

**REQUEST FOR PROPOSALS**  
**TO**  
**DESIGN AND CONSTRUCT**  
**THE**  
**US 421 PROJECT**  
**THROUGH A**  
**PROGRESSIVE DESIGN BUILD AGREEMENT**  
**A PROJECT OF THE**  
**KENTUCKY TRANSPORTATION CABINET**



**INSTRUCTIONS TO PROPOSERS**

**CONTRACT ID: 22-9004**

**January 25, 2023 – DRAFT**  
**March 10, 2023—FINAL**

# Table of Contents

<b>SECTION 1.0</b>	<b>INTRODUCTION AND GENERAL INFORMATION</b>	<b>1</b>
1.1	Introduction	1
1.2	RFP Documents	1
1.3	Project Goals	2
1.4	Project Description and Status	2
1.5	Procurement Schedule	3
1.6	Project Funding Total	4
1.7	Federal and State Requirements	4
<b>SECTION 2.0</b>	<b>PROCUREMENT PROCESS</b>	<b>5</b>
2.1	Procurement Method	5
2.2	Progressive Design Build Model	5
2.3	Authorized Representatives	6
2.4	Proposer Letters of Interest	6
2.5	Rules of Contact	6
2.6	Questions and Responses Regarding the RFP	6
2.7	Pre-Proposal One-on-One Meetings	7
2.8	Confidentiality	8
2.9	Protests	8
2.10	Notice to Proposers	9
2.11	Nature Preserve Coordination and Contact	9
<b>SECTION 3.0</b>	<b>GENERAL REQUIREMENTS FOR PROPOSERS</b>	<b>9</b>
3.1	Organizational Conflicts of Interest	9
3.2	Ineligible Individuals and Firms	10
3.3	Campaign Finance Law Statement Pursuant to KRS 45A.110 and KRS 45A.115	10
3.4	No Contingent Fees	11
3.5	Violation of Tax and Employment Laws	11
3.6	Registration with the Secretary of State by a Foreign Entity	11
3.7	KYTC Prequalification	11
<b>SECTION 4.0</b>	<b>PROPOSAL SUBMITTAL REQUIREMENTS</b>	<b>14</b>
4.1	General Submittal and Format Requirements	14
4.2	Outline of Proposal Contents	14
<b>SECTION 5.0</b>	<b>PROPOSAL EVALUATION PROCESS</b>	<b>19</b>
5.1	Responsiveness and Pass/Fail Evaluation	19
5.2	Technical Proposal Evaluation	20
5.3	Requests for Proposal Clarification	21
<b>SECTION 6.0</b>	<b>Miscellaneous Provisions</b>	<b>22</b>
6.1	Proposer Debrief	22
6.2	Reserved Rights	22

## **FORMS**

<u>Form A</u>	Proposal Letter
<u>Form B</u>	Proposer and Major Participant Certification
<u>Form C</u>	Surety Letter
<u>Form D</u>	Hourly Rates
<u>Form E</u>	Major Participants
<u>Form F</u>	Firm Experience
<u>Form G</u>	Key Personnel Experience
<u>Form H</u>	Proposer Questions
<u>Form I</u>	Key Personnel Commitment Letters
<u>Form J</u>	Affidavit of Authorizations and Representatives
<u>Form L</u>	Safety Questionnaire

## SECTION 1.0 INTRODUCTION AND GENERAL INFORMATION

### 1.1 Introduction

These Instructions to Proposers (**ITP**) are issued by the Kentucky Transportation Cabinet (the **Cabinet**) to seek competitive proposals (individually, a **Proposal** and collectively, **Proposals**) for a progressive design build project through a Progressive Design Build Agreement (**Design Build Agreement or DBA**). The Cabinet intends to execute the DBA with the Proposer that submits a responsive Proposal that, upon evaluation using the criteria set forth in this ITP, meets the standards set by the Cabinet, and provides the best value to, and is in the best interest of, the Commonwealth of Kentucky (the **Apparent Best Value Proposer**). Upon execution of the DBA by both the Apparent Best Value Proposer and the Cabinet, the Design Build Agreement will provide that the Apparent Best Value Proposer (becoming the **Design Build Team or DBT**) shall develop, design, and potentially construct the US 421 Project (**Project**). The form of Design Build Agreement is included as Volume II of the Request for Proposals (**RFP**).

The entity desiring to execute the Design Build Agreement (individually, a **Proposer** and collectively, **Proposers**) is invited to submit a Proposal. Proposers shall comply with the ITP during the procurement. Proposers shall also take into consideration the Project goals identified in Section 1.3 (Project Goals) in drafting its Proposal. It is anticipated that the Proposer will include, as part of its team, the Lead Contractor, Lead Designer, and any other entities required for the team to meet the Project prequalification requirements (together the **Major Participants**). The Proposer and all Major Participants must provide certain items as required in this ITP. The collective team including the Proposer, Major Participants, and other members added during the course of Project delivery will be referred to as the DBT.

All times in this ITP are Eastern Time. Capitalized terms and acronyms not otherwise defined herein are defined in Exhibit A (Acronyms, Definitions, and Submittals) of the Design Build Agreement.

### 1.2 RFP Documents

#### 1.2.1 Documents Comprising the RFP

The RFP consists of the following volumes, and any other documents that may be issued by Addenda:

1. Volume I – this ITP (including its forms); and
2. Volume II – the Design Build Agreement (including its exhibits and attachments).

#### 1.2.2 Addenda

The Cabinet reserves the right to revise, modify, or change the RFP and procurement process at any time before the Proposal Due Date or, if Proposal revisions are requested, prior to the due date for Proposal revisions. Any such revisions will be implemented through issuance of Addenda to the RFP.

#### 1.2.3 Errors

If any mistake, discrepancy, deficiency, ambiguity, error, or omission is identified in any of the documents by a Proposer at any time during the procurement process, the Proposer shall notify the Cabinet and is encouraged to suggest a recommended correction in writing in accordance with Section 2.6 (Questions and Responses Regarding the RFP).

#### 1.2.4 Reference Information Documents

Additional information that may prove helpful to the Proposer in understanding the Project have or will be made available as Reference Information Documents (**RIDs**). The process for requesting access to the RIDs was provided in the Notice to Industry released on November 30, 2022. The location and access for the RIDs remain the same during this RFP.

At the time of the issuance of this draft RFP, these documents are continuing to be identified and shared. The RIDs may be updated during the procurement period when additional information becomes available. The Cabinet has not determined whether any RID is accurate, complete, or pertinent. The RIDs are provided for information only and are not currently envisioned to become part of the DBA.

### 1.3 Project Goals

The Cabinet has identified the following goals for the Project:

1. Minimize traffic impacts during construction by:
  - a. Limiting lane closure times to facilitate commercial truck traffic on US 421 between Kentucky and Virginia
  - b. Maintaining 10-foot minimum lane widths
  - c. Maintaining traffic movements, particularly for trucks, at switch back curve located between the 0.8-mile marker (MM) and the 1.2MM
2. Minimize impacts to the environment, ROW, Utilities, and local businesses and residents
3. Start construction by October 16, 2023
4. Maximize the benefits of Progressive Design Build delivery to leverage private sector innovation and public and private sector collaboration to deliver as much of the Complete Scope at or below \$25 million (the **Maximum Contract Value**)
5. Structure project implementation and delivery in a way that captures and maximizes efficiencies from Progressive Design Build delivery (such as, for instance, grouping work into “packages” where it makes sense to do so)
6. Leverage private sector innovation to address the geotechnical challenges to delivery that exist within the Project’s footprint
7. Provide high quality Design and Construction

Proposers shall take into consideration the Project goals identified in this Section 1.3 (Project Goals) in drafting Proposals.

