

EXECUTIVE SUMMARY

KYTC LPA PROJECT GUIDE

This Executive Summary is intended to provide local leaders with a general understanding of the extensive requirements and processes associated with developing Federal-aid transportation projects in compliance with applicable legislation and regulations. Local Public Agency (“LPA”) project managers and administrators must read the LPA Guide in its entirety and must be aware that the Guide is not the final authority on these matters; LPAs are responsible for following all applicable legislation and regulations whether or not they are included in the LPA Guide. LPAs should work closely with the Kentucky Transportation Cabinet (“KYTC”) to understand how the legislation, regulations, and procedures outlined in the Guide may differ for state-funded transportation projects.

Critical information presented in the LPA Guide is summarized below by chapter. The LPA Guide provides sources to the information summarized here and points to additional resources.

Chapter I – Introduction

- When an LPA receives an award of federal funds for a project, it joins the Federal Highway Administration (FHWA) and the KYTC in the responsibility of developing and maintaining a safe and efficient transportation system while following all applicable federal and state legislation and regulations.
- Federal LPA programs do not provide up-front grant money. These are reimbursement programs. LPAs must pay project costs up-front (after receiving a written notice to proceed from KYTC) and then provide proper documentation for reimbursement from KYTC. If the LPA fails to follow these requirements, it risks not being reimbursed for project costs or having to return funds to FHWA.
- While some of the federal funds used by LPAs are dedicated for a particular project or area (such as for each of Kentucky’s urbanized areas), other federal funds are awarded based on competitive application cycles. The KYTC Office of Local Programs (OLP) is the Administering Office for the majority of application-based projects. For these funds KYTC OLP will notify the public that an application cycle is open. The notification will indicate the type of funding available, the application deadline, and the eligibility requirements. The amount and type of funding available varies between application cycles. You may contact the KYTC Office of Local Programs for additional information about application cycles and requirements. Some funding types (planning or dedicated STP, for example) follow a different application process. For those projects not administered by OLP, the LPA should contact the KYTC Division of Planning for information regarding how to request project funding.
- It is very important that LPAs develop adequate project budgets to cover all foreseeable project costs, including allowances for contingencies. No additional funds will be allocated for the project; LPAs must monitor project expenditures closely to ensure that the project stays within budget. It is the LPA's responsibility to complete the project as defined in the project agreement. Additional funds needed to cover cost overruns will be the responsibility of the LPA.

FHWA’s “Federal-Aid Essentials for LPAs” website is a comprehensive resource that is referenced throughout the guide:

<http://www.fhwa.dot.gov/federal-aidessentials/index.cfm>

- Federal LPA program awards must not be thought of as an award of a certain sum of money. Awards are a maximum amount for which the LPA will be reimbursed for eligible expenditures made in completing a defined scope of work. The LPA is not entitled to any funds which may remain once the project has been completed. LPAs may not expand the scope of a project in an effort to use remaining funds.
- For the majority of Federal-aid projects, FHWA will provide 80 percent of project costs and the LPA must provide 20 percent. If the LPA fails to meet the matching requirement, it may be required to return all federal funds reimbursed previously. The matching requirement is usually paid in cash. Generally, the LPA pays 100 percent of the project costs, and then KYTC reimburses the LPA 80% of the amount paid for eligible activities.
- The LPA must provide a full-time employee of the agency to be the “employee in responsible charge” of its Federal-aid project.
- All federally-funded LPA projects must be programmed in the Statewide Transportation Improvement Program (STIP). If an LPA project is located within the planning boundary of a Metropolitan Planning Organization (MPO), it must also be programmed in the Transportation Improvement Program (TIP).
- The LPA must receive a written notice to proceed and confirm that the funding and Memorandum of Agreement (MOA) are in place prior to making any expenditures. Any amount the LPA spends on the project before receiving the notice to proceed will not be reimbursed.
- Prior to executing the MOA, the LPA must pass a resolution authorizing its representative to enter the MOA.
- FHWA requires that a term be indicated for all projects. The project schedule must include an end date for the project, after which FHWA may de-obligate the project funds. The LPA is responsible for ensuring the project remains on schedule.
- Infrastructure project MOAs are required to have a maintenance plan. All arrangements for funding long-term maintenance should be included in the MOA between the LPA and KYTC.

