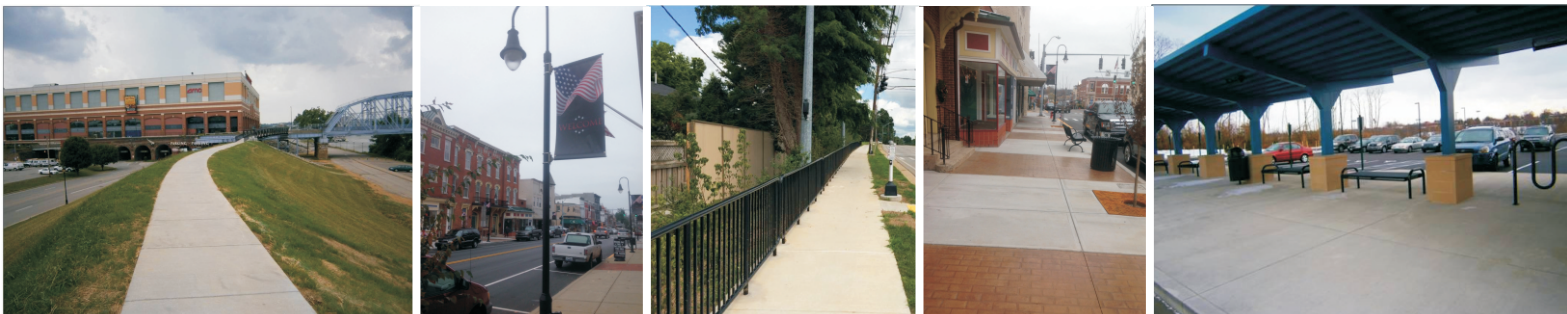


# LPA Project Guide

Federal-Aid Highway Program  
Project Development Guide for Local Public Agencies



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## 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.

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APPENDIX A: Explanation of Acronyms

## I. INTRODUCTION

The Federal Highway Administration (FHWA) and the Kentucky Transportation Cabinet (KYTC) share a responsibility to develop and maintain a safe and efficient transportation system while following all applicable federal and state legislation and regulations. When a Local Public Agency (LPA) receives an award of Federal funds for a project, it too shares in that responsibility.

The purpose of this LPA Guide is to briefly explain to local public agencies the requirements and processes for developing Federal-aid projects in compliance with applicable legislation and regulations.

Before any LPA submits an application for transportation funding, the LPA should consider in its project financial analysis that KYTC-funded projects are reimbursement projects; this is not a grant program. The LPA must have available local funding means to pay project invoices up front, and then submit an invoice to KYTC requesting reimbursement of eligible project expenditures.

An explanation of acronyms and a glossary are provided in **Appendix A**. All referenced attachments are provided at the end of each chapter.

### **I.1. How to use the LPA Guide**

Throughout the guide there are references made to specific laws, regulations, policies and other guidance. The LPA should explore all referenced resources to become familiar with the requirements for the development and administration of its project. This guide is not the final authority on these matters and the LPA's are responsible for following all applicable legislation and regulations whether or not they are included in this guide.

### **I.2. Key Understandings and First Steps**

This section outlines critical items the LPA must understand before beginning its project, explains how project funding is “authorized,” and explains how project agreements are executed.

*FHWA's "Federal-Aid Essentials for LPAs"  
website:*

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

### **Funding Sources and Administering Offices (Contact**

**Information):** **Table 1.1** illustrates the various FHWA Federal-aid project types and important corresponding information. Each project type has specific eligibility requirements. Additionally, there may be Federal Transit Administration funds available for projects involving public transit. If the LPA needs assistance in determining which funding type is appropriate for its project, it should contact the KYTC Division of Program Management.

How a project is funded dictates the KYTC Administering Office. The Administering Office is the LPAs primary point of contact; the LPA will work closely with its Administering Office over the life of the LPA project.

For OLP-Administered projects, OLP is responsible for the following project activities:

- Pre-Application
- Application
- Environmental (including Section 106)
- Programming
- KYTC Memorandum of Agreement
- Acquisition
- Procurement of Professional Services
- Procurement of Construction Contractors/Subcontractors for Projects requiring Section 106 Compliance
- Preliminary & Final Plan & Spec. Review & Approval (Section 106 Compliance to be reviewed by OLP)
- Financial Reconciliation & Reimbursement

While the relevant Highway District is responsible for:

- Plan/Spec/Checklist Review & Approval (Section 106 Compliance to be reviewed by OLP)
- Plan/Spec/Checklist Review & Approval for ADA compliance
- Procurement of Construction Contractors/Subcontractors
- Construction Monitoring & Inspection
- Invoice & Materials Verification (Construction projects)

And, OLP and the District share the responsibility for:

- Site Inspection
- Project Closure

OLP and the Districts use this delineation of duties as a guide to work together to deliver OLP-Administered projects. It is not all encompassing or rigid. Teamwork and communication are key. The Administering Office is always the primary point of contact for any LPA project.

**Table 1.1 – Funding Sources and KYTC Administering Offices**

Project Type (Source of Funding)	KYTC Administering Office	Local Match Required? (generally 20% of total, which is 25% of Federal award)	Project cost should include KYTC Direct Cost? (generally 10% of total)	Application Based?
Surface Transportation Program (STP)	KYTC Division of Program Management (502) 564-3388	Yes	Yes	No
National Highway System (NHS)	KYTC Division of Program Management (502) 564-3388	Yes	Yes	No
Planning (PL)	KYTC Division of Planning (502) 564-7183	Yes	No	No
Surface Transportation dedicated for Louisville (SLO)	Infrastructure: KYTC Highway District 5 (502) 210-5400	Yes	Yes	Yes, for the applicable area
	Non-Infrastructure: Division of Planning (502) 564-7183			
Surface Transportation dedicated for Lexington (SLX)	Infrastructure: KYTC Highway District 7 (859) 246-2355	Yes	Yes	Yes, for the applicable area
	Non-Infrastructure: Division of Planning (502) 564-7183			
Surface Transportation dedicated for Northern Kentucky (SNK)	Infrastructure: KYTC Highway District 6 (859) 341-2700	Yes	Yes	Yes, for the applicable area
	Non-Infrastructure: Division of Planning (502) 564-7183			
Surface Transportation dedicated for Henderson (SHN)	Infrastructure: KYTC Highway District 2 (270) 824-7080	Yes	Yes	Yes, for the applicable area
	Non-Infrastructure: Division of Planning (502) 564-7183			
Transportation Alternatives Program (TAP)	KYTC Office of Local Programs (502) 564-2060	Yes	Yes - TMAs dedicated TAP No - Statewide TAP	Yes
Congestion Mitigation and Air Quality (CMAQ)	KYTC Office of Local Programs (502) 564-2060	Yes	No	Yes
Earmarks (HPP, IMD, PLH, Delta Region, etc.)	KYTC Division of Program Management (502) 564-3388	Varies	Yes	Sometimes
Ferry Boat Earmarks	KYTC Division of Planning (502) 564-7183	Varies	Yes	No
Bridge Replacement (BRX or BRZ)	KYTC Division of Program Management (502) 564-3388	Yes	Yes	No
Highway Safety Improvement Program (HSIP)	KYTC Division of Traffic (502) 564-3020	Yes	Yes	Sometimes
Highway Safety (NHTSA)	KYTC Division of Highway (502) 564-1438	Yes	Yes	No
Recreation Trails Program (RTP)	Department of Local Government (502) 573 2382	Yes 50% for non-motorized 20% for motorized	No	Yes

Note: Recreational Trail projects must follow 23 CFR, but this is a unique Federal program with some exceptions to the rules and procedures outlined in this LPA Guide. LPAs should work closely with Jodie Williams, Department for Local Government, to deliver Recreational Trail projects in accordance with Federal and state regulations.

**Reimbursement Program:** Federal LPA programs do not provide up-front grant money. These are reimbursement programs. The LPA must pay for the project costs up-front (after receiving a written notice to proceed from KYTC) and then provide proper documentation for reimbursement from KYTC.

There are many requirements to using federal funds. These provisions include environmental, design, procurement, construction, reporting, inspection, and maintenance requirements. If the LPA fails to follow these requirements it will be at risk of not being reimbursed for project costs or having to return funds to FHWA.

**How to Receive Project Funding:** For LPAs that do not yet have a project, this sub-section provides some limited information on how to secure project funding.

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, as shown in **Table I.1**.

The KYTC Office of Local Programs (OLP) is the Administering Office for the majority of application-based projects. For these projects, when federal funds are available, 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 will vary between application cycles. LPAs may contact the KYTC Office of Local Programs for additional information about application cycles and requirements.

The LPA must not begin work upon selection announcements; the LPA must wait until funding is obligated through FHWA and the Memorandum of Agreement (MOA) is in place, as discussed below.

Some funding types (planning or dedicated STP for example) follow a different application process. For those projects that are not administered by OLP, the LPA should contact the KYTC Division of Planning for information regarding how to request project funding.

**Required Checklists (LDRC and LPA-PDC):** The Local Public Agency Project Development Checklist (LPA-PDC), which is referenced throughout this Guide, is required to be completed to obtain FHWA project approval/authorization of construction funds (except questions 11 and 12 of the construction procurement section, which should be completed as soon as applicable). This Guide and the LPA-PDC are organized chronologically whenever possible and are designed to help the LPAs navigate the project development process. LPA projects vary widely and, therefore, not all portions of the guide or the LPA-PDC will apply to each project. The criteria for determining whether a particular section applies to a particular project are stated at the beginning of each section. Often the applicability of a section depends on whether or not a project is an infrastructure project. Infrastructure projects are those that involve any ground disturbance or that involve an existing structure. Examples include but are not limited to sidewalks, streetscape projects, installing signs, restoration of historic buildings, ADA ramps, pavement striping, bicycle accommodations and any major construction project. Non-infrastructure projects are those that do not involve ground disturbance or structures. Examples include, but are not limited to, creating and distributing educational pamphlets, planning studies



and activities, rideshare programs, purchasing vehicles for any number of reasons, and promotional or educational events.

The Local Public Agency Design Review Checklist (LDRC) accompanies the LPA-PDC. It is intended to assist in development of design plans for projects which conform to FHWA Federal-aid regulations, policies, and guidance for Local Public Agency (LPA) infrastructure projects.

The LDRC must be completed by the LPA’s professional engineer or design consultant and submitted to the appropriate KYTC Administering Office with the complete Plans, Specifications, and Estimate (PS&E) package for review and concurrence prior to advertisement for construction bids. The completed LDRC will indicate the design documents for this project have been prepared in accordance with the current version of KYTC LPA guidance documents, the MOA, and all applicable state and federal laws, regulations, policies and specifications. Concurrence with the PS&E package, LPA-PDC and the LDRC by the KYTC is required prior to advertisement for construction bids. The LPA-PDC and LDRC can be found at the following link and a copy of each is provided at the end of this chapter:

<http://transportation.ky.gov/Local-Programs/Pages/Forms,%20Templates,%20and%20Examples.aspx>

**Project Budget:** Every project must have a budget. It is very important that LPAs develop adequate project budgets to cover all foreseeable costs, including allowances for contingencies. All projects require significant project performance monitoring and oversight. If the LPA project requires KYTC direct costs for oversight, as outlined in **Table I.1.**, the LPA must allow 10% of its total budget for these oversight services. No additional funds will be allocated for the project, so the LPA must monitor project expenditures closely to ensure that the project stays within budget. It is the LPAs responsibility to complete the project as defined in the MOA. Additional funds needed to cover cost overruns will be the responsibility of the LPA. Lastly, Federal LPA program awards must be thought of as an award of a defined project. They must not be thought of as an award of a certain sum of money. The LPA is not entitled to any funds which may remain once the project has been completed.

Indirect costs (such as overhead) are not eligible for reimbursement unless the LPA has an approved Cost Allocation Plan.<sup>1</sup> For information regarding what indirect costs are eligible for reimbursement and the requirements for a Cost Allocation Plan please see the OMB Super Circular 2 CFR 200:

[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)

If the LPA wishes to include indirect costs in its budget, it must obtain KYTC approval including approval of its Cost Allocation Plan.

**Time spent on administrative duties is not eligible for reimbursement.**

**Schedule:** Once a project is announced, the LPA should work closely with its Administering Office to establish funding authorization and an agreement in a timely manner.

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<sup>1</sup> OMB Circular A-87 (as revised); FHWA Memorandum: “Indirect Costs Eligibility and other TEA-21 Revisions to Title 23 USC § 302,” September 24, 1998.

Federal LPA projects do not provide fast money. Due to federal requirements, it is possible that an LPA project will take longer than some may expect. The time the project takes can be limited by diligence, communication, and attention on the part of the LPA.

LPAs will be required to have a project schedule. LPAs and their Administering Offices must discuss the period of performance start and end date for each project.<sup>2</sup> The project end date is included in the Project Agreement. If a project is behind schedule and goes beyond its performance end date, project funding could be jeopardized and expenditures will not be eligible for reimbursement after the “Project End Date”.

**Matching Requirements:** Federal LPA programs do not provide free or effortless money. As shown in **Table I.1.**, with most federal programs there is a matching requirement. For the majority of Federal-aid projects, FHWA will provide 80 percent of project costs and the LPA must participate in 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, but certain in-kind contributions can be used instead. All in-kind contributions must be pre-approved by KYTC. The LPA must provide documentation of any in-kind contributions with its request for reimbursement, as discussed in **Chapter XI**. Without this documentation, KYTC will automatically withhold the matching percentage from the LPA’s reimbursement payments. The amount of matching funds actually spent will be included in the Project Closure Form discussed in **Chapter XII**.

If real property is to be included in the LPA’s matching requirements, it must be appraised by a prequalified KYTC appraiser.<sup>3</sup> If the property was purchased or donated specifically for the project, it must have been acquired in compliance with the Right of Way (ROW) requirements discussed in **Chapter VI**.

If the LPA’s employees’ time and equipment usage for construction force account expenditures are to be included in the LPA’s matching requirements, the LPA must provide appropriate documentation. Employees of the LPA must record daily only that time worked and those equipment hours used specifically for the individual project. Employees must sign the daily time and equipment record and their supervisor must approve it. Force account labor is discussed further in **Chapter VIII**.

**Locally-Funded Design:** LPAs may choose to fund the design phase of their project with local funds. Doing so does not lessen or change the requirements of the Federal-aid project. In these cases, if the LPA wishes to use the local design investment as match to future federally-funded phases, it must have a federal authorization in place before any expenditures may be considered as eligible for match. For projects in MPO areas, the local design costs must be programmed in the MPO TIP and 10% of the design costs should be programmed with Federal dollars for KYTC oversight. To explore this option, the LPA should contact its Administering Office who will work with KYTC Program Management.

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<sup>2</sup> 2 CFR 200.210.

<sup>3</sup> 2 CFR 200.306. The process for hiring an appraiser is discussed in Sections III and V.

**Fund Allocation:** For federal funds to be used they must first be “programmed”. This means that they are allocated to the project budget and made available for use. The Administering Office works with the KYTC Division of Program Management to “program” funds for awarded projects.

All LPA projects must be programmed in the Statewide Transportation Improvement Program (STIP).<sup>4</sup> 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).<sup>5</sup>

The LPA must receive a written notice to proceed (and confirm that the funding and MOA are in place) prior to making any expenditures. Some projects’ funding will be programmed in phases. For example, the money allocated for the design phase may be available at a different time than the money allocated for the construction phase. For these projects, the LPA must confirm that the funds have been programmed and ensure that they receive a written notice to proceed from the Administering Office prior to starting each new phase of the project (design, right-of-way, utilities, and construction).

**Project Agreement:** The LPA and KYTC must enter into an MOA which will govern their relationship and dictate each party’s duties to the other. There is standard MOA language that will apply to all projects, but MOAs vary depending on project type and funding. As part of the MOA the LPA must certify that it has read and understood this Guide and that it will comply with all applicable federal and state legislation and regulations. The MOA will also describe the scope of the project; clearly define measurable project objectives; include the project schedule and budget. The LPA must pass a resolution that it will enter the MOA and ensure the project complies with applicable state and federal laws. The resolution will be included in the MOA and an example can be found here:

<http://transportation.ky.gov/Local-Programs/Documents/Resolution%20Authorizing%20LPA%20to%20Enter%20into%20a%20MOA.pdf>

If the project scope or phase costs change, a new resolution is required for each phase (when the supplemental MOA is prepared for that phase).

Infrastructure project MOAs will also include a maintenance plan. All arrangements for funding long term maintenance should be included in the MOA between the LPA and KYTC.

KYTC will draft the MOA and provide it to the LPA to sign. Once the funds are allocated, the MOA is approved and signed (fully executed) and the LPA has received a written notice to proceed from its Administering Office, the LPA may begin work on the project. Any amount the LPA spends on the project before receiving the notice to proceed will not be reimbursed.<sup>6</sup>

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<sup>4</sup> 23 USC § 135; 23 CFR § 450.216.

<sup>5</sup> 23 USC § 135; 23 CFR §§ 450.216, 450.322 and 450.324, 23 CFR § 450.104.

<sup>6</sup> 23 CFR § 630.106(a)(1).

**Responsible Charge:** The LPA must provide a full-time employee of the agency to be the “employee in responsible charge” of its Federal-aid project. “This person should be expected to be able to perform the following duties and functions:

- Administers inherently governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
- Maintains familiarity of day to day project operations, including project safety issues;
- Makes or participates in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visits and reviews the project on a frequency that is commensurate with the magnitude and complexity of the project;
- Reviews financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse; and
- Directs project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation.
- Is aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.”<sup>7</sup>

*FHWA Video on “Responsible Charge”:*

*<http://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=15>*

**Stewardship Agreement:** KYTC is here to help the LPAs as they navigate the LPA process, but it is only able to allow LPAs as much flexibility as the Kentucky Federal-aid Highway Program Stewardship Plan (Stewardship Plan) and the federal and state legislation and regulations allow.<sup>8</sup>

**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.**

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<sup>7</sup> <http://www.fhwa.dot.gov/federalaid/110804.cfm>

<sup>8</sup> This document outlines KYTC’s duties in administering the Federal LPA programs. The LPA may request a copy of the current agreement (May 2015) from its Administering Office.

**CHAPTER I ATTACHMENTS**

*Attachment 1 – Project Development Checklist (LPA-PDC)*

*Attachment 2 – Design Review Checklist (LDRC)*

*Attachment 3 – Sample Resolution*

**Kentucky Transportation Cabinet (KYTC) / Federal Highway Administration (FHWA)**  
**Local Public Agency Project Development Checklist (LPA-PDC)**  
Revised April 5, 2011

***Project Information***

**KYTC Item No. (If applicable) :**

**Federal Project No.:**

**Local Public Agency:**

**KYTC Administering Office:**

**County:**

**Route (If applicable) :**

**Description:**

**Contract ID No. :**

**Advertisement for Bids Date:**

**Letting Date:**

***Introduction***

This Local Public Agency Project Development Checklist (LPA-PDC) is intended to assist in development of projects which conform to FHWA Federal-aid regulations, policies, and guidance for infrastructure projects.

**State Administered Local Public Agency (LPA) Federal-aid Projects:**

The LPA-PDC should be completed by the LPA, signed by an authorized agent of the LPA, and submitted to the appropriate KYTC Administering Office with the complete Plans, Specifications, and Estimate (PS&E) package for review and concurrence prior to advertisement for construction bids. The completed LPA-PDC will indicate the contract documents for this project have been prepared in accordance with the current version of KYTC LPA guidance documents, the KYTC/LPA Project Agreement, and all applicable Federal-aid laws, regulations, and policies. **Concurrence with the PS&E package and LPA-PDC by the KYTC is required prior to advertisement for construction bids.**

The LPA-PDC is composed of a series of yes/no questions in categories including Planning, Environmental, Right-of-Way & Utilities, Plans & Specifications, Proposal, and Estimate. **Answer all questions by checking 'Yes', 'No', or 'N/A' and provide support information.** If additional documentation or comments are needed to address a question or satisfy a requirement, please note accordingly in the 'Comments' column and provide attachments as necessary.

Notations in parentheses provide reference information to source documents such as Title 23 Code of Federal Regulations (CFR) ([www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html)) or other various guidance documents.

**Notes:**

1. See the current version of the KYTC/FHWA Stewardship Plan (<http://transportation.ky.gov/stewardshipPlan.pdf>) for authority, role, and responsibility delegations of program and project activities in implementing the Federal-aid Highway Program.
2. The LPA-PDC is not an all inclusive list as it does not address all Federal-aid requirements and regulations. However, the LPA-PDC does account for several major Federal-aid requirements and provides references to source documents for further review.





**Environmental Requirements**

Checklist Item	Yes	No	N/A	Comments
<p>1. <b>Has KYTC received all Clearinghouse Documentation?</b> Date received by KYTC Administering Office: _____</p>	<input type="checkbox"/>	<input type="checkbox"/>		
<p>2. <b>Has the environmental documentation for the project been approved? Please check the type of environmental documentation below. (23 CFR 771)</b>  <input type="checkbox"/> <b>Categorical Exclusion Minor (CE-M)</b> Date Approved: _____  <input type="checkbox"/> <b>Categorical Exclusion Level 1 (CE-1)</b> Date Approved: _____  <input type="checkbox"/> <b>Categorical Exclusion Level 2 (CE-2)</b> Date Approved: _____  <input type="checkbox"/> <b>Categorical Exclusion Level 3 (CE-3)</b> Date Approved: _____  <input type="checkbox"/> <b>Environmental Assessment / FONSI</b> Date FONSI Approved: _____  <input type="checkbox"/> <b>Environmental Impact Statement / ROD</b> Date ROD Approved: _____</p>	<input type="checkbox"/>	<input type="checkbox"/>		
<p>3. <b>Is a re-assessment or re-evaluation of the environmental document needed? (23 CFR 771.129)</b> Date of most recent re-assessment/re-evaluation: _____</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>4. <b>Have environmental commitments been incorporated into the final design and contract documents, in any of the following areas? If Yes, please check Y or N below for each type of project commitment or N/A if not applicable.</b></p> <p><b>Historic Preservation</b> (36 CFR 800, 16 USC § 470f) <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p><b>Stream/Wetland Mitigation</b> (23 CFR 777) <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p><b>Noise Abatement</b> (23 CFR 772) <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p><b>Section 4f</b> (23 CFR 774, 23 USC § 138, 49 USC § 303) <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p><b>Endangered Species Act</b> (50 CFR 402.12(c)) <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p><b>Other:</b> _____ <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p>				

5.	Have all applicable environmental permits for the project been secured? If not, please explain.	<input type="checkbox"/>	<input type="checkbox"/>		
	Please check yes or no to indicate if the permit has been obtained and N/A if it is not required.				
	Section 401 – Water Quality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Kentucky Pollutant Discharge Elimination System (KPDES) Individual Storm Water Discharge Permit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Section 404 – USACE Individual Stream Permit (23 CFR 777)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Section 404 – USACE Individual Wetlands Permit (23 CFR 777)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Section 404 – USACE Nationwide Permit (23 CFR 777)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Coast Guard (23 CFR 650 Subpart H) Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

**Right-of-Way & Utilities**

**Note: Only Question #1 applies to Non-infrastructure Projects**

Checklist Item	Yes	No	N/A	Comments
1. Right-of-Way Certification Date Approved: _____ <i>Provide a copy of the Right-of-Way Certification with the LPA-PDC</i> Has <u>all</u> Right-of-Way for the project been secured?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2. Have <u>all</u> displaced persons been relocated to decent, safe, and sanitary housing per the requirements outlined in the Uniform Act? If 'No', please provide a detailed explanation and attach to the LPA-PDC. (23 CFR 635.309)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3. Have all Encroachment Permits been obtained for projects that will be constructed on KYTC Right-of-Way? Date Approved: _____ <i>Provide a copy of the Encroachment Permit with the LPA-PDC</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

4.	Are any utilities located within the project area?	<input type="checkbox"/>	<input type="checkbox"/>	
	If yes, have all Utility Agreements/No Impact Letters been approved?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	<b>What do the Utility Impact Notes indicate?</b> <input type="checkbox"/> No utilities remain located in the project area at the time of the letting <input type="checkbox"/> Utilities will be moved during construction by other than a contractor <input type="checkbox"/> Utilities will be moved during construction by a contractor <input type="checkbox"/> Utilities will remain in project area and must be avoided by Contractor  <i>Provide a copy of the Utility Impact Notes with the LPA-PDC</i>			
6.	Is the project located on or adjacent to or require the adjustment of railroad facilities or property?	<input type="checkbox"/>	<input type="checkbox"/>	
	If yes, has the railroad agreement been approved?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Non Construction Procurement (Purchasing)**

***Note: This Section only applies to Non-Infrastructure Projects.***

Checklist Item		Yes	No	N/A	Comments
1.	<b>What method of procurement will be used?</b> <input type="checkbox"/> Competitive Bidding RFB approved by KYTC _____ <input type="checkbox"/> Competitive Negotiation KYTC approval _____ RFP approval by KYTC _____ <input type="checkbox"/> Small Purchases Procedure KYTC approval _____ <input type="checkbox"/> Printing <input type="checkbox"/> Other KYTC approval _____				
2.	<b>Purchasing procedure chosen was followed and Purchase Contract drafted</b> KYTC approval _____	<input type="checkbox"/>	<input type="checkbox"/>		

**Design, Plans, & Specifications**

**Note: This Section only applies to Infrastructure Projects.**

Checklist Item		Yes	No	N/A	Comments
1.	Have <u>all</u> commitments and promises from previous reviews, meetings, and consultation with the public and external agencies been satisfactorily communicated in the design plans?	<input type="checkbox"/>	<input type="checkbox"/>		
2.	Have the design plans and LPA Design Review Checklist (LDRC) been signed by the LPA's Professional Engineer or Design Consultant?  Have plans and LDRC been submitted to District LPA Coordinator?  Date approved by District LPA Coordinator _____	<input type="checkbox"/>  <input type="checkbox"/>	<input type="checkbox"/>  <input type="checkbox"/>		
3.	Is the project in a historic district?  If yes, have the plans and LDRC been submitted to the KYTC State Historic Preservation Coordinator for review?  Date approved by KYTC State Historic Preservation Coordinator _____	<input type="checkbox"/>  <input type="checkbox"/>	<input type="checkbox"/>  <input type="checkbox"/>		
4.	Are any materials (excluding those supplied by a utility company for utility relocation) to be supplied by a public agency or through a non-competitive bid process? (23 CFR 635.407) Public Interest Finding approved by KYTC Date Approved: _____ Public Interest Finding approved by FHWA (if applicable per current KYTC/FHWA Stewardship Plan) Date Approved: _____	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>		
5.	Are patented or proprietary materials shown in the plans or specifications? (23 CFR 635.411) Use of Material Approved by KYTC Date Approved: _____ Use of Material Approved by FHWA (if applicable per current KYTC/FHWA Stewardship Plan) Date Approved: _____	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>		

**Construction Procurement**

**Note: This Section only applies to Infrastructure Projects.**

Checklist Item		Yes	No	N/A	Comments
1.	Has an official Engineer's Estimate been developed based upon all bid items included in the contract documents?	<input type="checkbox"/>	<input type="checkbox"/>		
2.	Is the remaining amount of funding consistent with the estimated cost of the construction phase?	<input type="checkbox"/>	<input type="checkbox"/>		
3.	Does the Bid Proposal contain: <input type="checkbox"/> Form FHWA-1273 language? (23 CFR 633.102) <input type="checkbox"/> Equal Employment Opportunity language and special provisions? (23 USC § 12101, et seq., 28 CFR 35, 29 CFR 1630, 41 CFR 60 and orders from the Secretary of Labor? <input type="checkbox"/> Does the Bid Proposal contain minimum wage rates required by federal and state law? (23 CFR 635.117 & KRS § 337.505 – 337.550)	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	 <input type="checkbox"/> <input type="checkbox"/>	
4.	Does the Bid Proposal contain a Disadvantage Business Enterprise (DBE) goal? (23 CFR 635.107 & 49 CFR 26) DBE Goal _____ Obtained on _____	<input type="checkbox"/>	<input type="checkbox"/>		
5.	Does the Bid Proposal contain the required non-collusion provision? (23 CFR 635.112 (f))	<input type="checkbox"/>	<input type="checkbox"/>		
6.	Does the Bid Proposal incorporate by reference the most current version of the <u>Standard Specifications for Roadway &amp; Bridge Construction</u> book?	<input type="checkbox"/>	<input type="checkbox"/>		
7.	Does the Bid Proposal contain the contract times and dates and any special scheduling provisions? (23 CFR 635.121)  Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> Completion Date: _____ Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> Work Days: _____ Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> Calendar Days: _____	<input type="checkbox"/>	<input type="checkbox"/>		
8.	Who will perform the construction inspection services for the project? <input type="checkbox"/> LPA to perform inspection? <input type="checkbox"/> Consultant, hired pursuant to Professional Services Procurement procedures, to perform the inspection?				
9.	Will the LPA use the small construction procurement process?  KYTC Approval _____	<input type="checkbox"/>	<input type="checkbox"/>		



13.	<b>Have the Construction Contract Documents been submitted to KYTC for approval?</b>	<input type="checkbox"/>	<input type="checkbox"/>		
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**Signatures and Concurrence**

**State Administered Local Public Agency (LPA) Federal-aid Project:** The information provided on this Project Development Checklist is complete/accurate and the contract documents for this project have been prepared in accordance with the KYTC LPA Guide and the KYTC/LPA Project Agreement No.: \_\_\_\_\_ Signed & Dated: \_\_\_\_\_.

The contract documents conform to all Federal-aid laws, regulations, and policies and the eligibility requirements for the type of Federal-aid funds requested for this project have been satisfied.

Local Public Agency (Name): \_\_\_\_\_

Signed: \_\_\_\_\_ Print: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Kentucky Transportation Cabinet (KYTC) Concurrence:**

Signed: \_\_\_\_\_ Print: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Once FHWA has authorized Federal-aid funds for the project and the project sponsor has received notification from KYTC of this authorization as well as concurrence from KYTC with the PS&E package and this LPA-PDC, the project sponsor may advertise the project for construction bids. A project must be advertised for construction bids for a minimum of 21 calendar days prior to opening bids and letting the contract. As a recipient of Federal-aid funds, the project sponsor is responsible for advertising and administering the construction of the project in accordance with all applicable Federal-aid laws and regulations.**



Referenced in the Design Plans and Specifications Section of the LPA Guide.

Kentucky Transportation Cabinet (KYTC) / Federal Highway Administration (FHWA)  
**Local Public Agency Design Review Checklist (LDRC)**

Revised April 1, 2011

***Project Information***

**KYTC Item No. (If applicable) :**

**Federal Project No.:**

**Local Public Agency:**

**KYTC Administering Office:**

**County:**

**Route (If applicable) :**

**Description:**

**Contract ID No. :**

**Advertisement for Bids Date:**

**Letting Date:**

***Introduction***

This Local Public Agency Design Review Checklist (LDRC) is intended to assist in development of design plans for projects which conform to FHWA Federal-aid regulations, policies, and guidance for Local Public Agency (LPA) infrastructure projects.

The LDRC will accompany the Local Public Agency Infrastructure Project Development Checklist (LPA-PDC) and should be completed by the LPA's professional engineer or design consultant and submitted to the appropriate KYTC Administering Office with the complete Plans, Specifications, and Estimate (PS&E) package for review and concurrence prior to advertisement for construction bids. The completed LDRC will indicate the design documents for this project have been prepared in accordance with the current version of KYTC LPA guidance documents, the KYTC/LPA Project Agreement, and all applicable state and federal laws, regulations, policies and specifications. **Concurrence with the PS&E package, LPA-PDC and the LDRC by the KYTC is required prior to advertisement for construction bids.**

The LDRC is composed of a series of yes/no questions in category of design including Plans & Specifications. **Answer all questions by checking 'Yes', 'No', or 'N/A' and provide support information.** If additional documentation or comments are needed to address a question or satisfy a requirement, please note accordingly in the 'Comments' column and provide attachments as necessary.