### 1.4 Project Description and Status

US 421 provides a vital connection between Harlan County, Kentucky and Lee County, Virginia. The Project will provide a safety-improved and enhanced movement solution for the US 421 corridor from the Kentucky-Virginia border (0 MM) to the 3.3 MM.

KYTC is open to all reasonable design concepts and welcomes innovation in delivering the Project. At a minimum, the Project must include 1) removing the switch back curve located between 0.8MM-1.2MM to allow a 30-mph design speed or establish a new alignment to avoid the curve altogether, and 2) generally updating the corridor between the 0.5 MM – 1.5 MM that would allow for a 30-35 mph design speed throughout (**Minimum Scope**). This represents the minimum improvements necessary for a successful design solution.

Beyond the minimum, the Proposer may propose the following (**Complete Scope**) to develop a more competitive Proposal but must be within the Maximum Contract Value:

- Construct a southbound passing lane from approximately the 0.5 MM to the state line to allow vehicles the ability to pass slower vehicles before crossing into Virginia where currently there are long stretches with no passing lanes.
- Widen the corridor from the 1.5 MM to the 3.3 MM by providing shoulders and addressing geometric deficiencies along the route utilizing a 45-mph design speed, which would provide

fixes for several curves. This may include culvert lengthening to accommodate the proposed roadway typical section.

The Project also has some geotechnical considerations and challenges that will need to be considered when determining design and construction of the Project as well as teaming. For more information on the Project’s geologic structure within the Project’s footprint, see RIDs, specifically the document titled, “US421\_Geotechnical Considerations Memo\_11072022”.

This corridor has had multiple design studies including development that led to right-of-way acquisition for an ultimate off-alignment reconstruction. The various design studies are included in the RIDs for information.

### 1.5 Procurement Schedule

The following represents the current anticipated schedule for the procurement. Further key dates, including dates otherwise referenced in this ITP, will be provided in subsequent iterations of the procurement schedule.

**Table 1: Procurement Schedule**

<i>Activity</i>	<i>Anticipated Date</i>
Issue NTI	November 30, 2022
One-on-One Industry Meeting Request Deadline	December 12, 2022
One-on-One Industry Meetings	December 15-16, 2022
Issue Draft RFP	January 25, 2023
Deadline for Interest Letters	February 3, 2023
One-on-One Agenda Submission	February 10, 2023
One-on-One Meeting	February 20, 2023
Deadline for Proposer Questions Incorporated in Final RFP	March 3, 2023
Final RFP Issued	March 10, 2023
Last Date for KYTC to Issue Addenda	March 20, 2023
Last Date for Proposer Questions	March 24, 2023
Last Date for KYTC Answers to Questions Issuance	March 29, 2023
Proposals Due and Deadline for Prequalification	April 3, 2023, 2 PM ET
Interviews	April 13, 2023
Apparent Best Value Proposer announced (Public Notification)	April 17, 2023
Project Award	April 28, 2023
Design Build Agreement Executed and Preconstruction NTP	May 15, 2023
Pricing Package Amendment	[October 6, 2023]
Construction Notice to Proceed	October 16, 2023

Where the ITP provides a deadline or due date for submission of documents, correspondence, or other materials to the Cabinet, the submission will only be considered timely if the Cabinet receives the submission by the date and, if applicable, the time identified. If no time is identified, a submission will be considered timely if it arrives before 4:00 p.m. Eastern Standard Time (EST) on the day identified.

## **1.6 Project Funding Total**

Project funding and the Maximum Contract Value is \$25 million and is inclusive of design, preconstruction, construction, management, utility relocations, right-of-way, environmental fees, construction and engineering inspections, and any other items required to construct the Project. The cost of Independent Cost Estimating (**ICE**), Cabinet consultant support, and Construction Quality Control and Construction Quality Assurance inspections will be deducted from the Maximum Contract Value. The Cabinet anticipates this amount to be approximately seven percent (7%) of the Contract Price. If, during the preconstruction phase, it is determined that KYTC will take some or all of the responsibility for any work related to delivery of the Project, then any associated costs will be additionally reduced from the Maximum Contract Value.

If a Pricing Package Amendment cannot be agreed to, or if the prices are not acceptable, KYTC may enter into a process of risk identification that determines price differences between the DBT's cost estimate and the Independent Cost Estimator. Following the resolution of these risk issues, the work may be re-priced. At any time during the preconstruction phase, KYTC maintains the right to terminate the preconstruction phase, retain or re-procure the designer or contractor, and procure the Project by some other method.

Project costs will be funded with state funds. No Proposer-provided financing is required.

## **1.7 Federal and State Requirements**

This is currently a completely state funded project and no federal funding is anticipated nor planned on being pursued. If, during the preconstruction phase, federal funding is identified and pursued, the Project will be subject to and must comply with, and the DBA will be subject to, applicable federal laws and regulations.

### **1.7.1 Equal Employment Opportunity Act**

The Equal Employment Opportunity Act of 1978 applies to all State government projects with an estimated value exceeding \$250,000.

The selected DBT shall submit the following documents in accordance with the requirements of the RFP-EEO-1: Employer Information Report, Affidavit of Intent to Comply, Employee Data Sheet, and Subcontractor Report or a copy of the Kentucky EEO Approval Letter issued by the Finance and Administration Cabinet, Office of EEO and Contract Compliance:

1. The selected DBT may obtain copies of the required EEO documents from the Finance and Administration Cabinet's Office of Equal Employment Opportunity Contract Compliance website at the following address: <https://finance.ky.gov/office-of-the-secretary/office-of-equal-employment-opportunity-contract-compliance/Pages/default.aspx>
2. The selected DBT shall advise each subconsultant with a subcontract of more than \$500,000 of the subconsultant's obligation to comply with the KY EEO Act. Further, the selected consultant shall comply with EEO documentation from its subconsultants and submitting the documentation to the Finance and Administration Cabinet, Office of EEO and Contract Compliance.
3. Failure to complete, sign, and submit all required documents will delay the award/contract modification process as incomplete submissions will not be processed.
4. Pursuant to KRS 45.610(2), the Finance and Administration Cabinet, Office of EEO and Contract Compliance reserves the right to request additional information and documentation and to conduct on-site monitoring reviews of project sites and business facilities at any point for the duration of any contract which exceeds \$500,000 to ascertain compliance with the Act and such rules, regulations, and orders issued pursuant thereto.

5. All questions regarding EEO forms or contract compliance issues shall be directed to the Finance and Administration Cabinet, Office of EEO and Contract Compliance via e-mail: [Finance.ContractCompliance@ky.gov](mailto:Finance.ContractCompliance@ky.gov) or via telephone: (502) 564-2874.

The Cabinet will notify the Finance and Administration Cabinet, Office of EEO and Contract Compliance about any Change Order that increases the value of a contract above \$500,000. At a minimum, this notice shall include the contract number, contract amount, and contact information for the selected consultant. The Office of EEO and Contract Compliance will contact the selected consultant for required information.