NO PROJECT ACTIVITY WILL BE ELIGIBLE FOR FEDERAL FUNDING BEFORE FHWA AUTHORIZATION HAS BEEN RECEIVED, THE PROJECT AGREEMENT IS SIGNED, AND THE LPA HAS RECEIVED ITS WRITTEN NOTICE TO PROCEED FROM KYTC.

Chapter II – Project Team Meetings

- After any project announcement, the LPA must work with the Administering Office to arrange an initial project team discussion of scope, schedule, budget, and professional services procurement. And, once a design professional is selected, a project team “kick-off” meeting must be held for every project.

Chapter III – Professional Services Procurement

- Pursuant to statute, LPAs must complete a Qualifications Based Selection (“QBS”) to procure professional services. The Federal statute requiring this is commonly referred to as the Brooks Act. The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications (price may not be a factor).

- There are three allowable QBS processes which may be used depending on the LPAs needs and the expected value of the Professional Services contract, as follows:
 - KYTC Statewide Contracts
 - Price Contracts (Finance Cabinet List)
 - Traditional QBS
- In some cases with pre-approval from KYTC, the LPA may instead use either its own staff for Professional Services or a KYTC pre-qualified professional with which it has a working relationship (if that relationship was entered into via a qualifications based selection process and if the current project scope was included in the original contract).

Chapter IV – Environment

- Federal-aid LPA projects must be delivered in compliance with the National Environmental Policy Act (“NEPA”), 49 U.S.C. § 303 (commonly referred to as section 4(f)), the National Historic Preservation Act, the Clean Water Act, the Endangered Species Act, and any other applicable environmental laws and regulations.
- Pursuant to Presidential Executive Order 12372, all LPA projects require a clearinghouse document which must be requested from the Governor’s Department of Local Government (DLG). The clearinghouse affords state government agencies the opportunity to identify and comment on the potential environmental impacts of a project. The LPA must request the clearinghouse document immediately upon filing its application or, for non-application based funding, early in the planning phase.
- All Federal-aid projects must have an environmental document demonstrating that NEPA requirements have been met; the type of document required depends on the level of environmental impact the project will have.
- The LPA must receive environmental approval from KYTC before beginning final design (may be referred to as “phase 2” design).
- FHWA will not authorize funding for final design or subsequent phases without approved environmental documentation.
- The LPA may need to hire a KYTC pre-qualified consultant to perform environmental services. Depending on project type and complexity, KYTC may agree to prepare the environmental document on the LPAs behalf.
- Costs of preparing the environmental document and complying with NEPA are to be included in the project budget. If environmental studies are required, such as archaeological or biological, project funds must be made available to cover the study costs.
- CEs (the most common required environmental document for LPA projects) and EAs/FONSIs (rare for an LPA project) must be reevaluated if the project is not under construction within two years of approval. Draft EISs (unlikely as LPA project) must be re-evaluated if an acceptable final EIS is not submitted within three years from the date the draft EIS was circulated.
- If a project will impact a natural or human environment, the LPA may be required to mitigate for these impacts.
- Some projects may require environmental permits, such as from the United States Army Corps of Engineers (USACE), Kentucky Division of Water (KDOW), or Federal Emergency Management Agency (FEMA). Securing appropriate environmental permits is the LPA’s responsibility unless otherwise set forth by the project MOA. The LPA

must ensure that funding is included in the project budget to cover the costs of required environmental permits and fees.