Notations in parentheses provide reference information to source documents such as Title 23 Code of Federal Regulations (CFR) ([www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html)) or other various guidance documents.

Notes:

1. See the current version of the KYTC/FHWA Stewardship Plan (<http://transportation.ky.gov/stewardshipPlan.pdf>) for authority, role, and responsibility delegations of program and project activities in implementing the Federal-aid Highway Program.

2. The LDRC is not an all inclusive list as it does not address all requirements, regulations and specifications regarding design.. However, the LDRC does account for several major federal and state requirements and provides references to source documents for further review.

<b>Design, Plans, &amp; Specifications</b>				
<b>Checklist Item</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Comments</b>
<p><b>1. Do the contract documents describe the location and design features and the construction requirements in sufficient detail to facilitate construction and the estimation of construction costs of the project?</b> (23 CFR 630.205)</p> <p><b>Do the contract documents contain the following:</b></p> <p>Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Title Sheet</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Typical Sections</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Summary of Quantities</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Plan Sheets</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Profile Sheets</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Drainage Sheets</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Cross Sections</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Traffic Control Plans</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Signing Plans</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Lighting Plans</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Traffic Signal Plans</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Special Detail Sheets</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Structure Plans</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Utility Relocation Plans</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Landscaping Plans</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Other: _____</b></p> <p><b>(Note: Contact Administering Office for applicability of sheets in plan set)</b></p>	<input type="checkbox"/>	<input type="checkbox"/>		
<p><b>2. Does the project conform to Federal-aid standards for geometric and structural design as described in Title 23 Code of Federal Regulations Part 625 Design Standards for Highways and/or all applicable KYTC policy and guidance manuals?</b> (<a href="http://transportation.ky.gov/KYTTCI-Forms/PolicyManuals.htm">http://transportation.ky.gov/KYTTCI-Forms/PolicyManuals.htm</a>)</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<p><b>3. Are any design exceptions incorporated into this project?</b> (23 CFR 625.3(f))</p> <p>Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> <b>Reviewed and Approved by KYTC</b>            Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> <b>Reviewed and Approved FHWA (if applicable per current KYTC/FHWA Stewardship Plan)</b>            Date Approved: _____</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Checklist Item	Yes	No	N/A	Comments
<b>4. Does the project involve new or revised Interstate Access?</b> <input type="checkbox"/> <b>Y</b> <input type="checkbox"/> <b>N</b> <input type="checkbox"/> <b>N/A</b> <input type="checkbox"/> <b>Interchange Justification/Modification Study Approved by FHWA</b> Date Approved: _____	<input type="checkbox"/>	<input type="checkbox"/>		
<b>5. Is the project located within two miles of an airport? (23 CFR 620.103)</b> <input type="checkbox"/> <b>Y</b> <input type="checkbox"/> <b>N</b> <input type="checkbox"/> <b>N/A</b> <input type="checkbox"/> <b>Coordinated with Kentucky Airport Zoning Permit (KAR 50.030)</b>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>6. Are Right-of-Way, easement, and control of access lines shown on the plans?</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>7. Are <u>all</u> temporary and permanent traffic control devices consistent with the current edition of the Manual on Uniform Traffic Control Devices (MUTCD)? (23 CFR 655.603)</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>8. Is a Transportation Management Plan (TMP) provided and consistent with regulations on Work Zone Safety &amp; Mobility in Title 23 Code of Federal Regulations Part 630 Subpart J and the KYTC Policy and Procedures for the Safety and Mobility of Traffic Through Work Zones?</b> <input type="checkbox"/> <b>Y</b> <input type="checkbox"/> <b>N</b> <input type="checkbox"/> <b>N/A</b> <input type="checkbox"/> <b>Project classified as "Significant"</b> <input type="checkbox"/> <b>Y</b> <input type="checkbox"/> <b>N</b> <input type="checkbox"/> <b>N/A</b> <input type="checkbox"/> <b>Public Information Plan Approved by KYTC</b> Date Approved: _____ <input type="checkbox"/> <b>Y</b> <input type="checkbox"/> <b>N</b> <input type="checkbox"/> <b>N/A</b> <input type="checkbox"/> <b>TMP Approved by KYTC</b> <input type="checkbox"/> <b>Y</b> <input type="checkbox"/> <b>N</b> <input type="checkbox"/> <b>N/A</b> <input type="checkbox"/> <b>TMP Approved by FHWA (if applicable per current KYTC/FHWA Stewardship Plan)</b> Date Approved: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>9. Are the highway clear zone and safety appurtenances in accordance with the current edition of the AASHTO Roadside Design Guide?</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>10. Are appropriate accommodations provided for bicyclists and pedestrians? (23 CFR 652)</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>11. Are pedestrian facilities and appurtenances designed in accordance with Americans with Disabilities Act requirements? (<a href="http://www.access-board.gov">www.access-board.gov</a>)</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>12. Does the project utilize the current version of the Kentucky Department of Highways (KDOH) Standard Drawings? If 'No', please provide a detailed explanation.</b>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>13. Does the project utilize the current version of the KYTC/KDOH Standard Specifications for Road and Bridge Construction? If 'No', please provide a detailed explanation and copy of KYTC written approval of alternate specifications.</b>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>14. Do contract documents include a specification and method of payment for all bid items?</b>	<input type="checkbox"/>	<input type="checkbox"/>		

Checklist Item	Yes	No	N/A	Comments
<p><b>15. Are any materials (excluding those supplied by a utility company for utility relocation) to be supplied by a public agency or through a non-competitive bid process? (23 CFR 635.407)</b>  Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> <b>Public Interest Finding Approved by KYTC</b>  Date Approved: _____  Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> <b>Public Interest Finding Approved by FHWA (if applicable per current KYTC/FHWA Stewardship Plan)</b>  Date Approved: _____</p>	<input type="checkbox"/>	<input type="checkbox"/>		
<p><b>16. Are patented or proprietary materials shown in the plans or specifications? (23 CFR 635.411)</b>  Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> <b>Use of Material Approved by KYTC</b>  Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> <b>Use of Material Approved by FHWA (if applicable per current KYTC/FHWA Stewardship Plan)</b>  Date Approved: _____</p>	<input type="checkbox"/>	<input type="checkbox"/>		
<p><b>17. Is State or local force account construction work to be utilized on this project? (23 CFR 635.204)</b>  Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> <b>Cost Effective Determination Approved by KYTC</b>  Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> <b>Cost Effective Determination Approved by FHWA (if applicable per current KYTC/FHWA Stewardship Plan)</b>  Date Approved: _____</p>	<input type="checkbox"/>	<input type="checkbox"/>		

**Signatures and Concurrence**

**State Administered Local Public Agency (LPA) Federal-aid Project:** The information provided on this LDRC is complete/accurate and the design documents for this project have been prepared in accordance with the KYTC LPA Guide and the KYTC/LPA Project Agreement No.: \_\_\_\_\_  
Signed & Dated: \_\_\_\_\_

The design documents conform to all state and federal, regulations, policies and specifications and the eligibility requirements for the type of Federal-aid funds requested for this project have been satisfied.

**Local Public Agency (Name):**

Signed: \_\_\_\_\_ Print: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Kentucky Transportation Cabinet (KYTC) Concurrence:**

Signed: \_\_\_\_\_ Print: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Once FHWA has authorized Federal-aid construction funds for the project and the project sponsor has received notification from KYTC of this authorization as well as concurrence from KYTC with the complete PS&E package, the LPA-PDC and this checklist, the project sponsor may advertise the project for construction bids. A project must be advertised for construction bids for a minimum of 21 calendar days prior to opening bids and letting the contract. As a recipient of Federal-aid funds, the project sponsor is responsible for advertising and administering the construction of the project in accordance with all applicable state and federal laws and regulations.**

**SAMPLE RESOLUTION**

**Whereas**, the federal-aid highway program locally-administered funding is in the amount of \$\_\_\_\_\_ for the \_\_\_\_\_ project and

**Whereas**, the City of \_\_\_\_\_ does hereby authorize Mayor \_\_\_\_\_ to sign the above mentioned Agreement, as well as any other necessary documents relating to the project.

or

**Whereas**, the \_\_\_\_\_ County Fiscal Court does hereby authorize COUNTY/JUDGE EXECUTIVE \_\_\_\_\_ TO SIGN THE ABOVE MENTIONED Agreement, as well as any other necessary documents relating to the project.

THE VOTE TAKEN ON SAID RESOLUTION, THE RESULT BEING AS FOLLOWS:

**MOTION CARRIED - YES NO (PLEASE CIRCLE ONE)**

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Title** \_\_\_\_\_

**Witness** \_\_\_\_\_

*WE MUST HAVE A RESOLUTION FROM THE CITY/COUNTY APPROVING THIS AGREEMENT AND INDICATING THE MAYOR'S/JUDGE'S AUTHORITY TO ENTER INTO THIS AGREEMENT FOR AND BY THE CITY/COUNTY . THE RESOLUTION SHOULD BE ADOPTED, SIGNED, AND SUBMITTED AS AN ATTACHMENT TO THIS AGREEMENT. WE WILL NOT ESTABLISH A PROJECT ACCOUNT OR EXECUTE THE AGREEMENT WITHOUT THE RESOLUTION*

## **II. INITIAL PROJECT TEAM MEETINGS**

### **II.1. Project Team Meeting #1**

After any project announcement, the LPA must work with the Administering Office to arrange an initial project team discussion. For LPAs with experience completing federal projects, these initial discussions may be handled over the phone or by email. At a minimum, the project team should discuss:

- the project scope of work, budget, and schedule;
- the status of the funding authorization and the memorandum of agreement;
- the KYTC project development process;
- how design or other professional services will be procured; and
- the level of environmental document that will be required and who will be responsible for preparing the document.

### **II.2. Project Team Meeting #2 – “Pre-Design Meeting”**

Once a design professional is selected using one of the methods outlined in **Chapter III**, a project team “kick-off” meeting must be held for every project. A face-to-face meeting is strongly encouraged. Following are recommended guidelines and topics for discussion.

- The project team should meet:
  - after funds are authorized by KYTC;
  - after the MOA is in place between KYTC and the LPA;
  - after a consultant has been hired, if applicable; and
  - before design work begins.
- The project team meeting must include:
  - The Administering Office (i.e., the KYTC project manager);
  - Other representatives of KYTC, such as the District LPA Coordinator and the District Environmental Coordinator;
  - LPA representatives, including the LPA project manager and any consultants; and
  - FHWA, if necessary, depending on the size and complexity of the project.
- It is strongly recommended that KYTC’s pre-design template be used to clearly describe the scope of work and responsibilities of all parties. The template can be found here:  
[http://transportation.ky.gov/Professional-Services/Forms/Pre-DesignConferenceMinutes%20\(rev%201-22-14\).docx](http://transportation.ky.gov/Professional-Services/Forms/Pre-DesignConferenceMinutes%20(rev%201-22-14).docx)

A copy is provided as an attachment to this chapter. The LPA (or its consultant) should bring a completed draft to the meeting for discussion.

- At a minimum, the project team should discuss:
  - Project scope, budget, and schedule;
  - Required deliverables;
  - Potential right-of-way, utility, and environmental impacts;
  - Design standards;

- Required permits;
- If a railroad is involved, the complexity and impact to schedule; and
- The need for additional project team meetings and appropriate level of coordination required.

The LPA (or its consultant) should summarize the kick-off meeting with formal meeting minutes for project team review.



**CHAPTER II ATTACHMENTS**  
*Attachment 1 – Pre-Design Conference Template*

## PRE-DESIGN CONFERENCE MINUTES

Item No.: Insert Item Number County: Insert County/Countries Route: Insert Route/Road Name  
 Consultant Name: Insert Consultant's Name Pre-Design Conference Date: Insert Date  
 Consultant Project Manager: Insert Manager's Name  
 Dept. Project Manager: Insert Manager's Name Length: Insert Length BMP/EMP: Insert BMP/EMP  
 Type of Work: Insert Type of Work Environmental Type: Choose an item.  
 Description: Insert Project Description

The consultant is to provide engineering and related services for this project for the following items (check all that apply):

- Pre-design scoping study
- Preliminary Roadway Design
- Final Roadway Design

### Scoping Studies

The type and extent of studies necessary for any given project will be defined at the Pre-design conference. The Department reserves the right to solicit other firms to complete the actual design of the project after studies are completed. The project may be split into design sections or may require the selection of another consultant to perform activities specifically identified during the study phase.

### Design Related Services

The following design related services shall be performed as checked below:

	Not Required	Department	Consultant	Statewide
Photogrammetry:	[ ]	[ ]	[ ]	[ ]
Surveying:	[ ]	[ ]	[ ]	[ ]
Environmental:	[ ]	[ ]	[ ]	[ ]
Geotechnical:	[ ]	[ ]	[ ]	[ ]
Right of Way & Utility Estimates:	[ ]	[ ]	[ ]	[ ]
Traffic Engineering Analysis: (Basic; Highway Capacity Manual)	[ ]	[ ]	[ ]	[ ]
Traffic Engineering Analysis: (Advanced; Micro-simulation)	[ ]	[ ]	[ ]	[ ]
Traffic Forecasting:	[ ]	[ ]	[ ]	[ ]
Pavement Design:	[ ]	[ ]	[ ]	[ ]
Structure Plans:	[ ]	[ ]	[ ]	[ ]
Signing Plans:	[ ]	[ ]	[ ]	[ ]
Signal Plans:	[ ]	[ ]	[ ]	[ ]
Lighting Plans:	[ ]	[ ]	[ ]	[ ]
Landscaping Plans:	[ ]	[ ]	[ ]	[ ]
Utility Design:	[ ]	[ ]	[ ]	[ ]
Utility Coordination:	[ ]	[ ]	[ ]	[ ]
Right of Way Coordination:	[ ]	[ ]	[ ]	[ ]

Unless otherwise specified in the Pre-design Conference Minutes, the Department shall provide:

- (1) All existing and projected traffic counts, including intersection turning movements.
- (2) The project's photogrammetry will be provided in DGN format, in English units. Additionally, the mass point and breakline files will be provided to aid the consultant in creating a digital terrain model. Ortho-rectified aerial photographs will also be provided.
- (3) Copies of any available record plans of existing roads and construction plans of any proposed road projects as details are finalized and become available.
- (4) Copies of any previous pertinent studies, reports or project documentation.

### **Scope of Work**

The consultant's responsibility for scope of work shall include:

*A description of the scope of the project and alternatives to be considered or developed, typical sections, public involvement, etc.*

### **Surveying**

The consultant's responsibility for surveys shall include:

*Explanations of work in most cases are identified within the Production-Hours Documentation, which is to be included with these Pre-design minutes.*

*Specific notes pertaining to surveying not specified in the Production-Hour Documentation.*

### **Preliminary Design**

The consultant shall be responsible for all alternatives and construction cost estimates necessary to make a determination of a recommended alignment. These alternatives should generally include the following items:

*Explanations of work in most cases are identified within the Production-Hours Documentation, which is to be included with these Pre-design minutes.*

*Specific notes pertaining to preliminary design not specified in the Production-Hour Documentation.*

Preliminary hydraulic studies, including stream sections, stream profile, and necessary channel changes. Consideration of avoidance and minimization of effects on blue-line streams must be included in accordance with Section 404 and 401 of the Clean Water Act. The consultant shall be responsible for obtaining all floodway studies and other pertinent drainage information to be utilized in their design.

## **Environmental**

If the consultant is responsible for the required environmental documentation, the Environmental Coordinator will review the project scope with the Director of the Division of Environmental Analysis to determine the level of environmental documentation that will be required (Overview, CE or EA/FONSI). The consultant will prepare the Production-Hour estimate (for environmental work only) based upon this determination and submit the estimate to the Director of the Division of Environmental Analysis for review and approval.

The environmental consultant shall provide a general environmental footprint to the Project Development Team as soon as possible so alternative alignments can be developed.

The District Environmental Coordinator shall be notified upon the discovery of any environmental issue or condition which may influence alignment design or preferred? alignment recommendation.

The Division of Environmental Analysis and the District Environmental Coordinator shall be notified should it become necessary to change an environmental services milestone date.

A preliminary “Purpose and Need Statement” of the project is to be defined early in the initial design and environmental review stages of the project and developed more extensively during the public involvement process. If a Purpose and Need Statement has been developed during the planning phase of the project it will serve as the preliminary Purpose and Need Statement. The Purpose and Need Statement shall be continuously evaluated during the development process and modified as needed based on information gained through the public involvement process. The development of the projects “Purpose and Need Statement” will be the responsibility of the project team.

The consultant or their sub-consultant shall notify the District Environmental Coordinator prior to initiating any fieldwork for the environmental baseline studies.

## **Public Involvement**

If necessary, public meetings or hearings will be held as discussed at the pre-design conference. The consultant will be responsible for providing all necessary exhibits and attending any public meetings or hearings that may be held.

*The extent of Public Involvement is to be identified in these Pre-design Minutes.*

## **Final Design**

In the case of a federally funded Preliminary Roadway Design contract, the consultant may not advance into the final design stages until such time that all public hearing requirements are met and a final environmental document has been approved.

The consultant shall be responsible for the development of all final details necessary for the complete design of Grade, Drain, and Surfacing Plans suitable for the letting to contract of the project. Plan scales for this project are as follows:

- |                              |   |      |
|------------------------------|---|------|
| 1) Plan and Profile          | - | 1" = |
| 2) Cross Sections            | - | 1" = |
| 3) Cross Section Spacing     | - |      |
| 4) Pipe Sections             | - | 1" = |
| 5) Right of Way Strip Maps   | - | 1" = |
| 6) Soil Profile Sheets       | - | 1" = |
| 7) Coordinate Control Sheets | - | 1" = |
| 8) Erosion Control Sheets    | - | 1" = |

Detail sheets shall be provided as required or as otherwise specified in the Pre-design Conference Minutes.

The consultant is responsible for providing an acceptable plan for the maintenance of traffic. This plan shall include, as necessary:

- (1) A written description of all required phases and notes to adequately explain the activities required of the contractor during construction to address maintenance of traffic.
- (2) Plan and profile views of diversions?, part-width construction or other necessary maintenance of traffic items.
- (3) Cross-sections to depict the location of traffic in various phases.

A Final Plans-In-Hand Inspection will be held when the right of way taking, plan construction notes and drainage items are shown on the plans. A detailed maintenance of traffic scheme shall also be available. An updated cost estimate based on all established bid items will be required. Details of Avoidance, Minimization and Mitigation Alternatives for blue-line streams shall be presented. A Drainage Inspection will also be held, frequently concurrent with the Final Plans-in-Hand Inspection. Finalization of plans shall not occur until the approvals of the Final and Drainage Inspection Reports are given by the Department.

A separate Right of Way Inspection may be held, at the discretion of the Department, in order to expedite the Right of Way phase. The Project Manager will make the determination if adequate details have been developed and included within the plans to hold an inspection. Upon approval of the inspection report and incorporation of inspection recommendations into the plans, the Right of Way Plans will be submitted.

It shall be the consultant's responsibility to see that all comments addressed in all inspection reports have been resolved before submission of Final Plans. Any item that may affect right of way should be resolved prior to the submission of Final Right of Way Plans.

Approximately 6 months prior to the letting date, a complete set of full-size final plans in PDF format will be submitted to the Project Manager, to be forwarded to the Plan Processing Section in the Central Office. The Plan Processing Section shall review the plans and return the plans with comments, corrections and revisions necessary to be made to the original plans. The consultant, prior to submittal of the original PDF file of the final construction plans, will perform the required changes to the final plans. The submittal of the final plans, all electronic plans, terrain models, geometric files, etc. shall be submitted to the Project Manager.

## **General**

- (1) The consultant shall be represented at all inspections and meetings. Any plans or exhibits required shall be the responsibility of the consultant.
- (2) Any subconsultants utilized must have approval of the Department prior to their performance of any work.
- (3) The consultant is responsible for having obtained and being knowledgeable of all Department Manuals including, but not limited to, Design, Drainage, Standard Drawings and Bridges. All work shall be performed in accordance with those manuals or other memos issued subsequent to the publication of those manuals unless otherwise explicitly stated.
- (4) The consultant shall submit the Production-Hour Worksheet, listing only the involved units of work, including supporting documentation of units obtained to the Project Manager to be reviewed. Upon agreement of the Production-Hour units, the consultant shall submit the fee proposal with detailed production-hours on the Department's Standard Production-Hour Worksheet to the Director of Professional Services. The Department's Project Manager shall also submit the Department's Production-Hour estimate.
- (5) Change orders to this project will not be permitted except in such cases that:
  - the project limits have been substantially revised from those initially indicated in the Pre-design Minutes.
  - a change of scope has occurred.
  - the consultant is requested to revise the plans as a result of a direction change by the Department.
- (6) The consultant is responsible, at all times, for correction of any errors or omissions that they may have made in the preparation of the plans. The consultant shall immediately notify the Project Manager of any item that they feel requires extra work. The consultant shall not proceed with that item of work until such time that the matter of extra work has been resolved.
- (7) All original submissions, including pay estimates and consultant monthly reports, shall be sent to the Project Manager. The pay estimate and monthly report may be electronically submitted to the Project Manager. The consultant monthly report shall be submitted even if a pay estimate is not being submitted. All correspondences pertinent to this project shall have the County, Item No. and Project Description noted.
- (8) Hardcopy sets of plans shall be provided for inspections and meetings, as requested by the Project Manager.
- (9) The consultant will be responsible for preparation of all minutes of meetings, including this Pre-design Conference.
- (10) Periodic progress meetings will be held with the District as discussed during the Pre-design Conference.
- (11) All design work and development of plans, preliminary and final, shall be prepared in MicroStation DGN format in accordance with current KYTC CADD Standards.

(12) The Department's Project Manager assigned to this project is **insert name**.

(13) The current schedule for this project, as described in the enacted Six Year Plan is as follows:

Phase	FY
Final Design	20 <b>xx</b>
Right of Way	20 <b>xx</b>
Utilities	20 <b>xx</b>
Construction	20 <b>xx</b>

**Milestones**

The consultant shall provide milestone dates for the following activities:

- 1) Preliminary Roadway Design
  - a) Alternate Alignments ready for a Project Team Meeting -
  - b) Hold Public Hearing -
  - c) Hold PL&G Inspection -
  - d) Submit DES -
  - e) Submit Preliminary Right of Way Plans -
  - f) Submit Electronic Plans -
  
- 2) Environmental Services
  - a) Submittal of Environmental Base Studies -
  - b) Approval of Environmental Base Studies -
  - c) Submittal of Draft EA to KYTC -
  - d) Approval of EA by FHWA -
  - e) Receipt of FONSI by KYTC -
  - f) FHWA Approval of FONSI or EIS -
  
- 3) Final Roadway Design
  - a) Submission of Critical Cross Sections to Geotechnical Branch for obtaining back slopes -
  - b) Submit Preliminary Drainage Folder -
  - c) Drainage Inspection -
  - d) Final Plans-in-Hand Inspection -
  - e) Advanced Situation Folders -
  - f) Right of Way Plans Submittal -
  - g) Submittal of Review Plans/Check Prints -
  - h) Final Roadway Plans & Final Drainage Folder Submittal -
  - i) Final Structure Plans Submittal -

*Other milestones may be added to this list as deemed necessary by the Department or consultant.*

Milestone dates are based on receiving Notice to Proceed by **insert date** and aerial photogrammetry and digitization by **insert date**.

### III. PROFESSIONAL SERVICES

This chapter explains the LPA's responsibilities and options for choosing a Professional Service provider for Federal-aid projects.

Professional Services include:

- engineering related services;
- geotechnical services;
- program management;
- construction management/inspection;
- studies, including feasibility studies;
- surveying;
- mapping;
- landscape architecture;
- architectural related services;
- historic preservation specialists;
- investigations;
- tests;
- evaluations;
- consultations;
- comprehensive planning services;
- conceptual design, plan, and specification services;
- value engineering services;
- soils engineering services;
- construction phase services;
- drawing reviews;
- operation and maintenance manual preparation; and
- other related services.<sup>1</sup>

There are federal and state statutes the LPA must follow when hiring professionals to perform Professional Services.<sup>2</sup> The purpose of these rules is to ensure that a qualified professional is obtained through an equitable selection process, referred to as qualifications based selection ("QBS"). The Federal statute requiring that LPAs follow a QBS process when using federal funds 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.

*FHWA Guidance on the "Brooks Act" can be found at the following websites:*

<http://www.fhwa.dot.gov/programadmin/121205.cfm>

<http://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm> (Pages 174-178)

To hire a professional, the LPA may choose from the three QBS processes outlined in the three following sections, depending on its needs and the expected value of the Professional Services contract. In some cases, the LPA may instead use either its own staff for Professional Services

<sup>1</sup> 40 USC § 1102(2)(C) and 23 CFR § 172

<sup>2</sup> 40 USC § 1101-1104, 2 CFR 200.320, 23 USC § 112, 23 CFR § 172, KRS § 45A.735-750, and KRS § 45A.800-838. 40 USC § 1102(2)(C) and 23 CFR § 172



(see **Section III.4**) or a professional with which it has a working relationship (must have been entered into via a qualifications based selection process and the current project scope must have been included in the original contract - see **Section III.5**).

In all cases, expenditures must not be incurred before the LPA receives notice to proceed from the Administering Office. And, the LPA will pay the consultant, then, seek reimbursement from KYTC.

### **III.1. Professional Services Procurement Option 1 – KYTC Statewide Contracts**

KYTC enters into multi-year statewide contracts with multiple general service design firms (hired by KYTC via QBS process).<sup>3</sup> LPAs may hire these professionals for their transportation projects which fall under the current per-project fee limit of \$250,000. Upon request, the KYTC State Highway Engineer assigns these consultants to projects based on a rotating list. The master agreements currently in place between KYTC and each of the statewide LPA consultants include a per-project fee limit. The KYTC State Highway Engineer must review and approve any request to exceed the current per-project limit. The LPA should contact its Administering Office to inquire about or request use of one of the statewide LPA consultants.

After working with the LPA to understand the scope of the project (previously agreed to by KYTC and the LPA), the consultant must submit production hour estimates to the KYTC Division of Professional Services for review and approval. If the production hours estimate is greater than 500 hours for any area, an independent estimate must be made<sup>5</sup>. The independent person-hour estimate is the responsibility of the LPA. KYTC will, upon request, provide a template for the LPA to use. Further, if the LPA is not qualified to prepare the independent person-hour estimate, KYTC can do so for the LPA. Once any differences are negotiated and production hour estimates are approved, KYTC Professional Services will issue a letter agreement for each individual project. The letter agreement is a contract between KYTC and the consultant.

### **III.2. Professional Services Procurement Option 2 - Price Contracts (“Finance Cabinet List”)**

For any engineering, environmental, architecture/landscape architecture, or geotechnical project for which the engineering fees will certainly be less than \$75,000, the LPA may choose to follow the small procurement statutes, specifically, the Price Contract statute.<sup>6</sup> To use this option, the LPA:

- must contact its Administering Office (OLP or District LPA Coordinator) who will provide the list of firms eligible for price contracting. Note: The Administering Office should request this information from the KYTC Statewide LPA Coordinator who maintains current price contract information from the Kentucky Finance and Administration Cabinet;
- must consider multiple professionals and choose one from the list;
- must provide the Administering Office with a completed Price Contract Selection Form indicating why it chose that Professional Service Provider. The Price Contract Selection Form can be found here:

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<sup>3</sup> KRS § 45A.838

<sup>5</sup> 600 KAR 6:070 Section 2 4d

<sup>6</sup> KRS § 45A.837, 23 CFR § 172.5(a)(2), 2 CFR 200.320

<http://transportation.ky.gov/Local-Programs/Documents/Price%20Contract%20-%20Selection%20Explanation.pdf>.

A copy is provided as an attachment to this chapter. The consultant selection must be approved by the Commissioner of the Department of Highways prior to the LPA signing the price contract with the Professional Service Provider. Note: The Administering Office must obtain approval from the Commissioner of the Department of Highways through the statewide LPA Coordinator;

- must keep careful track of the price contract(s) it awards. And, must ensure the consultant is not paid more than the amount approved by KYTC for a price contract. Any amount paid to the Professional Service Provider over the amount approved by the Commissioner of Highways will be the responsibility of the LPA. Note: KYTC will track consultant procurement approvals to ensure that no consultant receives more than \$150,000.00 in price contract fees per discipline (engineering, environmental, architecture/landscape architecture, and geotechnical) per fiscal year;<sup>8</sup>
- must obtain approval from the Administering Office of the professionals production hour/fee proposal; and
- must pay the professional the rates prescribed by the Finance Cabinet.

### **III.3. Professional Services Procurement Option 3 - Traditional QBS Process**

The final option the LPA may use to procure professional services is to follow the process described in KRS Chapter 45A. In doing so, the LPA:

- must develop and obtain approval of a Request for Proposal (RFP) and advertisement from its Administering Office for its specific project. An example advertisement and example RFP can be found here:

<http://transportation.ky.gov/Local-Programs/Pages/Forms,%20Templates,%20and%20Examples.aspx>.

A copy of each is provided as an attachment to this chapter.

- must check to see if there is a KYTC prequalification category for the type of services required for its particular Federal-aid project. KYTC maintains lists of Professional Services providers qualified to perform certain tasks. The types of tasks in which Professional Services providers can be prequalified are referred to as prequalification categories. See <http://transportation.ky.gov/progperform/> to determine if there is a prequalification category for the professional services needed. If there is a prequalification category that applies to the services to be provided, the advertisement and RFP should clearly state only those prequalified in that category may be considered;

*Federal requirements prohibit the use of in-State or local-hiring preferences and do not allow the consideration of cost in the evaluation, ranking, and selection of the most highly qualified professional.*

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<sup>8</sup> KRS 45A.837(2)(c).

- must use an RFP that clearly defines the statutorily-required evaluation criteria that will be used to assess and rate the qualifications of responding professionals, along with the scoring weight for each of the assigned criteria; and
- must post the notice online or in a newspaper of general circulation at least 21 days prior to the date the LPA awards the Professional Services contract.
- Must make it clear that price is not to be included in the response to the RFP and may not consider price when evaluating responses to the RFP.

In response to the LPA’s RFP, professionals will submit proposals. The LPA:

- must verify KYTC prequalification.
- must evaluate each proposal according to the evaluation criteria outlined in the RFP.
- may require interviews as part of this evaluation process.
- shall select at least three professionals on the basis of their technical proposals and rank them according to their qualifications (not fees)<sup>9</sup>. A sample evaluation template can be found here:

<http://transportation.ky.gov/Local-Programs/Documents/Evaluation%20of%20Proposals%20Template.pdf>

A copy is included as an attachment to this chapter.

- **shall not include cost as a factor in the evaluation.**<sup>10</sup> If fewer than three professionals responded to the advertisement or if fewer than three are judged to be qualified then only those professionals shall be ranked.
- must attempt, after selection of the top professional, to negotiate a contract for a “fair and reasonable value,” as statutorily defined<sup>11</sup>. If the LPA is unable to reach a contractual agreement with the highest ranked professional, it then begins negotiations with the second ranked professional, and so on. If negotiations with all of the ranked professionals fail, the LPA shall reevaluate the Professional Services to be provided and begin the process again.<sup>12</sup>
- must provide the project’s Administering Office documentation confirming that the LPA chose and followed this QBS process, including a statement signed by an authorized LPA official certifying that 1) the QBS process followed proper procedures, 2) the process met the intent of the Brooks Act, and 3) the negotiated scope, fee and schedule are fair and reasonable. The LPA must provide to the Administering Office copies of:
  - all advertisements;
  - the names of all respondents;
  - the names of all selection committee members; and

*FHWA Video: “Hiring a Consultant Using Competitive Negotiation Procedures”:*

<http://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=7>

<sup>9</sup> KRS § 45A.745(3)

<sup>10</sup> KRS § 45A.745 (2)

<sup>11</sup> KRS § 45A.750(1).

<sup>12</sup> KRS § 45A.750(3)

- score sheet(s) for selection.