The Finance and Administration Cabinet will maintain a list of approved vendors. This web-based list will be available to state agencies and the general public. 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. The Finance and Administration Cabinet will not pre-approve vendors. Unsolicited submittals will not be processed, nor will unsolicited submittals be returned to the vendor. The Finance and Administration Cabinet, Office of General Counsel will contact Cabinet General Counsel about any selected consultant that fails to comply with the Act. Finance and Cabinet will determine the appropriate course of action for noncompliant selected consultants.

The requirements of 41 CFR Part 60 shall apply to the Design Build Agreement and the Proposer shall submit EEO Certification with its Proposal. In addition, within 30 days of Award of Contract, the DBT shall file Standard Form 100 (EEO-1) with the Cabinet's Division of Construction Procurement, unless the DBT has submitted the form within 12 months preceding the date of the Award.

## **SECTION 2.0            PROCUREMENT PROCESS**

### **2.1            Procurement Method**

The Cabinet intends to use a single step with interview procurement method to select the DBT. The Cabinet reserves the right to modify the procurement process to comply with applicable Law or address the best interests of the Cabinet and the Commonwealth of Kentucky, including canceling the procurement at any time.

### **2.2            Progressive Design Build Model**

Progressive Design Build (**PDB**) is an alternative contracting method in which a contractor teams with a designer and other firms in any legal manner (sub-prime, joint venture, etc.), collectively referred to as a DBT, to perform design and other preconstruction services. In this model, if the Cabinet determines that the DBT has been successful in meeting the goals of the Project, the DBT may be given an opportunity to prepare and submit pricing and a construction plan for the Project. The DBT shall share pricing information with the Cabinet to facilitate price discussions and to help ensure the Cabinet is receiving a fair price. The Cabinet will utilize an Independent Cost Estimator (**ICE**) to evaluate the DBT's Cost Model and Pricing Milestone Estimates (**PME**). If the Cabinet is satisfied with the performance of the DBT, its approach to building the Project, and price, the Cabinet anticipates awarding the construction of the Project through execution of the Construction Phase Amendment with the DBT. If the Cabinet is not satisfied, the Cabinet reserves the right to terminate the Design Build Agreement and procure the Project by any delivery method.

KYTC is open to Proposals that consider "packaging" work which would result in one or more Pricing Package Amendment(s). The PDB delivery method allows the awarded DBT to collaborate with KYTC on advancing preconstruction and potentially assembling separate construction packages for multiple Pricing Package Amendments. While KYTC views packaging as a way to expedite the Project and begin construction on those portions of the work that are ready, all work must have received a KYTC-accepted Preliminary Design for the entire Project scope as a condition precedent to submitting the Construction

Phase Amendment to help ensure the Minimum Scope of the Project is able to be delivered within the Maximum Contract Value no matter the order of work or packaging that occurs as outlined in the DBA, Exhibit B Section 3.5.

### **2.3 Authorized Representatives**

The Cabinet has designated the following individuals to be its authorized representatives for the procurement (**Authorized Representatives**) who will provide all official Project communications:

**Primary**  
Sherri Chappell, P.E.  
Project Manager  
Kentucky Transportation Cabinet  
603 Railroad Ave  
Manchester, KY 40962  
E-mail: [kytc.us421pdb@ky.gov](mailto:kytc.us421pdb@ky.gov)

**Secondary**  
Greg York, P.E.  
Project Manager  
Kentucky Transportation Cabinet  
603 Railroad Ave  
Manchester, KY 40962  
E-mail: [kytc.us421pdb@ky.gov](mailto:kytc.us421pdb@ky.gov)

### **2.4 Proposer Letters of Interest**

All interested parties shall, on or before the date listed in Section 1.5 (Procurement Schedule), submit a Letter of Interest, attention **Rachel Mills** at [Rachel.Mills@ky.gov](mailto:Rachel.Mills@ky.gov), identifying, at a minimum, the name of the firm representing the Proposer and a Point of Contact (**POC**). The Letter of Interest is not intended to be a proposal or statement of qualifications, but simply a vehicle to communicate interest in the Project. The Cabinet requests that the Letter of Interest not exceed one page in length. The email shall include “US 421 Project Letter of Interest” in the subject line.

The POC is responsible for initiating and receiving all communication with the Cabinet and shall be delegated the full authority of the Proposer to communicate with the Cabinet throughout the procurement process. The POC may be changed upon request.

Proposers not submitting a Letter of Interest by the due date may be prohibited, at the sole discretion of the Cabinet, from participation in the procurement process. The Cabinet is not responsible for any oral communication or any other information or contact that occurs outside the official communication process specified in this ITP.

### **2.5 Rules of Contact**

The rules of contact remain in effect until identification of the Apparent Best Value Proposer or until the formal cancellation of the procurement by the Cabinet. The Proposer shall comply with all applicable Laws and refrain from lobbying any governmental authority in connection with the procurement process. No employee, member, agent, advisor, or consultant of any Proposer, Major Participant, or firms listed on Form E (Major Participants) may undertake any ex-parte communications, directly or indirectly, regarding this procurement with any representative of the Commonwealth of Kentucky, the Cabinet, or FHWA, including staff, advisors, contractors, or consultants, except for communications expressly permitted by this ITP.

### **2.6 Questions and Responses Regarding the RFP**

The Proposer shall review the RFP and any Addenda issued by the Cabinet prior to the Proposal Due Date. If the Proposer identifies any real or perceived mistake, discrepancy, deficiency, ambiguity, error, or omission contained therein, the Proposer shall request written clarification using Form H (Proposer Questions). The Cabinet will consider questions in issuing the final RFP and, if required, Addendum 1. The Cabinet also may elect, at its discretion, to respond to questions through written responses. Responses to questions will be issued on the dates specified in Section 1.5 (Procurement Schedule). Any written responses to questions given by the Cabinet will be for the information of the Proposer only and

will not become part of the Design Build Agreement, except to the extent that the Cabinet, in its discretion, may incorporate the substance of a response into, as appropriate, the RFP, whether in the final RFP issuance or by means of an Addendum to the RFP.

The Cabinet will only consider questions submitted using Form H via email to the Cabinet's Authorized Representative in accordance with the requirements described below. All communication between the Cabinet and the Proposer shall be in writing utilizing the Authorized Representative e-mails listed in Section 2.3 (Authorized Representatives).

Questions shall be submitted prior to the dates specified in Section 1.5 (Procurement Schedule) using Form H. If a question is submitted after a due date, the Cabinet, at its discretion, may elect to respond to the question in a subsequent answers to questions issuance. In completing Form H, the Proposer shall specify the relevant document (e.g., the ITP, form of Design Build Agreement, etc.), including the relevant page and section number, for reference. With respect to each Question Deadline specified in Section 1.5, the Proposer is encouraged to submit all questions in a batch at one time and in as few submissions as possible but without delaying sending a batch of questions just to reduce the number of submissions. All questions shall:

1. Be listed separately;
2. Not identify the Proposer in the body of the comment;
3. Be sequentially numbered;
4. Specifically reference the relevant document and page number (include the exact language in question) unless it is a general question;
5. Address a single issue per question;
6. Clearly indicate why the comment was made; and
7. Conspicuously identify whether the Proposer views its question or comment as confidential or proprietary in nature by indicating on Form H. The question shall explain why the Proposer considers the question to be confidential.

The Cabinet, in its sole discretion, may disagree with a Proposer's assessment regarding confidentiality of a question in the interest of maintaining a fair process or complying with applicable Law. Under such circumstances, it will inform the Proposer and may allow the Proposer to withdraw the question, rephrase the question, or have the question answered non confidentially.