Chapter V – Design

- All projects must be designed to meet applicable standards and guidelines.
- Certain design work, such as roadway design, must be completed by a licensed Professional Engineer (PE). Other design work must be completed by other professionals, such as architects or landscape architects having the appropriate licenses and certifications, as required by state statute.
- **The LPA may not advertise for construction until the appropriate KYTC personnel have signed the Project Development Checklist (PDC) and Design Review Checklist (LDRC) and the LPA has received a written notice to proceed from its Administering Office.**
- LPAs must comply with the provisions and design requirements of the Americans with Disabilities Act of 1990 (ADA). Section 504 of the 1973 Rehabilitation Act prohibits discrimination on the basis of disability in federally assisted programs.
- During any phase of the project, the LPA and their representatives may make promises or commitments to citizens, government agencies, or companies. Any promises should be made with great care and documented and signed by the promisee to prevent confusion regarding the terms of the promise. All promises must be incorporated into the project design plans and listed in the Bid Proposal.
- Federal law requires that materials used on the project must be obtained through the construction procurement process. If the design requires the LPA to provide materials or indicates that materials are to be obtained outside of the construction procurement process, the LPA must request that KYTC make a finding that it is in the public interest. Such a finding may require FHWA approval.
- Federal regulations also dictate that federal funds may not be used, directly or indirectly, to pay any premium or royalty on any patented or proprietary material, specification, or process outside of the construction procurement process. If, upon request from the LPA, the KYTC certifies that such an item is essential for synchronization with existing highway facilities, or that no equally suitable alternative exists, an exception may be granted.
- After the design plans have been approved, the LPA must obtain an Engineer's Estimate (EE) for the work described in the design plans. The EE is very important. It may be used to authorize construction funds and is used to evaluate bid proposals.
 - No bid may be considered if it is 5% over the EE without approval from the Administering Office.
 - If that the EE indicates the project will cost more than the amount of funds available, the LPA should work with the Administering Office to address the shortfall so that the entire project may be completed. If additional funding cannot be secured, the scope of the project may have to be adjusted. The LPA should work closely with its Administering Office to ensure any scope adjustments are acceptable to KYTC and FHWA.
 - The EE must list all construction tasks and materials (bid items) and assign a cost to each. The EE bid items must contain a similar level of detail to that used in the industry, for ease of comparison with the bids.

- **The EE must be kept confidential to ensure that bidders give their best price, instead of merely meeting the prices set in the EE.**

Chapter VI – Right-of-Way and Utilities

- Before executing any right-of-way activities beyond title work, such as appraising property or making offers, the LPA must ensure that right-of-way funds are authorized (which is always after NEPA clearance) and that a notice to proceed has been provided by the KYTC Administering Office.
- The LPA must obtain property interests adequate for the construction, operation, and maintenance of the project and for the protection of both the project and the public. The LPA should work closely with its Administering Office to confirm which type of property interest is most appropriate.
- Right-of-Way (ROW) Certification is required for all projects.
- If the Federal-aid LPA project will require any work within or abutting KYTC ROW, the LPA must obtain an encroachment permit from KYTC.
- LPAs must follow the Uniform Act when acquiring any property interest from a third party.
- The LPA may accept property donated or dedicated for the project as long as, prior to the donation or dedication, the property owner is informed in writing of their right to just compensation for their property. LPAs may under no circumstances coerce a property owner into donating his/her property. It has been determined that indicating that a project will not be done if the property is not donated is coercion.
- If the project touches the ground, the LPA must follow the Utilities and Rails Guidance Manual.
- The LPA should begin early coordination with utility companies, as soon as the written notice to proceed with the Design phase is received from the Administering Office, so that the location of existing utilities are included in the preliminary engineering and environmental, and final design decision making processes.
- Any time a project touches, goes over or under, or is adjacent to railroad ROW property it is necessary that the LPA coordinate with the railroad company in order to comply with state and federal statutes. If a project fits any of these descriptions, the LPA must work with its Administering Office to contact the KYTC Railroad Coordinator immediately so that negotiations between the LPA and the railroad company can begin.
- The construction bid proposal must include utility and railroad impact notes.