After the Administering Office has reviewed the documentation and deemed it satisfactory, it will approve the QBS process (via email). The Professional Service Provider may not begin reimbursable work until this approval is received.

#### **III.4. Professional Services via In House Staff**

If the LPA employs a person as part of its regular staff who is able to adequately perform the Professional Services, this individual may complete the work in house and the LPA will not need to use a QBS process.

The same design standards which apply to outside services apply to those designs prepared by in-house staff. If the Professional Services require a license or certification, the person performing the services must have these credentials. For example, if the Professional Services are engineering or engineering related services, the person performing the services must be a Kentucky licensed Professional Engineer (“PE”). This is discussed further in **Chapter V**.

The LPA must be able to segregate and provide an accounting of the design effort spent specifically on the Federal-aid project if the LPA intends to seek reimbursement for this work or to have it count as match (both of which require pre-approval).

#### **III.5. Professional Services via Working Relationships/Retainer Contracts**

LPAs often develop working relationships with professionals and wish to contract with those professionals on federal projects. This is only permitted if the LPA has a retainer contract in place with the professional with a scope broad enough to encompass the work to be done on the project and the LPA entered into that contract after completing a QBS process. If these two conditions are not met, the LPA may only consider the professional as part of one of the QBS processes described above (**Sections III.1-3**).

If utilizing this option, the LPA must provide KYTC with:

- The advertisement for services from the original QBS selection
- The response from industry
- The selection committee and score sheet or other process for selection
- A copy of the retainer contract
- Negotiation minutes for the current federal-aid project

After the Administering Office has reviewed the documentation and deemed it satisfactory, it will approve the QBS process (via email). The professional service provider may not begin reimbursable work until this certification is complete.

**CHAPTER III ATTACHMENTS**

*Attachment 1 – Price Contract Selection Form*

*Attachment 2 – Sample RFQ Advertisement*

*Attachment 3 – Sample RFQ*

*Attachment 4 – Sample Evaluation Template*



**PRICE CONTRACT SELECTION EXPLANATION**

Project Name \_\_\_\_\_ Date \_\_\_\_\_

Type of Price Contract (Check all that apply):

Civil Engineering Services		Architecture/Landscape Services	
Environmental Services		Geotechnical Services	

Firms Considered:

Firm 1 Name \_\_\_\_\_

Firm 2 Name \_\_\_\_\_

Firm 3 Name \_\_\_\_\_

Basis for Selection (Check all that apply):

Available to meet time frame _____	New, small, or seldom used firm _____
Location/proximity to site _____	Familiarity with facility _____
Specific expertise required _____	Minority business enterprise _____
Good prior performance _____	Other, please explain: _____
Familiar w/Federally funded projects _____	_____

FIRM SELECTED \_\_\_\_\_

ESTIMATED CONSULTANT FEE(S) \_\_\_\_\_ Design: \_\_\_\_\_

Construction/Inspection if applicable: \_\_\_\_\_

Total Estimated Consultant Fee \_\_\_\_\_

***In this fiscal year,*** \_\_\_\_\_

(Insert LPA Name)

***has awarded*** \_\_\_\_\_ ***in price contracts to this consultant.***

(Total \$ awarded prior to this request)

LPA Representative \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**REQUEST FOR QUALIFICATIONS**  
**[INSRT SERVICE TYPE]**

The **[LPA NAME]**, Kentucky, is requesting Statements of Qualification (SOQ) from professional **[INSERT FIRM TYPE]** firms for the purpose of providing **[ENTER SERVICE TYPE]** for the **[INSERT SCOPE OF WORK/PROJECT NAME]**.

**[ENTER DESCRIPTION OF WORK CONSULTANT WILL BE PERFORMING.]**

Information about the project and a complete Request For Qualifications (RFQ) package can be obtained by contacting **[INSERT CONTACT PERSON]**, at **[INSERT CONTACT ADDRESS]**. **[INSERT NUMBER OF COPIES REQUETED]** individual copies of the proposal should be submitted to the attention of **[INSERT CONTACT PERSON]** at the aforementioned address and clearly marked on the outside "Request for Qualifications-**[INSERT PROJECT TITLE AND LOCATION]**", no later than **[INSERT TIME]** local time, **[INSERT DAY], [INSERT DATE]**.

Inquiries regarding this RFQ should be directed to:

**[INSERT CONTACT INFORMATION, INCLUDING NAME, ADDRESS AND PHONE NUMBER]**

**A REQUEST FOR PROPOSAL  
FOR  
PERSONAL SERVICES CONTRACT**

Department of Highways  
Professional Services Procurement Bulletin 2015-12  
Letcher / US 119 / 12-0311.80

This document constitutes a Request for Proposals for Personal Service Contract from qualified individuals and organizations to furnish those services as described herein for the Commonwealth of Kentucky, Department of Highways.

**I. PROJECT DESCRIPTION**

County - Letcher  
Route - US 119  
Item No. - 12-0311.80  
Project Description - Reconstruction of US 119 from 0.15 mile west of KY 806 to KY 932

**II. PROJECT INFORMATION**

Project Manager - John M. Johnson  
User Division - Highway Design  
Approximate Fee - \$500,000 Preliminary Engineering (Lump Sum)  
Project Funding - Federal (APD) funds  
Project Length - Approximately 1.6 miles

**III. PURPOSE AND NEED**

The existing facility, US 119, is a narrow two-lane road. The segment contains vertical and horizontal deficiencies, few passing zones, limited sight distances, embankment stability problems, and narrow or nonexistent shoulders. The proposed project is to improve safety and level of service, reduce response time for emergency vehicles, and add capacity for future traffic demands.

**IV. DBE REQUIREMENT**

Consultants should include a DBE participation plan with their Response to Announcement. An additional page will be allowed with the Project Approach (page 7) in the Response to Announcement to convey this plan. A maximum of 4 points will be considered in the Evaluation Factors for the DBE Participation Plan.

**V. SCOPE OF WORK**

The selected Consultant will be required to provide Preliminary Roadway Design, including the preparation of engineering studies, identification of appropriate typical sections, identifying any utility impacts, performing drainage design, developing dependable cost estimates, conducting and preparing documents for public meetings.



The selected Consultant may be asked to provide engineering services to perform Final Roadway Design, which may be added to the contract by contract modification, when Preliminary Design is complete. Final Design will include the preparations of any design studies, drainage design, final right of way plans, construction plans, traffic control plans and cost estimates as necessary to provide final Grade, Drain and Surfacing Plans for the project.

## **VI. SPECIAL INSTRUCTIONS**

The Department may retain any of the advertised services to be performed by in-house state forces.

Instructions for Response to Announcement can be found at:

<http://transportation.ky.gov/Professional-Services/Pages/Respond-to-an-Announcement.aspx>

## **VII. AVAILABLE STUDIES**

[US 119 FONSI from Partridge to Oven Fork – January 2001](#)

## **VIII. METHOD OF DESIGN**

The selected Consultant shall utilize the most recent CADD Standards for Highway Plans Policy in the development of the highway plans.

## **IX. ENVIRONMENTAL**

Any necessary Environmental Services will be provided by the Department. It is anticipated that a re-evaluation of an existing EA/FONSI document will be prepared by the Department.

## **X. PHOTOGRAMMETRIC SERVICES**

The Department will be responsible for obtaining mapping and LIDAR data. The selected Consultant shall supplement this information with conventional surveying as needed.

## **XI. STRUCTURE DESIGN**

When the project advances to Final Design, and if the selected Consultant is retained for Final Design, they shall do the necessary engineering service to submit to the Department an Advanced Situation Folder(s) for the appropriate applicable structure(s). Structure Design Services may be added by Contract Modification. Prequalification in the area of Structure Design is required to be identified in the Consultant's Response to Announcement.

## **XII. GEOTECHNICAL SERVICES**

The selected Consultant may provide all Geotechnical Services required for the project. The Preliminary Design contract will include preliminary geotechnical services to review available geological, mining, or other geotechnical information that could influence the selection of the preferred alternate. Geotechnical services necessary for the completion of Final Design may be added by contract modification at the appropriate time. At any time, if the Department has the capacity to provide these services, the Department may retain the advertised geotechnical services.

**XIII. TRAFFIC**

The Traffic projections and related information will be provided by the Department.

**XIV. UTILITIES**

The Department will be responsible for determining the existing locations of utilities to determine feasibility of redesign or utility relocation and cost estimates.

**XV. PREQUALIFICATION REQUIREMENTS**

To respond to this project the Consultant must be prequalified in the following areas by the response due date of this advertisement:

**ROADWAY DESIGN**

- Rural Roadway Design
- Surveying

**STRUCTURE DESIGN**

- Spans under 500 feet

**GEOTECHNICAL SERVICES**

- Drilling Services
- Engineering Service
- Laboratory Testing Services

**XVI. PROCUREMENT SCHEDULE**

- Bulletin Posted - June 9, 2015
- Response Date - July 1, 2015 by 4:30 PM ET (Frankfort Time)
- First Selection - July 7, 2015
- Final Selection - July 22, 2015
- Pre-Design Conference - July 29, 2015
- Fee Proposal - August 7, 2015
- Contract Negotiations - August 19, 2015
- Notice to Proceed - September 17, 2015

**XVII. PROJECT SCHEDULE**

Preliminary Line and Grade – April 1, 2016  
Preliminary Right-of-Way Plans – June 1, 2016

**XVIII. EVALUATION FACTORS**

Consultants will be evaluated by the selection committee based on the following, weighted factors:

1. Relative experience of consultant personnel assigned to project team with highway project for KYTC and/or federal, local or other state governmental agencies. (15 Points)

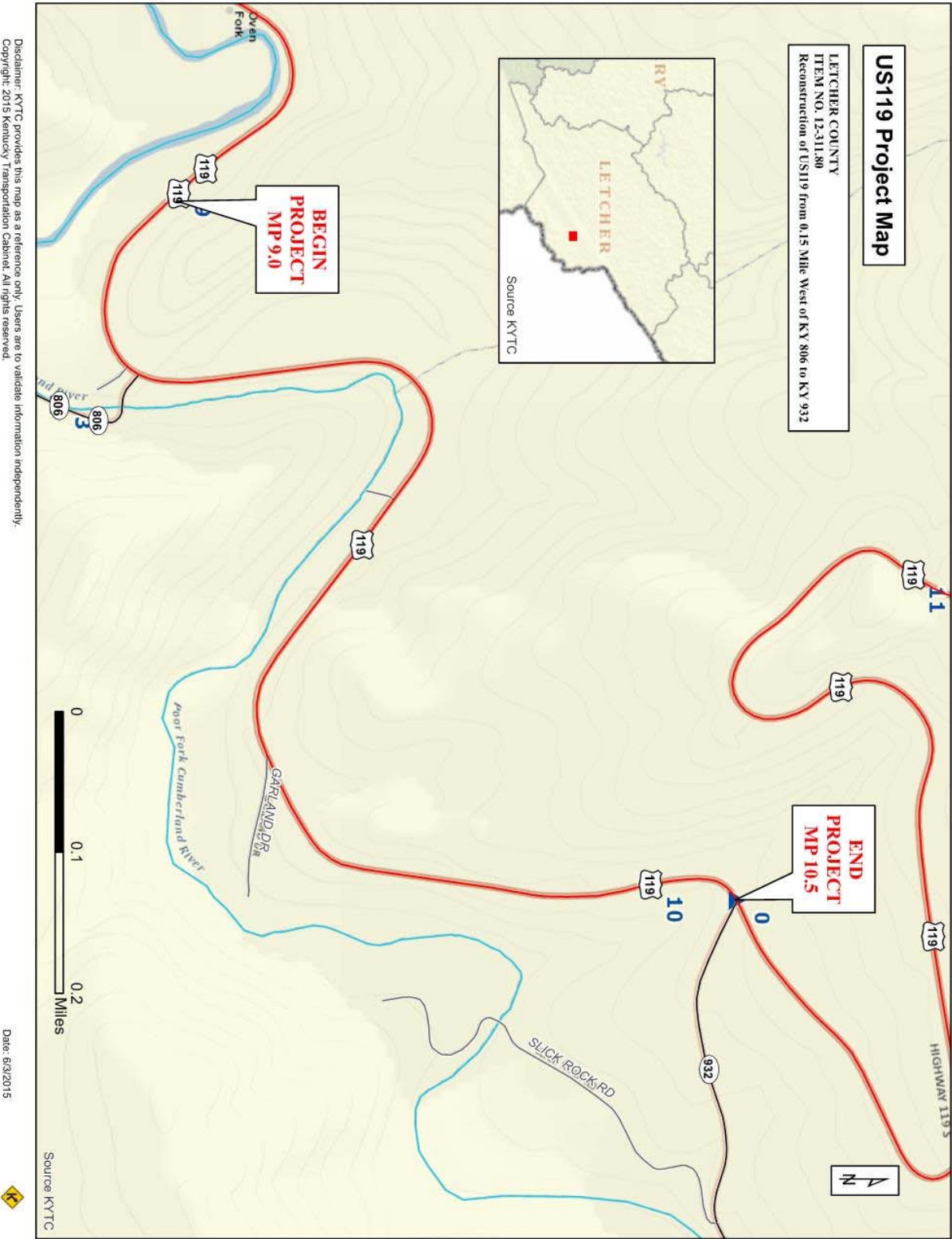
2. Capacity to comply with project schedule. (10 Points)
3. Past record of performance on projects similar in type and complexity. (15 Points)
4. Project approach and proposed procedures to accomplish the services for the project. (20 Points)
5. DBE Participation Plan. (4 Points)
6. Consultant's offices where work is to be performed. (2 Points)

For state-funded projects, if a Selection Committee vote results in a tie between two (2) firms, one (1) of which will perform more of the work tasks in Kentucky than the other, then the former firm shall be ranked one (1) place ahead of the latter.

**XIX. SELECTION COMMITTEE MEMBERS**

1. Kevin Martin, P.E., User Division
2. Chris James, P.E., User Division
3. \*, P.E., Secretary's Pool
4. \*, P.E., Secretary's Pool
5. \*, Governor's Pool

XX. AREA MAP



**PROFESSIONAL SERVICES PROCUREMENT EVALUATION TEMPLATE**  
**Referenced in the Professional Services Procurement Section of the LPA Guide**

Purpose: To provide LPAs with the statutorily defined criteria they must use to evaluate and hire professional service providers.

Note: If other criteria are important, it is acceptable to add that criteria for a particular project. Under no circumstances may the LPA consider the price the professional service provider will charge in making its evaluations and hiring decisions.

SAMPLE

**EXHIBIT II  
ENGINEERING SERVICES  
SELECTION RATING SYSTEM**

1. <u>Project Engineer's Experience</u>	<u>Maximum 20 Points</u>
A. 5 or more years experience with TEA-21 or other federal/state programs	20 Points
B. 3 or more years experience	15 Points
C. 1-2 years experience	10 Points
D. No experience	0 Points
2. <u>Firm's Project Completion Background</u>	<u>Maximum 20 Points</u>
A. Completion of 5 previous, similar type projects within proposed timeframe & budget	20 Points
B. Completion of 3 projects	10 Points
C. No projects were completed	0 Points
3. <u>References from Similar Projects</u>	<u>Maximum 20 Points</u>
A. Respondent lists 3 previous clients with similar projects and all references give excellent response on quality of service.	20 Points
B. Respondent lists 2 previous clients	15 Points
C. Respondent lists 1 previous client	10 Points
D. Respondent lists no previous references.	0 Points
4. <u>Firm's Familiarity with Community's Needs</u>	<u>Maximum 20 Points</u>
A. Firm is thoroughly familiar with City	20 Points
B. Firm is somewhat familiar with City	10 Points
C. Firm is unfamiliar with City	0 Points
5. <u>Local Engineer</u>	<u>Maximum 5 Points</u>
A. Firm is located within 25 miles of the City where project is located	5 Points
B. Firm is not located within 25 miles of the City where project is located	0 Points
6. <u>Minority or Female-Owned Firm</u>	<u>Maximum 5 Points</u>
A. Firm is minority or female-owned	5 points
B. Firm is not minority or female-owned	0 Points
7. <u>Small Business Firm</u>	<u>Maximum 5 Points</u>
A. Firm is a small business	5 Points
B. Firm is not a small business	0 Points

**MAXIMUM TOTAL POINTS**

**95 POINTS**

Statement of Qualifications submittals should be organized to address each evaluation criteria as listed above and provide references where appropriate. Brochures and similar generalized background materials may be included, but are not required.

**ENGINEER SELECTION  
U.S. 60 SIDEWALK CONSTRUCTION PROJECT  
CITY OF SIMPSONVILLE**

CRITERIA	POINTS AWARDED		
1. Engineer's Experience			
2. Firm's Project Completion Background			
3. References from Similar Projects			
4. Firm's Familiarity with Community's Needs			
5. Local Engineer			
6. Minority or Female-Owned Firm			
7. Small Business			
<b>TOTAL POINTS</b>			



## IV. ENVIRONMENTAL REQUIREMENTS

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.

The LPA must receive environmental approval from KYTC before beginning final design. FHWA will not authorize final design or subsequent phases without approved environmental documentation<sup>1</sup>.

For projects administered by the Office of Local Programs (OLP), KYTC will generally complete the environmental requirements on behalf of the LPA (the LPA should always confirm this).

*FHWA’s “Overview of NEPA as Applied to Transportation Projects” Video:*

<http://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?category=environm>

### IV.1. Clearinghouse Documents

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. Failure to do so can significantly delay progress on the project. The instructions for requesting the clearinghouse document are located at:

<https://kydlgweb.ky.gov/FederalGrants/eClearinghouse.cfm>.

A copy of these instructions is also provided as an attachment to this chapter.

Once the clearinghouse document is requested by the LPA, various departments of state government are asked to review and comment on the project. When the review period expires, the DLG will send a copy of the clearinghouse document to the LPA. The LPA must provide a copy to the Administering Office. It is important that the LPA read the Clearinghouse comments carefully. If KYTC is to complete the environmental work for the project, the Administering Office will send the clearinghouse document along with the application to the KYTC Division of Environmental Analysis so that it may begin its evaluation process. If KYTC is not completing the environmental work, the LPA must ensure that the clearinghouse comments are incorporated into the environmental document.

### IV.2. Environmental Documentation

NEPA regulations require that there be an appropriate amount of public involvement in the decision making process, that alternatives to the project be evaluated, that decisions are made based on a balanced consideration of pertinent information, including environmental factors, and that actions are taken to mitigate any adverse impacts to the environment caused by the project<sup>2</sup>.

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<sup>1</sup> 23 CFR § 771.113(a). The exceptions to this rule are found in 23 CFR § 771.113(d).

<sup>2</sup> 23 CFR § 771.105



The LPA is required to submit an environmental document demonstrating that NEPA requirements have been met. The type of environmental document depends on the classification of environmental impact the project will have. Some environmental review is required to determine potential environmental impact. The likely classification of environmental document should be discussed early in the project development process.

There are three types of environmental documents:

- An Environmental Impact Statement (EIS) is prepared for projects where it is known that the action will have a significant effect on the environment. After the EIS is prepared, it is submitted to FHWA. If FHWA agrees with the EIS, a Record of Decision (ROD) is issued.
- An Environmental Assessment (EA) is prepared for actions in which the significance of the environmental impact is not clearly established. Should it be determined through environmental analysis and interagency review during the EA process that a project has no significant impacts on the quality of the environment, a Finding of No Significant Impact (FONSI) is issued. If a significant environmental impact is found, the agency will be required to prepare an EIS.
- Categorical Exclusions (CEs) are issued for actions that do not individually or cumulatively have a significant effect on the environment. **The majority of LPA projects require this level of documentation.**

There are four levels of Categorical Exclusions: CE for minor projects (CEMP), CE Level 1, CE Level 2, and CE Level 3.

*Additional information on NEPA Documentation is provided by FHWA here:*  
<http://www.environment.fhwa.dot.gov/projdev/pd4document.asp>

*KYTC Guidance and forms related to Categorical Exclusions, including the CE Guidance Manual (2008) can be found here:*

<http://transportation.ky.gov/Environmental-Analysis/Pages/Project-Management.aspx>.

*The “CE Matrix” located at this site can be used to determine what level Categorical Exclusion will likely be required for any project.*

The LPA may need to hire a KYTC pre-qualified consultant to perform environmental services (see **Chapter III** for Professional Services procurement). Depending on project type and complexity, KYTC may agree to prepare the environmental document on the LPAs behalf. This arrangement should be included in the MOA between KYTC and the LPA. If environmental studies are required, such as archaeological or biological, project funds must be made available to cover the study costs. As previously mentioned, KYTC will generally prepare the environmental document for all projects administered by OLP. The LPA should always confirm this.

The environmental document is subject to KYTC and, depending on level of effort, FHWA approval.

### **IV.3. Reassessment or Reevaluation**

CEs (most common with LPA projects) and EAs/FONSIs (rare for LPA project) must be reevaluated if the project is not under construction within two years of FHWA approval.

Draft EISs must be reevaluated if an acceptable final EIS is not submitted within three years from the date the draft EIS was circulated. Depending on the result of the reevaluation, the draft EIS

may have to be amended, supplemented or redone<sup>3</sup>. LPA projects of this complexity are extremely rare.

#### **IV.4. Environmental Commitments**

If a project will impact a natural or human environment, the LPA may be required to mitigate for these impacts. Mitigation commitments must be detailed in the environmental document and must be implemented through construction.<sup>4</sup> The LPA's environmental consultant, or, if KYTC is drafting the environmental document, the Administering Office will assist the LPA in determining if its project will affect natural or human environments protected by environmental regulation and in negotiating the environmental commitments, if any are necessary. For infrastructure projects, these commitments will be included on the design plans and in the Bid Proposal later in the process, to ensure they are honored.

#### **IV.5. Environmental Permits**

Some projects may require environmental permits, such as from the United States Army Corps of Engineers (USACE), Kentucky Division of Water (KDOW), and/or the Federal Emergency Management Agency (FEMA). Securing appropriate environmental permits is the LPA's responsibility unless otherwise set forth by the project MOA. It is not possible to determine with certainty if a permit will be required until completion of the investigation required for the environmental document. The LPA should work with KYTC early in the project development process to understand the potential need for permits. The LPA must ensure that funding is included in the project budget to cover the costs of required environmental permits and fees. Some of these permits require certifications, or as-built drawings, after the construction is completed. LPAs must include costs for those permit requirements in the project budget.

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<sup>3</sup> 23 CFR § 771.129(a)

<sup>4</sup> Environmental legislation that may require mitigation are The Historic Preservation Act (16 USC § 470f and 36 C.F.R. 800), Stream/Wetland Mitigation (23 CFR § 777), Noise Abatement (23 C.F.R. 772), Section 4f (23 USC § 138, 49 USC § 303, and 23 C.F.R. 774); Endangered Species Act (16 USC § 1531 and 50 C.F.R. 402).

**CHAPTER IV ATTACHMENTS**  
*Attachment 1 – Clearinghouse Instructions*

## Instructions for Applicants:

- **Please note that Kentucky e-Clearinghouse supports Internet Explorer 9 or below. Google Chrome and Firefox are not supported browsers for the e-Clearinghouse, however you can be in an Internet Explorer higher than 9 but you will need to follow the next bullets to make it work.**
  - **If dates and numbers won't work in the ECH you need to go to internet tools, click Compatibility View Settings and add KY.gov.**
  - **Make sure your in the workbasket but not in the 424 form when you do this, it might have you to log in again.**
1. Go to [www.dlg.ky.gov](http://www.dlg.ky.gov)
    - Click on Kentucky State Clearinghouse on the left
    - Print and follow the Instructions for Applicants
    - Click on the EClearinghouse web site link at the bottom of page or
      - Log into <https://eclearinghouse.ky.gov> in Internet Explorer
      - If you get a message that your browser is older and you need to update, DON'T, be sure to answer the question before that about letting all the content, secure and unsecure in, then it will let you into the log in page
      - Save the eclearinghouse website in Favorites
  2. Click set up my account
    - Fill out all fields including the email address and company name
    - **These id's and password's will not come to you automatically, please be patient as the Clearinghouse Coordinator has to manually assign them, the coordinator has to be in the office to do this**
    - If it is after hours or on the weekend you will get an email the next business day. The Clearinghouse Coordinator may be out of the office, you will get as soon as she returns.
    - Click Save then Close the screen goes back to the log in screen with the EClearinghouse
    - Only do this once, it goes to the Clearinghouse Coordinator
    - You will receive your id and password by email
  3. Log back into the EClearinghouse (step one)
    - Type ID and Password under Existing Users
    - IDs and Passwords are case sensitive
    - Click Login
    - If you get Access Denied, keep trying as your typing something wrong, it must be typed exactly like it was sent to you, if you continue to get Access Denied please email the e-clearinghouse Coordinator
  4. First time logins will be prompted to change the password
    - Password must be at least eight characters long and include one number.
    - Type in old password
    - Type in new password two times

- Click Update
  - Click Close
  - Password's are updated every 30 days
5. Workbasket Opens
- User name is in left bottom corner
  - User tabs on the left
  - Projects will be viewed in the middle
6. Entering an Application
- Apply for Funding
  - Enter Application
  - Choose the Project Type from the drop down box, Please DO NOT Choose Other unless you first speak with the Eclearinghouse Coordinator, all the grants have a Project Type
  - Click Select
  - Double Click the 424 form or Click once to highlight and click open form
7. Completing the 424 Form
- First tab at top is Application/Applicant Tab
  - Fill out all fields, the fields with asterisks these are mandatory
    - Legal Name is the name of the entity that will receive the funding
    - Contact person and company name and address is the point of contact for the application, this information is what is automatically printed on the Eclearinghouse Endorsement Letter that will be returned to you by email
    - Please put a prefix in front of the first name (Mr., Ms., Judge, Mayor...)
    - Phone numbers, money and dates do not type dashes, slashes, periods, or parenthesis the program will put those in
    - The title should have the legal name and what the project is, not the description  
Example: Dept. for Local Government, City Park Recreational Trail
      - **Please don't put the project description here, that information goes on the Project tab. Keep this short, this will print on the Eclearinghouse Endorsement Letter**
  - Click Save at bottom
8. Second tab at top is Project Tab
- Click New CFDA, box will open up
  - Catalog of Federal Domestic Assistance number (CFDA) and Title must be filled in so the budget information to work.
    - Type CFDA Number (00.000 format)
      - If Water/Wastewater project and is state funding, put 00.000 so that it can be saved. The title can be State Funds.
      - All other grants have a CFDA number, if you don't know it call your funding agency to get it
      - You must have the CFDA number and Title to be able to move on to the budget tab
    - Type the Title
    - Click Save (it will be grey but will work)
    - If there are multiple CFDA numbers, click New CFDA, type in information again,

- Click Save
- Click Close
  
- **You will get a box that says, “To view the items just added in the application, please save the Form.” What this means is you will be able to view once the entire 424 form is saved. Please don’t call the Clearinghouse or keep inputting CFDA numbers as it is there when you are finished with the whole document.**

9. Executive Order 12372 is it subject to the review

- You need to mark yes and the next line you need to put in the date you are doing this application
- Fill out all fields, the fields with asterisks are mandatory

10. Project Description

- Project Description should be a detail of what the project entails. It should include the “Who”, “What”, “When” and “Where”
  - If project description isn’t complete or not clear the Clearinghouse Coordinator will refuse submission into the EClearinghouse and it will be re-opened and sent back into the applicant’s workbasket and an email sent to that person to fix what is missing or wrong
  - For all Construction Applications there must be a site address and or the GPS coordinates, if this is missing your application will be sent back
  - Please leave out any additional information that is not needed, like what happened in the past and what might happen in the future and any percentages of how many people will use or how much money will be made etc
  - Please don’t put in a couple of words, the project description must be similar to what would be sent to the funding agency
  - Not giving a good project description and having the project reopened may result in a delay of processing and review
- If its construction project, the water/wastewater and solid waste information must be provided this is below the project description, again if this information is not provided for a construction project it will be sent back to the applicant
- Click Save

11. Third Tab at Top is Budget Tab

- Click Add/Edit Budget at bottom
  - This is the information from the CFDA Number
- **Skip this first tab and go to Summary Category Tab**

12. Click Summary Category

- Double Click on the first CFDA number (if you have multiple ones, ignore them only use the first one)
  - This opens the break out budget items, they will be zeros
  - Go to Budget Category Section B (this is the only part of the budget that is the most important, you don’t have to fill out anything else in the Budget Tabs)
  - Do not put in decimal point, dollar sign, or cents round the dollar amount

- Tab down to the first box and fill in all of the budget items that apply
  - If you have categories that are not represented here, add them up and put in Other
  - Click Save Budget (it might be grey but will work)
13. When your finished with the Budget
- Click Close, not the X at the top
14. Click Close Again on the next page, not the X at the top
- This will take you back to the 424 box
15. The project will say Complete
16. Check the box of Certification of Information
17. Click Complete
- The Project will get a State Applicant Identifier Number (SAI)
  - To view the number, go to My Applications and click Workbasket this refreshes the screen
  - The application with the SAI number automatically goes to the eClearinghouse Coordinator to begin the review
18. If project needs to be given to someone else for read only purposes
- Click on the project to highlight it
  - Click User Access
  - Click New
  - Pick User
  - Type in Last Name
  - Click Search
  - Select User, Click once to highlight User
  - Click Accept
  - Click Close
19. A project can be edited until the Complete has been chosen
20. Project is sent to the EClearinghouse Coordinator
- After Complete is chosen the project is automatically sent to the EClearinghouse Coordinator for the review process
  - If your project has been re-opened by the Clearinghouse Coordinator you need to make the changes that is specified from the email that was sent to you, follow the directions for completing the application as you did before
  - When it has been sent back to you it will say Reopened in the Status box
  - Check the confirmation box, click Complete, click close
    - It will say Resubmitted in the Status box
    - If you don't do this the Clearinghouse Coordinator can not review it, when its in the reopened status only the applicant can see it so the project is not being reviewed until the applicant checks the box and hits complete again

21. Refreshing the screen in the eClearinghouse
  - Click My Applications
  - Click Workbasket
    - or press the F5 key on the keyboard
  - The SAI number will now be shown beside the completed project
  
22. Making Changes to an Application
  - Making corrections after its been completed
  - Email the Clearinghouse Coordinator ask to re-open the project, be sure to send the SAI number in the email
  - Coordinator re-opens and the project is sent back to Applicant for changes
  - Applicant makes changes and completes again
  
23. To Withdrawal a project
  - **Only withdraw a project if a review needs to be stopped**
  - Click on the project to withdrawal one time to highlight it
  - Click withdraw Application
  - Click OK
  
24. Information Request
  - Reviewers will need more information, the applicant receives an email with the SAI number in the subject line
  - The review stops until the Applicant answers the questions
  - The original email must be returned to the email of the Clearinghouse Coordinator or the email of KY State Clearinghouse
  
25. The Clearinghouse review usually takes 30 days, an Endorsement Letter will go to the Applicant, the review is complete for that project



## V. PROJECT DESIGN

This chapter outlines requirements for the design of any Federal-aid LPA project. This chapter only applies to Infrastructure projects. Infrastructure projects are those that involve any ground disturbance or that involve an existing structure. Examples include sidewalks, streetscape projects, installing signs, restoration of historic buildings, ADA ramps, pavement striping, bicycle accommodations and any major construction project.

Depending on the complexity of the project, it may be necessary to meet regularly with the Administering Office and other KYTC representatives during the design phase.

### V.1. Design Requirements

All projects must be designed to meet the applicable standards and guidelines. For roadway and roadside design, the *KYTC's Highway Design Manual (current edition)* must be followed: <http://transportation.ky.gov/Highway-Design/Pages/Highway-Design-Manual.aspx>

The KYTC uses the current edition of the following manuals for roadway design projects and would consider the LPAs use of these manuals acceptable:

- KYTC's Highway Design Manual
- KYTC's Standard Drawings
- KYTC's Standard Specifications for Road and Bridge Construction
- AASHTO's A Policy on Geometric Design of Highways and Streets
- AASHTO's Roadside Design Guide
- AASHTO's Guide for the Development of Bicycle Facilities
- FHWA's Flexibility in Highway Design
- FHWA's Manual on Uniform Traffic Control Devices (MUTCD)

On local roads, the LPA may, in some cases, with prior approval from the Administering Office, follow defensible standards not included as KYTC standards, such as AASHTO standards. The LPA must formally request any such exception from the Administering Office and should not proceed until written approval from KYTC is received.