## **2.7 Pre-Proposal One-on-One Meetings**

The Cabinet will invite the Proposer, if a Letter of Interest was submitted by the due date in Section 1.5 (Procurement Schedule), to participate in a one-on-one meeting. The Proposer shall submit an agenda for the one-on-one meeting by the date specified in Section 1.5. The agenda shall include a list of names of individuals from the Proposer who will be in attendance as well as general topics for discussion. This information will be used to assure that the Cabinet includes appropriate representation at the meeting. One-on-one meetings will be held in person on the dates set forth in Section 1.5 at 603 Railroad Avenue, Manchester, KY 40962.

During one-on-one meetings, the Proposer may ask questions and the Cabinet may provide responses for informational purposes. Any responses provided by the Cabinet during one-on-one meetings may not be relied upon; provided, however, that the Cabinet may, in its discretion, and subject to Section 2.6 (Questions and Responses Regarding the RFP), incorporate the substance of its responses into the RFP. The Cabinet reserves the right to disclose to all Proposers any issues raised during the one-on-one meetings, except to the extent that the Cabinet determines such disclosure would reveal a Proposer's

confidential business strategies, intellectual property, or technical solutions. The Cabinet will maintain the confidentiality of information related to Proposers and their Proposals to the extent permitted by Law.

## **2.8 Confidentiality**

### **2.8.1 Release of Information and Open Records**

All Proposals will be deemed, once submitted, to be the property of the Cabinet. The Cabinet will not disclose any portion of any Proposal prior to award to anyone outside the Cabinet, other than representatives of the federal government, if required, and the members of the awards committee or their designees. Upon the execution of the Design Build Agreement, the Cabinet will have the right to duplicate, use, or disclose all Proposal data, except proprietary data, submitted by Proposers in response to this solicitation as a matter of public record. Although the Cabinet recognizes each Proposer's possible interest in preserving selected data in a Proposal, the Cabinet will treat such information as provided by the Proposer pursuant to Kentucky's Open Records Act, KRS 61.870 et seq. Information that may normally 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 the Proposal contains information that the 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 watermarked "CONFIDENTIAL" or "PROPRIETARY DATA". Records and other prequalification information confidentially disclosed as part of the bid process shall be exempt from disclosure as provided in KRS 61.878(1)(c).

Information declared by the Proposer to be proprietary, either in whole or in part, other than described in this Section 2.8.1, may be deemed unresponsive to the solicitation, and may be rejected. Except as provided in this ITP, the Cabinet will have the right to use all ideas, or adaptations of those ideas, contained in any received response to the solicitation. Selection or rejection of the Proposal shall not affect this right.

### **2.8.2 Observers During Evaluation**

The Proposer is advised that observers from federal or other agencies including FHWA, as well as Cabinet consultants, may observe the Proposal evaluation process and will be permitted to review the Proposals. All persons provided with access to the Proposals will maintain confidentiality of the information contained therein in accordance with Cabinet policy.

## **2.9 Protests**

The Secretary of the Kentucky Transportation Cabinet, or designee, shall have authority to determine and resolve protests and other controversies of actual or prospective Proposers in connection with the solicitations or selection for award of a contract.

Any actual or prospective Proposer, who is aggrieved in connection with solicitation or selection for award of a contract, may file a protest with the Secretary of the Transportation Cabinet. A protest or notice of other controversy shall be filed promptly, and in any event within two calendar weeks after such aggrieved Proposer 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.

## 2.10 Notice to Proposers

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.

## 2.11 Nature Preserve Coordination and Contact

The below contact information should be used by Proposers in advance of Proposal submission who have any questions or concerns around impact to the Nature Preserve regarding their intended approach and Proposal.

Sunni L. Carr-Leach  
Executive Director  
Office of Kentucky Nature Preserves  
300 Sower Blvd.  
Frankfort, KY 40601  
Eec.ky.gov  
502-892-4446 office  
502-229-9758 cell  
[Sunni.carr@ky.gov](mailto:Sunni.carr@ky.gov)

## SECTION 3.0 GENERAL REQUIREMENTS FOR PROPOSERS

### 3.1 Organizational Conflicts of Interest

The Proposer is prohibited from receiving any advice or discussing any aspect relating to the Project or the procurement process with anyone with an organizational conflict of interest. The Proposer shall include a full disclosure of all potential organizational conflicts of interest in the Proposal, including all relevant facts concerning any past, present, or currently planned interests which may present an organizational conflict of interest, as required by 23 CFR 636.116.

Each of the following circumstances shall be deemed an organizational conflict of interest disqualifying the Proposer:

1. Participation by any of the following firms on more than one Proposer team:
  - a. Lead Contractor; or
  - b. Lead Designer.
2. Participation by an Affiliate of any such entity identified in clause (1) above, on another Proposer team.

The Proposer and each Major Participant shall certify by signatures of duly authorized representatives that it is legally entitled to respond to this solicitation and that it is not violating, either directly or indirectly, any conflict of interest statute under KRS Chapters 45A or 11A or ethical provisions under KRS Chapter 11A in Form B (Proposer and Major Participant Certification).

The Proposer and each Major Participant shall disclose all conflicts of interest, including all present or planned contractual arrangements with the Cabinet’s project management team in Form B. Proposers and each Major Participant shall, in the disclosure, identify planned efforts to avoid, neutralize, or mitigate

any potential conflict of interest between such entity on the Project and such other contractual arrangements.

The Proposer shall include a completed Form B for the Proposer and each Major Participant and disclose all organizational conflicts of interest in Proposal, Volume I (Administrative Requirements).

The Proposer is encouraged to disclose all potential organizational conflict of interest in advance of the Proposal due date for determination by the Cabinet if such organizational conflict exists. If an organizational conflict of interest is determined to exist at the time of Proposal submittal, the Cabinet may, in its sole discretion, disqualify the Proposer from the procurement process. If the Proposer was aware of an organizational conflict of interest prior to the award of the Design Build Agreement and did not disclose the conflict to the Cabinet using the prescribed form of notification in this ITP, the Cabinet may terminate the Design Build Agreement for breach of contract.

### **3.2 Ineligible Individuals and Firms**

No entity that has been disbarred or suspended from bidding or is otherwise ineligible for state or federal contracts may participate on any Proposer team.

At the time of submitting its Proposal, the Proposer and each Major Participant identified on Form E (Major Participants) shall certify on Form B (Proposer and Major Participant Certification) that it is not presently debarred, suspended, proposed for debarment, voluntarily excluded, or disqualified from bidding by any federal or state agency and shall certify and indicate exceptions to the statements identified in Form B.

The Cabinet, in its sole discretion, may reject a Proposal based on any such exception except to the extent the Cabinet has evaluated the item during Proposal evaluation as provided in Section 5.1 (Responsiveness and Pass/Fail Evaluation) and there is no new information following Proposal submission that warrants rejection of the Proposal.

#### **3.2.1 Restricted Firms**

The following firms are not allowed to participate on any Proposer Team due to a conflict of interest:

3. American Structurepoint, LLC
4. Garver, LLC
5. WSP USA, Inc.
6. EA Partners, PLC
7. HW Lochner, LLC
8. Avenue Consultants, Inc.