Chapter VII – Non-Construction Procurement

- For non-infrastructure projects, LPAs are required to follow a procurement process that is outlined in KRS § 45A. This process will depend on the dollar amount of the purchase as well as other factors. The LPA should discuss its proposed purchasing method with its Administering Office prior to taking action to obtain the items needed. There are several different non-construction procurement processes, including, but not limited to:
 - Competitive Bidding
 - Competitive Negotiation
 - Small Purchase
- KYTC must approve any procurement before award.

Chapter VIII – Construction Procurement

- The LPA must prepare a document describing the project on which the contractors will make their bids (Bid Proposal). Unless a proposer withdraws its bid prior to the bidding deadline, it is required to perform the requirements in the Bid Proposal if it is selected.
- There are numerous elements that are required to be part of the Bid Proposal, which is to be drafted by the LPA and must be approved by KYTC before advertisement.
- LPAs awarding contracts on federally-funded projects must allow Disadvantaged Business Enterprises (DBEs) to participate in the project.
- At least 21 days before the contract letting date, the LPA is required to make the project plans and specifications available to the public. In rare cases, a reduced advertisement period may be acceptable for certain project types not within the right-of-way of a public highway. For all projects, the LPA must provide adequate notice to the public that the plans and specifications are available. This may include posting notice in a newspaper or on the internet, either on the LPA’s website or on KYTC’s website. No advertisement may be posted without approval from the Administering Office.
- **The LPA must submit the EE, the Bid Proposal, the design plans as approved by the District LPA Coordinator and the state historic preservation coordinator, if applicable; the inspection plan, the bid advertisement, the LDRC, and the LPA-PDC (collectively, the “Construction Procurement Packet”) to the Administering Office in order to obtain the required authorization from KYTC and FHWA prior to advertising the project for bid.**
- Once the LPA receives written approval of its Construction Procurement Packet from KYTC and FHWA it may post its advertisement and begin making its Bid Proposal and the design plans and specifications available to potential bidders.
- For smaller construction projects (less than \$40,000), not located on the national highway system, the LPA may, with pre-approval from its Administering Office, obtain quotes from contractors rather than posting a Bid Proposal. The construction project may not be artificially divided so as to constitute a small purchase.
- **KYTC must approve award of a construction project in advance.**
- If the LPA wishes to use its own employees to construct the project, it must submit a request to its Administering Office showing that this is the most cost effective option. This request must also identify and describe the project and the kind of work to be performed, the estimated costs, and an estimate of the federal funds to be provided.

Chapter IX – Construction and Inspection

- Prime contractors may use subcontractors for components of project construction.
 - Subcontractors must be prequalified with KYTC for the type of work they are to perform.
 - Prior to the contractor using a subcontractor on any phase of project construction, it must request approval of that subcontractor in writing from the Administering Office.
 - Any prime contractor must perform at least 30% of the construction work and must perform more than any single subcontractor.
- There are required signs that must be posted at all construction sites.

- The LPA must inspect the contractor’s work on the project pursuant to their inspection plan. The inspector must be on the project’s job site at any time construction work is being completed. The inspector must create daily work reports (Inspection Reports).
- In the Inspection Reports, the inspector must verify that any DBEs working on the project are performing a commercially useful function for the payments to them to count towards the DBE goal. The project inspector is also responsible for materials testing.
- The inspector will determine for the LPA when construction phases are completed and progress payments are due. The LPA is required to promptly pay the contractor for work completed.
- The contract between the LPA and the contractor must prohibit withholding retainage. The LPA is permitted to include a bid item for demobilization, up to 1.5 % of the total project price, to compensate the contractor after it has finished removing all equipment from the project site, cleaning up the project site, and completing the Punch List.
- Sometimes unexpected things happen or are discovered during construction of a project that require a change in the project plans. If this occurs, the LPA must submit a formal request for “change order” approval to its Administering Office, including documentation clearly justifying the change. The Administering Office will review the change order to ensure that the change is truly unforeseen, within the original scope of the project, in accordance with all construction and design requirements, and that the redistribution of the allocated funds is acceptable. The Administering Office will then route the request for the appropriate KYTC approvals. **No work may be done on the change order until KYTC provides the LPA with written approval. The LPA must not assume that additional funds will be allocated above the amount of the project award. Cost overruns are the LPA’s responsibility.**
- When the construction work is complete, the LPA must notify the Administering Office that the project is ready for final inspection. After field visit and the completion of any Punch List items, KYTC will complete a Formal Acceptance Report (Acceptance Report). Upon receipt of the Acceptance Report, the LPA may issue the Final Release Letter (“Release”) for the contractor’s signature (including a list of final quantities and work). The LPA cannot issue the final payment to the contractor without a signed release from the contractor.