Where applicable, projects must comply with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*, which can be found at: [http://www.nps.gov/history/local-law/arch\\_stnds\\_8\\_2.htm](http://www.nps.gov/history/local-law/arch_stnds_8_2.htm)

For bicycle facility projects, *AASHTO's Guide for the Development of Bicycle Facilities (current edition)* must be followed.

Other bicycle, pedestrian and trail guidelines may be acceptable. Two promoted by FHWA are:

- NACTO Urban Bikeway Design Guide, and
- ITE Designing Walkable Urban Thoroughfares: A Context Sensitive Approach

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. **Chapter III** of this LPA Guide covers the requirements associated with hiring design professionals. Any professional conducting design services for the LPA should attend the project team pre-design meeting discussed in **Chapter II**.

The LPA Project Development Checklist (PDC) and Design Review Checklist (LDRC) are explained in detail in **Chapter I**; these checklists can be found here: <http://transportation.ky.gov/Local-Programs/Pages/Forms,%20Templates,%20and%20Examples.aspx>.

And, a copy of each is provided as an attachment to this chapter.

The LDRC acts to ensure that those creating designs for construction follow the requirements set by statute and regulation; it must be completed by the LPA's professional engineer or design consultant and submitted to the appropriate KYTC Administering Office with the complete Plans, Specifications, and Estimate (PS&E) package for review and concurrence prior to advertisement for construction bids. Concurrence with the PS&E package, LPA-PDC and the LDRC by the Administering Office is required prior to advertisement for construction bids.

**The LPA may not advertise for construction until KYTC has signed the PDC and LDRC and the LPA has received a written notice to proceed from its Administering Office. Note: Funding must always be authorized by FHWA prior to notice to proceed.**

The LPA must submit to the Administering Office the final project plans with the signed LDRC for KYTC review and approval. The Administering Office will route the LDRC to the appropriate KYTC professionals to review the design plans to ensure all requirements are met. At this time, if needed, the District LPA Coordinator will provide the plans and the encroachment permit (completed by the LPA) to the District Permits Department for review. There should always be early coordination with the District Permits Department. The LPA should work with the Administering Office to establish this coordination.

If the project affects any historic properties, the Administering Office will submit the final plans to the State Historic Preservation Officer. He/she will ensure that the designs meet all requirements relating to the historic nature of the project area.

As mentioned in other relevant sections, the final plans submittal must include:

- Right of Way lines;
- Any “no impact” letters from utility companies;
- Any right of way deeds, easements, releases;
- Completed right of way certification form; and
- Any approved deviations from the construction procurement process to allow for materials selection outside of the normal process.

The LPA should work with the Administering Office to determine what additional submittals are required during project development, such as preliminary line and grade and inspection.

## **V.2 ADA**

Section 504 of the 1973 Rehabilitation Act prohibits discrimination on the basis of disability in federally assisted programs. Section 504 requirements for USDOT administrations are covered under *49 CFR Part 27* (USDOT), Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Financial Assistance. The Americans with Disabilities Act (ADA, 1990, *Public Law 101-336*) is a broader civil rights statute that prohibits discrimination against people with disabilities in all areas of public life.

To ensure compliance, the LPA should reference:

- The United States Access Board’s Public Rights-of-Way Accessibility Guidelines (PROWAG) found at:  
<http://www.access-board.gov/guidelines-and-standards/streets-sidewalks/public-rights-of-way/proposed-rights-of-way-guidelines>
- The ADA Accessibility Guidelines for Buildings and Facilities found at:  
<http://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/background/adaag>
- The KYTC Standard Drawings regarding the design elements for ADA compliant pedestrian facilities found at:  
[http://transportation.ky.gov/design/standard/standard\\_drawings.html](http://transportation.ky.gov/design/standard/standard_drawings.html)

## **V.3. Communicating All Promises (“CAP”)**

During any phase of the project, the LPA and its representatives may make promises or commitments to citizens, government agencies, or companies. Any promises must be made with great care and documented and signed by the promisee to prevent confusion regarding the terms of the promise. The LPA should take care to make only reasonable promises; if there is any question about reasonableness, the LPA should ask the Administering Office. All promises must be incorporated into the project design plans and listed in the Bid Proposal. This ensures that the CAPs are clearly communicated to the contractor to whom the job is awarded. This is also important to the project team and LPA in keeping all CAPs on record and should help to ensure that any future maintenance personnel are aware of all CAPs.

## **V.4. Materials Provided by the LPA**

Federal law requires that materials used on the project must be selected through the construction procurement process.<sup>1</sup> 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.<sup>2</sup> The LPA may make such a request by contacting its Administering Office. If KYTC makes a finding that a deviation from the construction procurement process is in the public interest, the finding may have to be approved by FHWA.

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<sup>1</sup> 23 CFR § 635.407

<sup>2</sup> 23 CFR § 635.407(a)

These approvals must be attached to the LDRC and design plans when they are submitted to the Administering Office for review. These materials and their sources should be included in the proposal to be bid on by the potential contractors discussed in **Chapter VIII**.

#### **V.5. Patented or Proprietary Materials**

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.<sup>3</sup> This means, for example, that the design plans cannot dictate that Stanley door hinges or Elmer’s glue be used. Instead the plans must describe the characteristics of door hinges or glue that would meet the project’s needs without specifying a brand name.

If, upon request from the LPA, 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. This KYTC certification must be attached to the LDRC and design plans when they are submitted to the Administering Office for KYTC review. These materials and their sources should be included in the proposal to be bid on by the potential contractors discussed in **Chapter VIII**.

*FHWA guidance regarding patented and proprietary materials can be found at the following web address:*

<http://www.fhwa.dot.gov/construction/cqit/proprietary.cfm>

#### **V.6. Engineer’s Estimate**

After the design plans have been approved, the LPA must obtain an Engineer’s Estimate (“EE”) prepared by the professional who created the design plans.<sup>4</sup>

The EE is very important. The EE may be used to authorize construction funds and to evaluate bid proposals. No bid may be considered if it is 5% over the amount in the EE without approval from the Administering Office. In these cases, the LPA must contact the Administering Office to discuss why the bid is higher than the EE and to discuss funding.

If it is determined that the project will cost more than the amount of funds available, the LPA must 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 must work closely with the KYTC Administering Office to ensure any scope adjustments are acceptable to KYTC and FHWA.

If the bids are lower than the EE, the funding authorization may be reduced by the Administering Office to match the award amount and costs for resident inspection, if applicable. The LPA must not presume that the difference between the low bid and the EE or the difference in the low bid and the original project award amount is additional money for the LPA to use for additional project activities.

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<sup>3</sup> 23 CFR § 635.411.

<sup>4</sup> 23 CFR § 630.106(4).

Because estimating is not a perfect science, alternative bidding, discussed in **Chapter VIII** may be used to help the LPA optimize its ability complete the original project scope.

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 template used to prepare the EE must be provided in the bid proposal with all quantities listed (for recommended unit price bidding, other options are discussed in **Chapter VIII**). **The EE must be kept confidential to ensure that bidders give their best price, instead of merely meeting the prices set in the EE.**<sup>5</sup>

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<sup>5</sup> KRS 176.080

**CHAPTER V ATTACHMENTS**

*Attachment 1 – Project Development Checklist (LPA-PDC)*

*Attachment 2 – Design Review Checklist (LDRC)*

**Kentucky Transportation Cabinet (KYTC) / Federal Highway Administration (FHWA)**  
**Local Public Agency Project Development Checklist (LPA-PDC)**  
Revised April 5, 2011

***Project Information***

**KYTC Item No. (If applicable) :**

**Federal Project No.:**

**Local Public Agency:**

**KYTC Administering Office:**

**County:**

**Route (If applicable) :**

**Description:**

**Contract ID No. :**

**Advertisement for Bids Date:**

**Letting Date:**

***Introduction***

This Local Public Agency Project Development Checklist (LPA-PDC) is intended to assist in development of projects which conform to FHWA Federal-aid regulations, policies, and guidance for infrastructure projects.

**State Administered Local Public Agency (LPA) Federal-aid Projects:**

The LPA-PDC should be completed by the LPA, signed by an authorized agent of the LPA, and submitted to the appropriate KYTC Administering Office with the complete Plans, Specifications, and Estimate (PS&E) package for review and concurrence prior to advertisement for construction bids. The completed LPA-PDC will indicate the contract documents for this project have been prepared in accordance with the current version of KYTC LPA guidance documents, the KYTC/LPA Project Agreement, and all applicable Federal-aid laws, regulations, and policies. **Concurrence with the PS&E package and LPA-PDC by the KYTC is required prior to advertisement for construction bids.**

The LPA-PDC is composed of a series of yes/no questions in categories including Planning, Environmental, Right-of-Way & Utilities, Plans & Specifications, Proposal, and Estimate. **Answer all questions by checking 'Yes', 'No', or 'N/A' and provide support information.** If additional documentation or comments are needed to address a question or satisfy a requirement, please note accordingly in the 'Comments' column and provide attachments as necessary.

Notations in parentheses provide reference information to source documents such as Title 23 Code of Federal Regulations (CFR) ([www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html)) or other various guidance documents.

**Notes:**

1. See the current version of the KYTC/FHWA Stewardship Plan (<http://transportation.ky.gov/stewardshipPlan.pdf>) for authority, role, and responsibility delegations of program and project activities in implementing the Federal-aid Highway Program.
2. The LPA-PDC is not an all inclusive list as it does not address all Federal-aid requirements and regulations. However, the LPA-PDC does account for several major Federal-aid requirements and provides references to source documents for further review.





**Environmental Requirements**

Checklist Item	Yes	No	N/A	Comments
<p>1. <b>Has KYTC received all Clearinghouse Documentation?</b> Date received by KYTC Administering Office: _____</p>	<input type="checkbox"/>	<input type="checkbox"/>		
<p>2. <b>Has the environmental documentation for the project been approved? Please check the type of environmental documentation below. (23 CFR 771)</b>  <input type="checkbox"/> <b>Categorical Exclusion Minor (CE-M)</b> Date Approved: _____  <input type="checkbox"/> <b>Categorical Exclusion Level 1 (CE-1)</b> Date Approved: _____  <input type="checkbox"/> <b>Categorical Exclusion Level 2 (CE-2)</b> Date Approved: _____  <input type="checkbox"/> <b>Categorical Exclusion Level 3 (CE-3)</b> Date Approved: _____  <input type="checkbox"/> <b>Environmental Assessment / FONSI</b> Date FONSI Approved: _____  <input type="checkbox"/> <b>Environmental Impact Statement / ROD</b> Date ROD Approved: _____</p>	<input type="checkbox"/>	<input type="checkbox"/>		
<p>3. <b>Is a re-assessment or re-evaluation of the environmental document needed? (23 CFR 771.129)</b> Date of most recent re-assessment/re-evaluation: _____</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>4. <b>Have environmental commitments been incorporated into the final design and contract documents, in any of the following areas? If Yes, please check Y or N below for each type of project commitment or N/A if not applicable.</b></p> <p><b>Historic Preservation</b> (36 CFR 800, 16 USC § 470f) <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p><b>Stream/Wetland Mitigation</b> (23 CFR 777) <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p><b>Noise Abatement</b> (23 CFR 772) <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p><b>Section 4f</b> (23 CFR 774, 23 USC § 138, 49 USC § 303) <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p><b>Endangered Species Act</b> (50 CFR 402.12(c)) <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p><b>Other:</b> _____ <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p>				

5.	Have all applicable environmental permits for the project been secured? If not, please explain.	<input type="checkbox"/>	<input type="checkbox"/>		
	Please check yes or no to indicate if the permit has been obtained and N/A if it is not required.				
	Section 401 – Water Quality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Kentucky Pollutant Discharge Elimination System (KPDES) Individual Storm Water Discharge Permit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Section 404 – USACE Individual Stream Permit (23 CFR 777)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Section 404 – USACE Individual Wetlands Permit (23 CFR 777)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Section 404 – USACE Nationwide Permit (23 CFR 777)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Coast Guard (23 CFR 650 Subpart H) Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

**Right-of-Way & Utilities**

**Note: Only Question #1 applies to Non-infrastructure Projects**

Checklist Item		Yes	No	N/A	Comments
1.	<b>Right-of-Way Certification</b> Date Approved: _____ <i>Provide a copy of the Right-of-Way Certification with the LPA-PDC</i> Has <u>all</u> Right-of-Way for the project been secured?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2.	Have <u>all</u> displaced persons been relocated to decent, safe, and sanitary housing per the requirements outlined in the Uniform Act? If 'No', please provide a detailed explanation and attach to the LPA-PDC. (23 CFR 635.309)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3.	Have all Encroachment Permits been obtained for projects that will be constructed on KYTC Right-of-Way? Date Approved: _____ <i>Provide a copy of the Encroachment Permit with the LPA-PDC</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

4.	Are any utilities located within the project area?	<input type="checkbox"/>	<input type="checkbox"/>	
	If yes, have all Utility Agreements/No Impact Letters been approved?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	What do the Utility Impact Notes indicate? <input type="checkbox"/> No utilities remain located in the project area at the time of the letting <input type="checkbox"/> Utilities will be moved during construction by other than a contractor <input type="checkbox"/> Utilities will be moved during construction by a contractor <input type="checkbox"/> Utilities will remain in project area and must be avoided by Contractor  <i>Provide a copy of the Utility Impact Notes with the LPA-PDC</i>			
6.	Is the project located on or adjacent to or require the adjustment of railroad facilities or property?	<input type="checkbox"/>	<input type="checkbox"/>	
	If yes, has the railroad agreement been approved?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Non Construction Procurement (Purchasing)**

***Note: This Section only applies to Non-Infrastructure Projects.***

Checklist Item		Yes	No	N/A	Comments
1.	What method of procurement will be used? <input type="checkbox"/> Competitive Bidding RFB approved by KYTC _____ <input type="checkbox"/> Competitive Negotiation KYTC approval _____ RFP approval by KYTC _____ <input type="checkbox"/> Small Purchases Procedure KYTC approval _____ <input type="checkbox"/> Printing <input type="checkbox"/> Other KYTC approval _____				
2.	Purchasing procedure chosen was followed and Purchase Contract drafted KYTC approval _____	<input type="checkbox"/>	<input type="checkbox"/>		

**Design, Plans, & Specifications**

**Note: This Section only applies to Infrastructure Projects.**

Checklist Item		Yes	No	N/A	Comments
1.	Have <u>all</u> commitments and promises from previous reviews, meetings, and consultation with the public and external agencies been satisfactorily communicated in the design plans?	<input type="checkbox"/>	<input type="checkbox"/>		
2.	Have the design plans and LPA Design Review Checklist (LDRC) been signed by the LPA's Professional Engineer or Design Consultant?  Have plans and LDRC been submitted to District LPA Coordinator?  Date approved by District LPA Coordinator _____	<input type="checkbox"/>  <input type="checkbox"/>	<input type="checkbox"/>  <input type="checkbox"/>		
3.	Is the project in a historic district?  If yes, have the plans and LDRC been submitted to the KYTC State Historic Preservation Coordinator for review?  Date approved by KYTC State Historic Preservation Coordinator _____	<input type="checkbox"/>  <input type="checkbox"/>	<input type="checkbox"/>  <input type="checkbox"/>		
4.	Are any materials (excluding those supplied by a utility company for utility relocation) to be supplied by a public agency or through a non-competitive bid process? (23 CFR 635.407) Public Interest Finding approved by KYTC Date Approved: _____ Public Interest Finding approved by FHWA (if applicable per current KYTC/FHWA Stewardship Plan) Date Approved: _____	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>		
5.	Are patented or proprietary materials shown in the plans or specifications? (23 CFR 635.411) Use of Material Approved by KYTC Date Approved: _____ Use of Material Approved by FHWA (if applicable per current KYTC/FHWA Stewardship Plan) Date Approved: _____	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>		

**Construction Procurement**

**Note: This Section only applies to Infrastructure Projects.**

Checklist Item		Yes	No	N/A	Comments
1.	Has an official Engineer's Estimate been developed based upon all bid items included in the contract documents?	<input type="checkbox"/>	<input type="checkbox"/>		
2.	Is the remaining amount of funding consistent with the estimated cost of the construction phase?	<input type="checkbox"/>	<input type="checkbox"/>		
3.	Does the Bid Proposal contain: <input type="checkbox"/> Form FHWA-1273 language? (23 CFR 633.102) <input type="checkbox"/> Equal Employment Opportunity language and special provisions? (23 USC § 12101, et seq., 28 CFR 35, 29 CFR 1630, 41 CFR 60 and orders from the Secretary of Labor? <input type="checkbox"/> Does the Bid Proposal contain minimum wage rates required by federal and state law? (23 CFR 635.117 & KRS § 337.505 – 337.550)	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	 <input type="checkbox"/> <input type="checkbox"/>	
4.	Does the Bid Proposal contain a Disadvantage Business Enterprise (DBE) goal? (23 CFR 635.107 & 49 CFR 26) DBE Goal _____ Obtained on _____	<input type="checkbox"/>	<input type="checkbox"/>		
5.	Does the Bid Proposal contain the required non-collusion provision? (23 CFR 635.112 (f))	<input type="checkbox"/>	<input type="checkbox"/>		
6.	Does the Bid Proposal incorporate by reference the most current version of the <u>Standard Specifications for Roadway &amp; Bridge Construction</u> book?	<input type="checkbox"/>	<input type="checkbox"/>		
7.	Does the Bid Proposal contain the contract times and dates and any special scheduling provisions? (23 CFR 635.121)  Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> Completion Date: _____ Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> Work Days: _____ Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> Calendar Days: _____	<input type="checkbox"/>	<input type="checkbox"/>		
8.	Who will perform the construction inspection services for the project? <input type="checkbox"/> LPA to perform inspection? <input type="checkbox"/> Consultant, hired pursuant to Professional Services Procurement procedures, to perform the inspection?				
9.	Will the LPA use the small construction procurement process?  KYTC Approval _____	<input type="checkbox"/>	<input type="checkbox"/>		



13.	<b>Have the Construction Contract Documents been submitted to KYTC for approval?</b>	<input type="checkbox"/>	<input type="checkbox"/>		
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**Signatures and Concurrence**

**State Administered Local Public Agency (LPA) Federal-aid Project:** The information provided on this Project Development Checklist is complete/accurate and the contract documents for this project have been prepared in accordance with the KYTC LPA Guide and the KYTC/LPA Project Agreement No.: \_\_\_\_\_ Signed & Dated: \_\_\_\_\_.

The contract documents conform to all Federal-aid laws, regulations, and policies and the eligibility requirements for the type of Federal-aid funds requested for this project have been satisfied.

Local Public Agency (Name): \_\_\_\_\_

Signed: \_\_\_\_\_ Print: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Kentucky Transportation Cabinet (KYTC) Concurrence:**

Signed: \_\_\_\_\_ Print: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Once FHWA has authorized Federal-aid funds for the project and the project sponsor has received notification from KYTC of this authorization as well as concurrence from KYTC with the PS&E package and this LPA-PDC, the project sponsor may advertise the project for construction bids. A project must be advertised for construction bids for a minimum of 21 calendar days prior to opening bids and letting the contract. As a recipient of Federal-aid funds, the project sponsor is responsible for advertising and administering the construction of the project in accordance with all applicable Federal-aid laws and regulations.**

Referenced in the Design Plans and Specifications Section of the LPA Guide.

Kentucky Transportation Cabinet (KYTC) / Federal Highway Administration (FHWA)  
**Local Public Agency Design Review Checklist (LDRC)**

Revised April 1, 2011

***Project Information***

**KYTC Item No. (If applicable) :**

**Federal Project No.:**

**Local Public Agency:**

**KYTC Administering Office:**

**County:**

**Route (If applicable) :**

**Description:**

**Contract ID No. :**

**Advertisement for Bids Date:**

**Letting Date:**

***Introduction***

This Local Public Agency Design Review Checklist (LDRC) is intended to assist in development of design plans for projects which conform to FHWA Federal-aid regulations, policies, and guidance for Local Public Agency (LPA) infrastructure projects.

The LDRC will accompany the Local Public Agency Infrastructure Project Development Checklist (LPA-PDC) and should be completed by the LPA's professional engineer or design consultant and submitted to the appropriate KYTC Administering Office with the complete Plans, Specifications, and Estimate (PS&E) package for review and concurrence prior to advertisement for construction bids. The completed LDRC will indicate the design documents for this project have been prepared in accordance with the current version of KYTC LPA guidance documents, the KYTC/LPA Project Agreement, and all applicable state and federal laws, regulations, policies and specifications. **Concurrence with the PS&E package, LPA-PDC and the LDRC by the KYTC is required prior to advertisement for construction bids.**

The LDRC is composed of a series of yes/no questions in category of design including Plans & Specifications. **Answer all questions by checking 'Yes', 'No', or 'N/A' and provide support information.** If additional documentation or comments are needed to address a question or satisfy a requirement, please note accordingly in the 'Comments' column and provide attachments as necessary.

Notations in parentheses provide reference information to source documents such as Title 23 Code of Federal Regulations (CFR) ([www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html)) or other various guidance documents.

Notes:

1. See the current version of the KYTC/FHWA Stewardship Plan (<http://transportation.ky.gov/stewardshipPlan.pdf>) for authority, role, and responsibility delegations of program and project activities in implementing the Federal-aid Highway Program.



2. The LDRC is not an all inclusive list as it does not address all requirements, regulations and specifications regarding design.. However, the LDRC does account for several major federal and state requirements and provides references to source documents for further review.

<b>Design, Plans, &amp; Specifications</b>				
<b>Checklist Item</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Comments</b>
<p><b>1. Do the contract documents describe the location and design features and the construction requirements in sufficient detail to facilitate construction and the estimation of construction costs of the project?</b> (23 CFR 630.205)</p> <p><b>Do the contract documents contain the following:</b></p> <p>Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Title Sheet</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Typical Sections</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Summary of Quantities</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Plan Sheets</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Profile Sheets</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Drainage Sheets</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Cross Sections</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Traffic Control Plans</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Signing Plans</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Lighting Plans</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Traffic Signal Plans</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Special Detail Sheets</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Structure Plans</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Utility Relocation Plans</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Landscaping Plans</b>            Y <input type="checkbox"/> N/A <input type="checkbox"/> <b>Other: _____</b></p> <p><b>(Note: Contact Administering Office for applicability of sheets in plan set)</b></p>	<input type="checkbox"/>	<input type="checkbox"/>		
<p><b>2. Does the project conform to Federal-aid standards for geometric and structural design as described in Title 23 Code of Federal Regulations Part 625 Design Standards for Highways and/or all applicable KYTC policy and guidance manuals?</b> (<a href="http://transportation.ky.gov/KYTTCI-Forms/PolicyManuals.htm">http://transportation.ky.gov/KYTTCI-Forms/PolicyManuals.htm</a>)</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<p><b>3. Are any design exceptions incorporated into this project?</b> (23 CFR 625.3(f))</p> <p>Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> <b>Reviewed and Approved by KYTC</b>            Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> <b>Reviewed and Approved FHWA (if applicable per current KYTC/FHWA Stewardship Plan)</b>            Date Approved: _____</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Checklist Item	Yes	No	N/A	Comments
<b>4. Does the project involve new or revised Interstate Access?</b> <input type="checkbox"/> <b>Y</b> <input type="checkbox"/> <b>N</b> <input type="checkbox"/> <b>N/A</b> <input type="checkbox"/> <b>Interchange Justification/Modification Study Approved by FHWA</b> Date Approved: _____	<input type="checkbox"/>	<input type="checkbox"/>		
<b>5. Is the project located within two miles of an airport? (23 CFR 620.103)</b> <input type="checkbox"/> <b>Y</b> <input type="checkbox"/> <b>N</b> <input type="checkbox"/> <b>N/A</b> <input type="checkbox"/> <b>Coordinated with Kentucky Airport Zoning Permit (KAR 50.030)</b>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>6. Are Right-of-Way, easement, and control of access lines shown on the plans?</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>7. Are <u>all</u> temporary and permanent traffic control devices consistent with the current edition of the Manual on Uniform Traffic Control Devices (MUTCD)? (23 CFR 655.603)</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>8. Is a Transportation Management Plan (TMP) provided and consistent with regulations on Work Zone Safety &amp; Mobility in Title 23 Code of Federal Regulations Part 630 Subpart J and the KYTC Policy and Procedures for the Safety and Mobility of Traffic Through Work Zones?</b> <input type="checkbox"/> <b>Y</b> <input type="checkbox"/> <b>N</b> <input type="checkbox"/> <b>N/A</b> <input type="checkbox"/> <b>Project classified as "Significant"</b> <input type="checkbox"/> <b>Y</b> <input type="checkbox"/> <b>N</b> <input type="checkbox"/> <b>N/A</b> <input type="checkbox"/> <b>Public Information Plan Approved by KYTC</b> Date Approved: _____ <input type="checkbox"/> <b>Y</b> <input type="checkbox"/> <b>N</b> <input type="checkbox"/> <b>N/A</b> <input type="checkbox"/> <b>TMP Approved by KYTC</b> <input type="checkbox"/> <b>Y</b> <input type="checkbox"/> <b>N</b> <input type="checkbox"/> <b>N/A</b> <input type="checkbox"/> <b>TMP Approved by FHWA (if applicable per current KYTC/FHWA Stewardship Plan)</b> Date Approved: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>9. Are the highway clear zone and safety appurtenances in accordance with the current edition of the AASHTO Roadside Design Guide?</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>10. Are appropriate accommodations provided for bicyclists and pedestrians? (23 CFR 652)</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>11. Are pedestrian facilities and appurtenances designed in accordance with Americans with Disabilities Act requirements? (<a href="http://www.access-board.gov">www.access-board.gov</a>)</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>12. Does the project utilize the current version of the Kentucky Department of Highways (KDOH) Standard Drawings? If 'No', please provide a detailed explanation.</b>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>13. Does the project utilize the current version of the KYTC/KDOH Standard Specifications for Road and Bridge Construction? If 'No', please provide a detailed explanation and copy of KYTC written approval of alternate specifications.</b>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>14. Do contract documents include a specification and method of payment for all bid items?</b>	<input type="checkbox"/>	<input type="checkbox"/>		

Checklist Item	Yes	No	N/A	Comments
<p><b>15. Are any materials (excluding those supplied by a utility company for utility relocation) to be supplied by a public agency or through a non-competitive bid process? (23 CFR 635.407)</b>  Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> <b>Public Interest Finding Approved by KYTC</b>  Date Approved: _____  Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> <b>Public Interest Finding Approved by FHWA (if applicable per current KYTC/FHWA Stewardship Plan)</b>  Date Approved: _____</p>	<input type="checkbox"/>	<input type="checkbox"/>		
<p><b>16. Are patented or proprietary materials shown in the plans or specifications? (23 CFR 635.411)</b>  Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> <b>Use of Material Approved by KYTC</b>  Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> <b>Use of Material Approved by FHWA (if applicable per current KYTC/FHWA Stewardship Plan)</b>  Date Approved: _____</p>	<input type="checkbox"/>	<input type="checkbox"/>		
<p><b>17. Is State or local force account construction work to be utilized on this project? (23 CFR 635.204)</b>  Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> <b>Cost Effective Determination Approved by KYTC</b>  Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> <b>Cost Effective Determination Approved by FHWA (if applicable per current KYTC/FHWA Stewardship Plan)</b>  Date Approved: _____</p>	<input type="checkbox"/>	<input type="checkbox"/>		

**Signatures and Concurrence**

**State Administered Local Public Agency (LPA) Federal-aid Project:** The information provided on this LDRC is complete/accurate and the design documents for this project have been prepared in accordance with the KYTC LPA Guide and the KYTC/LPA Project Agreement No.: \_\_\_\_\_  
Signed & Dated: \_\_\_\_\_

The design documents conform to all state and federal, regulations, policies and specifications and the eligibility requirements for the type of Federal-aid funds requested for this project have been satisfied.

**Local Public Agency (Name):**

Signed: \_\_\_\_\_ Print: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Kentucky Transportation Cabinet (KYTC) Concurrence:**

Signed: \_\_\_\_\_ Print: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Once FHWA has authorized Federal-aid construction funds for the project and the project sponsor has received notification from KYTC of this authorization as well as concurrence from KYTC with the complete PS&E package, the LPA-PDC and this checklist, the project sponsor may advertise the project for construction bids. A project must be advertised for construction bids for a minimum of 21 calendar days prior to opening bids and letting the contract. As a recipient of Federal-aid funds, the project sponsor is responsible for advertising and administering the construction of the project in accordance with all applicable state and federal laws and regulations.**

## **VI. RIGHT-OF-WAY AND UTILITIES**

This chapter outlines the steps the LPA must take to “clear” right of way and utilities and coordinate with railroads for Federal-aid projects.

### **VI.1. Right-of-Way**

The LPA must obtain property interests adequate for the construction, operation, and maintenance of its project and for the protection of both the project and the public.<sup>1</sup>

The KYTC Right-of-Way Guidance Manual (current) must be followed on all LPA Projects. This manual can be found here:

<http://transportation.ky.gov/Organizational-Resources/Policy%20Manuals%20Library/RightOfWay.pdf>

The LPA should work very closely with its Administering Office (OLP or District LPA Coordinator) throughout the right-of-way phase to ensure Federal regulations and state policies are followed.

At a minimum, the LPA must understand the following key points in regards to right-of-way:

- The LPA may perform title work (only) in the design phase of a project; quality title work is critical. Before executing any additional right-of-way activities, 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 its Administering Office.
- The KYTC Division of Right-of-Way and Utilities must prepare an Official Order for every project with a right-of-way phase. This is done at the time of right of way funding authorization.
- If right-of-way is not funded by KYTC, NTP and the Official Order are still required.
- The LPA should work with its Administering Office to understand what approvals are necessary as part of the right-of-way phase. Items likely requiring KYTC review and approval during the R/W phase include, but may not be limited to:
  - Appraisals
  - Range of values for minor acquisitions (MARs)
  - All MARs and Deeds and Grants of Easement
  - Right-of-Way plans
  - Right-of-Way Certificate (must be signed by District R/W supervisor and Director of R/W)
  - Completed Parcel Files

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<sup>1</sup> 23 CFR § 710.201(e)

- The LPA must be able to demonstrate on what property the project will be located. If another entity owns the property, the LPA must comply with the applicable federal and state statutes to obtain property rights for its project.<sup>2</sup>
- **When acquiring property from third parties, regardless of funding source, the LPA is required to follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“Uniform Act”) discussed below. Failure to follow and document adherence to the Uniform Act will jeopardize project funding (all phases).**
- ROW Certification is required for all projects. The required KYTC ROW Certification form can be found here:  
<http://transportation.ky.gov/Organizational-Resources/Forms/TC%2062-226.pdf>.  
A copy is provided as an attachment to this chapter.
- The LPA must obtain all deeds/ grants of easements, and releases, and record them where appropriate. The Administering Office will review the ROW Certification Form and route to the appropriate parties for signature. Once all signatures are received, the completed form will be forwarded by the Administering Office to the LPA for their files. The final plans submittal, discussed in **Chapter V**, must include a copy of all recorded documents and a copy of the completed ROW Certification form.
- If the LPA’s project is non-infrastructure or located on the LPA’s property, the LPA must indicate on the ROW Certificate that the project requires no new or additional right-of-way acquisitions or relocations and the LPA must route the certificate to the Administering Office for signatures along with the survey or plans illustrating the project location/property ownership.
- No offers for acquisition may be made prior to approval of the environmental document (discussed in **Chapter IV**).
- All consultant right-of-way professionals working on any LPA project should be KYTC prequalified.
- If the LPA would like to hire a relocation agent, acquisition consultant, or appraiser rather than acquiring the property itself, the LPA must use one of the QBS processes discussed in **Chapter III** to procure the appropriate professionals. As mentioned in **Chapter III**, KYTC has statewide right-of-way professionals (hired by KYTC via QBS process) that the LPA may utilize.
- The LPA shall either adopt in writing KYTC’s written Policies and Procedures for Right of Way Acquisition and Relocation Assistance, outlined in the current Right of Way Guidance Manual, or present its own written Policies and Procedures for approval by the KYTC Department of Highways Division of Right of Way & Utilities. If the LPA has not adopted such policies and procedures, all right of way activities (including any payments) should be coordinated and approved by KYTC. The Administering Office will coordinate

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<sup>2</sup> 23 CFR § 710; 49 CFR § 24; and 42 USC § 4601.

with the applicable District and Central Office personnel. The LPA should make all submittals to the Administering Office.

