fencing locations and limits
 - i. Proposed bridges, situation-size drainage structures and retaining walls shown and labeled
 - j. Intersection skew angles, turning radii, any non-standard lane widths, etc. to convey the proposed intersection layout
 - k. Limits of paving and limits of earthwork
- D. Profile Roll Plots showing the following design items:
 - a. Profile scale and road names clearly labeled
 - b. Existing ground lines and proposed profile grade lines shown and labeled
 - c. Key features intersected along the profile (such as roadways or streams) labeled
 - d. Labels for proposed grades and vertical curves
 - e. Calculated sight distance values for each sag and crest vertical curve and the corresponding design speed accommodated by each vertical curve
 - f. High water data for crossed and adjacent waterways
 - g. Proposed drainage structure crossings shown and labeled for size
 - h. Proposed bridges (with substructure unit locations) shown and labeled for proposed number of spans, proposed beam type, span lengths and proposed vertical clearance to be provided
- E. Conceptual maintenance of traffic plans (typical sections for construction stages at critical locations, plans, profiles, construction phasing details, proposed traffic control devices, proposed construction staging areas, proposed access points, etc.) sufficient to convey the Proposer's proposed maintenance of traffic concept
- F. Cross Sections at 100-foot intervals or less for each roadway. Label the cross sections sheets to enable easy correlation to the plans and profiles.

Plan and profiles may be shown adjacently on the same roll plot if desired.

Bridge plans for each bridge shall include:

- A. Layout Sheet, showing plan and profile and including pier type, abutment type, wingwall type and expected foundation types and depths
- B. Typical Section
- C. Construction phasing details (as applicable)

Also provide an electronic KMZ file showing:

- construction limits and proposed ROW
- edge of pavement
- edge of shoulder
- horizontal alignments
- centerline stationing
- barriers
- bridge deck limits
- pier locations
- abutment locations
- All relative information proposed and existing

7.4 PRICE PROPOSAL

Price Proposals are qualified based on Sections 7.3 and 7.4 and evaluated on the basis of Section 7.5. The Price Proposal Score will represent 70 percent of the total score and will be determined based on the evaluation criteria listed below.

The total all-inclusive lump sum Contract Price offered by the Proposer for its Proposal is for all work specified in the Contract is referred to herein as the "Price Proposal". The Price Proposal shall be organized to correspond to the items listed in this section, and shall be submitted electronically, separate from the Technical Proposal through Bid Express. (See Appendix B – Contract Notes).

KYTC shall not open the Price Proposal packet file until the completion of the evaluation of the Technical Proposals.

7.4.1 Submittal Requirements

7.4.1.1 Price Proposal

The Price Proposal packet shall include the Price Proposal Form (see Form L) and an updated Acknowledgement of Receipt of proposal addenda, Form AOR (see Form M). The Price Proposal shall bear the (digital) signature(s) by the Authorized Representative of the Proposer.

The Proposers shall ensure the Price Proposal is developed in accordance with the payment provisions of the Contract Documents.

This Price Proposal packet shall be submitted utilizing the electronic bidding software outlined in Section 102.08.02 of the Standard Specifications. This bid shall be entered through Bid Express by the date and time shown in Section 1.4. Any Price Proposal that fails to meet the deadline or delivery requirement shall be rejected and returned to the Proposer without having been opened, considered, or evaluated. KYTC shall not be responsible for a late Bid due to failure of the Proposer to allow sufficient time for delivery of the Price Proposal.

A Bid File for the project will be placed on the Bid Express site by the date identified in Section 1.4.

7.4.1.1.1 Lump Sum Price

The Proposer shall populate Form L, Price Proposal, using lump sum prices for each of the scope items shown. The Proposer shall not add any other level of detail other than what is requested on such form. The Proposer shall ensure the lump sum prices indicated on Form L, Price Proposal, as submitted as part of its Proposal, accurately reflects the total all-inclusive cost of the DBT's Work for completing the Project in accordance with the requirements of the Contract Documents. The Contract Price shall be the value indicated in line 17 of Form L, Price Proposal. The Proposal will be evaluated based on the Adjusted Project Cost, which shall mean the Contract Price plus or minus and long and/or short term costs potentially incurred to KYTC due to Proposer-implemented ATC(s). KYTC will determine such costs, if any, and will notify the Proposer of such costs in the ATC evaluation response(s). The Proposer shall list the ATCs incorporated into the pricing on Form L, Price Proposal.

The Proposer shall not adjust the allowance items within Form L, Price Proposal, specifically lines 3 and 13. The Proposer is directed to Volume II and Volume III to understand the Contract Price and associated payment provisions for the Contract Price.

7.4.2 Proposal Guaranty

Each Proposer shall submit a Proposal Guaranty with its Proposal in the amount of at least five (5%) percent of the Proposal Price, issued by a surety meeting the requirements of the Contract. The Proposer may submit one or more Proposal Bond(s), as its Proposal Guaranty; provided that the amount of all such Proposal Guaranties shall equal to at least five percent (5%) of the Proposal Price in the aggregate. Contrary to the Specifications only electronic Proposal Guaranty submittals will be accepted. Proposals that fail to include a Proposal Guaranty in compliance with this subsection shall be deemed non-responsive and shall be rejected by KYTC.

The Proposal Guaranty must be issued by an Eligible Security Issuer, and the Proposer shall deliver, together with its Proposal Guaranty, evidence demonstrating that each issuer of the Proposal Guaranty is an Eligible Security Issuer. If, at any time following the Proposer's submission of its Proposal Guaranty to KYTC, any issuer ceases to be an Eligible Security Issuer, the Proposer shall promptly notify KYTC in writing via email of such change, and within 15 days of such notice, the Proposer shall deliver to KYTC new Proposal Guaranty from a replacement Eligible Security Issuer. Upon KYTC's receipt of such replacement Proposal Guaranty, KYTC shall promptly return the replaced Proposal Guaranty to the Proposer. KYTC shall have the right to draw on any Proposal Guaranty (and to hold the resultant funds in escrow during the Proposal Validity Period) in the event that any Proposal Guaranty is not promptly replaced in accordance with this section.

This bond shall be submitted with the Price Proposal via Bid Express and will not be opened until completion of the review of the Technical Proposals. See section 2.9.2 of Volume III Technical Provisions for additional requirements on Lump Sum Bid Items.

7.4.2.1 Forfeiture of Proposal Guaranty

Each Proposer understands and agrees that KYTC will be entitled to draw on its Proposal Guaranty in its entirety if:

- a) after the Proposal Due Date, the Proposer withdraws, repudiates, or otherwise indicates in writing that it will not meet one or more commitments made in its Proposal (without KYTC's written consent);
- b) KYTC disqualifies the Proposer pursuant to Sections 5.8.1 or 5.8.2;

- c) any Proposal Guaranty is not promptly replaced as described in Section 7.4.2.
- d) following notification by KYTC to the Proposer that such Proposer is the Apparent Best Value Proposer, if any of the following occur:
- i. the Apparent Best Value Proposer fails to negotiate in good faith as expressly described in Section 8.1;
 - ii. the Deadline for DBT to Execute Contract does not occur by the Deadline for DBT to Execute Contract set forth in Section 1.4, unless that failure is directly attributable to one or more of the circumstances set forth in clauses (A) through (H) below, and those circumstances are not caused in whole or in part by the acts, omissions, negligence, fault, recklessness, or willful misconduct of the Apparent Best Value Proposer:
 - A. KYTC's insistence upon terms or conditions for any documents that are inconsistent with this ITP and the form of the Contract included in this ITP (excepting for any request(s) by KYTC for the incorporation of Proposal Work Product from any unsuccessful Proposer(s) into the Contract Documents pursuant to Section 8.1(c)(v), with respect to which the Apparent Best Value Proposer unreasonably withholds approval or fails to accommodate in good faith);
 - B. KYTC's cancellation of this procurement or decision not to execute the Contract with the Apparent Best Value Proposer and to end negotiations after the Apparent Best Value Proposer has engaged in good faith negotiations;
 - C. failure of any KYTC or Commonwealth approval required under Section 8.1(f) to be granted;
 - D. KYTC's failure to provide any other deliverable KYTC is required to deliver to the DBT as a condition precedent to the Deadline for DBT to Execute Contract;
 - E. an unresolved pending protest filed pursuant to Section 5.16 (unless KYTC has elected to undertake execution of the Contract irrespective of such protest, in which case, this Section 3.7.2(d)(ii)(E) shall not apply);
 - F. the issuance of any preliminary or permanent injunction or temporary restraining order or other similar order, legal restraint or prohibition by a Governmental Entity of competent jurisdiction under applicable law that would prohibit execution of the Contract or materially prohibit performance by KYTC or the DBT under the Contract;
 - G. any action or failure to act by KYTC or the Commonwealth in violation of law or any contract provision under which it is obligated and with respect to which the subject Proposer or the DBT is an express beneficiary; or
 - H. KYTC's failure to comply with any other conditions required by the DB Law necessary for execution of the Contract.

For purposes of this Section 7.4.2, the Proposer's obligation to achieve the Deadline for DBT to Execute Contract under the Contract shall be satisfied when the Proposer has executed and filed the Contract, and any other documents required under this ITP. Each Proposer, by submittal of its Proposal, shall be deemed to have agreed to the foregoing.