### **3.3 Campaign Finance Law Statement Pursuant to KRS 45A.110 and KRS 45A.115**

Each member of the Proposer shall certify that no member of their immediate family has an interest of ten percent (10%) or more in any business entity involved in the performance of the Project and 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. Each member of the Proposer further swears under the penalty of perjury, as provided by KRS 523.020, that neither they nor the company they represent, has knowingly violated any provisions of the campaign finance laws of the Commonwealth of Kentucky, and that the award of a contract to him/her or the company which he/she represents shall not violate any provisions of the campaign finance laws of the Commonwealth of Kentucky.

A Commonwealth of Kentucky sworn statement regarding campaign financing laws shall be completed and signed by an authorized agent of the Proposer and submitted with the Proposal.

### **3.4 No Contingent Fees**

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

### **3.5 Violation of Tax and Employment Laws**

KRS 45A.485 requires the Proposer to reveal to the Cabinet, prior to the award of a contract, any final determination of a violation by the Proposer within the previous five-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 Proposer and each Major Participant identified on Form E (Major Participants) shall report any such final determination(s) of violation(s) to the Cabinet 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. This disclosure, if applicable, shall be made on Form B (Proposer and Major Participant Certification).

KRS 45A.485 also provides that, for the duration of the Design Build Agreement, the DBT shall be in continuous compliance with the provisions of those statutes which apply to the DBT's operations, and that the DBT's failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of the Design Build Agreement, shall be grounds for Cabinet's cancellation of the Design Build Agreement and disqualification of the DBT from eligibility for future state contracts for two years.

### **3.6 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 firm that is a foreign entity required by KRS 14A.9-00 to obtain a certificate of authority to transact business in the Commonwealth of Kentucky ("certificate") from the Secretary of State under KRS 14A.9-030, unless the firm produces the certificate within 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 of Kentucky, if a copy of the certificate is not received by the contracting agency with the Proposal, 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.

### **3.7 KYTC Prequalification**

In order to submit a Proposal, the Proposer and any Major Participant shall be KYTC Pre-Qualified Contractors or Consultants at the time of the Proposal Due Date for all classifications of work for which each of them intends to perform pursuant to the Design Build Agreement. If any of the Proposer or Major Participants are a partnership, joint venture, or consortium, then the foregoing shall be construed to apply

to the partners or members of the Proposer or Major Participant. All subconsultants and subcontractors utilized by the Proposer on the Project shall be pre-qualified to perform work for the Cabinet or their services shall not be allowed.

If there are questions concerning design prequalification, contact Mr. Eric Pelfrey, PE at (502) 564-4555. See [Section 3.7.2](#) (Professional Services Prequalification) for additional information. For questions regarding contractor prequalification, contact Rachel Mills, PE at (502) 564-3500. See [Section 3.7.1](#) (Contractor Prequalification) for additional information. Responses that do not have all mandatory areas of prequalification fulfilled will be deemed nonresponsive.

Information on KYTC contractor and consultant prequalification is available at: <https://transportation.ky.gov/Construction-Procurement/Pages/Prequalification.aspx>

Information on KYTC Professional Services prequalification is available at: <https://transportation.ky.gov/ProfessionalServices/Pages/default.aspx>

### 3.7.1 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 Cabinet projects and accepting subcontracts on Cabinet projects shall apply for and receive prequalification and possess a Certificate of Eligibility, with an eligibility amount meeting or exceeding the requirements for the project, as provided in regulations published by the Cabinet according to KRS 176.140.

The Lead Contractor must perform at least 30% of the work. The Lead Contractor must be prequalified in a minimum of one work item that totals 30% of the Work in order to meet the self-perform requirement. As part of the Technical Proposal to be provided by the Proposer, the Proposer shall identify the work item(s) anticipated for the Project and that the Lead Contractor is prequalified to do such work. Major Participants and Persons providing other services shall be prequalified by KYTC and possess a Certificate of Eligibility showing a maximum eligibility amount greater than \$25,000,000 prior to performing the work.

Organizations and Persons providing other construction services shall be prequalified by the Cabinet and possess a Certificate of Eligibility prior to performing the work.

### 3.7.2 Professional Services Prequalification

The Proposer and Major Participants shall provide all necessary services to design all permanent and temporary portions of the Project, inclusive of relocating all affected utilities utilizing firms prequalified by the Cabinet at the time the services are performed. Cabinet standards, practices, policies, guidelines, and specifications shall control in case of a conflict. The standard of care for all such services performed or furnished under the Design Build Agreement shall be the care and skill ordinarily used by members of the engineering profession practicing under similar conditions at the same time and locality.

As part of the Technical Submittal, the Proposer shall identify the Major Participants that are prequalified for those prequalifications required at the Proposal Due Date and will perform the identified items of work:

**Table 2: Professional Services Prequalification**

<i>Prequalification Work Item</i>		<i>Required at Proposal Due Date</i>
Highway Design	Rural Roadway Design	Yes
	Surveying	Yes
Structure Design	Spans Under 500 ft	Yes

<i>Prequalification Work Item</i>		<i>Required at Proposal Due Date</i>
Geotechnical	Engineering Services	Yes
	Laboratory Testing Services	No
	Drilling Services	No
Right of Way	Relocation	No
	Acquisition	No
	Appraisal	No
	Appraisal Review	No
Utility Design	Utility Preconstruction Coordination	No
	Utility Construction Inspection	No
	Communication	No
	Electric Level 1	No
	Gas Level 1	No
	Water and Sewer Level 1	No
	Water and Sewer Level 2	No
	Utility Construction Inspection	No
Traffic Operations	Traffic Engineering Services	No
	Electrical Engineering Traffic Signal Services	No
	Electrical Engineering Roadway Lighting Services	No
Environmental and UST Services	UST & Hazmat Preliminary Site Assessment (Phase I)	No
	UST Closure Assessment	No
	Hazmat Corrective Action	No
	UST Site Investigation (Phase II)	No
	Hazmat Site Investigation (Phase II)	No
	UST Corrective Action	No
Environmental Aquatic and Terrestrial Ecosystems Analysis	Fisheries	No
	Botany	No
	Terrestrial Zoology	No
	Wetlands	No
	Freshwater Macroinvertebrates	No
	Water Quality	No
Environmental Archeology and Other Services	Air Quality Analysis	No
	Prehistoric Archeology	No
	Socio-Economic Analysis	No
	Highway Noise Analysis	No
	Historic Archaeology	No
	Environmental Document Writing and Coordination	No

<i>Prequalification Work Item</i>		<i>Required at Proposal Due Date</i>
	Cultural-Historic Analysis	No
	Stream and Wetland Mitigation	No

**3.7.3 Insurance, Licensing, and Permits**

The Cabinet will require the DBT to provide insurance specified in the Design Build Agreement.

All firms participating in this procurement, or the Design Build Agreement, shall obtain all licenses and permits and take all necessary steps to conduct business in the Commonwealth of Kentucky and perform the Work required under the Design Build Agreement, including proposing and carrying out contracts consistent with the laws of the Commonwealth of Kentucky. If not incorporated in the Commonwealth of Kentucky, the Proposer must register with the Secretary of State’s office to do business in the Commonwealth of Kentucky no later than the Proposal Due Date identified in Section 1.5 (Procurement Schedule).

All licensed professionals identified in the Proposal who are required to be licensed for the Project shall be licensed in the Commonwealth of Kentucky on or before the Proposal Due Date.