- LPAs may not purchase property in the name of the state.
- **Encroachment Permit:** If the Federal-aid LPA project will require any work within or abutting KYTC right-of-way, the LPA must obtain an encroachment permit from KYTC. There are different types of encroachment permits depending on the type of work to be completed. More information regarding how to acquire an encroachment permit can be found in the KYTC Permits Manual:

<http://transportation.ky.gov/Permits/Documents/2013-PermitsManual.pdf>.

As explained in the Manual, the following application must be completed and submitted with final plans:

<http://transportation.ky.gov/Organizational-Resources/Forms/TC%2099-1A.pdf>.

A copy of this form is provided as an attachment to this chapter.

- **The Uniform Act:** As mentioned above, LPAs must follow the Uniform Act when acquiring any property interest from a third party.<sup>4</sup> The following bulleted paragraphs summarize the LPAs responsibilities related to the Uniform Act:

*FHWA Video: Introduction to Right-of-Way Requirements and the Uniform Act*

<http://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?category=rightofw>

- There must be a written record of contacts documenting all communication with the property owner or the property owner's representative.
- LPAs are responsible for informing property owners of their rights under The Uniform Act at the time that they make contact with them for the purpose of acquiring the needed property interest.
- The Uniform Act requires the LPA to perform certain relocation planning activities.<sup>5</sup> The LPA is required to provide notices to displaced persons.<sup>6</sup> The Uniform Act also requires that the LPA provide relocation assistance advisory services which include interviews with displaced persons to determine their needs and preferences<sup>7</sup>.
- The Uniform Act requires that persons displaced because of a federally funded project receive compensation for relocation expenses<sup>8</sup>.
- The Uniform Act requires that those that are displaced from their property, homes or businesses be given just compensation for that property.
- **Under no circumstances may the LPA enter or take an interest in a third party's property without first making an offer of just compensation.** In order to offer just compensation, the LPA must obtain an appraisal unless the owner is donating the property (see **Section V.1.b** below) or the LPA determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the

<sup>4</sup> 42 USC § 4601-4655

<sup>5</sup> 49 CFR § 24.205(a)

<sup>6</sup> 49 CFR § 24.203

<sup>7</sup> 49 CFR § 24.205(c)

<sup>8</sup> 49 CFR § 34.207

anticipated value of the proposed acquisition is estimated at \$10,000.00 or less, based on a review of available data<sup>9</sup>. Appraisers must be prequalified by KYTC.

- Appraisals expire; expiration varies depending on the market.
- When the value of acquisition is less than or equal to \$10,000.00 and non-complex, a Minor Acquisition Review (“MAR”) should be used to determine the amount of compensation that must be offered to the property owner. MARs may also be used when the value of acquisition is greater than \$10,000 and less than \$25,000, but these parcels shall be subject to an appraisal if requested by the property owner(s). MARs must be created by the collection of comparable sales data either independently or from the approved comparable sales book for the project and from a KYTC-approved range of values. A minimum of three (3) comparable sales shall be used to determine the value for the “Offer to Purchase” letter.
  - The MAR form and Comparable Chart outline how to do the calculation of the compensation using the value range. A sample MAR can be found here: <http://transportation.ky.gov/Local-Programs/Documents/Minor%20Acquisition%20Review.PDF>. A copy is provided as an attachment to this chapter. The LPA must submit the forms to the Administering Office; the Administering Office will handle coordination with the District ROW Supervisor who must approve the MAR before an offer is made to the property owner.
- Once the MAR or appraisal is approved by KYTC, the right-of-way agent may contact the property owner to arrange a meeting to make the offer. Offers must be given to the property owner both verbally and in writing.
- If the parcel cannot be acquired through the procedures outlined in the KYTC Right-of-Way Guidance Manual, it may be necessary, after consultation with KYTC, to begin condemnation proceedings. KYTC may be able to assist the LPA with this process. The LPA should alert KYTC to any such problems as soon as possible. There are considerable costs and delays associated with the condemnation process; a negotiated resolution is preferable.
- Adequately documenting the right-of-way phase is critical. Following are examples of essential elements of a completed right-of-way acquisition file:
  - Record of contacts
  - Title report
  - MAR or Appraisal
  - KYTC approval of MAR or Appraisal
  - Written offer
  - Memorandum of understanding between the LPA and the property owner
  - Deed or easement

- **Temporary Easement, Permanent Easement, and Fee Simple/Right-of-Way:** The LPA should work closely with the KYTC to determine what type of property interests are needed

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<sup>9</sup> If the property owner is donating the property, the LPA must also comply with the provisions of 23 CFR § 710.505 regarding real property donations.

FHWA can approve ROW acquisition without a waiver up to \$25,000 if the LPA offers the property owner the option of having the LPA appraise the property. 49 CFR § 24.102  
49 CFR § 24.102(c).



for its project. The LPA may need a temporary easement, permanent easement, or to purchase right of way in fee simple. The LPA should consider the following:

- **Temporary Easement:** If the LPA needs to enter property not owned by KYTC or the LPA during the construction phase of a project, a Temporary Easement will be necessary.
- **Permanent Easement:** The LPA must purchase a permanent easement when a portion of the rights to a property are needed for the construction and/or perpetual maintenance of project improvements, such as slope, drainage, or utilities. A sample permanent easement template can be found here:

<http://transportation.ky.gov/Local-Programs/Documents/Permanent%20Easement%20-Citizen%20to%20LPA.pdf>.

A copy is provided as an attachment to this chapter. The permanent easement must also allow the LPA to later transfer an easement interest to KYTC if KYTC requires it. KYTC may require a maintenance or preservation easement be provided on a case by case basis depending on the amount of the award, nature, or sensitivity of the project. This is discussed further in **Chapter XI**.

- Permanent easements and fee simple purchases should be acquired free and clear of any liens, taxes, mortgages or other encumbrances except easements, restrictions, or record, and zoning laws.
- **Consent and Release:** In extremely limited cases, with KYTC approval, the LPA may use a consent and release to enter property not owned by KYTC or the LPA during the construction phase of a project. This option may be appropriate when minimal property access is needed for a brief time and there will be no disturbance of site land improvements (i.e., fence, tree, gravel). Before a Consent and Release is obtained, the property owner must be informed of their right to just compensation (see “The Uniform Act” subsection). A sample form can be found here:

<http://transportation.ky.gov/Local-Programs/Documents/Consent%20and%20Release%20Form.pdf>.

A copy is provided as an attachment to this chapter. A signed consent and release is generally not recorded on permanent property records which would allow other entities to obtain rights superior to the LPA’s. For example, the property owner could sign the Consent and Release Form, but then, before the construction was over, the owner could sell the property. The new owner would be under no obligation to honor the Consent and Release. Also, if the property is foreclosed on during the construction phase, the party foreclosing is also under no obligation to continue to allow the LPA access to the property. If the need to enter onto the property will be brief, a Consent and Release may be the appropriate option.

- **Donation or Dedication of Property Rights:** 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<sup>11</sup>. 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

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<sup>11</sup> 49 CFR § 24.108 and 23 CFR § 710.505

coercion. It is necessary to assign a value to donated property through the MAR or appraisal process if donated property will be credited towards the LPA's matching funds.<sup>12</sup> Even if the property rights are donated or dedicated, it is still necessary for the LPA to obtain and record deeds or easements documenting the donation.

- **Cemeteries:** If surveys, environmental analysis, or conversations with locals indicate the potential for graves in close proximity to the project, please contact KYTC. KYTC will perform any grave relocation work associated with LPA projects. All associated costs are the responsibility of the LPA.

## VI.2. Utilities

If the project touches the ground, the LPA must follow the Utilities and Rails Guidance Manual<sup>14</sup>. The manual can be found here:

<http://transportation.ky.gov/Organizational-Resources/Policy%20Manuals%20Library/Utilities%20and%20Rails.pdf>.

The LPA should begin early coordination with utility companies, as soon as the written notice to proceed with the Design phase (discussed in **Chapter V**) 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.

The LPA must understand the following regarding utilities:

- It is important to discuss the utilities policy and relocation process at the project team meeting.
- As mentioned above, the LPA should begin utility coordination as soon as possible so that coordinating with utility companies will not delay the project.
- The LPA must provide its Administering Office the location and limits of the project. The Administering Office will coordinate with the District Utilities Supervisor who will provide to the LPA a list of all the known utility companies that could be in the project area.
- If the MOA between KYTC and the LPA indicates that the LPA will negotiate with the utility companies itself, its representatives will contact each of the known utilities and confirm that the utility is within the project limits. For each utility within the project limits, the LPA must identify any affect the project will have on that utility through reasonable means as identified in the *Utilities and Rails Guidance Manual*. The LPA must also determine which of the utilities it must compensate for relocation work done<sup>15</sup>. The utility company must be compensated for the cost of relocating if the utility company is a not for profit company or if the utility equipment is located on private ROW rather than KYTC's ROW. For further guidance regarding whether or not the LPA must compensate the utility companies please see the Utilities and Rail manual and applicable laws.

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<sup>12</sup> 23 CFR § 710.507 and 23 CFR § 630.106(h)(1). See also Chapter I, Section I.2 "Matching Requirement".

<sup>14</sup> This process is governed by KRS § 177.035; KRS § 416.140; KRS § 179.265; 23 USC § 123.

<sup>15</sup> KRS § 177.035 and KRS § 179.265 dictate when a utility company is due compensation for its relocation costs.

- If the utility will not be impacted by the project, but is located within the project area, the utility company must provide a “No Impact” letter to the LPA. The final plans submittal discussed in **Chapter V** must include a copy of all “no impact” letters.
- If a utility company will be impacted by the project and is compensable, the LPA must negotiate the relocation terms and enter into an agreement defining how the utility will be treated and who is to perform any relocation work. The agreement must also estimate how much compensation the utility company is due. There are several forms of utility agreement. To determine which of these forms is appropriate see <http://transportation.ky.gov/Right-of-Way-and-Utilities/Documents/ROW-Complete%202007.pdf>.

This manual provides all form agreements and sample “no impact” letters.

- If the utility is impacted by the project, but is not due compensation for its relocation costs, the utility must obtain an encroachment permit if any of the relocated utility’s facilities will be located on KYTC ROW.
- Other government permits may be required if the facilities will be located on government ROW other than KYTC ROW.
- For utility companies eligible for compensation, the relocation agreement acts as the encroachment permit.
- In the event the LPA is unable to reach an agreement with a utility company, it should alert and request assistance from its Administering Office.
- In order to open the Project for construction bidding, the LPA must provide the bidders with Utility Impact Notes. These notes must explain what facilities exist, what facilities are to be relocated and in what stage of relocation the utilities will be when construction is to begin.<sup>16</sup> Utility Impact Notes must also include utility contact information. KY 811 language concerning calling before digging must be included in the construction Bid Proposal<sup>17</sup>.
- LPAs constructing projects administered by OLP should note that no more than 25% of the total project cost will be reimbursed for costs associated with utility relocation. Any amount spent on utility relocation which exceeds 25% of the total project cost will be the responsibility of the LPA.
- A railroad impact note must be included in the construction bid proposal (discussed in **Chapter VIII**). If there is no impact to any railroad, the following should be included: “There are no railroad facilities or property associated with this project.”

*Information about Kentucky 811 can be found here:*

<http://kentucky811.org/>

<sup>16</sup> See form Utility Impact Notes in the Utilities and Rails Procedure manual located at <http://transportation.ky.gov/Right-of-Way-and-Utilities/Documents/ROW-Complete%202007.pdf>

<sup>17</sup> KRS § 367.4901 through KRS § 367.4917

**Railroads:** 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 in order to comply with state and federal statutes.<sup>18</sup> If the 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 can begin. The KYTC Railroad Coordinator must participate and support the LPA in these negotiations. The end result of the negotiations is a Railroad Agreement which must be approved by the KYTC Railroad Coordinator. A sample agreement can be found in the KYTC Utilities and Rail manual referenced above. Typically, the railroad is due compensation for design review, construction support, and flagging services. These services may be discussed in special rail coordination notes which must be included in the Bid Proposal.

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<sup>18</sup> 23 CFR § 646.

**CHAPTER VI ATTACHMENTS**

*Attachment 1 – Right-of-Way Certification Form*

*Attachment 2 – Encroachment Permit Form*

*Attachment 3 – Sample Minor Acquisition Review (MAR)*

*Attachment 4 – Sample Permanent Easement*

*Attachment 5 – Sample Consent and Release*



KENTUCKY TRANSPORTATION CABINET  
 Department of Highways  
**DIVISION OF RIGHT OF WAY & UTILITIES**

TC 62-226  
 Rev. 01/2016  
 Page 1 of 1

**RIGHT OF WAY CERTIFICATION**

<input type="checkbox"/>	<b>Original</b>	<input type="checkbox"/>	<b>Re-Certification</b>	<b>RIGHT OF WAY CERTIFICATION</b>			
<b>ITEM #</b>		<b>COUNTY</b>		<b>PROJECT # (STATE)</b>		<b>PROJECT # (FEDERAL)</b>	
<b>PROJECT DESCRIPTION</b>							
<input type="checkbox"/> <b>No Additional Right of Way Required</b>							
Construction will be within the limits of the existing right of way. The right of way was acquired in accordance to FHWA regulations under the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, as amended. No additional right of way or relocation assistance were required for this project.							
<input type="checkbox"/> <b>Condition # 1 (Additional Right of Way Required and Cleared)</b>							
All necessary right of way, including control of access rights when applicable, have been acquired including legal and physical possession. Trial or appeal of cases may be pending in court but legal possession has been obtained. There may be some improvements remaining on the right-of-way, but all occupants have vacated the lands and improvements, and KYTC has physical possession and the rights to remove, salvage, or demolish all improvements and enter on all land. Just Compensation has been paid or deposited with the court. All relocations have been relocated to decent, safe, and sanitary housing or that KYTC has made available to displaced persons adequate replacement housing in accordance with the provisions of the current FHWA directive.							
<input type="checkbox"/> <b>Condition # 2 (Additional Right of Way Required with Exception)</b>							
The right of way has not been fully acquired, the right to occupy and to use all rights-of-way required for the proper execution of the project has been acquired. Some parcels may be pending in court and on other parcels full legal possession has not been obtained, but right of entry has been obtained, the occupants of all lands and improvements have vacated, and KYTC has physical possession and right to remove, salvage, or demolish all improvements. Just Compensation has been paid or deposited with the court for most parcels. Just Compensation for all pending parcels will be paid or deposited with the court prior to AWARD of construction contract							
<input type="checkbox"/> <b>Condition # 3 (Additional Right of Way Required with Exception)</b>							
The acquisition or right of occupancy and use of a few remaining parcels are not complete and/or some parcels still have occupants. All remaining occupants have had replacement housing made available to them in accordance with 49 CFR 24.204. KYTC is hereby requesting authorization to advertise this project for bids and to proceed with bid letting even though the necessary right of way will not be fully acquired, and/or some occupants will not be relocated, and/or the just compensation will not be paid or deposited with the court for some parcels until after bid letting. KYTC will fully meet all the requirements outlined in 23 CFR 635.309(c)(3) and 49 CFR 24.102(j) and will expedite completion of all acquisitions, relocations, and full payments after bid letting and prior to AWARD of the construction contract or force account construction.							
Total Number of Parcels on Project		EXCEPTION (S) Parcel #		ANTICIPATED DATE OF POSSESSION WITH EXPLANATION			
Number of Parcels That Have Been Acquired							
Signed Deed							
Condemnation							
Signed ROE							
<b>Notes/ Comments (Use Additional Sheet if necessary)</b>							
<b>LPA RW Project Manager</b>				<b>Right of Way Supervisor</b>			
Printed Name				Printed Name			
Signature				Signature			
Date				Date			
<b>Right of Way Director</b>				<b>FHWA</b>			
Printed Name				Printed Name			
Signature				Signature			
Date				Date			



**APPLICATION FOR ENCROACHMENT PERMIT**

<b>Permittee Information</b>		<b>KYTC No.</b>		
Name	<b>Permit Information</b>			
Address	Address			
	City			
City	State	Zip		
State	Zip	County		
Phone#	Route No.	Mile-Point		
Contact	Longitude (X)			
Phone	Cell	Latitude (Y)		
Email	<i>Information below to be filled out by KYTC</i>			
Contact	<input type="checkbox"/> Air Right	<input type="checkbox"/> Entrance		
Phone	Cell	<input type="checkbox"/> Utilities	<input type="checkbox"/> Other: _____	
Email				
		<input type="checkbox"/> Left	<input type="checkbox"/> Right	<input type="checkbox"/> X-ing
		Access: <input type="checkbox"/> Full	<input type="checkbox"/> Partial	<input type="checkbox"/> by Permit

**General Description of Work:**

THE UNDERSIGNED PERMITTEE(s) (being duly authorized representative(s) or owner(s)) DO AGREE TO ALL TERMS AND CONDITIONS ON THE TC 99-1 (A).

Signature

Date

This is not a permit unless and until the permittee(s) receives an approved TC 99-1(B) from KYTC. This application will become void if not approved by the cancellation date. The cancellation date will be one year from the date the permittee submits their application.



## APPLICATION FOR ENCROACHMENT PERMIT

### TERMS AND CONDITIONS

1. The permit, including this application and all related and accompanying documents and drawings making up the permit, remains in effect and is binding upon the Applicant/Permittee, its successors and assigns, as long as the encroachment(s) exists and also until the permittee is finally relieved by the Department of Highways from all its obligations.
2. Applicant shall meet all requirements of the Clean Water Act if the project will disturb one acre or more, the applicant shall obtain a KPDES KYR10 Permit from the Kentucky Division of Water. All disturbed areas shall meet the requirements of the Department of Highway's Standard Specifications, Sections 212 and 213, as amended.
3. **INDEMNITY:**
  - A. **PERFORMANCE BOND:** The permittee shall provide to the Department a performance bond according to the Permits Manual, Section PE-203 as a guarantee of conformance with the Department's Encroachment Permit requirements.
  - B. **PAYMENT BOND:** At the discretion of the department, a payment bond will be required of the permittee to ensure payment of liquidated damages assessed to the permittee.
  - C. **LIABILITY INSURANCE:** Liability insurance will be required of the permittee (in an amount approved by the department) to cover all liabilities associated with the encroachment.
  - D. It shall be the responsibility of the permittee, its successors and assigns, to maintain all indemnities in full force and effect until the permittee is authorized to release the indemnity by the Department.
4. A copy of this application and all related documents making up the approved permit will be given to the applicant and shall be made readily available for review at the work site at all times.
5. Perpetual maintenance of the encroachment is the responsibility of the permittee, its successors and assigns, with the approval of the Department as required, unless otherwise stated.
6. Permittee, its successors and assigns, shall comply with and agrees to be bound by the requirements and terms of (a) this application and all related documents making up the approved permit, (b) by the Department's Permits Manual, and (c) by the Manual on Uniform Traffic Control Devices, both manuals as revised to and in effect on the date of issuance of the permit, all of which documents are made a part thereof by this reference. Compliance by the permittee, its successors and assigns, with subsequent revisions to applicable provisions of either manual or other policy of the Department may be made a condition of allowing the encroachment to persist under the permit.
7. Permittee agrees that this and any encroachment may be ordered removed by the Department at any time, and for any reason, upon thirty days written notice to the last known address of the applicant or to the address at the location of the encroachment. The permittee agrees that the cost of removing and of restoring the associated right-of-way is the responsibility of the permittee, its successors and assigns.
8. Permittee, its successors and assigns, agree that if the Department determines that motor vehicular safety deficiencies develop as a result of the installation or use of the encroachment, the permittee, its successors and assigns, shall provide and bear the expenses to adjust, relocate, or reconstruct the facilities, and/or add signs, auxiliary lanes, or other corrective measures reasonably deemed necessary by the Department within a reasonable time after receipt of a written notice of such deficiency. The period within which such adjustments, relocations, additions, modifications, and/or other corrective measures must be completed will be specified in the notice.





**APPLICATION FOR ENCROACHMENT PERMIT**

9. Where traffic signals are required as a condition of granting the requested permit or are thereafter required to correct motor vehicular safety deficiencies, as determined by the Department, the costs for signal equipment and installation(s) shall be borne by the permittee, its successors and assigns, and/or the Department in its reasonable discretion and only in accordance with the Department’s current policy set forth in the Traffic Operations Manual and Permits Manual. Any modifications to the permittee’s entrance necessary to accommodate signalization (including necessary easement(s) on private property) shall be the responsibility of the permittee, its successors and assigns, at no expense to the Department.

10. The requested encroachment shall not infringe on the frontage rights of an abutting owner without their written consent as hereinafter described. Each abutting owner shall express their consent, which shall be binding on their successors and assigns, by the submission of a notarized statement as follows, “I (we), \_\_\_\_\_, hereby consent to the granting of the permit requested by the applicant along Route \_\_\_\_\_, which permit does affect frontage rights along my (our) adjacent real property.” By signature(s) \_\_\_\_\_, subscribed and sworn by \_\_\_\_\_, on this date \_\_\_\_\_.

11. The permit, if approved, is subject to the agreement that it shall not interfere with any similar rights or permit(s) previously granted to any other party, except as otherwise provided by law.

12. Permittee shall include documentation which describes the facilities to be constructed. Permittee, its successors and assigns, agrees as a condition of the granting of the permit to construct and maintain any and all permitted facilities or other encroachments in strict accordance with the submitted and approved permit documentation and the policies and procedures of the Department. Permittee, its successors and assigns, shall not use facilities authorized herein in any manner contrary to that prescribed by the approved permit. Only normal usage as contemplated by the parties and by this application and routine maintenance are authorized by the permit.

13. Permittee, its successors and assigns, at all times from the date permitted work is commenced until such time as all permitted facilities or other encroachments are removed from the right-of-way and the right-of-way restored, **shall defend, protect, indemnify and save harmless** the Department from any and all liability claims and demands arising out of the work, encroachment, maintenance, or other undertaking by the permittee, its successors and assigns, related or undertaken pursuant to the granted permit, due to any claimed act or omission by the permittee, its servants, agents, employees, or contractors. This provision shall not inure to the benefit of any third party nor operate to enlarge any liability of the Department beyond that existing at common law or otherwise if this right to indemnity did not exist.

14. Upon a violation of any provision of the permit, or otherwise in its reasonable discretion, the Department may require additional action by the permittee, its successors and assigns, up to and including the removal of the encroachment and restoration of the right-of-way. In the event additional actions required by the Department under the permit are not undertaken as ordered and within a reasonable time, the Department may in its discretion cause those or other additional corrective actions to be undertaken and the Department may and shall recover the reasonable costs of those corrective actions from the permittee, its successors and assigns.

15. Permittee, its successors and assigns, shall use the encroachment premises in compliance with all requirements of federal law and regulation, including those imposed pursuant to Title VI of the Civil Right Act of 1964 (42 U.S.C. § 2000d et seq.) and the related regulations of the U.S. Department of Transportation in Title 49 C.F.R. Part 21, all as amended.



### **APPLICATION FOR ENCROACHMENT PERMIT**

**16.** Permittee, its successors and assigns, agree that if the Department determines it is necessary for the facilities or other encroachment authorized by the permit to be removed, relocated or reconstructed in connection with the reconstruction, relocation or improvement of a highway, the Department may revoke permission for the encroachment to remain under the permit and may order its removal, relocation or reconstruction by the permittee, its successors and assigns, at the expense of the permittee, except where the Department is required by law to pay any or all of those costs.

**17.** Permittee agrees that the authorized permit is personal to the permittee and shall remain in effect until such time as (a) the permittee's rights to the adjoining real property to have benefitted from the requested encroachment have been relinquished, (b) until all permit obligations have been assumed by appropriate successors and assigns, and (c) unless and until a written release from permit obligations has been granted by the Department. The permit and its requirements shall also bind the real property to have benefitted from the requested encroachment to the extent permitted by law. The permit and the related encroachment become the responsibility of the successors and assigns of the permittee and the successors and assigns of each property owner benefitting from the encroachment, or the encroachment may not otherwise permissibly continue to be maintained on the right-of-way. (Does not apply to utility encroachments serving the general public.)

**18.** If work authorized by the permit is within a highway construction project in the construction phase, it shall be the responsibility of the permittee to make personal contact with the Department's Engineer on the project in order to coordinate all permitted work with the Department's prime contractor on the project.

**19.** This permit is not intended to, nor shall it, affect, alter or alleviate any requirement imposed upon the permittee, its successors and assigns, by any other agency.

**20.** Permittee, its successors and assigns, agrees to contain and maintain all dirt, mud, and other debris emanating from the encroachment away from the surrounding right-of-way and the travel way of the highway hereafter and at all times that its obligations under the permit remain in effect.

COMMONWEALTH OF KENTUCKY  
 TRANSPORTATION CABINET  
 Division of Right of Way and Utilities  
**MINOR ACQUISITION REVIEW**

RWU6620  
 Rev. 3/2001

Item No. 07-28.00-9999

Parcel No. 099

County Name	Project Number	
MADISON	353R	NH 0753(088)R
	MARS 61687 01 RR	

Road Name TENN. STATE LINE-LEXINGTON; CONSTRUCT NEW INTERCHANGE AT I-75 AND DUNCANNON ROAD. (04CCR)(TO BE LET WITH 7-28.10)

	UM				EXTENDED AMOUNT	
Fee Simple 1	1,000,000 SF	X	\$0.99	=	\$990.00	
Fee Simple 2		X		=	\$0.00	
Fee Simple 3		X		=	\$0.00	
Temporary Easement 1	1,700,000 SF	X	\$0.99	X	20.00%	= \$336.60
Temporary Easement 2		X		X	%	= \$0.00
Permanent Easement	300,000 SF	X	\$0.99	X	70.00%	= \$207.90
Improvements				=	\$0.00	
Site Improvements				=	\$0.00	
Cost to Cure				=	\$50.00	
2 schubs @ \$25.00 each						
<b>Total</b>					= \$1,584.50	
<b>Use</b>					= \$1,600	
Remarks						
Acquisition Agent <u>KEITH MCDONALD</u>						
Approved Amount		<u>\$1,600</u>	Approved Date		<u>04-MAY-2011</u>	
			Proj. Mgr.		<u>KEITH MCDONALD</u>	

SAMPLE



**M-A-R VALUE CALCULATION AUTHORIZATION**

COUNTY FAYETTE ITEM NO. 07-163.30

UNIFORM PROJECT NO. FD52 C034 3921208R; OONH 00272 095  
ROAD NAME. LEXINGTON – PARIS ROAD (US 27)

**LAND CLASS VALUE RANGE**

**RESIDENTIAL SUBDIVISION** Lots are sold on a per lot basis, not price per square foot.

**VALUE RANGE** \$33,000.00 to \$65,000.00 per lot.

**AGRICULTURAL/RESIDENTIAL** 1 acre to 10 acres

**VALUE RANGE** \$2,000.00 to \$75,000.00 per acre

**AGRICULTURAL** 5 acres to 10 acres

**VALUE RANGE** \$4,000.00 to \$10,000.00 per acre

**INDUSTRIAL** 1 acre to 25 acres

**VALUE RANGE** \$30,000 to \$40,000.00

**EXPLANATION OF VALUE RANGE**

COMPARABLE SALES REFERENCES FROM R.F. LINK COMPARABLE SALES BOOK for Lexington – Paris Road (US 27), 7-163.30.

APPROVED: \_\_\_\_\_  
Keith McDonald  
Right of Way Supervisor

\_\_\_\_\_  
DATE

## Christian County Comparable Farm Sales

<u>Location</u>	<u>Sale Date</u>	<u>Sale Price</u>	<u>Size</u>	<u>Price/Ac</u>	<u>Deed Bk. Pg.</u>
4838 Cox Mill Rd.	5/11/07	\$ 2,880,000	876.19 Acres	\$3,287	BK: 660 PG: 701
Masonville Beverly Rd.	9/23/09	\$ 250,000	47.129 Acres	\$5,305	BK: 664 PG: 251
Herndon Oak Grove Rd.	2/17/09	\$ 686,530	130 Acres	\$5,281	BK: 664 PG: 144
John Rivers Rd.	3/12/08	\$ 457,916	99.547 Acres	\$4,600	BK: 651 PG 095
Ft. Campbell Blvd.	3/13/08	\$ 300,000	27.66 Acres	\$10,846	BK: 651 PG 157
Sivley Rd.	1/07/08	\$ 233,800	29.408 Acres	\$8,612	BK: 649 PG 523

SAMPLE

Price Range of the Sales Varies From \$3,287 to \$10,846 per acre

\*Considering any change in market conditions from the dates of sales, a price of \$8,000 per acre shall be used.

**PERMANENT EASEMENT**  
**Referenced in the Right of Way section of the LPA Guide**

Purpose: To give the LPA sufficient property rights to build, operate, and maintain the project facilities, where the project is located on land that is not owned by the LPA or KYTC.

Note: The template is from a recreational trails program project. Changes will have to be made so the Easement will apply to individual projects. If the LPA has any questions when making these changes it should contact its Administering Office.

SAMPLE

**PERPETUAL EASEMENT**

**Grant from** \_\_\_\_\_ **[CITIZEN]** \_\_\_\_\_ **to** \_\_\_\_\_ **[LPA]** \_\_\_\_\_

This Deed of Easement is made this made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (“Grantor”) and \_\_\_\_\_ [Agency building trail] (“Grantee”).

**WITNESSETH:**

**WHEREAS**, the Grantor is the owner in fee simple of real property in \_\_\_\_\_ County, Kentucky conveyed to the Grantor by deed dated \_\_\_\_\_ and recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_ in the Office of the County Clerk of \_\_\_\_\_ County, Kentucky (“Grantor’s Property”) and has the right to convey an easement on the Grantor’s Property.

**WHEREAS**, the Grantee is a public body politic, which has obtained a grant from the Kentucky Transportation Cabinet (“KYTC”), as governed by the Memorandum of Agreement between the Grantee and the KYTC in order to establish a public multi-use non motorized recreational trail in conjunction with the Recreational Trails Program governed by 23 U.S.C. § 206 and all other applicable law s and regulations.

**WHEREAS**, in connection with the above described program, the Grantee desires to acquire this Easement across Grantor’s Property as more fully described below.

**NOW, THEREFORE**, in consideration of the mutual covenants by and between the parties hereto and the public benefit to be derived by the grant of the hereinafter described easement (“Easement”), the Grantor hereby grants and conveys unto the Grantee, its successors, lessees, and assigns a perpetual, non-exclusive and assignable multi-use public trail easement along with the right, power, and privilege to maintain a multi-use public trail and all appurtenances thereto (“Trail”) along and upon all that part of Grantor’s Property described on Exhibit A and identified as \_\_\_\_\_ on the Plat attached hereto as Exhibit B (“Trail Easement Area”).

1. Easement Restrictions. The Easement includes the following restrictions:

- a. Grantee shall have the right but not the obligation, at Grantee’s expense to construct, maintain, repair, use the Trail within the Trail Easement Area, including the right to install, maintain, repair and replace steps, trail surfacing, bridges, culverts, and other structures and improvements as permitted herein.
- b. The Trail shall be solely for public recreational purposes. The Trail shall be used only for non-motorized passive recreation and designated for foot and horse travel, bicycle use, roller-skating and skateboarding use and the like.