7.4.2.2 Proposal Guaranty Forfeiture as Liquidated Damages

The Proposers acknowledge and agree that the Proposal Guaranty payable pursuant to Section 7.4.2, Forfeiture of Proposal Guaranty is in the nature of liquidated damages (and not a penalty) and represents a genuine and reasonable estimate of the loss that will be suffered by KYTC as a result of any event detailed in Section 7.4.2, Forfeiture of Proposal Guaranty, and is fair and reasonable to compensate KYTC for losses it will incur as a result of such an event, including:

- a) additional costs of administering the procurement of the Project; and
- b) delay to the delivery of the Project, and loss of competition and potential best value to the general public.

7.4.2.3 Return of Proposal Guaranty

KYTC will retain the Proposal Guaranty of each Proposer until the Project Award.

Following the occurrence of Deadline for DBT to Execute Contract, KYTC will return the Proposal Guaranty of each Proposer within 15 days, except any Proposal Guaranty drawn by KYTC in accordance with the terms of this ITP; provided that KYTC may elect, in its sole discretion, to return any Proposer's Proposal Guaranty at an earlier date.

7.5 VALUE-BASED FORMULA USED FOR SELECTION

Scoring of the responsive Technical Proposal and Price Proposal plan shall be combined using a normalized weighted formula as follows:

$$SB = 100 [0.30 (TB/TH) + 0.70 (PL/PB)]$$

Where:

PB = Proposer's Price Proposal (Adjusted Project Cost from Form L)

PL = Lowest Price Proposal (all Proposers) (Adjusted Project Cost from Form L)

TB = Proposer's Technical Proposal Score

TH = Highest Technical Proposal Score (all Proposers)

The Proposer's overall score (SB) shall be rounded to a tenth of a point. Rounding of scores to the nearest tenth of a point shall be accomplished by the round-up method: e.g., 75.45, 75.46, 75.47, 75.48, and 75.49 would be rounded up to 75.5; and 75.41, 75.42, 75.43, and 75.44 shall be rounded to 75.4. The Proposer with a responsive Technical Proposal and the highest overall score shall be the Apparent Best Value Proposer. The Apparent Best Value Proposer shall be recommended to the KYTC Awards Committee for Project Award. In the event that two or more Proposers achieve the same rounded final score (SB), the "tied" Proposer with the lowest Price Proposal (PB) shall be the Apparent Best Value Proposer and recommended to the KYTC Awards Committee for Project Award. The KYTC Awards Committee has final authority to determine the best interests of the KYTC in awarding (or not awarding) the Project.

ARTICLE 8. FINALIZATION OF THE CONTRACT AND CLOSING

8.1 EXECUTING THE CONTRACT

The following process shall be followed for executing the Contract:

- a) After being notified that it is the Apparent Best Value Proposer, KYTC and the Apparent Best Value Proposer will finalize the Contract without further negotiation or amendment, except as may be permitted pursuant to this Section 8.1.
- b) KYTC may, however, and in its sole discretion, initiate limited negotiations as described herein after such date.
- c) By submitting its Proposal, each Proposer commits to enter into good faith negotiations with KYTC to finalize the Contract in the form included as part of the RFP Documents, without any revisions except with respect to the following:
 - i. minor changes, additions, and modifications necessary to create a complete and legally binding contract;
 - ii. additions or modifications to those provisions that require information regarding the Apparent Best Value Proposer's corporate and financing structure, provided that such additions or modifications are consistent with the terms of the form of the Contract and this ITP, in KYTC's reasonable discretion;
 - iii. additions or modifications required in order to incorporate terms or concepts provided in the Proposal submitted by the Apparent Best Value Proposer that have been approved or required by KYTC for inclusion in the Contract;
 - iv. additions or modifications required to complete the schedules, exhibits, appendices, or forms in the Contract; and
 - v. incorporation into the Contract of Proposal Work Product from unsuccessful Proposers who have submitted a Stipend Agreement in accordance with Section 5.10 and 5.11 of this ITP.
- d) Notwithstanding Section 8.1(c), KYTC may (in accordance with the DB Law) agree to negotiate certain terms of the Contract with the Apparent Best Value Proposer. Any decision as to whether or when to commence such negotiations is at KYTC's sole discretion.
- e) The Apparent Best Value Proposer will be deemed to have failed to engage in good faith negotiations with KYTC and shall forfeit its Proposal Guaranty if the Apparent Best Value Proposer:
 - i. fails to attend or actively participate in reasonably scheduled negotiation meetings with KYTC; or
 - ii. insists upon terms or conditions for any documents to be negotiated or provided by the Apparent Best Value Proposer under this ITP (including the Contract Documents) that are inconsistent with this ITP.
- f) Once the Contract has been finalized between KYTC and the Apparent Best Value Proposer, and KYTC has sent the final version of the Contract to the Apparent Best Value Proposer, the Apparent Best Value Proposer will have 15 calendar days to execute and file the Contract. The Commissioner of Highways then has 30 days to execute the Contract and issue a Notice to Proceed to the now DBT. KYTC will use reasonable efforts to keep the Apparent Best Value Proposer updated as to the status of approval of the Contract by the Commissioner of Highways.
- g) If the Apparent Best Value Proposer fails to satisfy all conditions to the execution of the Contract and fails to execute the Contract prior to the 15 business days from receiving the final Contract (unless as a direct result of KYTC's failure to satisfy any of the condition to execution of the Contract for which KYTC is responsible under this ITP or the Contract), KYTC may revoke

its selection of the Apparent Best Value Proposer, draw on the Apparent Best Value Proposer's Proposal Security as and to the extent set out in Section 7.4.2, Forfeiture of Proposal Guaranty.

- h) As part of the finalization of the Contract, KYTC and the Apparent Best Value Proposer shall complete all conditions set forth below:
- i. All KYTC and Commonwealth approvals regarding the Project Award to the Apparent Best Value Proposer and the finalized Contract form, as required under Section 8.1(f), have been granted and remain in full force and effect.
 - ii. DBT has provided KYTC with legal opinions consistent with general DB market practice and customary for a transaction of this nature addressed to KYTC, from the DBT's legal counsel, as to, among other things:
 - A. the organization, existence, and good standing and qualification to do business in the Commonwealth, of the DBT;
 - B. the due authorization and signing of the Contract;
 - C. the enforceability of the Contract against the DBT; and
 - D. confirmation that the Contract does not violate any applicable law or any of DBT's organizational documents.
 - iii. If not provided with the Proposal:
 - A. If DBT is a corporation or includes a corporation as a joint venture member, partner, or member, provide articles of incorporation and bylaws for the DBT and each corporation certified by an appropriate individual.
 - B. If DBT is a consortium or joint venture, or includes a joint venture as a joint venture member, partner, or member, attach full names and addresses of all consortium or joint venture members and the equity ownership interest of each entity, provide the incorporation, formation, and organizational documentation for DBT (partnership agreement and certificate of partnership for a partnership, articles of incorporation, and bylaws for a corporation, certificate of formation and operating agreement for a limited liability company, and joint venture agreement for a joint venture) certified by an appropriate individual.
 - C. If DBT is a limited liability company or includes a limited liability company as a joint venture member, partner, or member, attach full names and addresses of all members and the equity ownership interest of each entity, provide the incorporation, formation, and organizational documentation for DBT (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, or certificate of formation and operating agreement for a limited liability company, and joint venture agreement for a joint venture) certified by an appropriate individual.

The DBT's partnership agreement, limited liability company operating agreement, or joint venture agreement, as applicable, must include an express provision satisfactory to KYTC stating that, in the event of a dispute between or among joint venture members, partners, members, or shareholders, no joint venture member, partner, member, or shareholder, shall be entitled to stop, hinder, or delay work on the Project.
 - iv. The DBT has delivered to KYTC any performance security (for the avoidance of doubt to include any payment and performance bonds), in form and substance as required under the Contract.
 - v. The DBT has delivered to KYTC a bringdown of the Key Personnel and Major Team Member commitments set forth in this ITP dated as of the Effective Date.
 - vi. The DBT has obtained and delivered to KYTC pro forma or exemplar "specimen" copies of insurance policies and all endorsements thereto that conform to all the terms specified herein with bindable proposals from insurers in a binder evidencing

- that all insurances required under the Contract will be in place as of the Notice to Proceed.
- vii. The DBT has provided KYTC with acceptable evidence that the Key Personnel, and all other staff working on behalf of the DBT are properly licensed to carry out their respective scopes of work under the Contract.
 - viii. The DBT has delivered to KYTC an executed copy of Form B (Certification Regarding Use of Contract Funds for Lobbying).
 - ix. The DBT has delivered to KYTC an executed copy of Form G (Federal Debarment Certification Form).
 - x. The DBT has delivered to KYTC an executed copy of Form C (Title VI Assurances).
 - xi. Satisfaction of any other conditions to execution of the Contract set forth under the DB Law or other applicable law.
- i) This ITP permits a Proposer to identify and form an entity other than the Proposer to enter into the Contract as the DBT. However, if the entity identified as the proposed DBT in the Contract Proposal is not formed as required by this ITP or fails to comply with the requirements set forth in this ITP, the entities that signed the Contract Proposal shall have the joint and several obligation to enter into the Contract themselves. The business form of the DBT and any entities that will have joint and several liability under the Contract or that will provide a performance guaranty (including any joint venture agreement, partnership agreement, operating agreement, articles of incorporation, certificate of formation, bylaws, or equivalent documents) must be consistent with the requirements of the Contract Documents and provide for continuation of the DBT in the event of bankruptcy or withdrawal of any of its members.
 - j) Further, KYTC may initiate negotiations with a Proposer other than the Apparent Best Value Proposer if: (i) negotiations with the Apparent Best Value Proposer are unsuccessful, or (ii) the Apparent Best Value Proposer does not provide sufficient information or timely feedback to finalize the Contract in accordance with the Project Schedule in Section 1.4.