**SECTION 4.0 PROPOSAL SUBMITTAL REQUIREMENTS**

**4.1 General Submittal and Format Requirements**

Proposals shall be received no later than the time and day specified in Section 1.5 (Procurement Schedule). Late submittals will not be considered. For each Proposer that provided a Letter of Interest, a SharePoint site has been established for the purpose of receiving Proposals and access instructions will be provided in separate communication. Proposers are encouraged to keep file sizes under 2GB and if required, may separate each required volume into two separate files as long as they are clearly named.

Only PDF files of the Proposal shall be submitted. The PDF files shall include bookmarks aligned with the organization described in Section 4.2 (Outline of Proposal Contents) to facilitate navigation of the document. If more than one PDF attachment comprising the Proposal is transmitted, the Proposer shall ensure that each PDF is separated by volume with the cover of each volume of the Proposal referencing (1) the Project name “US 421 Project” (2) Project number 22-9004 and (3) volume number.

All pages of the Proposal (with the exception of the organization chart described in Section 4.2.4.1 (General Organization and Approach) shall be 8.5-inch by 11-inch, with a margin of no less than one inch provided on all pages (excluding header/footer text). Margins on forms provided by the Cabinet shall not be modified. Minimum font size shall be 11-point; however, 10-point text is permissible on charts, graphs, and tables.

It should be noted that once uploaded, Proposals cannot be modified, however, prior to the date and time specified in Section 1.5, revised versions of the Proposal may be uploaded to SharePoint. Revised versions, if required, shall be clearly identifiable as submissions and Proposers are invited to notify the Authorized Representative, via email, of the appropriate version to use. The Cabinet will not accept any unsolicited addenda, revisions, or alterations to any Proposal after the Proposal Due Date. If the Cabinet issues an addendum to the RFP after the Proposal Due Date, then the Proposer may respond. The Proposer’s response shall precisely respond to the contents of the Cabinet’s addendum.

**4.2 Outline of Proposal Contents**

The Proposal shall consist of two volumes: the Administrative Submittal (Proposal Volume I), and the Technical Submittal (Proposal Volume II).

The contents of Proposal Volume I and Volume II shall be organized in the order set forth in this Section 4.2.

#### **4.2.1 Administrative Proposal (Proposal Volume I)**

The requirements and information to be submitted, in the order noted below, in Volume 1 of the Proposal are as follows:

1. Form A (Proposal Letter);
2. Form B (Proposer and Major Participant Certification);
3. Form C (Surety Letter) as further described in Section 4.2.2 (Surety Letter);
4. Form D (Hourly Rates);
5. Form E (Major Participants);
6. Form I (Key Personnel Commitment Letters);
7. Form J (Affidavit of Authorizations and Representations)
8. Form K (Ethics Compliance)
9. Form L (Safety Questionnaire)
10. Demonstrated prequalification as outlined by Section 3.7 (KYTC Prequalification)
11. Copy of certificate of eligibility issued pursuant to KRS 176.140 showing a maximum eligibility amount greater than \$25,000,000; and
12. All required attachments relevant to each form.

#### **4.2.2 Surety Letter**

Proposal Volume I shall include a letter from a Surety or insurance company in the form of Form C (Surety Letter) indicating that the Surety has reviewed the Proposer's financial statements, works in progress, and other diligence information and are of the opinion that the Proposer could obtain a Contract Bond with a penal sum of not less than \$25 million. If the Proposer is to be a joint venture, partnership, limited liability company, or other association, then a separate Form C shall be submitted for each member or partner thereof with respect to which the Surety is certifying to the entity's bonding capacity with the foregoing requirements.

The surety letter shall indicate that based on the information reviewed the Surety is comfortable that the Proposer understands the bonding requirements of alternative delivery. Furthermore, the Surety shall expressly agree and acknowledge that if the Proposer is selected as the Apparent Best Value Proposer, the Surety shall perform further diligence about whether they can offer the payment and performance bond required of the DBT under the Design Build Agreement. Letters indicating "unlimited" bonding capability are not acceptable.

The Contract Bond, in accordance with Section 30 of the DBA, will be required to be in place for the Apparent Best Value Proposer at the time of DBA execution.

#### **4.2.3 Major Participants**

Proposal Volume I shall include a list of Major Participants in the form of Form E (Major Participants). Pursuant to the Design Build Agreement, engagement and selection of subcontractors and subconsultants after execution of the Design Build Agreement is subject to competitive selection and Cabinet approval. All firms identified on Form E, shall be subject to the requirements of the Design Build Agreement, including being subject to Open Book Basis requirements.

#### **4.2.4 Technical Proposal (Proposal Volume II)**

The contents of Proposal Volume II shall be organized in the order set forth in this Section 4.2.4.

#### 4.2.4.1 General Organization and Approach

The Proposer shall provide the organization and communication structure among the Lead Contractor, the Lead Designer, any Key Personnel Firms, and, if applicable, any other Major Participants identified in the Proposal. This information shall be submitted in a one-page organization chart in 11-inch by 17-inch format. The organization chart will not be separately scored or included in the page limit of the Technical Proposal. The organization chart will be used to provide the Cabinet an understanding of the Proposer's team structure and may be considered during evaluation of the Preconstruction Phase Approach or Construction Phase Approach.

#### 4.2.4.2 Experience of the Firms

The Proposer shall provide a summary of the background and experience of all Major Participants. The summaries shall identify and describe how partnerships and collaboration, especially for innovative design and open-book pricing, have been used effectively to deliver past projects. The summary page limit is two pages maximum for the Lead Contractor, two pages maximum for the Lead Designer, and two pages total for all other Major Participants identified for the Proposer on Form E. **(6 pages total)**

Using Form F (Firm Experience), provide descriptions of three past projects for each of the Lead Contractor, and Lead Designer using Form F (Firm Experience). Experience shall be limited to the past 10 years and relevant to the Project. The Proposer shall outline, with specifics, how a collaborative design and construction environment was maintained. The Proposer shall provide examples where the firm has added value through innovative strategies, including use of effective risk management, value engineering, and alternative technical concepts. Attach a completed Form F for each project to the respective firm's background and experience summary.

#### 4.2.4.3 Key Personnel Experience

The Proposer shall submit a completed Form G (Key Personnel Experience) for each of the required Key Personnel. The same individual may fill more than one Key Personnel position; however, a separate form is required for each position. Completed Form Gs are not subject to the overall technical proposal page limit.

The Proposer shall include the proposed level of availability for each Key Personnel for each phase of the DBA in Form I (Key Personnel Commitment Letters) based on the Proposer's approach and envisioned level of need for each Key Personnel for each phase of project delivery.

The Proposer shall include the name and contact information of the project representative for each project listed on Form G. It is the responsibility of the Proposer to verify the accuracy of the contact information provided. If experience cannot be validated by the Cabinet due to inaccurate contact information, the experience will not be considered in the evaluation of Proposals. Project representatives shall be owners or clients for whom the Key Personnel performed the work on the project.

The Key Personnel may not at any time be removed, replaced, or added during the DBA period without written approval of KYTC. To qualify for approval, the qualifications and experience 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 outlined below.

Key Personnel requirements:

1. **Project Manager:** Minimum of 10 years' experience in construction and management of highway projects with design and construction elements. Preference will be given to a Project Manager that shows the ability to coordinate third-party involvement, and experience with construction in mountainous terrain. The Project Manager shall hold a full-time position within the Lead Contractor's organization with authority to make decisions affecting any aspect of the Project. The Project Manager will be responsible for the overall design, construction, maintenance, contract administration, safety, quality, and environmental compliance on behalf of

DBT during the Term. The Project Manager shall be in the position to take full responsibility for the prosecution of the Work and will act as a single point of contact on all matters on behalf of DBT during the Term.

2. **Design Manager:** Shall be a Professional Engineer licensed in the Commonwealth of Kentucky. Such individual shall be a direct, full-time employee of the Lead Designer and have a minimum of 10 years' experience managing design for multidisciplinary highway and bridge projects. The Design Manager will be responsible for ensuring the design Work is completed and design criteria and requirements are met. The Design Manager will be responsible for coordinating with Key Personnel, Lead Contractor, and Cabinet to ensure that any design issues are resolved expediently.
3. **Construction Manager:** Minimum of 10 years' experience in construction, construction management, design plan constructability reviews, and improving constructability and developing complex staging and maintenance of traffic on highway projects of similar size and scope. Such individual shall be a direct, full-time employee of the Lead Contractor. The Construction Manager is responsible for ensuring that the Project is constructed in accordance with the Contract Documents. The Construction Manager will be responsible for coordinating with Lead Designer to resolve any issues that occur during construction.
4. **Lead Estimator:** Shall be a direct, full-time employee of the Lead Contractor or Lead Designer with a minimum of 7 years' experience preparing production-based construction costs estimates, managing risk, managing construction schedules for projects with similar scope and complexity, and collaborating with project owners, designers and stakeholders. The Lead Estimator will be responsible for complying with the Open-Book Process as well as coordinating with the ICE to help reach agreement during Construction Cost Estimate Review Meetings. The Lead Estimator will assist the Cabinet in managing the Risk Register, provide input on the Project Schedule, and coordinate with the Lead Contractor and Lead Designer in regard to managing and mitigating risks. This role will be an integrated member of the DBT and attend project meetings where price, risk, schedule and other factors relevant to estimating/bidding are discussed (including design coordination meetings, milestone review meetings, risk workshops, and pricing reconciliation meetings).
5. **Geotechnical Lead:** Shall be a Professional Engineer licensed in the Commonwealth of Kentucky with at least 7 years of project experience with highway design/construction in mountainous terrain with demonstrated experience of being lead or project geotechnical engineer for at least three highway projects in mountainous terrain. Each of the three highway projects should be at least 1 mile in length with designed cuts greater than 100 feet. At least one of the projects must demonstrate application of engineering and geologic design principles involving rock cuts and excavation through dipping bedrock.

A Proposer may, but is not required to, submit up to two additional Key Personnel that the Proposer deems necessary for the Project based on the Proposer's approach to delivering the Project. Should the Proposer deem an additional Key Personnel necessary, a brief summary, no more than 250 words, may be submitted with the additional Key Personnel's Form G explaining the rationale for including this proposed Key Personnel.

#### 4.2.4.4 Preconstruction Phase Approach

The Proposer's Preconstruction Phase Approach shall include:

1. The Proposer's overall approach to delivery of preliminary engineering and other Work as requested and overseen by KYTC, including how the Proposer will provide quality assurance and quality control for the Project's delivery;

2. The Proposer's approach to Project design and design quality in alignment with the Project goals and scope, including collaboration and communication specifically around innovative solutions for the Project with KYTC;
3. The Proposer's approach to integrate and optimize the construction schedule with the design schedule and description of factors that may control the overall Project schedule;
4. The Proposer's approach to identifying potential Pricing Packages including preliminary methodologies and description of anticipated major design and Pricing Packages that will be used to optimize Project delivery;
5. The Proposer's approach to schedule management and risk identification and mitigation during the Preconstruction Phase including working with stakeholders and other third parties such as regulatory agencies and utilities; and
6. A description of the Proposer's subcontracting approach, including the approach to identifying which portions of the Project intended to be subcontracted, competitively bidding subcontracts, and identifying and enhancing equal employment opportunities.

The Preconstruction Phase approach shall be limited to **6 pages**.

#### **4.2.4.5 Construction Phase Approach**

The Proposer's Construction Phase Approach shall include:

1. The Proposer's overall construction management approach in consideration of the Project goals, including project controls methods;
2. Provide a summary project schedule that presents your firm's phasing and sequencing approach to all major activities necessary to meet or improve on the dates identified in this ITP ([Section 1.5](#));
3. The Proposer's approach to management of construction phasing and maintenance of traffic during construction, including maintaining commercial, emergency and school vehicle access;
4. The scope of work the Proposer intends to self-perform to meet self-performance requirements and the scopes of work that the Proposer intends to subcontract;
5. The Proposer's approach to quality management; and
6. The Proposer's approach to risk management during the Construction Phase of the Project. This should include a narrative outlining the anticipated risks and the Proposer's strategy for conducting appropriate due diligence and mitigating those risks, including relevant stakeholder engagement and public outreach.
7. The Proposer's approach to completing the project within the Maximum Contract Value, including the Proposer's approach to help minimize scope creep during preconstruction and minimize change orders during construction demonstrating the Proposer's success in helping owners accomplish this goal on past projects;
8. Based on the proposed construction schedule from Criterion 2 in Section 4.2.2.5, describe the Proposer's approach to keeping the project on schedule and completing construction on time including procedures for identifying potential delays and how the occurrence of any event giving rise to a delay or potential delay will be handled, including the use of recovery plans and schedules; and
9. The Proposer's approach to employing cost and schedule estimating and tracking tools, scheduling systems and management techniques to deliver the Project on time and within budget with examples of projects that successfully utilized these tools, systems, and techniques.

The Construction Phase approach shall be limited to **8 pages**.

#### **4.2.4.6 Pricing Approach**

The Proposer's Pricing Approach shall include:

1. The Proposer's approach to providing open and transparent pricing.
2. The Proposer's approach to ensure that KYTC receives a fair price for construction, including a description of the major cost components (i.e., cost drivers) for the Project and the Proposer's approach to obtaining optimal pricing for these major cost drivers.
3. The Proposer's approach to competitively soliciting subcontracting packages and obtaining reasonable and competitive pricing from qualified subconsultants and suppliers;
4. The Proposer's subcontracting approach to including:
  - a. approach to competitively soliciting subcontractor quotes and how subcontracting packages will be developed and advertised;
  - b. approach to obtaining reasonable proposals from qualified subconsultants, as needed;
  - c. approach to providing openness and transparency in the subcontracting solicitation and selection process; and
  - d. approach to identifying and enhancing equal employment opportunities.

The Pricing approach shall be limited to **6 pages**.

### **SECTION 5.0 PROPOSAL EVALUATION PROCESS**

#### **5.1 Responsiveness and Pass/Fail Evaluation**

The Cabinet will review each Proposal to confirm that it is responsive. A responsive Proposal shall be complete and shall not deviate from the ITP requirements in any material respect.

Following the Cabinet's determination of responsiveness, the Cabinet will evaluate each Proposal based upon the following pass/fail criteria:

1. The Proposer has presented evidence showing the makeup of its organization and evidence that its organization has the legal ability to enter into and perform the Design Build Agreement to deliver the Project;
2. The Proposer and Major Participants, identified on Form E (Major Participants) are not currently suspended, debarred, voluntarily excluded, or disqualified from performing or bidding on work for any federal or state agency;
3. The information disclosed in Form B (Proposer and Major Participant Certification) does not, in the Cabinet's sole determination, materially adversely affect the Proposer's responsibility, including its integrity and ability to carry out the Project responsibilities potentially allocated to it;
4. The Proposer demonstrates, in the Cabinet's sole determination, that the Proposer is capable of obtaining a Contract Bond in the amount set forth in Section 4.2.2 (Surety Letter).
5. The Proposer's rates identified in Form D (Hourly Rates) are determined to be reasonable by the Cabinet.
6. The Lead Contractor has completed Form L (Safety Questionnaire) and has demonstrated to KYTC an appropriate record of safety.

7. The Proposer has demonstrated the Lead Contractor and Lead Designer, and each firm identified on Form E (Major Participants) are prequalified in the work items they have identified as being responsible for performing at the time of Proposal submission.

A Proposal that does not achieve a “pass” rating on any pass/fail element will be deemed unacceptable and will not progress to further evaluation and scoring.

## 5.2 Technical Proposal Evaluation

The Cabinet intends to identify the Proposer with the highest overall score as the Apparent Best Value Proposer. The Proposer’s scores are the sum of the Technical Proposal score and the interview score. Table 3 (Distribution of Points) shows the maximum points allocated to each category.

**Table 3: Distribution of Points**

<i>Evaluation Criteria</i>		<i>Maximum Score</i>
Technical Proposal	Experience of the Firms	10 points
	Key Personnel Experience	20 points
	Preconstruction Phase Approach & Organization	15 points
	Construction Phase Approach & Organization	20 points
	Pricing Approach	15 points
Interview		20 points
Total		100 points

### 5.2.1 Experience of the Firms

Firm experience will be evaluated on:

1. The extent to which the Proposer’s experience demonstrates experience relevant to the size, complexity, and composition of the anticipated Project in the areas of the ability to maintain the project schedule, remain within the Maximum Contract Value, coordinate with adjacent projects, develop and maintain an agile design and construction environment, and construct using innovative designs, methods, or materials; and
2. The extent to which the Proposer’s experience demonstrates relevant experience that will improve the likelihood of successful project delivery.

Progressive Design Build experience is not required; however, the Cabinet will consider experience and knowledge in alternative project delivery in its evaluation process. In accordance with this Section 5.2, the Cabinet will consider all relevant firm experience that demonstrates the likelihood of successful project delivery in its evaluation and scoring.

### 5.2.2 Key Personnel Experience

Key Personnel Experience will be evaluated based on:

1. The extent to which the required Key Personnel meet or exceed preferred requirements for qualifications and experience;
2. The extent to which the experience of each Key Personnel included work of a similar scope, nature, and complexity as the Project;
3. The extent to which the required Key Personnel can demonstrate a history of commitment to collaboration among all parties; and
4. The extent to which the Lead Estimator demonstrates experience with open-book or cost-plus contracts.

### **5.2.3 Preconstruction Phase, Construction Phase and Pricing Approach**

The Proposer's approach (preconstruction, construction and pricing) will be evaluated based on the extent to which the Proposer demonstrates:

1. a general management structure and corporate culture that facilitates coordination and collaboration among the parties involved in the Project in a manner that is aligned with progressive design build delivery;
2. effective project management techniques; and
3. an effective approach to staffing the Project and managing staff turnover.
4. alignment with Project goals and the concepts of progressive design-build delivery;
5. an efficient and effective approach for coordination and collaboration with the Cabinet's consultants, and stakeholders in connection with the Project, including effective engagement of Key Personnel, selection of a project delivery solution, and mitigating impacts to the traveling public; and
6. an understanding of the scope of work, schedule for the work, and effective processes to advance and manage the Project in a manner that is cost-effective and ensures quality while maintaining the schedule. an approach to pricing that ensures the Cabinet will be receive a fair price for the Work that is open and transparent; and
7. a subcontracting approach that ensures competitive, open, and transparent subcontracting.

### **5.2.4 Interviews**

As part of the evaluation and scoring process, the Proposer will be required to attend an interview with the Cabinet. The interviews are anticipated to occur in-person at the KYTC Central Office (200 Mero Street Frankfort, KY 40622). The interview will last 45 minutes and will consist of a 20-minute presentation from the Proposer followed by a 25-minute question and answer period. All Proposers will be asked the same questions. Questions will either be posed to specific Key Personnel or to the team as a whole.

Proposer may bring to its interview any material it believes may assist the Cabinet in the evaluation process. The Proposer is required to attend the interview with all Key Personnel. The Proposer may bring other individuals so long as the total number of attendees does not exceed ten individuals.

The Proposer will be evaluated on the following:

1. The extent to which the Proposer demonstrated Project understanding;
2. The extent to which the Proposer clearly communicated concepts and approach;
3. The extent to which the Proposer demonstrated technical expertise, ability to anticipate technical issues, and required levels of expertise for each Project phase; and
4. The extent to which the Proposer demonstrated recognition of key points and ideas, including the DBT's role in Project advancement at each Project phase, likely issues and Project stressors at each Project phase, understanding of the GMP process and pricing transparency, and ideas and ability necessary to effectively collaborate with the Cabinet and other stakeholders to achieve Project goals.

### **5.3 Requests for Proposal Clarification**

The Cabinet may issue one or more proposal clarification requests to Proposers requesting additional information or clarification related to information presented in the Proposal. The request will include a timeframe within which the Proposer shall respond. If a response in the time allotted is not possible, the

Proposer shall immediately request additional time and include a reason why the timeframe is inadequate and propose an alternative deadline. Failure to communicate may result in exclusion from further consideration.

## **SECTION 6.0 MISCELLANEOUS PROVISIONS**

### **6.1 Proposer Debrief**

Each Proposer that submits a responsive but unsuccessful Proposal may, within 30 days after the Preconstruction NTP, request a debriefing. The Cabinet will not discuss the details of other Proposer's Proposals but will discuss:

1. the strengths and weaknesses of the debrief requestee's Proposal;
2. the breakdown in scoring of the debrief requestee's Proposal; and
3. the ranking of Proposers and their overall scores.

The unsuccessful Proposer may ask questions at the debrief, but the Cabinet reserves the right, in its sole discretion, to not respond to any such questions. Debrief requests should be made to the Cabinet's Authorized Representative.

### **6.2 Reserved Rights**

The Cabinet reserves to itself all rights (which rights shall be exercisable by the Cabinet in its sole discretion) described herein and available to it by law, including, without limitation, with or without cause, and with or without notice, the right to:

1. Modify, withdraw, or cancel this solicitation in whole or in part at any time prior to the execution of the Agreement by the Cabinet, without incurring any costs, obligations, or liabilities.
2. Issue a new RFP after withdrawal of this RFP.
3. Accept or reject any and all submittals, responses, and Proposals received at any time.
4. Modify the RFP process (with appropriate notice to Proposers).
5. Issue addenda, supplements, and modifications to the RFP.
6. Add or delete Proposer responsibilities from the information contained in the RFP.
7. Require confirmation of information furnished by a Proposer, require additional information from a Proposer concerning its Proposal, and require additional evidence of qualifications to perform the work.
8. Waive any informalities, irregularities, or omissions in a Proposal, permit corrections, and seek and receive clarifications to a Proposal.
9. Terminate evaluation of any Proposal, submittal, response, or proposal at any time.
10. Negotiate with a Proposer without being bound by any provision in its Proposal.
11. Suspend, discontinue, or terminate negotiations with any Proposer at any time, or elect not to commence negotiations with any responding Proposer and engage in negotiations with other than the highest ranked Proposer, prior to the actual authorized execution of an Agreement by all parties.

The Cabinet assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties responding to this RFP. All such costs shall be borne solely by the Proposer.