- c. Any structures or improvements constructed and maintained pursuant to this Easement shall be conducive to the use of the Trail and/or the safety of the Trail users. Such structures may include but shall not be limited to signage, stairways, steps, bridges, paving and surfacing material, culverts, benches, picnic tables, restrooms, parking lots, trash receptacles, and signs or markings to inform the public of the Trail location or other features. Any such structures shall not be constructed outside of the Trail Easement Area.
- d. Grantee may relocate the Trail within the Trail Easement Area at the Grantee's discretion after giving notice to the Grantor as provided in Section 1.e.
- e. Prior to initial Trail installation, Trail relocation or major maintenance activity, Grantee shall give prior written notice to Grantor as required by Paragraph 2.
- f. Use of any motorized vehicle or similar mechanical means of locomotion, including snowmobiles, or other all-terrain vehicles shall be prohibited, except that Grantee may utilize reasonable motorized vehicle and equipment in the Trail Easement Area in the event of an emergency and for construction or maintenance purposes as appropriate. Grantee may permit motor-driven wheelchairs for the use of handicapped persons within the Trail Easement Area if consistent with the purposes of this Easement. Grantee or Grantor with Grantee's prior written consent may erect and maintain such fencing and barriers within the Trail Easement Area as may be reasonably necessary to prevent access to the Trail by motor vehicles. Grantor shall not erect fences, barriers, or signs that impede access to or use of the Trail.
- g. The general topography and elevation of the Grantor's Property in the Trail Easement Area shall be maintained or restored to the approximate level as of the date hereof, except that Grantee may maintain the Trail and the Trail Easement Area as shown on the Attached Exhibit B, which is incorporated herein by reference.
- h. Except for Trail construction, maintenance, or relocation, neither Grantor nor Grantee shall permit or cause any disturbance of the surface of the Trail or the Trail Easement Area, including but not limited to filing, excavation, removal of topsoil, sand, gravel, rocks or minerals, or change of the topography of the Trail or the Trail Easement Area in any manner. Further there shall be no placement, collection, or storage of trash, human waste, ashes, chemicals, hazardous or toxic substances, or any other unsightly or offensive material within the Trail Easement Area, except for trash receptacles provided for the use of Trail users, pursuant to Section 1.c. above.
- i. Grantee may clear brush as required to maintain the Trail and the Trail Easement Area, and may remove dead, dying or diseased vegetation or trees within the Trail Easement Area which poses a safety risk to Trail users. Otherwise, the Grantee may cut or remove additional vegetation or trees only with the prior written



consent of the Grantor. Grantee shall not employ herbicides, pesticides, growth inhibitors or other chemicals within the Trail Easement Area without the prior written consent of the Grantor. Grantor shall not remove any trees in the Trail Easement Area without the prior written consent of Grantee, except that Grantor may remove dead, diseased, or dying trees without prior permission of the Grantee, provided that Grantor has given Grantee notice of the proposed activity so that Grantee can divert public use of the Trail if necessary.

- j. The Grantee has the right and obligation to grant an easement to the Kentucky Transportation Cabinet that will allow, but not obligate, the Kentucky Transportation Cabinet, its successors, lessees, and assigns to share with the Grantee all of the rights, limitations and privileges given to the Grantee in this Easement.
  - k. The Grantor shall not permit any rights-of-way, easements of ingress or egress, driveways, roads, utility lines or other easements or servitudes, to be constructed, developed, or maintained into, on, over, under, or across, the Trail Easement Area without the prior written permission of Grantee.
  - l. The Grantee shall have the right to perform any of its duties and obligations as a recipient of Recreational Trails Program grant funds, as described in 23 U.S.C. § 206 and all other applicable laws and regulations.
  - m. Grantor shall in no way interfere with the Grantee's fulfillment of its obligations under this Easement. Grantor shall not tamper with, destroy, deface, or otherwise impact any structure Grantee constructs or preserves pursuant to the terms of this Easement.
2. Notice and Approval. The Purpose of requiring the Grantor to notify the Grantee prior to undertaking certain permitted activities is to afford the Grantee an adequate opportunity to monitor those activities in question to ensure that they are designed and carried out in a manner that is consistent with the purpose of the Easement.
- a. Whenever notice is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purpose of this Easement.
  - b. Where approval of one of the parties is required by the Easement, that approving party shall grant or withhold its approval in writing within (30) days of receipt of the other parties written request therefore. Failure of the approving party to deliver a written response to the other party within such thirty (30) days shall be

deemed to constitute approval by the approving party of such request unless such act is contrary to any express restriction included herein. Approval may be withheld only upon a reasonable determination by the approving party that the action as proposed would be inconsistent with the purpose of this Easement.

3. Inspections. The Grantee may, but is not required to make periodic inspections of the Trail and the Trail Easement Area. Representatives of Grantee shall be permitted at all reasonable times to inspect the Trail and the Trail Easement Area.
4. Grantor's Liability. The Grantor shall be entitled to all limits of liability as set forth in KRS § 411.190, KRS 150.645 and such other applicable status that may from time to time be enacted.
5. Notice of Violation; Corrective Action. If either party determines that a violation of the terms of this Easement has occurred or is threatened, that party shall give written notice to the other party of such violation and demand that corrective action sufficient to cure the violation be taken. The violating party shall correct the violation(s) identified and report those corrections to the non violating party within the time allowed for cure outlined in Paragraph 6.
6. Remedies.
  - a. Injunction. If a party violating the Easement fails to cure the violation within sixty (60) days after receipt of notice thereof from the non violating party, or, under circumstances where the violation cannot reasonably be cured within a sixty(60) day period, fails to begin curing such violation within the sixty (60) day period, fails to continue diligently to cure such violation until finally cured, the non violating party may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by restraining order, temporary or permanent injunction, and to require the restoration of the Trail and Trail Easement Area to the condition they were in prior to the violation.

In the event the Grantee seeks an injunction the Grantee shall not be required to post a bond and shall not be required to demonstrate irreparable harm or injury. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and the Grantee shall be entitled to the injunctive relief described above, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the

terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Subparagraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- b. Damages. If the violating party fails to cure the violation within sixty (60) days after receipt of notice thereof from the non violating party, or under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, fails to begin curing such violation within the sixty (60) day period fails to continue diligently to cure such violation until finally cured, the non violation party may bring an action at law demanding its costs in remedying the violation itself.
- c. Emergency Enforcement. If the Grantee, in its discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Trail or the Trail Easement Area, the Grantee may pursue any of its remedies available under this Easement without notice to Grantor and without waiting for the period provided for cure to expire.
- d. Scope of Relief. The parties' rights under this Paragraph apply equally in the event of either actual or threatened violations of this Easement.
- e. Forbearance. Forbearance by either party to exercise any of its rights under this Easement in the event of any breach of any term of this Easement by the opposite party shall not be deemed or construed to be a waiver by the non violating party of such term or of any subsequent breach of the same or any other terms of this or of any of the non violating party's rights under this Easement. No delay or omission by the non violating party shall impair such right or remedy or be construed as a waiver.
- f. Waiver of Certain Defenses. The parties acknowledge that they have both read this Easement, its terms and requirements, and both, in full knowledge of its provisions, hereby waive any defenses of laches, estoppels, or prescription with respect to any enforcement action instituted.
- g. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Trail or Trail Easement Area resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm, vandalism by non related parties and earth movement.

7. Representations and Warranties. Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:
- a. There are currently no mortgages or other liens on the property making up the Trail Easement Area except those that Grantor has informed the Grantee of in writing. Grantor shall assist the Grantee in obtaining a release of said mortgage if one is required.
  - b. No substance defined, listed or otherwise classified pursuant to any federal, state or local law, regulation or requirement has hazardous, toxic, polluting, or otherwise contaminating to the air, water or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned or transported in, on, over, under, from or across the Trail Easement Area;
  - c. There are not now any underground storage tanks located within the Trail Easement Area, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Trail Easement Area in a manner not in compliance with applicable federal, state and local laws, regulations and requirements;
  - d. Grantor and Trail Easement Area are in compliance with federal state and local laws, regulations, ordinances, codes and requirements applicable to the Trail Easement Area and its use;
  - e. There is no pending or threatened litigation in any way affecting, involving or relating to the Trail Easement Area;
  - f. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or any alleged violation of, or failure to comply with, any use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders; and
  - g. There are no outstanding surface or subsurface mineral rights associated with the Trail Easement Area.
8. Taxes. Grantor shall pay immediately, when first due or owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, charges or fees of whatever description levied on or assessed against the Trail Easement Area by a competent authority which may become a lien on the Trail Easement Area, unless Grantor timely object to the amount or validity of the assessment or charge and diligently prosecutes any appeal thereof, in which case the obligation hereunder to pay such charges

shall be suspended for the period permitted by law for prosecuting such appeal and any applicable grace period following completion of such action. Grantor shall furnish Grantee with satisfactory evidence of payment upon request.

9. Toxic substances. If, at any time, there occurs, or has occurred, a release in, on, or about the Trail Easement Area of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to notify the Grantee immediately.
10. Notice from Government Authorities. Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Trail and the Trail Easement Area received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request of Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.
11. Proposed Sale of Any Portion of Trail Easement Area. Grantor shall promptly notify the Grantee in writing of any proposed sale of the Trail Easement Area, the names and addresses of Grantor's proposed successor(s) in interest, and provide the Grantee the opportunity to explain the terms of the Easement to potential new owners prior to sale closing. In any deed conveying an interest in all or part of the Trail Easement Area subject to the terms of this Easement, the Grantor shall refer to this Easement and shall indicate that the Easement is binding upon all successors in interest to the Trail Easement Area in perpetuity.
12. Runs with the Land. Except as provided in Paragraphs 17 and 18, the obligations imposed by this Easement shall be effective in perpetuity and shall be deemed to run as a binding servitude with all property which makes up the Trail Easement Area. This Easement shall extend to and be binding upon Grantor and Grantee and all of each of their successors and assigns. Anything contained herein to the contrary notwithstanding, an owner of any portion of the Trail Easement Area shall have no obligation pursuant to this instrument where such owner shall cease to have any ownership interest in the property by reason of a bona fide transfer. The restrictions, stipulations, and covenants contained in this Easement shall be inserted by Grantor, verbatim or by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself of either the fee simple title or any lesser estate in the property making up the Trail Easement Area or any part thereof, including by way of example and not limitation, a lease of all or a portion of the property making up the Trail Easement Area.
13. Assignment. Grantee may convey, assign or transfer its respective rights, title and interest in this Easement to a duly authorized unit of the federal, state or local government or to a similar local, state or national organization whose purpose, inter alia, are to promote the values of the Recreational Trails program, provided that such conveyance, assignment or transfer requires the purpose for which the Easement was granted will continue to be

carried out. In the event that the grantee shall cease to be authorized to hold such easements, then the Grantee shall promptly select another qualified organization, and convey, assign, or transfer to the selected qualified organization all of its respective right, title, and interest under this Easement.

14. Recording and Effective Date. Grantee shall do and perform at its own cost all acts necessary for the prompt recording of this instrument in the land records of \_\_\_\_\_ County, Kentucky. Grantor and Grantee intend that the restrictions arising under this Easement take effect on the day and year this instrument is recorded in the above described land records. This instrument may be re-recorded at any time as may be required to preserve the rights in this Easement.
15. Stipulated Percentage Interest. For purposes of allocating proceeds pursuant to Paragraphs 17 and 18, Grantor and Grantee stipulate that as of the date of this Easement, Grantor and Grantee are each vested with real property interests in the Trail Easement Area and that such interests have a stipulated percentage interest in the fair market value of the property unencumbered by the Easement. Said percentage interests shall be determined by the ratio of the value of the Easement on the effective date of this Easement to the value of the whole property, without deduction for the value of the Easement on the effective date of this Easement. The stipulated percentage interest in the fair market value of the property has been determined as follows: Grantor's interest is 80% and Grantee's interest is 20%. For purposes of this paragraph, the ratio of the value of the easement to the value of the property unencumbered by the Easement shall remain constant, and the Grantor's and Grantee's percentage interest in the fair market value of the property unencumbered by the Easement thereby determinable shall remain constant.
16. Change in Economic Conditions. The fact that any use of the Trial Easement Area that is expressly prohibited by the terms of this Easement may become more economically valuable than uses permitted by the terms of this Easement, or that neighboring properties may, in the future be put entirely to uses that are not permitted by the terms of this Easement, has been considered by Grantor in granting this Easement, Grantor believes that any such changes in the use of neighboring properties will increase the benefit to the public of the continuation of this Easement and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement. The inability of making a profit shall not impair the validity of the Easement or be considered grounds for its termination or extinguishment pursuant to Paragraph 17.
17. Extinguishment. If circumstances arise in the future that render the purpose of the Easement impossible to accomplish, this Easement can only be terminated or extinguished whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Such circumstances may include, but are not limited to, partial or total destruction of the Trail or the Trail Easement Area resulting from casualty. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Trail Easement Area after such termination or extinguishment, and after the satisfaction or prior claims and any costs or expenses associated with such sale, Grantor



and Grantee shall share in the net proceeds resulting from such sale in accordance with their respective percentage interest in the fair market value of the Trail Easement Area, as such interests are determined under the provision of Paragraph 15, adjusted, if necessary, to reflect a partial termination or extinguishment of this Easement. Grantor shall immediately turn over such proceeds to the Grantee. Net proceeds shall also include without limitation, net insurance proceeds. In the event of extinguishment, the provisions of this Paragraph shall survive extinguishment and shall constitute a lien on the trail Easement Area with the same effect and priority as a mechanic's lien, except that such lien shall not jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Trail Easement Area.

18. Condemnation. If all or any part of the Trail Easement Area is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their interest in the Trail Easement Area subject to the taking or, in lieu purchase and all direct or incidental damages resulting therefrom. After the satisfaction of prior claims and net of expenses reasonably incurred by the Grantor and the Grantee in connection with such a taking or the prevention of a taking, the Grantor and the Grantee shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of Paragraphs 15 unless otherwise provided by law.
19. The Parties. The term "Grantor" as used in this Easement shall include any and all heirs, successors, and assigns of the original Grantor. The term "Grantee" as used in this Easement shall include any and all heirs, successors and assigns of the original Grantee.
20. Agents of Grantee. Grantee may assign its rights and obligations under this instrument with regard to construction, relocation, maintenance, and management of the Trail and the Trail Easement Area to persons, entities, or agencies ("Agents") as it sees fit. Grantee shall notify Grantor if such assignment is made and shall provide Grantor the name, address, and other contact information for these Agents. The Grantor is hereby notified that the Kentucky Transportation Cabinet ("KYTC") shall have all rights transferred to the Grantee pursuant to this Easement. KYTC can be contacted at the following location:

Kentucky Transportation Cabinet  
Department of Rural and Municipal Aid  
200 Mero Street  
Frankfort, KY 40622  
Telephone: (502) 564-2060  
Facsimile: (502) 564-6615  
Web: [http://transportation.ky.gov/Intergovernmental\\_Programs/](http://transportation.ky.gov/Intergovernmental_Programs/)

21. Interpretation. The following provisions shall govern the effectiveness, interpretation, and duration of the Easement:

- a. The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Kentucky;
- b. Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of the Trail Easement Area shall not apply in the construction interpretation of this Easement and this instrument shall be interpreted broadly to affect its purpose and the transfer or rights and restriction on use herein contained;
- c. The parties intend to agree and bind themselves, their successors, and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of any statute, common law, or private agreement in existence either now or hereafter.
- d. The invalidity or unenforceability of any provision of this Easement shall not affect the validity or enforceability of any other provision of this Easement or any ancillary or supplementary agreement relating to the subject matter hereof;
- e. Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any law regulation, ordinance, code or requirement relating to building materials, construction methods, interior mechanical systems (including, but not limited to, heating, air conditioning, plumbing, electrical, or gas), or use of the Trail or the Trail Easement Area. In the event of any conflict between any such ordinance or regulation and the terms hereof, Grantor shall promptly notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purpose of both this Easements and such ordinance or regulation.
- f. To the extent that Grantor owns or is entitled to development rights which may exist now or at some time hereafter, whether by reason of applicable zoning or some other similar ordinance, such development rights shall not be exercisable on, above, or below the Trail or the Trail Easement Area during the term of the Easement, nor shall they be transferred to any adjacent parcel and exercised in a manner what would interfere with the purpose of the Easement.
- g. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation; and
- h. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual written



agreement jointly amend this Easement, provided that no amendment shall be made that will adversely affect the qualification of the Easement or the status of Grantee under any applicable law. Any such amendment shall be consistent with the purpose of the Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the land records of \_\_\_\_\_ County, Kentucky. Nothing in this paragraph shall require the Grantor or Grantee to agree to any amendment or bind them to negotiation.

i. Time is of the essence concerning the provisions of this Easement.

**TO HAVE AND TO HOLD** said easement, together with all rights, privileges, and appurtenances thereunto belonging t the Grantee, its successors, lessees, and assigns.

**IN WITNESS WHEREOF**, the Grantor and Grantee have hereunto set their hands on the date indicated above.

GRANTOR(S)

\_\_\_\_\_  
[Property owner]

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, STATE AT LARGE, KY

GRANTEE

[AGENCY NAME]

\_\_\_\_\_  
By: [Agency representative, Title]

COMMONWEALTH OF KENTUCKY

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, STATE AT LARGE, KY

This instrument prepared by: [Agency representative, Title]

SAMPLE

**SAMPLE CONSENT AND RELEASE**  
**Referred to in the Right of Way and Utilities Section of the LPA Guide**

Purpose: To provide the LPA's the recommended language for gaining temporary access to a third party's property during project construction, without having to file a temporary easement in the county's property records.

Notes: Under no circumstances may the LPA request that a land owner sign a Consent and Release without first offering to compensate them. If the land owner demands compensation a temporary easement rather than a Consent and Release is recommended.

SAMPLE

[LPA]

### CONSENT AND RELEASE

County \_\_\_\_\_  
Route No. \_\_\_\_\_  
Mile Point \_\_\_\_\_

Road Name \_\_\_\_\_  
SYP Item No. \_\_\_\_\_

WHEREAS, the [LPA] has an approved plan for construction of:

Project Description:

Construction of right and left turn lanes on the Mt. Sterling By-Pass (KY 686) and construction of an entrance to the Herb Botts Memorial park at RT Sta. 8+27.55. This entrance road will be constructed on park property within the temporary easement described below and located at the following address.

Project Address:

Herb Botts Memorial Park  
(formerly Herb Botts Park)  
6305 Indian Mound Drive  
Mt. Sterling, KY 40353

Boundary

Being a tract of land in Montgomery County along KY 686 Beginning at a point on the Existing KY 686 Right of Way line approximately 160 feet north of the Montgomery County South Property Line and located 75.86 feet right of proposed KY 686 alignment at Station 7+40.00; Thence with the existing KY 686 right of way line North 21 Degrees 48 Minutes 39 Seconds East a distance of 180.62 feet to a point in the existing KY 686 right of way line 84.60 feet right of proposed KY 686 alignment at Station 9+20.00; Thence with the proposed easement line South 67 Degrees 02 Minutes 08 Seconds East a distance of 75.59 feet to a point in the proposed easement corner 160.00 feet right of proposed KY 686 alignment at Station 9+15.00; Thence with the proposed easement line South 06 Degrees 04 Minutes 14 Seconds West a distance of 133.65 feet to a point in the proposed easement corner 190.00 feet right of proposed KY 686 alignment at Station 7+85.00; Thence with the proposed easement line South 87 Degrees 31 Minutes 33 Seconds West a distance of 122.69 feet to a point in the existing KY 686 right of way line 75.86 feet right of proposed KY 686 alignment at Station 7+40.00 and the Point of Beginning. The above described parcel contains 0.343 acres (14,933 sq. ft.).

NOW, THEREFORE, in consideration of the above and the incidental benefits accruing to the property, I hereby consent and agree that the [LPA] may come upon property and do the work as described, and do further agree that I will assert no claim for damages against the [LPA] by reason of said work, but by these presents shall be forever barred. I am aware that I am entitled to an appraisal of that portion of my property used for the above described work. I agree to waive my right to an appraisal of that portion of my property being used. I am aware that I am entitled to just compensation for my property. I agree to waive monetary compensation for the use of the land to do the work described above. I agree that these consents be good through the duration until completion of the project.

\_\_\_\_\_  
Property Owner

\_\_\_\_\_  
Property Owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness  
LPA Agent

\_\_\_\_\_  
Witness  
LPA Agent

## VII. NON-CONSTRUCTION PROCUREMENT

This section only applies to Non-Infrastructure projects. This includes the purchase of items that are not:

- to be used as part of the construction of a project (discussed in Chapter VIII);
- real estate (discussed in Chapter VI); or
- professional services (discussed in Chapter III).

For example: pamphlets, badges, buttons, or vehicles.

For non-infrastructure projects, the LPA is required to follow a procurement process that is outlined in KRS Chapter 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 which are outlined below.

### VII.1. Non-Construction Procurement: Competitive Bidding

Contracts must be awarded by competitive sealed bidding unless it is determined in writing that this method is not practicable or that one of the alternative options discussed below is acceptable. Competitively bid contracts shall be awarded based on best value.<sup>1</sup> Best value means that the decision to award the contract will be based on the primary objective of meeting the specific business requirements and best interests of the LPA.<sup>2</sup> Decisions must be based on objective and quantifiable criteria (including price), which were communicated to potential bidders in the invitation for bids.<sup>3</sup> These criteria will be assigned points and will form the basis of the decision to award the contract.

To communicate the best value selection criteria to potential bidders, the LPA must draft a Request for Bids (RFB). The LPA must submit its proposed RFB to its Administering Office to obtain KYTC approval before publishing or providing it to potential bidders.

The RFB must be announced to the public by posting it online or publishing it in a newspaper of general circulation and must be left open for a minimum of 21 days.<sup>4</sup> On the bid closing date, the LPA must either publically read the bids submitted or post them on a website available to the public.<sup>5</sup> The information provided must include the vendor name, the line item price and the guarantee of delivery upon request.

After publishing the bids, the LPA must examine the bids for any clerical or technical errors and to verify that the bidders are responsible and that the bids are responsive.<sup>6</sup> A responsive bidder:

- has the capability in all respects to perform fully if it were to be awarded the contract and the integrity and reliability which will assure good faith performance; and

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<sup>1</sup> KRS § 45A.080(1) and (2)

<sup>2</sup> KRS § 45A.070(1)

<sup>3</sup> KRS § 45A.070(1)

<sup>4</sup> KRS § 45A.080(3)

<sup>5</sup> KRS § 45A.080(4)

<sup>6</sup> KRS § 45A.345(19), KRS § 45A.345(20)

- has submitted a bid under KRS § 45A.365 which conforms in all material respects to the invitation for bid, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.

Any questions the LPA has about any of the bids must be clarified in writing and the answers will become part of any contract awarded from that bid. Bids that are not responsive, bids that are from bidders that are not responsible, are collusive, or that present a conflict of interest must be rejected.<sup>7</sup> For any procurement that is \$100,000 or more the LPA must ensure that the bidders are not suspended or debarred from doing business with federal agencies.<sup>8</sup>

For the compliant bids, the LPA generates a bid tabulation sheet and scores each bid based on the evaluation criteria established in the RFB. The contract must be awarded to the bidder whose evaluation score is the highest. Once the bid is selected, the LPA must draft and enter into a contract with that bidder to purchase the solicited item, as discussed in **Section VII.5**.

If the bids received are unsatisfactory, the LPA may request approval to conduct the competitive negotiation process discussed in **Section VII.2**.<sup>9</sup> Additionally, if bids received exceed available funds or one or no responsive bid was received, the LPA may request permission for non competitive negotiations.<sup>10</sup>

### **VII.2. Non-Construction Procurement: Competitive Negotiation**

The second type of non-construction procurement is Competitive Negotiation. If the LPA believes that competitive sealed bidding is not practicable it should request a written determination from its Administering Office. In making the determination, KYTC will consider whether specifications can be prepared that permit an award on the basis of best value and the available sources, the time and place of performance, and other relevant circumstances as appropriate.<sup>11</sup> The LPA may also request approval for competitive negotiation if it believes that the bids received by competitive sealed bidding were either unreasonable or were not independently reached in open competition.<sup>12</sup> If approval is given for this reason, each competitive bidder must be notified of the intention to negotiate and must be given a reasonable opportunity to negotiate.<sup>13</sup>

In order to procure an item through competitive negotiation, the LPA must draft a RFP. The LPA must submit its proposed RFP to its Administering Office to obtain KYTC approval before publishing it or providing it to vendors.

The RFP must be announced to the public and left open for a minimum of 21 days. This can be done by posting the RFP online or publishing it in a newspaper of general circulation.<sup>14</sup> When the RFP notice period is closed, the LPA must examine the proposals for any clerical or technical errors and to verify that the vendors are responsible and the proposals are responsive. See **Section**

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<sup>7</sup> FAP 111-34-00(4) and KRS § 45A.340

<sup>8</sup> FAP 111-59-00

<sup>9</sup> Approval will be given according to the criteria set in KRS § 45A.090(2).

<sup>10</sup> KRS § 45A.090(3), KRS § 45A.095, and KRS § 45A.375.

<sup>11</sup> KRS § 45A.080(1)

<sup>12</sup> KRS § 45A .085(3)

<sup>13</sup> KRS § 45A.085(3)

<sup>14</sup> KRS § 45A.080(3)

**VII.1** for an explanation of “responsive bidder.” Any questions the LPA has about any of the proposals must be clarified in writing and the answers will become part of any contract awarded from that bid. Proposals that are not responsive, bids that are from vendors that are not responsible, are collusive, or that present a conflict of interest must be rejected.<sup>15</sup> For any procurement that is \$100,000 or more the LPA must ensure that the vendors are not suspended or debarred from doing business with federal agencies.<sup>16</sup>

For the remaining proposals, the LPA purchasing representative must indicate in writing what it believes would be a fair price for the items (“Cost Proposal”) and any technical changes it would like to make to what was offered in the proposal (“Technical Proposal”). The LPA must then appoint an evaluation committee of three to five people with knowledge of the items to be purchased but who are different from the person who prepared the Cost and Technical Proposals. The evaluation committee members must sign a non-disclosure form before they are given the proposals from the vendors. The Cost and Technical Proposals are not distributed to the evaluation committee members.

The evaluation committee members do an independent review of the proposals and then the committee holds a meeting to score all of the vendors based on the evaluation criteria communicated in the RFP and provides comments to support the scores. Each committee member signs their evaluation sheet. The LPA purchasing representative oversees the meeting to ensure the integrity of the process and compiles the comments and scores onto a spreadsheet to generate a total score for each vendor at the meetings conclusion.

If the cost proposed by the vendor with the highest score is acceptable, the contract is awarded to that vendor. If the cost is unacceptable, the LPA may negotiate the price with that vendor. If the LPA cannot reach an agreement with that vendor, it must begin negotiations with the vendor with the next highest evaluation scores and so on.

### **VII.3. Non-Construction Procurement: Small Purchase Procedure**

The third and most commonly used non-construction procurement procedure for the LPAs is the small purchase procedure. If the item being purchased is expected to cost less than \$20,000, the LPA is not required to open the purchase up for competitive bidding. Instead, it may obtain quotes from three suppliers and award the contract to whichever supplier provides the LPA with the lowest price. If an item costs less than \$5,000, the LPA may obtain a quote from one supplier and award the contract to that supplier, if the price quoted is satisfactory.<sup>17</sup>

Quotes must be obtained in writing and must be kept in the LPA’s project files as evidence that the quotes were obtained. The LPA may not artificially divide their procurement needs in order to make the small purchase procedure applicable<sup>18</sup>. The LPA must obtain approval from KYTC prior to beginning its small purchase procedure by submitting purchase information to its Administering Office.

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<sup>15</sup> FAP 111-34-00(4) and KRS § 45A.340

<sup>16</sup> FAP 111-59-00

<sup>17</sup> KRS § 45A.100; FAP 111-55-00; 200 KAR 5:302, Section 2; The Agency Small Purchase Delegation spread sheet found at <http://finance.ky.gov/business/procurementservices/>

<sup>18</sup> KRS § 45A.100(2)

#### **VII.4. Non-Construction Procurement: Other Exceptions to Competitive Bidding**

There are other types of non-construction procurement that act as exceptions to the competitive bidding requirement that apply regardless of the cost of the item to be purchased. When there is such an exception, the LPA must follow the rules specific to that item when making its purchase. Most of the time these exceptions indicate that the LPA may purchase the item from the vendor they see fit without obtaining quotes from other vendors.

Some of these exceptions are specified by law or regulation.<sup>19</sup> Other exceptions to the competitive bidding rule are made because opening the purchase of the items for bid would not be practicable or feasible. These are all listed in the Kentucky Finance and Administration Cabinet’s Manual of Policy and Procedure and several may be of interest to those doing LPA projects.<sup>20</sup> There may be some documentation requirements to ensure that the items purchased are being obtained for the best price available.

There is also an exception to the competitive bidding requirement for sole source purchases. The LPA may solicit from a “Sole Source” when there is only one known capable supplier of a commodity or service, occasioned by the unique nature of the requirement, the supplier or market conditions.”<sup>21</sup> Whenever it is practical, the LPA should solicit at least three suppliers for quotes and, if more than one supplier responds, the contract must be awarded to whichever supplier offers the best price.<sup>22</sup> The names of the suppliers solicited, the names of the suppliers submitting quotes, and the date and amount of each quote must be retained in the LPA’s project file.<sup>23</sup>

If the LPA intends to follow the process for procurement allowed by any of the above exceptions to competitive bidding it must first obtain KYTC approval by submitting the purchasing information and an explanation of why the purchasing process chosen is appropriate to its Administering Office.

#### **VII.5. Non-Construction Procurement: Awarding a Contract**

After the LPA has chosen its supplier through one of the above described processes, it must enter into a contract with that supplier. This contract must include the Affidavit for Bidders, Offerors and Contractors, a statement regarding revealing violations of and assuring compliance with particular state statutes, language regarding access to documents, and language explaining payment and cancellation terms.<sup>24</sup> There are also federal contract provisions that must be included in the contract. Samples of these can be found in the Forms Library.

Prior to execution, KYTC must verify that the LPA followed the selection process correctly and approve the contract with the chosen supplier. To verify that the LPA followed the selection process correctly, the Administering Office will require a Determination of Findings and the evaluation sheets used to select the vendor. To obtain approval of the contract, the LPA should

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<sup>19</sup> All of these exceptions are found in FAP 111-08-00

<sup>20</sup> FAP 111-09-00.

<sup>21</sup> KRS § 45A.095(1)

<sup>22</sup> KRS § 45A.095(1)

<sup>23</sup> KRS § 45A.095(1)

<sup>24</sup> KRS § 45A.110(2), KRS § 45A.115, KRS § 45A.485, and 200 KAR 5:314. All of these requirements are from FAP 111-44-00



submit the contract to its Administering Office as soon as it is drafted, before sending it to the supplier. Once the contract is approved by KYTC and signed by the LPA and the vendor, the vendor may begin work performing its duties under the contract.

## VIII. CONSTRUCTION PROCUREMENT

This section only applies to Infrastructure Projects. Infrastructure projects are those that involve any ground disturbance or that involve an existing structure. Examples include sidewalks, streetscape projects, installing signs, restoration of historic buildings, and any major construction project.

Once design plans, LDRC and LPA-PDC are complete and have been approved, the LPA must submit its Engineers Estimate (EE) to the Administering Office. The EE is not simply the estimate used in applying for the project award, as discussed in **Chapter V**. The Administering Office will request authorization of the construction phase funds in the same amount indicated in the EE. The LPA may not advertise the project for bid or begin work on the project until it has received a Notice to Proceed in writing from its Administering Office indicating that the funding authorization has been completed<sup>1</sup> and that the bid proposal, discussed below, is approved.

### VIII.1 Bid Proposal

The LPA must prepare a document describing the project on which the contractors will make their bids (“Bid Proposal”). Once a contractor makes a bid it will be bound to perform the requirements in the Bid Proposal if it is selected for the project. The contractors’ bids are also referred to as Bid Proposals, but the term Bid Proposal in this section refers to the one prepared by the LPA.