8.2 EEO CONTRACT COMPLIANCE FORMS

The Apparent Best Value Proposer shall complete the following forms and submit the completed documents to KYTC. In turn, KYTC shall send copies of the completed forms to the Finance and Administration Cabinet, Office of EEO and Contract Compliance (EEO/CC) for certification of compliance. Thereafter, EEO/CC will re-certify the selected Design-Builder and Design-Builder Related Entities at one (1) year intervals. Copies of the forms are available at <https://finance.ky.gov/offices/Pages/equalOpportunity.aspx> :

- (a) EEO-1: Employer Information Report
- (b) Affidavit of Intent to Comply
- (c) Employee Data Sheet
- (d) Subcontractor Report Form or a copy of the Kentucky Approval Letter issued by the Office of Equal Employment Opportunity and Contract Compliance.

The Finance and Administration Cabinet will not accept compliance certifications from the federal government or other states. Only forms developed by the Finance and Administration Cabinet, Office of EEO and Contract Compliance will be accepted and processed

8.3 WITHDRAWAL OF APPARENT BEST VALUE PROPOSER STATUS

Pursuant to Section 9, KYTC may formally end negotiations with the Proposer selected as the Apparent Best Value Proposer and revoke its status as Apparent Best Value Proposer.

ARTICLE 9. KYTC RESERVED RIGHTS

In connection with this procurement and consistent with KRS 176.431, KYTC reserves to itself all rights (which rights shall be exercisable by KYTC in its sole discretion) available to it under the DB Law and applicable law, including without limitation, and with or without cause, the right at any time to:

- a) modify the procurement including procurement documentation to address applicable law and/or the best interests of KYTC or the Commonwealth;
- b) develop the Project in any manner that it deems necessary or desirable, including modifying the scope of the Project;
- c) modify all dates set or projected in this ITP;
- d) reject any and all submittals, responses, and Proposals or request revisions to Proposals to all Proposers;
- e) terminate evaluation of any and all submittals, responses, and Proposals, at any time;
- f) negotiate with a Proposer other than the Apparent Best Value Proposer if negotiations with the Apparent Best Value Proposer are unsuccessful;
- g) (require confirmation of information furnished by a Proposer and require additional information from a Proposer concerning its Proposal, including requiring additional evidence of qualifications to perform the work described in this ITP, including holding meetings and exchanging correspondence with the Proposers to seek an improved understanding of the Proposals (it being understood that if any such meetings are held, all Proposers submitting responsive Proposals will be afforded an opportunity to participate in an individual Proposer meeting);
- h) add or delete responsibilities from the information and scope of work contained in this ITP;
- i) issue Addenda, supplements, and modifications to this ITP from time to time and at any time;
- j) revise and modify the evaluation factors or otherwise revise or expand the evaluation methodology for the Proposals by issuing an Addendum at any time before the Last Date for KYTC to Issue Addenda as shown in Section 1.4;
- k) cancel this ITP in whole or in part at any time prior to the execution of the Contract, without incurring any cost obligations, other than honoring any agreed upon compensation or Stipends to Proposers and having no further obligation thereafter;
- l) issue a new RFP after withdrawal of the original RFP;
- m) appoint evaluation and scoring committees to review Proposals, make recommendations, and seek the assistance of outside experts and consultants in Proposal evaluation;
- n) establish protocols for remedying minor deficiencies within a specified period of time in a Proposal;
- o) disqualify any Proposer under this ITP or a subsequent RFP for violating any rules or requirements of the procurement set forth in this ITP or in any other communication from KYTC or its outside experts or consultants;
- p) determine whether to issue a Notice to Proceed after the DBT execution of the Contract;
- q) develop, finance, design, construct, operate, or maintain (or any combination of the foregoing), itself or through another Governmental Entity or Governmental Entities, or with a third party of KYTC's choice, some or all of the Project itself;
- r) disclose information contained in any Proposal to the public as governed by applicable law, order of any court having jurisdiction, or by this ITP (or both);
- s) exercise any other right reserved or afforded to KYTC under this ITP or applicable law;
- t) disqualify any private entity for any conflict of interest, or other conduct or behavior manifesting a lack of responsibility;
- u) make independent calculations with respect to numbers and calculations submitted in any Proposal for purposes of its evaluation;

- v) seek or obtain information, and consider such information, from any source, including the evaluators' personal experiences or knowledge, that, in each case, has the potential to improve the understanding and evaluation of the Proposals;
- w) waive deficiencies in any Proposal and review a non-conforming Proposal, or permit clarifications or supplements to any Proposal;
- x) accept changes to a Proposal after submission;
- y) disqualify any Proposer that changes any submittal, response, or otherwise modifies its Proposal after submission without KYTC's prior, written approval;
- z) reject Proposals from Proposers where any member of Proposer's team has failed to perform timely or satisfactorily any prior contract with KYTC;
- aa) exercise its discretion in relation to the matters that are the subject of this ITP as it considers necessary or expedient in light of all circumstances prevailing at the time that KYTC considers relevant;
- bb) modify electronic document file names;
- cc) suspend or terminate negotiations at any time, recommence negotiations with the Apparent Best Value Proposer after negotiations have been suspended, elect not to commence Contract negotiations with any responding Proposer, or engage in negotiations with other than the highest ranked Proposer;
- dd) approve or disapprove changes in the Proposer Team's organization; and
- ee) offer a Proposer the opportunity to cure its failure to meet required financial qualifications by providing a guaranty (or guaranties), if applicable.

This ITP does not commit or bind KYTC to enter into any contract or proceed with the procurement described herein.

In no event shall KYTC be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as the Contract has been authorized and executed by KYTC, and, then, only to the extent set forth therein; provided, however, that the foregoing disclaimer in this sentence shall not apply to the obligations of KYTC to the Proposers during the RFP Process, which obligations are expressly set forth in this ITP. In submitting a Proposal in response to the RFP, the Proposer is specifically acknowledging these disclaimers.

Except as expressly set forth in Section 5.10, or otherwise as set forth in this ITP, should the RFP Process or negotiations be suspended, discontinued or terminated, the Private Entities, including specifically Proposers, shall have no rights of recourse to KYTC or any other Governmental Entity or public entity, or any of their respective constituents, including for reimbursement of any Private Entity review fee(s) or costs associated, directly or indirectly, with the Proposal development or presentations. KYTC assumes no obligations, responsibilities, or liabilities, fiscal or otherwise, for any such costs, incurred or alleged to have been incurred, by parties considering a response to or responding to this ITP. As among KYTC, any other Governmental Entity or public entity, and any of their respective constituents, and Proposer, all of such costs shall be borne solely by each Proposer.

APPENDIX A: FORMS

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FORM A: NON-COLLUSION AFFIDAVIT

State of _____

County of _____

I state that I am _____ (*Title*) _____ of _____ (*Name of Firm*) _____ and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and, officers. I am the person responsible in my firm for the amounts, percentages and other figures presented in this Proposal.

I state that:

- (1) The Proposal has been arrived at independently and without consultation, communication or agreement with any other Proposer or potential Proposer.
- (2) This Proposal has not been disclosed to any other firm or person who is a Proposer or potential Proposer, and they will not be disclosed before the selection of the Apparent Best Value Proposer.
- (3) No attempt has been made or will be made to induce any firm or person to refrain from submitting a Proposal or to submit any noncompetitive Proposal or other form of complementary Proposal.
- (4) The Proposal of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Proposal.
- (5) _____ (*Name of Firm*) _____ its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows:

I state that _____ (*Name of Firm*) _____ understands and acknowledges that the above representations are material and important and will be relied on by the Kentucky Transportation Cabinet in determining Project Award for which the Proposal is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the Kentucky Transportation Cabinet of the true facts relating to the submission of this Proposal.