Chapter X – Reimbursement

- All LPA projects operate on a reimbursement basis. The LPA must pay project expenses up front and then submit a request for reimbursement to the Administering Office on the appropriate reimbursement request form.
- The LPA must submit invoices for reimbursement payments every 90 days (at a minimum) until its project is completed and final reimbursement payment is made to LPA (and the project is closed by KYTC). Monthly invoicing is recommended. If an invoice is not submitted within any 90 day period, an explanation must be provided.
- Projects with no expenditures processed for reimbursement are subject to being added to the Federal “Inactive Project” project list and the federal funding is subject to being de-obligated by FHWA.
- Reimbursement requests must be appropriately supported with legible, detailed vendor invoices and receipts that include a detailed description and/or location for the work performed, printed name and approval signature, date, cancelled checks (front and back)

proving the LPA has paid the vendors, and any other supporting documents, as appropriate, to explain expenditures submitted for reimbursement.

- Indirect costs (such as overhead) are not eligible for reimbursement unless the LPA has an approved Cost Allocation Plan. Administrative duties are not eligible for reimbursement.
- If the LPA is seeking reimbursement for employee time and equipment usage for construction force account expenditures (which must be pre-approved by its Administering Office), the LPA must provide appropriate documentation.
- Supporting documentation must demonstrate that the DBE goal (discussed in **Chapter VIII**) is being met and that DBEs employed on the project are being promptly paid. If the DBE requirements are not being met, the LPA's reimbursement payment will not be made.
- If the project is being constructed through a non-reimbursement program, prime contractors must be paid by the LPA within 7 days of the date the LPA receives the funds from KYTC. The LPA must also ensure that all subcontractors are being promptly paid in accordance with statute. For both non-reimbursement and reimbursement programs subcontractors must be paid within 7 days from the date the prime contractor receives its payment from the LPA. In no instance shall the subcontractors wait more than 30 days from the time they satisfactorily provided their services or items to receive payment.

Chapter XI – Project Completion (Project Closing, Audits, and Record Retention)

- When the project is completed, the LPA must submit a completed Project Closure Form. The LPA will not receive its final reimbursement payment until these documents are received. The Administering Office will use these documents and pictures to close the project with FHWA. If any funds remain, they will be re-encumbered to the respective program's funds.
- For infrastructure projects, the LPA is responsible for maintaining their Federal-aid project facilities (as agreed to in the project MOA) on a non-profit basis. The cost of future maintenance for a project will be the sole responsibility of the LPA. As mentioned in **Chapter I**, all arrangements for funding long-term maintenance should be included in the MOA between the LPA and KYTC.
- LPAs are required to retain all records relating to their federally-funded projects for three years following formal project acceptance and closure by KYTC. Copies or electronic versions of the documents are acceptable.
- LPA projects are subject to audit by KYTC, the Kentucky Auditor of Public Accounts, and FHWA.
- KYTC, FHWA, and the LPA must at all times comply with OMB Super Circular 2 CFR 200.

The KYTC is here to help LPAs deliver Federal-aid transportation projects. The requirements and processes are extensive, but taken one-by-one are very manageable, as scores of successful LPA projects demonstrate.