A checklist of all items which must be contained in the Bid Proposal can be found here:

<http://transportation.ky.gov/Local-Programs/Documents/Construction%20Procurement%20Checklist.pdf>.

A copy is provided as an attachment to this chapter.

In the Bid Proposal, among other items outlined in the above referenced checklist, the LPA must:

- inform the bidding contractors of any requirements that could cause a bid not to be considered.<sup>2</sup>
- include the language found in Form FHWA-1273 “Required Contract Provisions, Federal-aid Construction Contracts” in all of its Bid Proposals.<sup>3</sup> This language must be included in its most current version, without any modifications. The same language must be included in all subcontracts entered into by the prime contractor.<sup>4</sup> This form can be found here: <http://www.fhwa.dot.gov/programadmin/contracts/1273.cfm>

A copy is provided as an attachment to this chapter.

*“The engineer’s estimate should reflect the amount that the contracting agency considers fair and reasonable and is willing to pay for performance of the contemplated work. Under-estimating causes project delay while additional funding has to be arranged to meet the contract costs. On the other hand, over-estimating causes inefficient use of funds that could be used for other projects. In addition, the engineer’s estimate serves as the benchmark for analyzing bids and is an essential element in the project approval process.”*

Source:

<http://www.fhwa.dot.gov/programadmin/contracts/ta508046.cfm>

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<sup>1</sup> 23 CFR 635.112

<sup>2</sup> 23 CFR § 635.112(h)

<sup>3</sup> 23 CFR § 633.102

<sup>4</sup> 23 CFR § 633.102(e)

- include Equal Employment Opportunity (“EEO”) provisions which will be applicable to construction contracts and related subcontracts of \$10,000 or more.<sup>5</sup>
- include any applicable federal and state minimum wage rate requirements.<sup>6</sup>
  - If a project is fairly estimated to cost more than \$250,000, federal and state wage rates apply and should be included in the bid proposal.
    - State wage rates can be requested here:  
<http://www.labor.ky.gov/dows/doesam/pw/Pages/Current-Wage-Rates.aspx>
    - Federal wage rates can be found here:  
<http://www.wdol.gov/dba.aspx>.
    - The bid proposal should include a statement that the higher of the two for any classification must be paid.
  - If a project is fairly estimated to cost \$250,000 or less, only federal wage rates apply and should be included in the bid proposal.
    - As mentioned above, Federal wage rates can be found here: Federal wage rates can be found here:  
<http://www.wdol.gov/dba.aspx>.
- include a non collusion provision which states: “Each bidder shall file a statement executed by, or on behalf of the person, firm association, or corporation submitting the bid certifying that such person, firm, association or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. Failure to submit the executed statement as part of the bidding documents will make the bid non responsive and not eligible for award consideration.”
- provide the “Required Affidavit for Bidders, Offerors, and Contractors” to each prospective bidder.<sup>7</sup> The bidder awarded the contract will be required to provide a signed and notarized copy of the affidavit at the time the contract is signed.<sup>8</sup>
- incorporate by reference KYTC’s Standard Specifications for Roadway and Bridge Construction (“Spec Book”). This is true even if the project is not for the building of Roadways or Bridges. The Spec Book contains procedures and requirements that apply to all infrastructure projects.<sup>9</sup> Any special provisions, project notes or deadlines indicating a deviation from the standards contained in the Spec Book or containing requirements not discussed in the Spec Book must also be included in the Bid Proposal. The language in the Bid Proposal will govern over all of the other contract documents and the Spec Book.

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<sup>5</sup> This language is required by 23 USC § 12101, et seq., 28 CFR § 35, 29 CFR § 1630, 41 CFR § 60 and Orders of the Secretary of Labor.

<sup>6</sup> 23 CFR § 635.117(f); 40 USC § 3142 et seq.: KRS § 337.505, 530, and 540; 803 KAR 1:045, 1:055, and 1:085. The Federal Prevailing Wage requirements only apply to those projects which cost more than \$2,000. For Transportation Enhancement projects, it is only necessary to include these wage rate requirements when the project is a federal-aid highway project or where it is located on federal-aid highway right of way. The state wage requirements apply to all projects with a total cost over \$250,000.

<sup>7</sup> 23 CFR § 635.112(f). The affidavit form can be found at <http://transportation.ky.gov/Contract/cont%20proc%20guidance%20manual.pdf>, Exhibit CP-9010.

<sup>8</sup> The form for this affidavit can be found in the Forms Library

<sup>9</sup> These requirements include procedures concerning how to deal with traffic details of the project, inspection requirements, materials testing, disposal of hazardous materials and many other items.

- include utility and railroad impact notes. If there is no impact to any railroad, the following should be included: “There are no railroad facilities or property associated with this project.”
- include a CAP section. The Bid Proposal is the document governing the contractual relationship between the LPA and the contractor so all commitments and promises must be included in it to ensure they are kept during the construction phase of the project. The Bid Proposal must also include time and completion date requirements.
- include a progress schedule which will identify controlling work items.<sup>10</sup> The bidder that is awarded the contract will not be allowed progress payments until the controlling work items are completed.
- include a requirement that all bidders provide with their bids a signed and notarized certification stating that the contractor will take affirmative action to seek out and consider Disadvantaged Business Enterprises (DBEs) as potential subcontractors and that the contractor has made contact with potential DBE subcontractors; has affirmatively solicited their interest, capacity, and prices; and has documented the result of such contacts.
- include a requirement, on all contracts that exceed \$40,000, that the contractor provide a 5% bid bond, a 100% payment bond and a 100% performance bond (which will replace the bid bond after award and contract execution) for the project.<sup>11</sup> *It is recommended that the LPA require the contractors to provide these bonds on all projects, not just those over \$40,000, as required by law.* The bid bond will ensure that the LPA is compensated if the contractor is awarded the bid and then refuses to execute the contract. The payment bond will ensure that those providing material, labor and supplies to the contractor are paid, preventing those suppliers from filing liens against the project. The performance bond will protect the LPA against any harm occurring as a result of the contractor’s performance.
- include all other insurance requirements, particularly the requirement that if the project affects a railroad (discussed further in **Section VI.2.**), the contractor must have Railroad Liability Insurance.<sup>12</sup>

If any of the required language or items are not included in the bid proposal, the amounts due under any awarded contracts will not be eligible for federal reimbursement. All required language must be included without modification.

For most LPA projects, unit price bidding is preferred. In limited circumstances, a lump sum Bid Proposal may be appropriate. With lump sum bids, contractors must provide a summary of quantities reflecting unit prices or a schedule of values.

### **VIII.2 Disadvantaged Business Enterprise (DBE) Goal**

LPAs awarding contracts on federally funded projects must meet requirements to allow Disadvantaged Business Enterprises (DBEs) to participate in the project.<sup>15</sup>

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<sup>10</sup> Spec Book 108.02

<sup>11</sup> KRS § 45A.185 and KRS § 45A.190

<sup>12</sup> The other types of insurance that KYTC requires are Commercial General Liability, Liability for Products and Completed Work, Personal and Advertising Liability, Auto, Employer Liability, Liability for Bodily Injury and Disease, and Workers Compensation.

<sup>15</sup> 23 CFR § 365.107 and 49 CFR § 26

To qualify as a DBE the contractor or subcontractor must be included in the Certified DBE Directory found here: <http://transportation.ky.gov/Civil-Rights-and-Small-Business-Development/Pages/Certified-DBE-Directory.aspx>. All of KYTC's prequalification requirements apply to DBEs. Certified and Prequalified DBEs can be found here:

<http://transportation.ky.gov/Civil-Rights-and-Small-Business-Development/Pages/Certified-and-Prequalified-DBEs.aspx>.

For a hard copy of the current lists, the LPA should contact the Administering Office.

All LPA projects will be assigned a DBE goal by KYTC. The LPA must ask its Administering Office for a DBE goal as soon as possible after the design plans and EE are complete. The Administering Office will obtain a DBE goal from the Office of Civil Rights and Small Business Development and provide it to the LPA. The LPA must include the DBE goal in its bid proposal. The DBE goal indicates what percentage of the project cost must be awarded by contract to a DBE.

As mentioned above, bid proposals must include a requirement that all bidders provide with their bids a DBE certification. Without this certification, bids must be considered non-responsive and shall not be considered.

Expenditures to a DBE contractor may only be counted toward the DBE goal if the DBE is performing a commercially useful function on the contract.<sup>16</sup> And, if a contractor uses a materials supplier to meet the DBE goal, only 60 percent of the total paid to the materials supplier may be counted toward the DBE goal.

### **VIII.3 Additive and Deductive Alternates**

The LPA may include additive alternate bidding to achieve a maximum amount of its project scope within the available budget. The LPA should identify a base set of items that is the least amount of work that will be considered for award. Next, the LPA should group additional work that would be desired, if funds are available. The additional work should be grouped in workable units or alternates. These alternates should be prioritized with the highest or most desirable listed as "A", then "B" as the next most desired, and so on. The alternate priority or preference order should be shown in the bidding documents.

The bidder submitting a bid with the most added alternates (in order of priority established by the LPA in the bid proposal) not exceeding the contract award limit will be considered for award. If more than one bidder submits a bid under the contract award limit for the same number of alternates, the bidder with the lowest total bid for the base set of items and those alternates will be the bidder considered for award. If all bids exceed the contract award limit, the bidder with the lowest bid for the base set of items will be considered for award.

Similarly, the LPA can use deductible alternates in its Bid Proposal. The LPA will define the work items for the project in the Bid Proposal. It will then indicate which bid items or groups of bid items can be dropped from the project and in which order, in the event the bids received exceed the amount of funds available. If more than one bidder is able to provide all of the bid items within the budget, the project will be awarded to the lowest bidder. If only one bidder is able to provide

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<sup>16</sup> The DBE's participation counts as a commercially useful function if it meets the requirements in 49 CFR § 26.55(c). The DBE's participation is evaluated during the construction process as discussed in Section IV.1.

all bid items within the budget, the project will be awarded to that bidder. If there are no bidders that can provide all of the bid items within the project budget, the LPA will look at the bids, eliminating descending groups of deductible bid items one at a time, and determine if there are any bidders that can provide those bid items within the project budget. If more than one bidder can provide the same number of bid items within the project budget the contract will be awarded to the lowest bidder for those bid items.

The LPA must receive KYTC concurrence before awarding any project.

#### **VIII.4 Inspection Plan**

Once construction begins, the LPA will have to inspect the project on a regular basis to ensure that it is progressing as the contract and the legal requirements dictate (see **Chapter IX**). Before the project can be let for bidding, the LPA must determine whether it will do the inspections in-house or hire a consultant to perform the construction inspection services. If the LPA is to complete the inspections with in-house staff, it must have a regular staff person who is qualified to inspect the type of project being constructed. The LPA must send the proposed in-house inspector's resume to the Administering Office for approval. To hire a consultant the LPA must follow the Professional Services Procurement procedures outlined in **Chapter V**. The LPA must obtain approval of its inspection plan from the Administering Office prior to letting the contract for bid. The LPA should request from its Administering Office an example inspection plan, relevant to its project, if needed.

#### **VIII.5 Project Letting Process**

At least 21 days before the contract letting date, the LPA is required to make the project plans and specifications available to the public.<sup>18</sup> In rare cases, with KYTC and sometimes FHWA approval, a reduced advertisement period may be acceptable for certain projects, including some projects not within the right-of-way of a public highway.<sup>19</sup> 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.<sup>20</sup> 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 approval of its Construction Procurement Packet from KYTC and FHWA and a formal notice to proceed to advertise (always after construction funds are authorized) it may post its advertisement and begin making its Bid Proposal and the design plans and specifications available to potential bidders.

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<sup>18</sup> 23 CFR § 635.112(b)

<sup>19</sup> 23 CFR 635.112

<sup>20</sup> KRS § 45A.080(3). To post the notice on KYTC's website, the LPA must submit it to its Administering Office.

### **VIII.6 Bid Evaluation**

During the time the bid is advertised, and up until the time the bids are announced, the LPA may accept sealed bids, but must not open them until the close of the advertising period. The LPA must screen bidders during this time to ensure that contractors are prequalified with KYTC for any prequalification categories outlined in the Bid Proposal. The LPA can find KYTC prequalified contractors here:

<http://transportation.ky.gov/Construction-Procurement/Pages/default.aspx>

(See “Prequalified Contractors List”). If a contractor is not listed, the LPA must contact the KYTC Division of Construction Procurement to verify prequalification status (i.e., do not assume the list is correct; the contractor may have recently received prequalification status).

After the contract letting closes, the LPA is required to publically announce each responsive bid and the EE either by reading them aloud in an advertised public setting or by posting them on a website available to the public at large. A responsive bidder:

- has the capability in all respects to perform fully if it were to be awarded the contract and the integrity and reliability which will assure good faith performance; and
- has submitted a bid under KRS § 45A.365 which conforms in all material respects to the invitation for bid, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.

The individual bid items on the EE are to remain confidential. Only the total cost from the EE may be announced publically. Before announcing any particular bid, the LPA representative must ensure that all required affidavits, certifications, and bonds are included in the contractor’s bid packet. It must also ensure that all bid items indicate a price and that all bid items in the proposal are included in the bid. If there were any addendums to the Bid Proposal after the contract was let for bidding, the LPA must ensure that these addendums are acknowledged in the bid. If these criteria are not met or if a bidder is not prequalified the bid is not responsive and the LPA must not read or post it.

Once all of the bids are read and after KYTC concurrence, the contract is to be awarded to the lowest responsive bidder, unless, upon further examination, the LPA determines that the bidder was not responsive.

After the bids are posted on the web or read in public, the LPA:

- must compare the lowest bid to the EE to ensure that the bid was not more than 5% above the estimated project cost. The LPA should work with its Administering Office to examine bids when the lowest bid is more than 5% above the estimated project cost. In some cases, if justifiable, and with KYTC approval, these projects may be awarded.
- must ensure that the contractor or subcontractors are not federally debarred or suspended. The LPA can determine this by accessing the following web address:

<https://www.sam.gov/portal/SAM/#1>

- must compare the individual bid items on the EE to the bid items in the lowest bid to ensure the bid is not materially or mathematically unbalanced.<sup>21</sup> The EE can also be used to ensure that the bid does not charge an unreasonable amount for any particular bid item.
- must examine the lowest bid to ensure that the DBE goal was met and that the plan to meet it is feasible and requires the DBEs to perform a Commercially Useful Function. The DBE that will perform work or supply materials to meet the goal must meet all of the certification and prequalification criteria discussed in **Chapter VIII**.

If the lowest bid is determined to be unresponsive, the LPA must examine the next lowest bid to determine its responsiveness.

### **VIII.7 Awarding the Contract**

Prior to awarding the contract, the LPA must submit all of its bid tabulations and analysis, discussed in the previous section, to the Administering Office for review. If the Administering Office reviews the bids and concurs with the LPA's selection, it then certifies that the LPA followed the selection process and provides the LPA with approval to award the contract.

The LPA must send the successful bidder the project construction contract.<sup>22</sup> The Contractor must return the signed contract along with a signed "Required Affidavit for Bidders, Offerors and Contractors" for each of its subcontractors along with its performance bond, payment bond, and proof of insurance.

### **VIII.8 Small Construction Procurement**

For smaller construction projects, not located on the national highway system, the LPA may avoid most of the construction procurement process. If the labor and materials together will total less than \$40,000, it may solicit quotes from three or more contractors and award the contract to whomever's price is the lowest. If the labor and materials together will total less than \$20,000, the LPA may obtain one quote from a contractor and, if the price quoted is satisfactory, the LPA may award the contract.<sup>24</sup> The construction project may not be artificially divided so as to constitute a small purchase.<sup>25</sup>

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<sup>21</sup> A mathematically unbalanced bid is one containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs, which he/she anticipates for the performance of the items in question.

A bid is materially unbalanced if there is a reasonable doubt that award to the bidder submitting the mathematically unbalanced bid will result in the lowest ultimate cost.

<sup>22</sup> See sample in Forms Library. There is language that must be included in the contract between the LPA and the contractor so it is important that the LPA does not change the language in the form except as necessary for the individual project specifications.

<sup>24</sup> KRS § 45A.100; FAP 111-55-00; 200 KAR 5:302, Section 2

<sup>25</sup> KRS § 45A.100(2)



### **VIII.9 Construction Performed by Local Forces**

Federal statute requires that construction shall be done by a party hired as a result of competitive bidding.<sup>26</sup> In rare circumstances, an LPA may have reason to request that it be able to use its own employees to construct a portion of its project; in order to do so, it must demonstrate that this is a more cost effective alternative. To do this the LPA must submit a request to its Administering Office identifying and describing the project and the kind of work to be performed, the estimated costs, the estimated federal funds to be provided, and the reason or reasons that force account for such project is considered cost effective.<sup>27</sup> KYTC will review the request, make recommendations and submit to FHWA for approval, per Stewardship Agreement. Any approved decision to use local forces should be described in the bid proposal.

*For more information regarding force account labor please see:*

<http://www.fhwa.dot.gov/legsregs/directives/orders/50601.cfm>.

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<sup>26</sup> 23 CFR § 635.204

<sup>27</sup> 23 CFR § 635.204(c) and 23 CFR § 635.205

**CHAPTER VIII ATTACHMENTS**

*Attachment 1 – Construction Procurement Checklist*

*Attachment 2 – FHWA Form 1273*

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PROJECT

PO2-628-

**STANDARD SPECIFICATION PROVISIONS**

- Please provide this statement as part of the proposal **“Project will follow the Kentucky Standard Specifications for Road and Bridge Construction 2012”**
  
- Bidders and subcontractors must be prequalified with the Kentucky Transportation Cabinet.
  
- Bid Bond (5%) must be provided with bid
  
- Award project to the Lowest Responsible Bidder
  
- LPA Change Order (lpa-chgord 7-2-10)  
**\*\*\*Please be advised that Change Orders must be approved by the Office of Local Programs before the Change Order work may commence**
  
- Buy America Stipulation (23CFR635.410)

**SCOPE OF WORK**

- Contract Time **(Working Days – Calendar Days – Fixed Completion Date)**

## FEDERAL CONTRACT NOTES

- 23 C.F.R. §112(h) **(102.08 Irregular Proposals. 102.09 Proposal Guaranty, 102.10 Delivery of Proposal and 102.14 Disqualification of Bidders.)**
  
- Civil Rights Act of 1964
  
- Reporting bid rigging
  
- FHWA 1273 **(Revised May 1, 2012- Document may be accessed from Office of Local Programs website)**
  
- Project DBE Provisions
  - Contract Goal
  
  - Certification of Contract Goal  
**(Please be advised that contractors are required to certify their DBE Participation on the Certification of Bid Proposal/DBE page of the proposal. Bids submitted which do not include Certification of DBE Participation will not be accepted)**
  
  - DBE Participation Plan
  
  - Consideration of Good Faith Efforts Request
  
  - Failure to Meet Good Faith Requirement
  
  - Sanction for Failure to meet DBE Requirements

- Prompt Payments to DBEs (7 days)
  
- Contractor Reporting
  
- Default of Decertification of the DBE
  
  
- Employment Requirements (344)
  
  
- Notice of Requirement for Affirmative Action Executive Order 11246  
**(Include the following: Labor Final Rule, New- Document on OLP's website)**
  
  
- Standard Title VI/Non-Discrimination Assurances **(New- Document on OLP's website)**

## **CERTIFICATIONS**

- Executive Branch Code of Ethics
  
- Provisions of Senate Bill 258
  
- Non-collusion Certification
  
- Certification of Organization
  
- Certification of Performance
  
- Certification for Federal-Aid Contract

Certification of Bid Proposal/DBE  
**(DBE Certification required on this page)**

DBE Subcontractor List

Required Affidavit for Bidders

## **BID ITEMS/QUANTITIES**

Bid Items

- Projects bid as Lump Sum requires a Summary of Quantities or a Schedule of Values to be provided with bid. If the work to be performed is a building restoration/renovation project the submittal must be provided before the project is awarded.
  
- Reflects “Demobilization” and “Mobilization”
  
- Has there been any discussion about bidding this project utilizing Additive or Deductive Alternate bidding method?
  
- Project Proposal reflects “Retainage” **(Not permitted on Federally fund projects. Conflicts with prompt payment provision 49CFR 26.29)**

## PREVAILING WAGE RATES

County \_\_\_\_\_

Locality \_\_\_\_\_

Prevailing Wages

Federal Wage Rates

Utilize Federal Wage Rates if the project is in Locality 1, 2, 3 and 4

State Wage Rates

Utilize only if the project in Locality 2 and is fairly estimated to cost more than \$250, 000. Contractor must pay the higher of the two rates.

**Please see Highway Construction Locality Wage Rates posted on Office of Local Programs website under Examples & Templates**

## INSURANCE

Commercial General Liability-Occurrence form - not less than \$2,000,000 General Aggregate, \$2,000,000 Products & Completed Aggregate, \$1,000,000 Personal & Advertising, \$1,000,000 each occurrence.

Automobile Liability - \$1,000,000

Employers Liability:

a) \$100,000 – Each Accident Bodily Injury

b) \$500,000 - Policy Limit Bodily Injury by Disease

c) \$100,000 – Each Employee Bodily Injury by Disease

KENTUCKY WORKMEN'S COMPENSATION INSURANCE. The contractor shall furnish evidence of coverage of all employees or give evidence of self-insurance by submitting a certificate issued by the Workmen's Compensation Board.

Performance Bond 100%

Payment Bond 100%

### **GENERAL PROVISIONS**

Project Traffic Control Coordinator **(Contractor will be required to provide)**

Pre-Bid Meeting **(Will one be conducted?)**

Pre-Construction **(Will one be conducted?)**

Standardized Changed in Conditions Clauses **(23CFR635.109, please provide as part of proposal)**



- Railroad Impact Note  
**(There are no railroad facilities or property associated with this project. This can be part of the Utility Impact Note, if desired)**

- Patented or Brand Name Materials ( **Requires two brands and the words “or approved equal”**)

Are any of these items made of steel or iron?

If so, please remember the Buy America requirement.

- 23CFR635.112 Advertising for Bids and Proposals**  
**(Advertise a minimum of three weeks – 21 days prior to bid opening. Bids may not be opened on the 21<sup>st</sup> day.)**

## **PROJECT AWARD PROCEDURES**

- Award Process **(Does the LPA have an award process?)**    **YES**    **No**

- LPA shall verify contractor (low bidder) is not on excluded party list (suspended or debarred) website [www.sam.gov/portal/public/SAM](http://www.sam.gov/portal/public/SAM)

## **LPA-PDC CHECKLIST**

- Traffic Management Plan
  
- Provide a current Engineer's Estimate / Should be the same as Proposal Bid Form
  
- Construction Monitoring Plan
  
- Utility Impact Note
  
- Right-of-Way Certification Form
  
- Encroachment Permit
  
- Inspection Plan
  
- Please provide an 8.5 X 11 Project Location Map of the project.**

Please answer the following questions.

Will the LPA be performing any work on the project?    YES    NO

If yes, what work will the LPA be performing?

If the LPA is performing work on the project, please provide a Public Interest Finding request and an In-Kind Cost Break Down.

Will the LPA be providing any materials for the project?    YES    NO

Please indicate the products being providing.

Are any of these products made of steel or iron?    YES    NO

Was the manufacturing of the steel or iron domestic or foreign?  
\_\_\_\_\_

If the LPA is providing materials, please provide a Public Interest Finding request for the products being provided.

Is this project calling for any proprietary items to be utilized?    YES    NO

**If yes, please indicate the proprietary items**

**Are any of these proprietary products made of steel or iron?    YES    NO**

**Was the manufacturing of the steel or iron, domestic or foreign?**  
\_\_\_\_\_

**If the LPA is requesting proprietary items, please provide a Public Interest Finding request for these products?**

**REMARKS/CONCERNS**

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

**ATTACHMENTS**

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

**I. GENERAL**

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

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

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

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

**II. NONDISCRIMINATION**

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

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

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

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

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

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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

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

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

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

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

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

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

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

**10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

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

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

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

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

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

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

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

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

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

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

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

#### 1. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

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

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

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

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

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

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



will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

## 2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

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

#### 4. Apprentices and trainees

##### a. Apprentices (programs of the USDOL).

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

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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

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

##### b. Trainees (programs of the USDOL).

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

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

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

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

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

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

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

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

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

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

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

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

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

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

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

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

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

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

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

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

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

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

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

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

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

## VII. SAFETY: ACCIDENT PREVENTION

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

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

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

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

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

#### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

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

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

##### **1. Instructions for Certification – First Tier Participants:**

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

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

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

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

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

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

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

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

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

\* \* \* \* \*

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

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

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

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

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

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

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

### **2. Instructions for Certification - Lower Tier Participants:**

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

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

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

this transaction originated may pursue available remedies, including suspension and/or debarment.

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

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

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

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

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

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

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

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

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

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

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

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

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

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

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

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

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

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

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

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

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



## **IX. CONSTRUCTION AND INSPECTION**

This section only applies to Infrastructure Projects. Infrastructure projects are those that involve any ground disturbance or that involve an existing structure. Examples include sidewalks, streetscape projects, installing signs, restoration of historic buildings, and any major construction project.

### **IX.1. Subcontractor Prequalification**

Prime contractors may use subcontractors for components of project construction. The LPA should be aware of the following:

- 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 by filling out a subcontractor request form found here:

<http://transportation.ky.gov/Local-Programs/Documents/Subcontractor%20Request%20Form.pdf>.

A copy of this form is also provided as an attachment to this chapter. For more information regarding the proper way to request subcontractor approval please see section CST 304-1 in the KYTC construction manual located at

<http://transportation.ky.gov/KYTCL-Forms/eBook/construction.pdf>.

- The LPA must also submit an Affidavit for Bidders, Offerors, and Contractors signed by each subcontractor, found here:

<http://transportation.ky.gov/Local-Programs/Documents/Required%20Affidavit%20for%20Bidders%20Offerors%20and%20Contractors.pdf>.

A copy of this form is also provided as an attachment to this chapter.

- Any prime contractor must perform at least 30% of the construction work and must perform more than any single subcontractor.<sup>1</sup>

### **IX.2 Construction Posters**

Signs required to be posted on Federal-aid project job sites can be found here:

<http://www.fhwa.dot.gov/programadmin/contracts/poster.cfm>

### **IX.3 Construction Inspection**

A construction inspector must inspect the contractor's work on the project pursuant to the inspection plan. These inspections ensure that the project is well built, compliant with the construction specifications, and that the LPA is getting a good value from the contractor. They also play a role in determining when work has been completed, allowing the contractor to receive progress payments on their contract.

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<sup>1</sup> Spec Book Section 108

The inspector must be qualified by having at least five (5) years of roadway and/or bridge construction experience. Engineering education may be substituted on a year by year basis with the KYTC State Highway Engineer (SHE) approval. The inspector must have experience and understanding of construction practices, record keeping and workmanship in regard to inspections. The inspector must be capable of handling the physical requirements needed to access and perform all inspection activities on any construction project. Certifications listed below shall be held and maintained throughout the duration of the contract:

- ACI Level I Certification
- Aggregate Sampling Technician
- Grade Level I Technician
- Asphalt Lay-Down Technician
- Structural Inspection Level I
- KEPSC-RI qualification

Grade I certification requires use of nuclear density machine (furnished by the KYTC Engineer). The consultant inspector will be required to furnish his own badge and will track and report to appropriate safety organization. Consultant inspector will have to transport nuclear density machine from storage area to job site and be in compliance with policy on transportation and storage and supervision while in his possession until stored properly at end of work day. KYTC inspectors are required to attend safety classes presented by Troxler and all other inspectors must have that same level of training. The inspector(s) must have all qualifications before reporting to duty.

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"). The inspector should use KYTC Form TC 63-28, found here:

<http://transportation.ky.gov/Organizational-Resources/Pages/Forms-Library.aspx?Department=Construction>.

A copy of this form is also included as an attachment to this chapter.

If the inspection reports show any deviation from the design plans, proposal (or other bidding document) or the Standard Specifications for Road and Bridge Construction ("Spec Book"), these deviations should be discussed with the contractor and remedied. Any changes must be approved by KYTC.

As part of the Inspection Reports the inspector is asked to verify that any DBEs working on the project are performing a commercially useful function and are participating adequately for the payments to them to count towards the DBE goal. This may require interviewing DBE employees, confirming the ownership of the DBE equipment, and determining the origin of goods supplied by the DBEs. If the inspector has any concerns regarding whether the DBEs are providing a commercially useful function he/she must contact the LPA immediately so that the LPA can work with KYTC to resolve the problem without risking the LPAs reimbursement. The inspector must give a copy of all Inspection Reports to the LPA. The Inspection Reports must be retained by the LPAs as they may be reviewed by auditors or analyzed by the KYTC Office of Civil Rights and Small Business Development to ensure that the commercially useful function reviews were adequately performed.

The project inspector is also responsible for materials testing. The requirements for materials used on most projects are found in the Spec Book. If the project's materials are not addressed in the Spec Book, they must meet some other standard set by a reputable source, as agreed upon by the LPA and the Administering Office. These standards should be included in the Bid Proposal discussed in **Chapter VIII**. The inspector must test the materials according to the testing requirements indicated in the Spec Book and provide the LPA with a material certification which will provide sufficient information to determine that the materials incorporated into the project meet the contract specification requirements. An example can be found here:

<http://transportation.ky.gov/Local-Programs/Documents/Materials%20Certification%20Documentation.pdf>

During construction inspection, the inspector will help the LPA determine whether certain phases of construction required for progress payments have been completed. The LPA is required to promptly pay the contractor for work completed as these milestones are met. The contract between the LPA and the contractor must not allow for withholding retainage on Federal-aid projects. A retainage is the withholding of a portion of each progress payment earned by a contractor or subcontractor until a construction project is complete. Retainage is calculated as a percentage of each progress payment, typically 5% to 10% of the payment. Because the full amount of the progress payment due at the milestone is not paid, such a retainage does not comply with the requirement that the LPA promptly pay the contractor for the work completed. The LPA is permitted, however, to include a bid item for demobilization, up to 1½ % 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 as discussed in the following section.

#### **IX. 4 Change Orders**

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, using a change order form found here: <http://transportation.ky.gov/Local-Programs/Pages/Forms,%20Templates,%20and%20Examples.aspx>

Note, there are currently separate change order forms for OLP-Administered projects and District-Administered projects. A copy of these forms is provided as an attachment to this chapter.

No work may be done on the change order until KYTC provides the LPA with written approval.

Supporting documentation clearly justifying the change order must accompany the change order form. If the change order relates to a time extension it must indicate how the extension will affect the project's schedule. The LPA may be required to prepare an independent estimate to ensure that the proposed change order prices are fair and reasonable.

*FHWA's "Change Orders" Video:*

<http://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=4>

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<sup>2</sup>. 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.

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<sup>2</sup> 23 CFR § 635.121

**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.**

**IX.5. Final Inspection and Acceptance**

When the construction work is complete, the LPA must notify the Administering Office that the project is ready for final inspection. The appropriate KYTC representative(s), a LPA representative, the inspector, and the contractor should visit the project together and create a list of corrective work for the contractor to complete (“Punch List”). Once the contractor notifies the LPA that the Punch List is complete, the LPA should coordinate with the Administering Office to arrange to revisit the project site together to ensure that the Punch List changes were made. If the Punch List was properly addressed, the appropriate KYTC representative will certify that the project was constructed satisfactorily and he/she will complete a KYTC Formal Acceptance Report (“Acceptance Report”). The template at the following web link should be used:

<http://transportation.ky.gov/Local-Programs/Documents/Formal%20Acceptance%20Form.pdf>.

A copy of this form is provided as an attachment to this chapter.

The Administering Office will provide a copy of the Acceptance Report to the LPA.

Upon receipt of the Acceptance Report, the LPA may issue the Final Release Letter (“Release”) for the contractor’s signature. A list of final quantities and work will be attached. If the contractor agrees with the statements in the Release he/she will sign the letter. The LPA cannot issue the final payment to the contractor without a signed release from the contractor. The LPA must submit the Acceptance Report and the signed Release to the Administering Office.