(Signature)

(Signatory's Name)

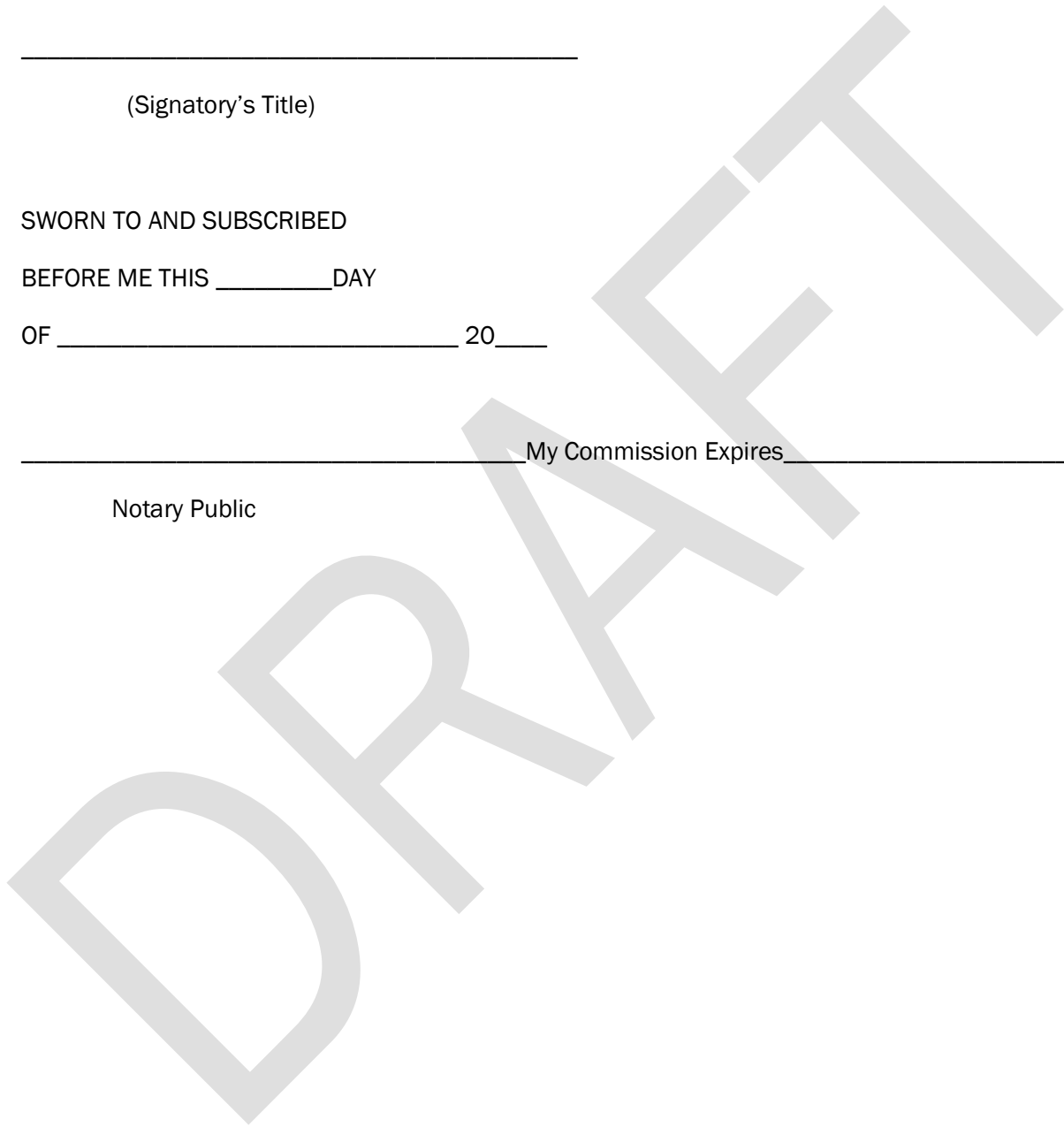
(Signatory's Title)

SWORN TO AND SUBSCRIBED

BEFORE ME THIS _____ DAY

OF _____ 20____

My Commission Expires _____
Notary Public



FORM B: CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

The undersigned certifies, on behalf of [*Proposer / Proposer Team Member*], to the best of his or her knowledge and belief, that:

- (a) no federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; and
- (b) if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its Proposal.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.

(Signature)

Name: _____

Title: _____

Entity Making Certification: _____

Date: _____

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FORM C: TITLE VI ASSURANCES**The United States Department of Transportation (USDOT)****Standard Title VI/Non-Discrimination Assurances****DOT Order No. 1050.2A**

The Subrecipient (herein referred to as the “Recipient”), **hereby agrees that**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through its various operating administrations and bureaus, which include but are not limited to, the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Federal Aviation Administration (FAA), Office of the Secretary, National Highway Traffic Safety Administration, and Federal Motor Carrier Safety Administration (FMCSA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964); and
- 49 C.F.R. part 303 (FMCSA’s Title VI/Nondiscrimination Regulation).

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including, but not limited to, the FHWA, FTA, FAA, Office of the Secretary, National Highway Traffic and Safety Administration, and the FMCSA."

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted program that is the subject of this Agreement.

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with the federally-assisted transportation program and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

“The Recipient, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:

- a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the Recipient also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the federal agencies' access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the federal agencies. You must keep records, reports, and submit the material for review upon request to the federal agencies, or their designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the federally-assisted program. This ASSURANCE is binding on the Commonwealth of Kentucky, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the federally-assisted program. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

 (Name of Recipient)

by _____
 (Signature of Authorized Official)

DATED _____

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TITLE VI ASSURANCES, APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation (U.S. DOT), through its various operating administrations and bureaus, which include but are not limited to, the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Federal Aviation Administration (FAA), Office of the Secretary, National Highway Traffic Safety Administration, and Federal Motor Carrier Safety Administration (FMCSA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the U.S. DOT, through its various operating administrations and bureaus, which include but are not limited to, the FHWA, FTA, FAA, Office of the Secretary, National Highway Traffic Safety Administration, and FMCSA, to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the U.S. DOT, through its various operating administrations and bureaus, which include but are not limited to, the FHWA, FTA, FAA, Office of the Secretary, National Highway Traffic Safety Administration, and FMCSA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the U.S. DOT, through its various operating administrations and bureaus, which include but are not limited to, the FHWA, FTA, FAA, Office of the Secretary, National Highway Traffic Safety Administration, and FMCSA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the U.S. DOT, through its various operating administrations and bureaus, which include but are not limited to, the FHWA, FTA, FAA, Office of the Secretary, National Highway Traffic Safety Administration, and FMCSA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

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TITLE VI ASSURANCES, APPENDIX B**CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the Commonwealth of Kentucky, Kentucky Transportation Cabinet will accept title to the lands and maintain the project constructed thereon in accordance with the Legislative Authority applicable under this Agreement, the Regulations for the Administration of the federally-assisted program, and the policies and procedures prescribed by the U.S. Department of Transportation's various operating administrations and bureaus, which include but are not limited to, the FHWA, FTA, FAA, Office of the Secretary, National Highway Traffic Safety Administration, and FMCSA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the Commonwealth of Kentucky, Kentucky Transportation Cabinet, all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the Commonwealth of Kentucky, Kentucky Transportation Cabinet and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the Commonwealth of Kentucky, Kentucky Transportation Cabinet, its successors and assigns.

The Commonwealth of Kentucky, Kentucky Transportation Cabinet, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) the Commonwealth of Kentucky, Kentucky Transportation Cabinet will use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

TITLE VI ASSURANCES, APPENDIX C**CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Commonwealth of Kentucky, Kentucky Transportation Cabinet pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 1. in the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the Commonwealth of Kentucky, Kentucky Transportation Cabinet will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the Commonwealth of Kentucky, Kentucky Transportation Cabinet will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Commonwealth of Kentucky, Kentucky Transportation Cabinet and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

TITLE VI ASSURANCES, APPENDIX D**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the Commonwealth of Kentucky, Kentucky Transportation Cabinet pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, the Commonwealth of v will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the Commonwealth of Kentucky, Kentucky Transportation Cabinet will there upon revert to and vest in and become the absolute property of the Commonwealth of Pennsylvania, Department of Transportation and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

TITLE VI ASSURANCES, APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

FORM D: EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The undersigned certifies on behalf of _____, that:

_____ (Name of entity making certification)

[check one of the following boxes]

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- It will develop and will file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs). *[Note: Check this box only if the member of the Proposer Team is not yet formed and is subject to 41 C.F.R. Part 60-2]*

[check one of the following boxes]

- It has not participated in a previous contract or subcontract subject to the equal opportunity section described in Executive Orders 10925, 11114, or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity section described in Executive Orders 10925, 11114, or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President’s Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Title: _____

Date: _____

If not Proposer, relationship to Proposer: _____

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts which are subject to the equal opportunity section. Contracts that are exempt from the equal opportunity Section are set forth in 41 C.F.R. 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers or Major Team Members who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or

such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

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FORM E: BUILD AMERICA, BUY AMERICA CERTIFICATION

[Instructions: To be signed by authorized signatory(ies) of Proposer]

The undersigned certifies on behalf of itself, and all Subcontractors (at all tiers) that only domestic steel and iron will be used in the Project.

- A. Proposer and all Subcontractors shall comply with the Federal Highway Administration (FHWA) Buy America Requirements of 23 CFR 635.410. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States, and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. Notwithstanding any other provision of this certification, this requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the guaranteed maximum price.
- B. A false certification is a criminal act in violation of 18 USC 1001. Should this Contract be investigated, Proposer has the burden of proof to establish that it is in compliance.
- C. At Proposer’s request, the Project Team may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, Proposer certifies that it, and all Subcontractors will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by the Project Team.
- D. All material fully incorporated into the Project must be certified to comply with Buy America on the appropriate material certification documents. Material certification documents must be signed by the appropriate material suppliers and not Proposer or its subcontractors.

Date: _____
 Proposer’s Name: _____
 Signature: _____
 Name (printed or typed): _____
 Title: _____

FORM F: PRE-PROPOSAL QUESTION TEMPLATE

(Please complete using this Microsoft® Word template)

Proposer: _____

Date: _____

Authorized Representative: _____

RFP Pre-Proposal Question Submission No. [] ¹

Comments on RFP dated [____], 202[] ²

No.	Document	Section #	Page #	Discipline	Category (1,2,3,4)	Comment or Question
1.						
2.						
3.						

In accordance with Section 3.1, Pre-Proposal Questions shall:

- a) be listed separately
- b) must not identify the Proposer in the body of the comment
- c) are sequentially numbered
- d) specifically reference the relevant RFP document, section and page number, unless it is a general question
- e) address a single issue per Pre-Proposal Question
- f) clearly indicate why the Pre-Proposal Question has been made
- g) conspicuously identify whether the Proposer views its Pre-Proposal Question or comment as confidential or proprietary in nature by beginning the Pre-Proposal Question with the word “CONFIDENTIAL”. The Pre-Proposal Question should explain why the Proposer considers the Pre-Proposal Question to be confidential.
- h) identify the comment/question as either “Technical”, “Legal”, “Commercial”, “Procurement” or “Financial” (Discipline)
- i) indicate whether the Pre-Proposal Question is a Category 1, 2, 3 or 4 question as described below.

Proposers may, at their option, elect to submit with their Pre-Proposal Questions revised drafting, redline, or similar markup of the applicable document as part of their questions/comments via the file upload function of Project Portal.

Categories:

- “Category 1” means a potential “go/no-go” issue that, if not resolved in an acceptable fashion, may preclude the Proposer from submitting a PDA Proposal;
- “Category 2” means an issue that, if not resolved in an acceptable fashion, will significantly affect value for money or, taken together with the entirety of other issues, may preclude the Proposer from submitting a PDA Proposal; and

¹ Sequentially number each set of RFP comments or questions submitted.

² The Proposers should specify on which RFP they are commenting by including the relevant RFP release date.

- “Category 3” means an issue or clarification that is minor in nature and that is not likely to affect the Proposer’s approach to a PDA Proposal.
- “Category 4” means corrections of typographical errors, incorrect cross references or internal inconsistencies within or among this ITP and the PDA Documents.

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FORM G: DEBARMENT CERTIFICATION FORM

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion First Tier Covered Transactions³

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Parts 180 and 1200.

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal, State or local department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment, including a civil settlement, rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

ATTESTATION

By signing this report, I certify to the best of my knowledge and belief that the foregoing is true, complete, and accurate. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Sections 3729-3730 and 3801-3812).

Company Name

³ Note to Proposers: before completing the certification, please read the instructions on the next page which are an integral part of the certification.

Name and Title of Authorized Representative

Signature

Date

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CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION--FIRST TIER PARTICIPANTS

Instructions For Certification

- a. The prospective first tier participant is providing the certification set out above.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "civil judgment," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are

not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.

- i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

FORM H: ATC SUMMARY FORM**ATC Number:****ATC Name-Description:****Proposer:****ATC Summary Submission Date:****ATC Document Reference (Document, Section and Page Number):**

NOTE: ATC Summary shall be limited to [four] pages, 12-pt font, single spaced, excluding preliminary drawings or supporting documentation.

1. Provide justification as to how the proposed ATC meets or exceeds the project goals and objectives as stated in the RFP.
2. All references to requirements of the RFP that are inconsistent with the proposed ATC and explanation of the nature of the deviations from said requirements.
3. The locations where, and an explanation of how, the proposed ATC will be used on the Project;
4. The reduction, if any, in the Contract Time(s) resulting from implementing the ATC, including, as appropriate, a description of method and commitments
5. If additional right-of-way is required, discuss potential impacts, if any, this additional right-of-way may have on the NEPA process;
6. Identify any changes to existing access points and addition of new access points;
7. Discuss potential impacts on vehicular traffic (both during and after construction);
8. Additionally, the Proposer should discuss other items relevant to this ATC including but not limited to the following:
 - a) maintenance requirements and any changes to standard VDOT practices associated with the ATC;
 - b) operational aspects of the proposed ATC (if applicable);
 - c) potential changes in the anticipated service life of the item(s) comprising the ATC;
 - d) environmental permitting approach, community impact, and safety; and
 - e) if applicable, a description of other projects on which a similar ATC has been used, degree of success or failure of such usage, and contact information, including names and contact information, including phone numbers and e-mail addresses, for project owner representatives that can confirm such statements.

FORM I: ATC SUBMITTAL FORM**ATC Number:****ATC Name-Description:****Proposer:****ATC Submittal Date:****ATC Document Reference (Document, Section and Page Number):**

NOTE: Formal ATC Submission Form shall be limited to [ten] pages, 12-pt font, single spaced, excluding preliminary drawings or supporting documentation.

1. Provide justification as to how the proposed ATC meets or exceeds the project goals and objectives as stated in the RFP
2. All references to requirements of the RFP that are inconsistent with the proposed ATC and explanation of the nature of the deviations from said requirements
3. The locations where, and an explanation of how, the proposed ATC will be used on the Project
4. The reduction, if any, in the Contract Time(s) resulting from implementing the ATC, including, as appropriate, a description of method and commitments
5. An estimate of any savings that would accrue to the Project should the ATC be approved and implemented and/or any additional KYTC, DBT and third-party costs associated with implementation of the ATC
6. If additional right-of-way is required, identify the limits of this ROW and define the impacts, if any, this additional right-of-way has on the NEPA process
7. Identify any changes in operations requirements associated with the ATC, including improvements in safety
8. Identify any changes in the anticipated service life of the item(s) comprising the ATC;
9. Preliminary analysis of potential impacts on life-cycle costs (including the impacts on the cost of repair, maintenance and operation);
10. Preliminary analysis and quantitative discussion of potential impacts on vehicular traffic (both during and after construction);
11. A preliminary analysis on environmental permitting and community impacts;
12. A description of added risk to KYTC or third parties associated in connection with the ATC's implementation
13. If applicable, a description of other projects on which a similar ATC has been used, degree of success or failure of such usage, and names and contact information, including phone numbers and e-mail addresses, for a project representatives that can confirm such statements;
14. Preliminary drawings of the configuration of the ATC or other descriptive information, including a traffic operational analysis

FORM J: ATC RESPONSE FORM

ATC Number:
ATC Name-Description:
Proposer:
ATC Submittal Date:

KYTC Response:

- The ATC is approved and may be included in the Proposer's Technical Proposal.
- The ATC is approved subject to conditions. The ATC may be included in the Proposer's Technical Proposal provided that all approval conditions have been met. Failure to clearly demonstrate that all conditions have been met may render the Proposer's Technical Proposal non-responsive.
- The ATC is not approved in its present form, but may be resubmitted for reconsideration. The reconsideration request must address all KYTC comments, questions, and concerns. Reconsideration requests must meet all ATC submission and content requirements.
- The ATC is not approved. Inclusion of the ATC in the Technical Proposal will render the Technical Proposal non-responsive.
- The proposed ATC does not qualify as an ATC but may be included in the Proposer's Proposal because it appears to be within the requirements of the RFP or any pending Addendum.
- The proposal does not qualify as an ATC and may not be included in the Technical Proposal. Inclusion of the ATC in the Technical Proposal will render the Technical Proposal non-responsive.

FORM K: [NOT USED]

FORM L: PRICE PROPOSAL

CID #: 22-9002

Item #: 4-169.10
Form PP

KY 555 page 1 of 2

Price Proposal

All prices shall be in present-day dollars.

Item No.	Item Description	Unit	Price
1	Right of Way Acquisition Services	Lump Sum	
2	Design and Permitting Costs	Lump Sum	
3	Springfield Water Utility Adjustment Work (Allowance)	Lump Sum	[TBD]
4	Other Utility Adjustment Work	Lump Sum	
5	Grade & Drain	Lump Sum	
6	Excavation	Lump Sum	
7	Asphalt Paving	Lump Sum	
8	Maintenance of Traffic	Lump Sum	
9	ITS Systems	Lump Sum	
10	Permanent Signing	Lump Sum	
11	Permanent Lighting	Lump Sum	
12	Structures	Lump Sum	
13a	Landscaping (Allowance)	Lump Sum	\$50,000
13b	Soft subgrade (Allowance)	Lump Sum	[TBD]
14	Subtotal:	Lump Sum Total	[Sum of 1-13]
15	Mobilization:	Lump Sum	
16	Demobilization:	Lump Sum	
17	Contract Price:	Lump Sum Total	[Sum of 14-16]
18	Cost (long and short term) incurred to KYTC due to Proposer-implemented ATCs:	Total Adjustment	[Sum of 18a-18e]
18a	ATCs included in Price Proposal	[ATC Number, Name, Approval Date]	Adjustment [TBD]
18b		[ATC Number, Name, Approval Date]	Adjustment [TBD]
18c		[ATC Number, Name, Approval Date]	Adjustment [TBD]
18d		[ATC Number, Name, Approval Date]	Adjustment [TBD]

18e		[ATC Number, Name, Approval Date]	Adjustment	[TBD]
19	Adjusted Project Cost:		Lump Sum Total	[Sum of 17 & 18]

PROPOSER TEAM SIGNATURE

By:

Name:

Title:

Date:

KYTC Vendor ID:

Federal ID Number:

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Right of Way Cost

Summary of costs that KYTC will pay to the property owners disturbed by the project. This estimate will not be utilized in determining overall cost of the Project but it will be used for KYTC budgeting purposes. These values must be reflected within the Price Proposal, above, however.

Item Description	Unit		
Right of Way (Roadway)	Lump Sum		
Easements (Roadway)	Lump Sum		
Right of Way (Utilities)	Lump Sum		
Easements (Utilities)	Lump Sum		
Relocations (Residential)	Lump Sum		
Relocations (Non-Residential)	Lump Sum		
Relocations (Miscellaneous)	Lump Sum		
Estimated Right of Way Cost	Lump Sum		

The Proposer has included herewith _____ pages, consisting of a schedule of values showing a complete breakdown of the Contract Price shown on page 1 of Form PP.

Please check one of the following:

- The Proposer has not violated any of the provisions included in Section 5.1 of this Volume I within the previous five (5) year period.
- The Proposer has violated the provisions of one or more of the statutes included in Section 5.1 of this Volume I of the Instructions to Proposers 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.

PROPOSER TEAM SIGNATURE

By:

Name:

Title:

Date:

KYTC Vendor ID:

Federal ID Number:

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**FORM M: ACKNOWLEDGEMENT OF RECEIPT OF RFP, ADDENDA AND RESPONSES TO
PRE-PROPOSAL QUESTIONS**

KY555 DESIGN BUILD

NAME OF PROPOSER

We hereby acknowledge receipt of the KY555 Design Build RFP dated _____, Subsequent Addenda and responses to Pre-Proposal Questions by KYTC, as listed below. Add additional lines in tables below, if needed.

Addendum number:	Date issued by KYTC:

Responses to Pre-Proposal Questions number:	Date issued by KYTC:

SIGNED	
DATE	
NAME	
TITLE	

FORM N: PROPOSER COMMONWEALTH LAWS CERTIFICATION

The Proposer hereby makes the following certifications and statements:

- A. In accordance with KRS 45A.110 and KRS 45A.115, the Proposer as defined in KRS 45A.070(6), nor the entity which he/she represents, certifies that it has not knowingly violated any provisions of the campaign finance laws of the Commonwealth of Kentucky, and the award of a contract to the bidder or Proposer or the entity which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.
- B. The Proposer, on behalf of each Proposer Team Member, certifies that neither he/she nor any member of his/her immediate family having an interest of ten percent (10%) or more in any business entity involved in the performance of this project, has contributed more than the amount specified in KRS 121.056 (2), to the campaign of the gubernatorial candidate elected at the last election preceding the date of this solicitation.
- C. The Proposer swears and affirms under penalty of perjury that, to the extent required by Kentucky law, the entity bidding, and all subcontractors therein, are aware of the requirements and penalties outlined in KRS 45A.485; is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state; is duly registered with the Kentucky Secretary of State to the extent required by Kentucky law; and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded.
- D. The Proposer swears and affirms under penalty of perjury that, to the extent required by Kentucky law, the entity bidding, and its affiliates, are duly registered with the Kentucky Department of Revenue to collect and remit the sales and use tax imposed by KRS Chapter 139, and will remain registered for the duration of any contract awarded.
- E. The Proposer swears and affirms under penalty of perjury that the entity bidding is not delinquent on any state taxes or fees owed to the Commonwealth of Kentucky and will remain in good standing for the duration of any contract awarded.
- F. The Proposer swears and affirms under penalty of perjury that the entity bidding, is not currently engaged in, and will not for the duration of the contract engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which Kentucky can enjoy open trade, as defined in Executive Order No. 2018- 905.
- G. The Proposer swears and affirms that the entity bidding, and all subcontractors therein, have not violated any of the prohibitions set forth in KRS 11A.236 during the previous ten (10) years, and further pledge to abide by the restrictions set forth in such statute for the duration of the contract awarded.

Proposer Team:

Name and Title of Authorized Representative:

Signature

Date

APPENDIX B: CONTRACT NOTES

PROPOSAL ADDENDA

All addenda to this proposal must be applied when calculating Price Proposal and certified in the proposal packet submitted to the KYTC. Failure to use the correct and most recent addenda may result in the Proposal being rejected.

PROPOSAL SUBMITTAL

Proposer must use KYTC's electronic bidding software. The Proposer must download the Bid File located on the Bid Express website (www.bidx.com) to prepare a proposal packet for submission to KYTC. The Proposer must submit electronically using Bid Express.

JOINT VENTURE BIDDING

Joint venture bidding is permissible. All companies in the joint venture must be prequalified in one of the work types in the qualifications for Proposers for the project. The Proposers must get a vendor ID for the joint venture from the Division of Construction Procurement and register the joint venture as a Proposer on the project. Also, the joint venture must obtain a digital ID from Bid Express to submit a bid. A joint Proposal Guaranty of 5% may be submitted for both companies or each company may submit a separate bond of 5%.

UNDERGROUND FACILITY DAMAGE PROTECTION

The DBT shall make every effort to protect underground facilities from damage as prescribed in the Underground Facility Damage Protection Act of 1994, Kentucky Revised Statute KRS 367.4901 to 367.4917. It is the DBT's responsibility to determine and take steps necessary to be in compliance with federal and state damage prevention directives. When prescribed in said directives, the contractor shall submit Excavation Locate Requests to the Kentucky Contact Center (KY811) via web ticket entry. The submission of this request does not relieve the DBT from the responsibility of contacting non-member facility owners, whom shall be contacted through their individual Protection Notification Center. Non-compliance with these directives can result in the enforcement of penalties.

REGISTRATION WITH THE SECRETARY OF STATE BY A FOREIGN ENTITY

Pursuant to KRS 176.085(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by [KRS 14A.9-010](#) to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under [KRS 14A.9-030](#) unless the person produces the certificate within fourteen (14) days of the bid or proposal opening. If the foreign entity is not required to obtain a certificate as provided in [KRS 14A.9-010](#), the foreign entity should identify the applicable exception. Foreign entity is defined within [KRS 14A.1-070](#).

For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within

the time frame identified above, the foreign entity's solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.

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

HARDWOOD REMOVAL RESTRICTIONS

The US Department of Agriculture has imposed a quarantine in Kentucky and several surrounding states, to prevent the spread of an invasive insect, the emerald ash borer. Hardwood cut in conjunction with the project may not be removed from the state. Chipping or burning on site is the preferred method of disposal.

INSTRUCTIONS FOR EXCESS MATERIAL SITES AND BORROW SITES

Identification of excess material sites and borrow sites shall be the responsibility of the DBT. The DBT shall be responsible for compliance with all applicable state and federal laws and may wish to consult with the US Fish and Wildlife Service to seek protection under Section 10 of the Endangered Species Act for these activities.

ACCESS TO RECORDS

The contractor, as defined in KRS 45A.030 (9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004.

BUILD AMERICA, BUY AMERICA ACT (BABA)

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (IIJA), Pub. L. No. 117-58, includes the Build America, Buy America Act ("the Act"). Pub. L. No. 117-58, §§70901-52. The Act strengthens the Buy America preference to include "construction materials." The current temporary waiver for "**construction materials**" expired on November 10, 2022.

The Act will apply to construction materials as outlined in the guidance issued in OMB M-22-11.

Construction Materials – Includes an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives – that is or consists primarily of:

- Non-ferrous metals

- Plastic/polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Lumber; or
- Drywall.

Construction Materials only applies to items, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project.

Construction Materials does not apply to tools, equipment or supplies brought to the jobsite and removed before completion.

October 14, 2022

DRAFT

APPENDIX C: FEDERAL CONTRACT NOTES

The Kentucky Department of Highways, in accordance with the Regulations of the United States Department of Transportation 23 CFR 635.112 (h), hereby notifies all bidders that failure by a bidder to comply with all applicable sections of the current Kentucky Standard Specifications, including, but not limited to the following, may result in a bid not being considered responsive and thus not eligible to be considered for award:

102.02 Current Capacity Rating	102.08 Preparation and Delivery of Proposals
102.13 Irregular Bid Proposals	102.14 Disqualification of Bidders
102.09 Bid Proposal Guaranty	

CIVIL RIGHTS ACT OF 1964

The Kentucky Department of Highways, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252) and the Regulations of the Federal Department of Transportation (49 C.F.R., Part 21), issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that the contract entered into pursuant to this advertisement will be awarded to the lowest responsible bidder without discrimination on the ground of race, color, or national origin.

NOTICE TO ALL BIDDERS

To report bid rigging activities call: 1-800-424-9071.

The U.S. Department of Transportation (DOT) operates the above toll-free “hotline” Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the “hotline” to report such activities.

The “hotline” is part of the DOT’s continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

SECOND TIER SUBCONTRACTS

Second tier subcontracts are acceptable per Section 108.01 of the Standard Specifications for Road and Bridge Construction. There are special rules to DBE subcontractors satisfying DBE goals on federal-aid projects. 1st-Tier DBE Subcontractors may only enter into a 2nd-Tier subcontract with another DBE contractor.

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

It is the policy of the Kentucky Transportation Cabinet (“the Cabinet”) that Disadvantaged Business Enterprises (“DBE”) shall have the opportunity to participate in the performance of highway construction projects financed in whole or in part by Federal Funds in order to create a level playing field for all businesses who wish to contract with the Cabinet. To that end, the Cabinet will comply with the regulations found in 49 CFR Part 26, and the definitions and requirements contained therein shall be adopted as if set out verbatim herein.

The Cabinet, contractors, subcontractors, subconsultants, and sub-recipients shall not discriminate on the basis of race, color, national origin, or sex in the performance of work performed pursuant to Cabinet contracts. The Design Build Team (DBT) shall carry out applicable requirements of 49 CFR 26 in the award and administration of federally assisted highway construction projects. The DBT will include this provision in all its subcontracts and supply agreements pertaining to contracts with the Cabinet.

Failure by the DBT to carry out these requirements is a material breach of its contract with the Cabinet, which may result in the termination of the contract or such other remedy as the Cabinet deems necessary.

DBE GOAL

The Disadvantaged Business Enterprise (DBE) goal established for this contract is the percentage of the total value of the contract.

The DBT shall exercise all necessary and reasonable steps to ensure that Disadvantaged Business Enterprises participate in a least the percent of the contract as set forth above as goals for this contract.

OBLIGATION OF CONTRACTORS

Each contractor prequalified to perform work on Cabinet projects shall designate and make known to the Cabinet a liaison officer who is assigned the responsibility of effectively administering and promoting an active program for utilization of DBEs.

If a formal DBE goal has not been designated for the contract, all contractors are encouraged to consider DBEs for subcontract work as well as for the supply of material and services needed to perform this work.

DBTs are encouraged to use the services of banks owned and controlled by minorities and women.

CERTIFICATION OF CONTRACT GOAL

Contractors shall include a DBE certification statement in Bids for projects containing a DBE goal. The Cabinet will not consider bids submitted without a completed DBE certification percentage for award and will consider the bids non-responsive.

“The bidder certifies that will secure participation by Disadvantaged Business Enterprises (“DBE”) in the amount of 9 percent of the total value of this contract and that the DBE participation is in compliance with the requirements of 49 CFR 26 and the policies of the Kentucky Transportation Cabinet pertaining to the DBE Program.”

The DBE certification percentage statement shall be submitted with the bid/price proposal.

DBE UTILIZATION PLAN

The apparent best value bidder shall submit a final DBE Utilization Plan within 5 days of the apparent best value DBT announcement. The project will not be considered for award prior to submission and approval of the bidder's final DBE Utilization Plan.

The final DBE Utilization Plan will be inclusive of all the requirements of the Preliminary DBE Utilization Plan in Part F of the RFP in addition to the following:

- 1) Name and address of each DBE Subconsultant, intended to be used on the project. Name and address of any DBE subcontractors to the extent known at the time of preparation. For the remaining portion of the DBE Goal where the subcontractor opportunities are unknown at the time of award, executed DBE subcontracts will be submitted with the Ready for Construction plans for each Buildable Unit.
- 2) Description of work each Subcontractor and/or Subconsultant is to perform, including their corresponding prequalification work type (contractor) or engineering related prequalification type (consultant); The estimated dollar value of each proposed DBE Subcontractor, Subconsultant, Supplier or Broker, and the percentage of total project contract value this represents. The DBE participation may be counted as follows:
 - a) If DBE suppliers and manufactures assume actual and contractual responsibility, the dollar value of materials to be furnished will be counted toward the goal as follows:
 - The entire expenditure paid to a DBE manufacturer;
 - 60 percent of expenditures to DBE suppliers that are not manufacturers provided the supplier is a regular dealer in the product involved. A regular dealer must be engaged in, as its principal business and in its own name, the sale of products to the public, maintain an inventory and own and operate distribution equipment; and
 - The amount of fees or commissions charged by the DBE firms for a bona fide service, such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, supplies, delivery of materials and supplies or for furnishing bonds, or insurance, providing such fees or commissions are determined to be reasonable and customary.
 - b) The dollar value of services provided by DBEs such as quality control testing, equipment repair and maintenance, engineering, staking, etc.;
 - c) The dollar value of joint ventures. DBE credit for joint ventures will be limited to the

dollar amount of the work actually performed by the DBE in the joint venture;

- 3) A DBE subcontracting plan that includes:
 - a) Examples of sub-agreements to be utilized with certified DBEs,
 - b) Example of DBE subcontracting plan procurement and expenditure report,
 - c) Dispute resolution process,
 - d) Process for effective and timely communications with DBEs,
 - e) Method for providing assistance with insurance and bonding,
 - f) Process for managerial and technical performance reviews, feedback, and improvement,
 - g) Explanation of the invoice and payment process;
- 4) Estimated timeframes for achieving DBE participation (i.e. outline the schedule in the years of the project when DBE participation will be achieved.);
- 5) Confirm the DBE/EEO Coordinator who will responsible for effectively administering and promoting an active program for DBE utilization
- 6) Commitment to communicate and fully cooperate with the Cabinet on DBE participation and compliance efforts throughout the term of this project.
- 7) The DBE Utilization Plan shall be signed and dated by the Lead Contractor of the DBT.

Changes to DBE Utilization Plans must be approved by the Cabinet. The Cabinet may consider extenuating circumstances including, but not limited to, changes in the nature or scope of the project, the inability or unwillingness of a DBE to perform the work in accordance with the bid, and/or other circumstances beyond the control of the prime contractor.

CONSIDERATION OF GOOD FAITH EFFORTS REQUESTS

If the DBE Utilization Plan submitted prior to award by the apparent best value bidder does not meet or exceed the DBE contract goal, the apparent best value bidder must submit a Good Faith Effort Package to satisfy the Cabinet that sufficient good faith efforts were made to meet the contract goals prior to submission of the bid. Efforts to increase the goal after bid submission will not be considered in justifying the good faith effort, unless the contractor can show that the proposed DBE was solicited prior to the letting date. DBEs utilized in achieving the DBE goal must be certified and prequalified for the work items at the time the bid is submitted. One complete set (hard copy along with an electronic copy) of this information must be received in the Division of Construction Procurement no later than 12:00pm (prevailing time) of the tenth calendar day after receipt notifying the DBT of being the apparent best value bidder.

Where the information submitted includes repetitious solicitation letters it will be acceptable to submit a sample representative letter along with a distribution list of the firms solicited. Documentation of DBE quotations shall be a part of the good faith effort submittal as necessary to demonstrate

compliance with the factors listed below which the Cabinet considers in judging good faith efforts. This documentation may include written subcontractors' quotations, telephone log notations of verbal quotations, or other types of quotation documentation.

FAILURE TO MEET GOOD FAITH REQUIREMENT

The Good Faith Effort Package shall include, but may not be limited to information showing evidence of the following:

- 1 Whether the bidder attended any pre-bid meetings that were scheduled by the Cabinet to inform DBEs of subcontracting opportunities;
- 2 Whether the bidder provided solicitations through all reasonable and available means;
- 3 Whether the bidder provided written notice to all DBEs listed in the DBE directory at the time of the letting who are prequalified in the areas of work that the bidder will be subcontracting;
- 4 Whether the bidder followed up initial solicitations of interest by contacting DBEs to determine with certainty whether they were interested. If a reasonable amount of DBEs within the targeted districts do not provide an intent to quote or no DBEs are prequalified in the subcontracted areas, the bidder must notify in the Office of Civil Rights and Small Business Development to give notification of the bidder's inability to obtain DBE quotes;
- 5 Whether the bidder selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the contract goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the DBT might otherwise perform these work items with its own forces;
- 6 Whether the bidder provided interested DBEs with adequate and timely information about the plans, specifications, and requirements of the contract;
- 7 Whether the bidder negotiated in good faith with interested DBEs not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection should be so noted in writing with a description as to why an agreement could not be reached;
- 8 Whether quotations were received from interested DBE firms but were rejected as unacceptable without sound reasons why the quotations were considered unacceptable. The fact that the DBE firm's quotation for the work is not the lowest quotation received will not in itself be considered as a sound reason for rejecting the quotation as unacceptable. The fact that the bidder has the ability and/or desire to perform the contract work with its own forces will not be considered a sound reason for rejecting a DBE quote. Nothing in this provision shall be construed to require the bidder to accept unreasonable quotes in order to satisfy DBE goals;
- 9 Whether the bidder specifically negotiated with subcontractors/subconsultants to assume part of the responsibility to meet the contract DBE goal when the work to be subcontracted includes potential DBE participation;
- 10 Whether the bidder made any efforts and/or offered assistance to interested DBEs in obtaining the necessary equipment, supplies, materials, insurance and/or bonding to satisfy the work requirements of the bid proposal; and
- 11 Any other evidence that the bidder submits which may show that the bidder has made reasonable good faith efforts to include DBE participation.

Where the apparent best value bidder fails to submit sufficient participation by DBE firms to meet the contract goal and upon a determination by the Good Faith Committee (the Committee) based upon the information submitted that the apparent best value bidder failed to make sufficient reasonable efforts to meet the contract goal, the bidder will be offered the opportunity to meet in person for

administrative reconsideration. The bidder will be notified of the Committee's decision within 24 hours of its decision. The bidder will have 24 hours to request reconsideration of the Committee's decision. The reconsideration meeting will be held within two days of the receipt of a request by the bidder for reconsideration.

The request for reconsideration will be heard by the Office of the Secretary. The bidder will have the opportunity to present written documentation or argument concerning the issue of whether it met the goal or made an adequate good faith effort. The bidder will receive a written decision on the reconsideration explaining the basis for the finding that the bidder did or did not meet the goal or made adequate Good Faith efforts to do so.

The result of the reconsideration process is not administratively appealable to the Cabinet or to the United States Department of Transportation.

The Cabinet reserves the right to award the contract to the next apparent best value bidder or to rebid the contract in the event that the contract is not awarded to the apparent best value bidder as the result of a failure to meet the good faith requirement.

SANCTIONS FOR FAILURE TO MEET DBE REQUIREMENTS OF THE PROJECT

Failure by the Design Build Team to fulfill the DBE requirements of a project under contract or to demonstrate good faith efforts to meet the goal constitutes a breach of contract. When this occurs, the Cabinet will hold the DBT accountable, as would be the case with all other contract provisions. Therefore, the DBT's failure to carry out the DBE contract requirements shall constitute a breach of contract and as such the Cabinet reserves the right to exercise all administrative remedies at its disposal including, but not limited to the following:

- Disallow credit toward the DBE goal;
- Withholding progress payments;
- Withholding payment to the DBT in an amount equal to the unmet portion of the contract goal; and/or
- Termination of the contract.

PROMPT PAYMENT

The Design Build Team is required to pay the DBE subcontractor, subconsultant, supplier or broker within seven (7) working days after he or she has received payment from the Kentucky Transportation Cabinet for work performed or materials furnished.

CONTRACTOR REPORTING

The Design Build Team must keep detailed records and provide reports to the Cabinet on their progress in meeting the DBE goal on the Contract. These records may include, but shall not be limited to payroll, lease agreements, cancelled payroll checks, executed subcontracting agreements, etc. The Lead Contractor and Lead Designer of the DBT will be required to complete and submit a **signed and notarized** Affidavit of Subcontractor Payment (TC 18-7) and copies of checks for any monies paid to each DBE subcontractor, subconsultant, supplier or broker utilized to meet a DBE goal. Information that needs to be reported on the form includes date the payment is sent to the DBE, check number, Contract ID, and the amount of payment. These documents must be

completed and signed within 7 days of being paid by the Cabinet.

The DBT must certify that all payments were made to all DBE subcontractors, DBE subconsultants, DBE suppliers, and/or DBE brokers prior to final payment on this contract.

***** IMPORTANT*****

Please mail the original, signed and completed TC(18-7) Affidavit of Subcontractor Payment form and all copies of checks for payments listed above to the following address:

Office of Civil Rights and Small Business Development
6th Floor West 200 Mero Street
Frankfort, KY 40622

The DBT should notify the Kentucky Transportation Cabinet - Office of Civil Rights and Small Business Development seven (7) days prior to any DBE (including suppliers and brokers) commencing work on the project. Mr. Melvin Bynes is the current contact in the Office of Civil Rights and Small Business Development. Mr. Bynes' current contact information is: email address - melvin.bynes2@ky.gov and office telephone (502) 564-3601.

DEFAULT OR DECERTIFICATION OF THE DBE

If the DBE subcontractor, subconsultant, supplier or broker is decertified or defaults in the performance of its work, and the overall goal cannot be credited for the uncompleted work, the Design Build Team may utilize a substitute DBE or elect to fulfill the DBE goal with another DBE on a different work item. If after exerting good faith effort in accordance with the Cabinet's Good Faith Effort policies and procedures, the DBT is unable to replace the DBE, then the unmet portion of the goal may be waived at the discretion of the Cabinet.

PROHIBITION ON TELECOMMUNICATIONS EQUIPMENT OR SERVICES

In accordance with the FY 2019 National Defense Authorization Act (NDAA), 2 CFR 200.216, and 2 CFR 200.471, Federal agencies are prohibited, after August 13, 2020, from obligating or expending financial assistance to obtain certain telecommunications and video surveillance services and equipment from specific producers. As a result of these regulations, contractors and subcontractors are prohibited, on projects with federal funding participation, from providing telecommunication or video surveillance equipment, services, or systems produced by:

- Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)
- Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities)

LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC – CARGO

PREFERENCE ACT (CPA).

(REV 12-17-15) (1-16)

SECTION 7 is expanded by the following new Article:

102.10 Cargo Preference Act – Use of United States-flag vessels.

Pursuant to Title 46CFR Part 381, the Contractor agrees

- To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 1 of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

APPENDIX D1: STANDARD TITLE VI/NON-DISCRIMINATION ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

STANDARD TITLE VI/NON-DISCRIMINATION STATUTES AND AUTHORITIES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 460 I), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 610 I *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC§ 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- J 2189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order I 2898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order J 3 J 66, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. I 681 *et seq.*).

APPENDIX D2: NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

(Executive Order 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

GOALS FOR MINORITY PARTICIPATION IN EACH TRADE	GOALS FOR FEMALE PARTICIPATION IN EACH TRADE
9.6%	6.9%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally-assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4, 3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) working days of award of any construction subcontract in excess of \$10,000.00 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed. The notification shall be mailed to:

**Evelyn Teague, Regional Director
Office of Federal Contract Compliance Programs
61 Forsyth Street, SW, Suite 7B75
Atlanta, Georgia 30303-8609**

4. As used in this Notice, and in the contract resulting from this solicitation, the "**covered area**" is Washington County.

DRAFT

APPENDIX E: PROJECT WAGE RATES—LOCALITY 1/FEDERAL

The contractor shall use the Davis Bacon Act Wage Determinations for highway construction (WD #KY20210040) that are effective 10 calendar days prior to the submission of price proposal. The project wage determinations can be found at the following link.

<https://sam.gov/wage-determination/KY20200038/0>

Fringe benefit amounts are applicable for all hours worked except when otherwise noted.

No laborer, workman or mechanic shall be paid at a rate less than that of a Journeyman except those classified as bona fide apprentices.

Apprentices or trainees shall be permitted to work as such subject to Administrative Regulations adopted by the Commissioner of Workplace Standards. Copies of these regulations will be furnished upon request from any interested person.

Before using apprentices on the job the contractor shall present to the Contracting Officer written evidence of registration of such employees in a program of a State apprenticeship and training agency approved and recognized by the U. S. Bureau of Apprenticeship and Training. In the absence of such a State agency, the contractor shall submit evidence of approval and registration by the U. S. Bureau of Apprenticeship and Training.

The contractor shall submit to the Contracting Officer, written evidence of the established apprenticeship-journeyman ratios and wage rates in the project area, which will be the basis for establishing such ratios and rates for the Project under the applicable contract provisions.

TO: EMPLOYERS/EMPLOYEES

PREVAILING WAGE SCHEDULE:

The wages indicated on this wage schedule are the least permitted to be paid for the occupations indicated. When an employee works in more than one classification, the employer must record the number of hours worked in each classification at the prescribed hourly base rate.

OVERTIME:

Overtime is to be paid to an employee at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek. Wage violations or questions should be directed to the designated Engineer or the undersigned.

Director
Division of Construction Procurement
Frankfort, Kentucky 40622
502-564-3500

APPENDIX F: FHWA 1273

Revised July 5, 2022

REQUIRED CONTRACT PROVISIONS

FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action.

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding (29 CFR 5.5)

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics,

including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records (29 CFR 5.5)

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or

subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees (29 CFR 5.5)

a. Apprentices (programs of the USDOL):

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State

Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL):

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 29 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor

set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility (29 CFR 5.5)

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1 of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section. 29 CFR 5.5.

* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) as may be adjusted annually by the Department of Labor; pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990).

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section. 29 CFR 5.5.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or

equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance

with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.326.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders

or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.326.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant

who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is

submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(b) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(c) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier

subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.
2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)
This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

APPENDIX G: EXECUTIVE BRANCH CODE OF ETHICS

In the 1992 regular legislative session, the General Assembly passed and Governor Brereton Jones signed Senate Bill 63 (codified as KRS 11A), the Executive Branch Code of Ethics, which states, in part:

KRS 11A.040 (7) provides:

No present or former public servant shall, within six (6) months following termination of his office or employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with, or is regulated by, the state in matters in which he was directly involved during the last thirty-six (36) months of his tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he was involved prior to taking office or beginning his term of employment, or for which he received, prior to his state employment, a professional degree or license, provided that, for a period of six (6) months, he personally refrains from working on any matter in which he was directly involved during the last thirty-six (36) months of his tenure in state government. This subsection shall not prohibit the performance of ministerial functions, including but not limited to filing tax returns, filing applications for permits or licenses, or filing incorporation papers, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs.

KRS 11A.040 (9) states:

A former public servant shall not represent a person or business before a state agency in a matter in which the former public servant was directly involved during the last thirty-six (36) months of his tenure, for a period of one (1) year after the latter of:

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

This law is intended to promote public confidence in the integrity of state government and to declare as public policy the idea that state employees should view their work as a public trust and not as a way to obtain private benefits.

If you have worked for the executive branch of state government within the past six months, you may be subject to the law's prohibitions. The law's applicability may be different if you hold elected office or are contemplating representation of another before a state agency.

Also, if you are affiliated with a firm which does business with the state and which employs former state executive-branch employees, you should be aware that the law may apply to them.

In case of doubt, the law permits you to request an advisory opinion from the Executive Branch Ethics Commission, 3 Fountain Place, Frankfort, Kentucky 40601; telephone (502) 564-7954.

Revised: May 23, 2022