**CHAPTER IX ATTACHMENTS**

*Attachment 1 – Subcontractor Request Form*

*Attachment 2 – Affidavit for Bidders, Offerors, and Contractors*

*Attachment 3 – Daily Inspection Report*

*Attachment 4 – OLP Change Order Request Form*

*Attachment 5 – District Change Order Request Form*

*Attachment 6 – Formal Acceptance Report Template*

**KENTUCKY TRANSPORTATION CABINET  
DEPARTMENT OF HIGHWAYS  
DIVISION OF CONSTRUCTION  
SUBCONTRACT REQUEST**

TC 63-35

CONT\_ID \_\_\_\_\_  
SUBCONTRACT NO: \_\_\_\_\_ Tier Y/N \_\_\_\_\_  
TO: \_\_\_\_\_  
Director, Division of Construction  
FROM: \_\_\_\_\_  
Prime Contractor \_\_\_\_\_ KYTC Vendor Number \_\_\_\_\_  
SUBJECT: \_\_\_\_\_  
County \_\_\_\_\_ Fed/State Project Number \_\_\_\_\_

I hereby request to subcontract a portion of the subject project to:

\_\_\_\_\_ KYTC Vendor Number \_\_\_\_\_  
The amount to be subcontracted by this request is \$ \_\_\_\_\_ or \_\_\_\_\_ % of the  
(Original contract amount or subcontract amount if Tier request) \_\_\_\_\_  
I have previously subcontracted as follows:

NAME OF SUBCONTRACTOR	AMOUNT	PERCENT
-----------------------	--------	---------

The total amount to be subcontracted including this request is \$ \_\_\_\_\_ or \_\_\_\_\_ % of the  
(original contract) or (subcontract) amount.

This subcontractor has been furnished a copy of Appendix B of 49 CFR Part 29 and advised to include the Certification in all lower tier covered transactions and in all solicitations for lower tier transactions (Federal Aid Contracts only).

The proposed subcontractor is on the Department's list of qualified contractors to perform work requested and a copy of current insurance coverage will be available at the prime contractor's office before the subcontractor begins work on project.

\_\_\_\_\_  
Prime Contractor \_\_\_\_\_ Date \_\_\_\_\_



## **REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS**

### **FOR BIDS AND CONTRACTS IN GENERAL:**

I. Each bidder or offeror swears and affirms under penalty of perjury, that:

- a. In accordance with KRS 45A.110 and KRS 45A.115, neither the bidder or offeror as defined in KRS 45A.070(6), nor the entity which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth of Kentucky; and the award of a contract to the bidder or offeror or the entity which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.
- b. The bidder or offeror swears and affirms under penalty of perjury that, to the extent required by Kentucky law, the entity bidding, and all subcontractors therein, are aware of the requirements and penalties outlined in KRS 45A.485; have properly disclosed all information required by this statute; and will continue to comply with such requirements for the duration of any contract awarded.
- c. The bidder or offeror swears and affirms under penalty of perjury that, to the extent required by Kentucky law, the entity bidding, and its affiliates, are duly registered with the Kentucky Department of Revenue to collect and remit the sales and use tax imposed by KRS Chapter 139, and will remain registered for the duration of any contract awarded.
- d. The bidder or offeror swears and affirms under penalty of perjury that the entity bidding is not delinquent on any state taxes or fees owed to the Commonwealth of Kentucky and will remain in good standing for the duration of any contract awarded.
- e. Pursuant to KRS 45A.480 the bidder or offeror swears and affirms under penalty of perjury, that all contractors and subcontractors employed, or that will be employed, under the provisions of this contract shall be in compliance with the requirements for worker's compensation insurance according to KRS Chapter 342 and unemployment insurance according to KRS Chapter 341.
- f. The bidder or offeror swears and affirms under penalty of perjury that the entity bidding is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state; is duly registered with the Kentucky Secretary of State to the extent required by Kentucky law; and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded.

### **FOR "NON-BID" CONTRACTS (I.E. SOLE-SOURCE; NOT-PRACTICAL OR FEASIBLE TO BID; OR EMERGENCY CONTRACTS):**

II. Each contractor further swears and affirms under penalty of perjury, that:

- a. In accordance with KRS 121.056, and if this is a non-bid contract, neither the contractor, nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of any contract awarded, have contributed more than the amount specified in KRS 121.050 to the campaign of the gubernatorial candidate elected in the election last preceding the date of contract award.







Kentucky Transportation Cabinet  
 Division of Construction  
**DAILY INSPECTION REPORT**

TC 63-28  
 03/2000  
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Project No. \_\_\_\_\_ Date \_\_\_\_\_  
 County \_\_\_\_\_ Day \_\_\_\_\_  
 Road \_\_\_\_\_ Encumbrance No. \_\_\_\_\_  
 Contractor \_\_\_\_\_ PCN \_\_\_\_\_  
 Subcontractor \_\_\_\_\_  1st Tier  2nd Tier  
 Date Pay Qty Entered in SiteManager \_\_\_\_\_ By \_\_\_\_\_

PAY QUANTITIES					Site Manager Entered
SSSC	Quantity	Unit	Item Description	Location (Sta.No.) and/or Remarks	
					<input type="checkbox"/>
					<input type="checkbox"/>
					<input type="checkbox"/>
					<input type="checkbox"/>
					<input type="checkbox"/>
					<input type="checkbox"/>
					<input type="checkbox"/>

**PAY QUANTITY DETAILS, REFERENCES, SKETCHES. ETC.**

Pay Quantities Checked By \_\_\_\_\_ Date \_\_\_\_\_

Working Day  Yes  No Comments

**Attention Project Engineer**

Inspector's Name \_\_\_\_\_ Time on Project Begin \_\_\_\_\_

See back for More Information  Yes  No End \_\_\_\_\_



Kentucky Transportation Cabinet  
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**DAILY INSPECTION REPORT**

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 Page 2 of 2

Project No \_\_\_\_\_ Date \_\_\_\_\_ Day \_\_\_\_\_ PCN \_\_\_\_\_

Weather \_\_\_\_\_ Temperature AM \_\_\_\_\_ PM \_\_\_\_\_

**CONTRACTOR'S EQUIPMENT & ORGANIZATION**

Foreman (Name) \_\_\_\_\_

Skilled \_\_\_\_\_ Laborers \_\_\_\_\_ Flaggers \_\_\_\_\_ Others \_\_\_\_\_

Dozers _____	Tractors _____	Scrapers _____	Rollers _____	Graders _____
Backhoes _____	Trucks _____	Cranes _____	Pil Drivers _____	Mowers _____
Guardrail Drivers _____	Hoe Ram _____	Drills _____	Bit. Rollers _____	Bit. Pavers _____
Finishing Mach. _____	Distributors _____	Brooms _____	Gradall _____	Stripers _____
Off Road Trucks _____	Conc. Pump _____	Conc. Pavers _____	Conc. Saws _____	Hi-Lift _____
Auto Grade Mach. _____	Others _____			

**CONSTRUCTION DETAILS, MATERIALS, ETC**  
**TRAFFIC CONTROL DEVICES**

Delays & Causes \_\_\_\_\_

Previous Inspections & Tests Complete  Yes  No Comments \_\_\_\_\_

Materials Delivered to Project

ASSISTANTS \_\_\_\_\_

REVIEWED BY \_\_\_\_\_

DATE \_\_\_\_\_

SEE ATTACHMENTS

### **Instructions for Completing the Office of Local Programs Change Order**

Please note that change orders are required for any item that deviates from the original approved scope of your Office of Local Programs (OLP) project. This includes field orders and minor changes. The approved scope of the project can be found in Attachment A of your contract with the OLP for this project.

When a change order becomes necessary the project sponsor shall e-mail the OLP Project Manager, OLP Historic Preservation Coordinator, and the District LPA Coordinator at the same time. This e-mail should include all proposed changes. The OLP Project Manager will then notify the project sponsor as to whether or not the change order would be minor or major.

If the change order is minimal, (meaning it will have no adverse affect and requires no additional documentation)the OLP Project Manager may provide an e-mail approval so work on the project may continue without interruption. However, the Change Order must still be submitted and formally approved.

If a major change is required, work on that particular item must cease until the Change Order has been approved by the Transportation Cabinet.

When completing the Change Order form, please make sure to identify the purpose of the change order, and include detailed explanations for the changes, including time extensions. A cost analysis must be included when appropriate.

A copy of the signed LPA Change Order must be sent to the OLP Project Manager for approval by KYTC Central Office. It is the responsibility of the LPA to secure the signature of the project engineer, the LPA signature authority , and the district LPA Coordinator. A copy of the approved Change Order will be forwarded to the LPA.

Keep in mind that the OLP does not increase funding for a project after it has been awarded. Project sponsors will be responsible for all additional costs if this change order will result in a cost increase that exceeds the budget for this project.

When a reimbursement request is submitted to the OLP for costs associated with the change order the LPA must attach a copy of the approved Change Order with the reimbursement request and documentation.

If you have any questions regarding the Change Order process, please contact your OLP Project Manager.



Kentucky Transportation Cabinet  
**Office of Local Programs**  
**LPA CHANGE ORDER**

TC 20-33  
 07/2010

Page

Contract ID PO2-628-

Project Sponsor

Change Order No

County

Contractor

Project Number

Contractor

Project Name

Address

*Proposed Changes in Connection with Contract Items:*

Item No.	Description	Quantity	Unit	Unit Price	Amount
<i>Total for this Page</i>					
<i>Total for Continuation Page(s)</i>					
<i>Total Contract Items</i>					

*Proposed Items of Supplemental Agreement:*

Ref. No.	Description	Quantity	Unit	Unit Price	Amount
<i>Total for this Page</i>					
<i>Total for Continuation Page(s)</i>					
<i>Total Supplemental Agreement</i>					
<b>Total Amount</b>					

Time Extension/Explanation:

Reasons for Proposed Changes and Cost Analysis:

If approved by Transportation Cabinet, the undersigned contractor agrees to do the work outlined herein and to accept as payment in full the basis of payment as set forth herein.

Requested \_\_\_\_\_  
 Project Engineer DATE

Recommended \_\_\_\_\_  
 District LPA Coordinator DATE

Recommended \_\_\_\_\_  
 Commissioner of Rural & Municipal Aid DATE

Approved \_\_\_\_\_  
 LPA Signature Authority DATE

\_\_\_\_\_  
 Title DATE

Approved \_\_\_\_\_  
 Secretary of Transportation Cabinet DATE

Contractor

By: \_\_\_\_\_

Date

\_\_\_\_\_





Kentucky Transportation Cabinet  
**Office of Local Programs**  
**LPA CHANGE ORDER**

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Page

Contract ID  
Change Order No  
Contractor  
Contractor  
Address

PO2-628-

Project Sponsor  
County  
Project Number  
Project Name

Reasons for Proposed Changes and Cost Analysis:

**FORM OF PROPOSAL**  
**KENTUCKY TRANSPORTATION CABINET**  
**Local Public Agency (Department of Highways Funding**  
**CHANGE ORDER**

1pa-DOH-chgord Mod 07/2/10
-------------------------------

Page		Project Sponsor	
Contract ID		County	
Change Order No.		Project Number	
Contractor		Project Name	
Contractor			
Address			

*Proposed Changes in Connection with Contract Items:*

Item No.		Description	Quantity	Unit	Unit Price	Amount
<i>Total for this Page</i>						
<i>Total for Continuation Page(s)</i>						
<i>Total Contract Items</i>						

*Proposed Items of Supplemental Agreement:*

Ref. No.		Description	Quantity	Unit	Unit Price	Amount
<i>Total for this Page</i>						
<i>Total for Continuation Page(s)</i>						
<i>Total Supplemental Agreement</i>						
<i>Total Amount</i>						

**Time Extension/Explanation**

**Reasons for Proposed Changes:**

If approved by Transportation Cabinet, the undersigned contractor agrees to do the work outlined herein and to accept as payment in full the basis as set forth herein.

	Requested	_____	Date
	Recommended	Project Engineer	_____
	Recommended	Chief District Engineer	_____
	Recommended	Deputy State Highway Engineer	_____
	Approved	LPA Signature Authority	_____
	Approved	Title	_____
	Approved	State Highway Engineer	_____

\_\_\_\_\_  
Contractor

By: \_\_\_\_\_

\_\_\_\_\_

Date



**KYTC FORMAL ACCEPTANCE REPORT**  
**Referred to in the Construction and Inspection Section of the LPA Guide.**

Purpose: To indicate that the Contractor performed the construction work completely and satisfactorily.

SAMPLE

[LPA NAME]

## Formal Acceptance Report of Completed Construction

Contract ID: **XXXXXX**      Date of Report: **00/00/0000**

---

District: \_\_\_\_\_ County: \_\_\_\_\_ Project No.: \_\_\_\_\_  
Type of Construction: \_\_\_\_\_  
Prime Contractor: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone: XXX.XXX.XXXX

---

Letting Date: **00/00/0000**  
Date of Completion: **00/00/0000**  
Corrective work: **YES OR NO**  
Date of Completion of Corrective work: **00/00/0000**  
Inspection Dates: **[Project Type] - 00/00/0000**

---

### PROJECT DESCRIPTION

XXXXX Road Name: ROAD AND DESCRIPTION    Distance: 0.00 WORKTYPE

**Comments :** COMMENTS

---

**THE [LPA INSPECTOR] REPORTED THAT WORK HAS BEEN COMPLETED IN A MANNER SATISFACTORY TO THE [LPA] AND KYTC. THIS PROJECT IS NOW CONSIDERED COMPLETE IN ITS ENTIRETY. THEREFORE, FORMAL ACCEPTANCE IS EFFECTIVE : 00/00/0000.**

Copies to :    LPA Head :  
                  Administering Office  
                  District LPA  
                  Coordinator, if different  
                  Contractor

## **X. REIMBURSEMENT**

### **X.1. Costs Eligible for Reimbursement**

Costs directly related to the project are reimbursable as long as the LPA, prior to incurring the eligible activity cost, completed the necessary steps and received the appropriate approvals from KYTC and FHWA.

As mentioned in **Chapter I**, indirect costs (such as overhead) are not eligible for reimbursement unless the LPA has an approved Cost Allocation Plan.<sup>1</sup>

If the LPA is seeking reimbursement for employee time and equipment usage for construction force account expenditures, as discussed in **Chapter VIII**, the LPA must provide appropriate documentation. Time spent on administrative duties is not eligible for reimbursement. Employees of the LPA must record daily only that time worked and those equipment hours used specifically for the individual project. Employees must sign the daily time and equipment record and their supervisor must approve it. This documentation must be included with the reimbursement request.

### **X.2. Reimbursement Process**

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, found here:

<http://transportation.ky.gov/Local-Programs/Pages/Forms,%20Templates,%20and%20Examples.aspx>

Note, there are currently separate reimbursement request forms for OLP-Administered projects and District-Administered projects. A copy of each of these forms is provided as an attachment to this chapter.

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 the 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.

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.

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<sup>1</sup> OMB Circular A-87 (as revised); FHWA Memorandum: “Indirect Costs Eligibility and other TEA-21 Revisions to Title 23 USC § 302,” September 24, 1998.

After KYTC review and approval, the LPA will be reimbursed by KYTC at the agreed upon federal share for properly documented, eligible, and authorized project costs.

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.<sup>2</sup> 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. The party with whom the subcontractor has contracted must pay it within 30 days of the date the subcontractor satisfactorily performed its services regardless of whether or not it has received reimbursement or payment.

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<sup>2</sup> 49 CFR 26.29.

**CHAPTER X ATTACHMENTS**

*Attachment 1 – OLP Reimbursement Request Form*

*Attachment 2 – District Reimbursement Request Form*









**KENTUCKY TRANSPORTATION CABINET**

**STATEMENT OF CHARGES**

Chief District Engineer  
 KYTC District #  
 Street Address  
 City, Kentucky Zip

C
---

Agency Name:		County:	
Agency Contact and Address:		Project Name:	
Vendor No.:		Authorization No.:	
		SYP Item No.	

Agreement Amount:		Current ___ Final ___	Bill No. _____
Supplemental: #1		Amount This Bill	
#2		Total Amount of Previous Bills Submitted	
#3		Total To Date	
#4			
#5			
#6			
#7			
<b>TOTAL</b>		<b>NOTE:</b> If the amount of this bill applies to more than one county, the correct distribution <b>MUST</b> be shown on the following lines. (If one of the Project Numbers is <b>NOT INVOLVED</b> show same as \$0.00)	

	UPN	AMOUNT
Agency Work Order or Invoice Number		
Date Work Began		
Date Work Completed		

**CERTIFICATION:**

I certify that the attached invoice is a true statement of costs incurred by our agency related to this project and such costs are eligible for payment in accordance with the agreement entered into between our agency and the Kentucky Transportation Cabinet.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

FOR THE KENTUCKY  
 TRANSPORTATION CABINET

\_\_\_\_\_  
 Checked: Project Manager Date

\_\_\_\_\_  
 Approved: Transportation Engineer Branch Manager Date

## **XI. PROJECT COMPLETION**

### **XI.1. Project Closing Documentation**

When the project is completed, the LPA must submit a completed Project Closure Form, found here:

<http://transportation.ky.gov/Local-Programs/Pages/Forms,%20Templates,%20and%20Examples.aspx>

There are currently separate closure forms for OLP-Administered projects and District-Administered projects. A copy of each of these forms is provided as an attachment to this chapter.

The completed project closure form and pictures documenting the completed project must be submitted to the Administering Office. 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. The LPA will not be permitted to enlarge the scope of its project, even if funds remain.

### **XI.2. Maintenance and Easements**

For infrastructure projects, the LPA is responsible for maintaining its Federal-aid project facilities on a non-profit basis (per the maintenance plan in the MOA). 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.

The LPA's maintenance responsibilities may be reinforced in an easement the LPA may be required to grant to KYTC. Infrastructure projects involving historic property may require a historic preservation easement. KYTC will make the decision to require that a maintenance or preservation easement be provided on a case by case basis depending on the amount of the award at stake and the sensitivity of the project.

Easements will describe the condition of the project at the time its construction is complete and will require that the LPA or any future owner of the property maintain the project in that condition. Information regarding the condition of the property at the time its construction is complete will come from the project closeout documentation unless the project requires a historic preservation easement. For these easements, the LPA must obtain a baseline document describing the condition of the property by hiring a prequalified historic preservation consultant. Once the baseline document is created, the LPA must submit the baseline document to its Administering Office. Using this document, KYTC will draft the historic preservation easement for the LPA's signature. The easement will require that the LPA or any future owner of the property maintain the project to that condition.

In the event the LPA or current property owner fails to maintain its project, the easement will give the KYTC the right to enter onto and maintain the property and charge the LPA or the current owner for any costs it incurs in doing so.

All easements must be signed by the LPA and KYTC. KYTC will record the easement in the property records in the county in which the project is located. The LPA should sign the easement document before final reimbursement.

**XI.3. Audits and Record Retention**

LPA projects are subject to audit by KYTC and the Kentucky Auditor of Public Accounts. Also, FHWA may elect to conduct a comprehensive audit of any project receiving Federal-aid funding. LPAs are required to retain all records relating to their federally funded projects for three years following formal acceptance and closure by KYTC. Copies or electronic versions of the documents are acceptable in accordance with statute.<sup>1</sup> The retention period begins at the time KYTC submits its last expenditure report for the period and the final project closing documentation is completed in FHWA’s Financial Management Information System (FMIS).<sup>2</sup> For as long as the records are retained, KYTC, FHWA and the Comptroller General of the United States, or any of their authorized representatives shall have the right to access the records in order to make audits, examinations, excerpts, and/or transcripts.<sup>3</sup> KYTC, FHWA, and the LPA must at all times comply with OMB Super Circular 2 CFR 200.

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<sup>1</sup> 2 CFR 200.335.

<sup>2</sup> More complete information regarding when the retention period begins can be found in 49 CFR 18.32(c).

<sup>3</sup> 2 CFR 200.336.

**CHAPTER XI ATTACHMENTS**  
*Attachment 1 – OLP Project Closure Form*  
*Attachment 2 – District Project Closure Form*

Date:                      Prepared By:                      Telephone:                      E-mail:  
Program: Choose an item.

Contract Number:

Federal Program Number:

Project Title:

Project Sponsor:

Project County:

Project Completion Date:

**Please attach photos of the completed project.**

**Sponsor Certification:**

As the sponsor of the above Office of Local Programs project, I hereby certify that:

- ❖ The project has been completed consistent with the contract executed by and between the Kentucky Transportation Cabinet and the sponsor.
- ❖ The final reimbursement request has been submitted and the project may be closed.
- ❖ All construction is complete, and approved plans and specifications were followed during this project.
- ❖ A long term maintenance plan has been prepared and implemented.

\_\_\_\_\_  
Signature of Sponsor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

<p>For KYTC Personnel The project above has been reviewed and an on-site inspection has been completed. I have determined the project was completed consistent with the project contract and recommend closure of the project. The final invoice for expenditures has been reimbursed and all matching funds have been documented.</p>	
<p>_____ Signature of KYTC Representative &amp; Title</p>	<p>_____ Date</p>

## KYTC District Office Project Closure Tracking Form

Date: \_\_\_\_\_

Prepared By: \_\_\_\_\_ Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

Funding Program (Circle One):      ARRA              STP-SLO              Earmark              State              Other

KYTC Contract ID (Authorization No.): \_\_\_\_\_

Federal Program Number: \_\_\_\_\_

Project Title: \_\_\_\_\_

Project Sponsor: \_\_\_\_\_

Project County: \_\_\_\_\_

Project Completion Date: \_\_\_\_\_

**Please attach photos of the completed project.**

**Sponsor Certification:**

As the sponsor of the above KYTC District Office administered project, I hereby certify that:

- ❖ The project has been completed consistent with the contract executed by and between the Kentucky Transportation Cabinet and the sponsor.
- ❖ The final reimbursement request has been submitted and the project may be closed.
- ❖ All construction is complete, and approved plans and specifications were followed during this project.
- ❖ A long term maintenance plan has been prepared and implemented.

\_\_\_\_\_  
Signature of Sponsor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

For KYTC Personnel:

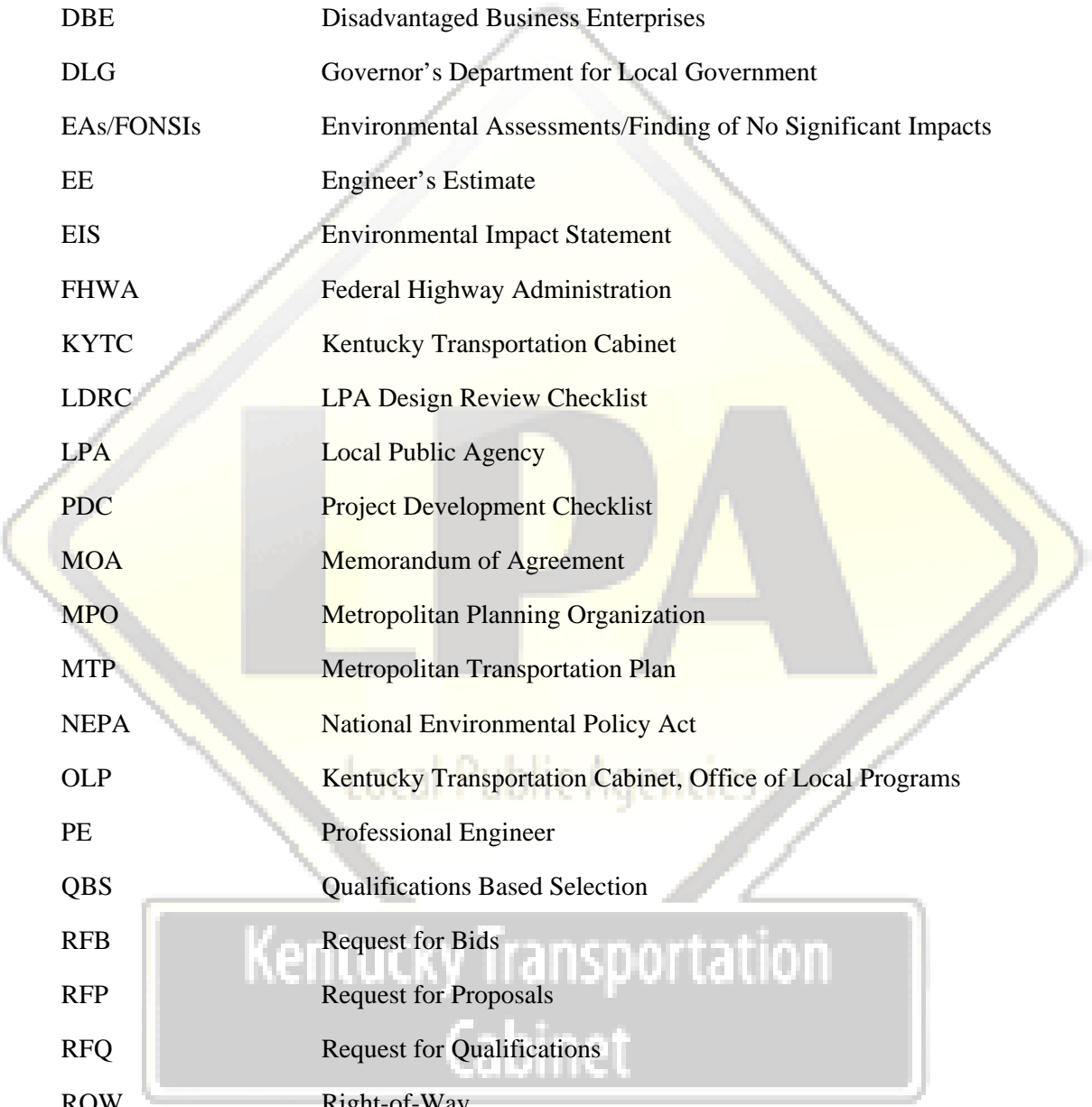
The project above has been reviewed and an on-site inspection has been completed. I have determined the project was completed consistent with the project contract and recommend closure of the project. The final invoice for expenditures has been reimbursed and all matching funds have been documented

\_\_\_\_\_  
Signature of KYTC Representative & Title

\_\_\_\_\_  
Date

# Appendix A

## Explanation of Acronyms



ADA	Americans with Disabilities Act of 1990
CAP	Communicating All Promises
CE	Categorical Exclusion
DBE	Disadvantaged Business Enterprises
DLG	Governor's Department for Local Government
EAs/FONSI	Environmental Assessments/Finding of No Significant Impacts
EE	Engineer's Estimate
EIS	Environmental Impact Statement
FHWA	Federal Highway Administration
KYTC	Kentucky Transportation Cabinet
LDRC	LPA Design Review Checklist
LPA	Local Public Agency
PDC	Project Development Checklist
MOA	Memorandum of Agreement
MPO	Metropolitan Planning Organization
MTP	Metropolitan Transportation Plan
NEPA	National Environmental Policy Act
OLP	Kentucky Transportation Cabinet, Office of Local Programs
PE	Professional Engineer
QBS	Qualifications Based Selection
RFB	Request for Bids
RFP	Request for Proposals
RFQ	Request for Qualifications
ROW	Right-of-Way
STIP	Statewide Transportation Improvement Program
STP	Surface Transportation Program
TIP	Transportation improvement Program
TMP	Traffic Management Plan

## Glossary

### Administering Office

For projects funded by any or a combination of the TE, TCSP, SRTS, CMAQ funds and certain earmark projects, the KYTC OLP is the Administering Office. For all other projects the Administering Office is generally one of the 12 KYTC District Offices, depending on the KYTC District in which the LPA project is located. For some projects the Administering Office will be the Division of Planning.

### Bid Bond

A bond provided by a firm bidding on a contract. If a firm is selected for a contract award but chooses not to enter into the contract with the awarding agency, the agency will be compensated. A 5% bid bond is required for projects over \$40,000.00.

### Bid Proposal

A document describing all design and structural requirements of a project and the contract terms which will govern the LPA's relationship with the construction contractor which provides the lowest responsive bid.

### Change Order

The document which governs any changes to the original design plans and bid proposals. Unless this document receives the appropriate approvals, any payments made as a result of the change order will not be reimbursable.

### Clearinghouse Document

The electronic document administered by the Governor's Department of Local Government, required for the environmental phase of all projects, which allows other governmental agencies to identify the environmental impacts of a project.

### Commercially Useful Function

To perform a commercially useful function a DBE must be responsible for execution of the work of the contract and carry out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

### Disadvantaged Business Enterprises ("DBE")

A potential contractor, subcontractor, or professional service provider that has been certified by the Minority Business Development Agency of the Department of Commerce.

### Engineers Estimate ("EE")

An estimate of a project's construction costs, prepared by the person or consultant who designed it.



### Engineering Related Services

Services that are a necessary part of the design work done by an Engineer such as surveying.

### Federal Fiscal Year

The Federal Fiscal Year is the accounting period used when managing an LPA project. It begins on October 1 and ends September 30 of each calendar year.

### Federal Highway Administration ("FHWA")

An agency within the US Department of Transportation that supports state and local governments in the design construction and maintenance of the nation's highway system.

### Fund Allocation

The process by which KYTC makes federal funds available to be spent on LPA projects. For some projects the funds are allocated in phases. No funds spent by the LPA prior to Fund Allocation can be reimbursed.

### Infrastructure

Infrastructure projects are those that involve any ground disturbance or that involve an existing structure. Examples include sidewalks, streetscape projects, installing signs, restoration of historic buildings, and any major construction project.

### In-Kind Contributions

An LPA can get credit for the value of the non-cash item in meeting its matching requirement. In-kind contributions can include land owned by the LPA; but if it does, it must have been acquired in compliance with the Uniform Relocation Act discussed in the Right-of-Way section of this guide.

### Kentucky Federal-aid Highway Program Stewardship Plan ("Stewardship Plan")

The agreement between FHWA and KYTC, entered into pursuant to 23 USC 106(c), which clarifies the roles and responsibilities of FHWA and KYTC in the efficient and effective management of public funds with the goal of ensuring that FHWA Programs are delivered consistent with laws, regulations, policies and good business practices.

### Kentucky Transportation Cabinet ("KYTC")

A state executive branch agency responsible for overseeing the development and maintenance of a safe efficient multi-modal transportation system throughout Kentucky

### LPA Design Review Checklist ("LDRC")

The checklist that must be filled out by whomever designs the LPA project and must be approved by the District LPA Coordinator and, if the project is located in a historic area, by the state historic preservation coordinator.

### Matching Requirement

For most LPA projects the LPA must provide a percentage of the project cost from its own funds. This is referred to as the Matching Requirement.

## Memorandum of Agreement ("MOA")

The agreement between KYTC and the LPA which governs their relationship and dictates each party's duties to the other. It contains a certification that the LPA has read this guide, includes a project scope, a project budget and, for infrastructure projects, it will also include a maintenance plan.

## Notice to Proceed

The permission from KYTC to move on to the next phase of the project. It can take the form of an email or a letter.

## Payment Bond

A bond provided by a firm after it is awarded a contract. If a firm fails to pay its subcontractors or those from whom it purchases supplies, those injured parties will collect from the payment bond rather than by putting liens on the project property.

## Performance Bond

A bond provided by a firm after it is awarded a contract. If a firm in the performance of the contract causes any damage or liability to the awarding agency, the agency will be compensated. A 100% performance bond is required for projects over \$40,000.00.

## Punch List

A list of corrective work that is compiled by a KYTC representative, and LPA representative, the inspector, and the contractor at a visit to the project after all of the work has been completed. The items on the Punch List must be completed before the contractor is released from the contract.

## Qualifications Based Selection ("QBS") Process

The federally mandated selection process for hiring professional service providers - requires that hiring decisions be based on the qualifications of the candidates rather than price.

## Right of Way

That property owned or acquired by a government body as part of a government infrastructure project.

## Spec Book

KYTC's Standard Specifications for Roadway and Bridge Construction which can be found at  
<http://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx>