

# PUBLIC-PRIVATE PARTNERSHIP

**WAYNE COUNTY FISCAL COURT  
NATURAL GAS DISTRIBUTION SYSTEM  
PUBLIC-PRIVATE PARTNERSHIP**



**WAYNE COUNTY FISCAL COURT  
PUBLIC-PRIVATE PARTNERSHIP  
REQUEST FOR PROPOSALS**

**Mandatory Pre-Proposal Meeting and Site Visit**

November 7, 2022, 10:00 a.m. Eastern Time

55 N. Main Street, Suite 103

Monticello, KY 42633

**PROPOSAL DUE DATES**

November 23, 2022, 4:00 p.m. Eastern Time

**PROPOSAL DELIVERY ADDRESS**

Lake Cumberland Area Development District

P.O. Box 1570

Russell Springs, KY 42642

Phone: (270) 866-4200

**RFP POINT OF CONTACT**

Fara Popplewell-Miniard, Economic Development Specialist

Email: [fara@lcadd.org](mailto:fara@lcadd.org)

**October 21, 2022**

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## SECTION I: PROJECT OVERVIEW

### 1.1. GENERAL REQUEST

Wayne County (“the County”) is accepting proposals (“Proposals”) from qualified respondents (“Private Partners” or “Respondents”) to enter into a public-private partnership (“P3”) agreement (“P3 Agreement”) for the following project (“Project”) components: (1) collaborate with the County regarding the design and construction of a natural gas distribution system (the “Utility”), (2) fund/finance the Project in partnership with the County, and (3) operate and maintain the Utility.

### 1.2. PROJECT BACKGROUND

Wayne County is one of only seven Kentucky counties without a natural gas distribution system serving at least part of the county. Access to natural gas service would provide a public benefit to local businesses and residents, as well as assist with future economic development efforts.

The County has received approval for a U.S. Economic Development Administration grant in the amount of \$4,057,900 (“EDA Grant”) to support the Wayne County Fiscal Court with construction of a natural gas line to serve the city of Monticello, Kentucky. The Project will help support job growth in the area following negative economic impact from both decline in the coal industry and the COVID-19 pandemic. In addition, the Project will meet the demand from local industries for a more reliable energy source and support recruitment of industry to the area. Once completed, the Project will help the region diversify its local economy, create, and save jobs, attract private investment, and advance economic resiliency throughout the region. As required under the EDA Grant, the County has procured engineering services necessary for the Project. The selected Private Partner will review the design documents and provide recommendations to optimize the development and implementation of the natural gas distribution system. The County intends to publicly bid the construction of the Utility in collaboration with the Private Partner. The Private Partner will fund/finance the remainder of the Project and provide operations and maintenance services. Wayne County is willing to explore creative P3 Proposals that appropriately share risk and reward between the County and Private Partner to provide these services.

The EDA Grant requires oversight, reporting requirements quarterly progress reports, design contract approval, bid documents compliance, bid opening concurrences, financial reimbursements, closeout process, etc. as more fully set forth here: <https://eda.gov/resources/grantee-information/>.

### 1.3. WAYNE COUNTY’S OBJECTIVES

1.3.1. Single Point of Collaboration and Accountability: Partner with the County to review and participate in the selection of design elements and construction means and methods that will ensure long term sustainability and minimize overall future operational concerns and maintenance costs.

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To have the Private Partner work with the County collaboratively regarding contract accountability for operations and maintenance of the Utility. The single point of accountability is responsible for providing the County with complete resolutions to operations and maintenance issues that may arise during all phases of Project execution.

1.3.2. Quality Design and Construction: Provide facilities and equipment that will be sustainable and will be in full compliance with state and federal regulations and contractual standards as set herein.

1.3.3. Guaranteed Project Financing: The Private Partner can commit to funding/financing a maximum amount of Project costs.

1.3.4. Streamlined Project Schedule: Collaborate with and assist the County throughout the design, construction, and performance testing of the Utility.

1.3.5. Minimizing Risk for Change Orders: Achieve an optimal balance of risk allocation between the County and the Private Partner and manage risks to reduce the likelihood of change orders.

1.3.6. Selection of Qualified Private Partner: Selection of an experienced Private Partner that understands the County's objectives, has collaborative experience in the design and construction marketplace, and can partner with the County regarding the design and construction of the Project to or under budget.

1.3.7. Innovative Solutions: Select a Private Partner that will work with the County to develop and implement innovative solutions for accelerated Project scheduling, maximum cost control, improved constructability and minimization of operations and maintenance costs to ensure the Project is completed on time and under budget.

### 1.4. RFP SHARED WITH COMMONWEALTH AGENCIES

Copies of this RFP will be submitted to the Commonwealth of Kentucky's Finance and Administration Cabinet and the Department of Local Government in accordance with KRS 65.028(9).

## SECTION II: PROJECT SPECIFICATIONS

### 2.1. SCOPE OF THE PROJECT

The County is accepting Proposals to collaborate in the design and construction of the Project, as well as a Private Partner to finance, operate, and maintain the Utility for the benefit of commercial and residential customers. The County reserves the right to accept elements or components of a Proposal while rejecting others.

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2.1.1. DESIGN AND BUILD COMPONENTS

The County is accepting Proposals addressing the following requirements:

2.1.1.1. Collaborate with the County regarding the design and construction of a new natural gas distribution system to serve Wayne County customers. Private Partner shall review the design documents and provide recommendations regarding optimal design, construction and cost. The Private Partner will also collaborate with the County in the selection of the construction contractor.

2.1.1.2. The Private Partner will be responsible for paying a five percent (5%) Administration Fee of the Total Project Costs to offset the County's expenses for the professional services associated with this Project at financial closing. The Administration Fee should appear as a separate line item in the Proposal budget and should be calculated based on the total Project cost.

2.1.1.3. The Private Partner must reimburse the County for one hundred percent (100%) of the costs for a P3 Study that addresses all requirements in 200 KAR 5:355(2)(2). The County retains final approval authority over which entity conducts the study. The study must be complete within 30 days after negotiations are completed.

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2.1.2. FINANCE COMPONENT

The County is accepting Proposals to fund/finance the Project and will score the Proposals' entire capital stack. Wayne County welcomes creative Proposals that take full advantage of all applicable financial incentives, tax credits, and arrangements, as well as Proposals that include Private Partner contributions, revenue sharing, and other innovative ideas. Respondents may propose financing for a range of amounts and terms or for a maximum amount and term. The County retains the right to substitute its own financing options while accepting the remainder of the Respondent's Proposal.

Respondents should assume the County will provide no funds up front other than the EDA Grant funds. If the Respondent submits a Proposal whereby the Respondent will recover certain costs over a term of years through an annual or regular payment by the County, either through a lease or similar arrangement, then the County understands and expects that the Respondent may desire some sort of a termination fee as part of any such arrangement, whereby its full unamortized capital costs can otherwise be recovered. If a Respondent submits a Proposal offering such an arrangement via a lease or other whereby the County makes payments over a number of years, the Respondent should include in its Proposal a proposed term, payment schedule, and proposed termination fee, including a provision for the reduction of such fee over the life of the term.

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2.1.3. OPERATIONS AND MAINTENANCE COMPONENT

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The County is accepting Proposals to assume operations and maintenance responsibility for the Project up to a twenty-year term, with a right of renewal for a term to be determined as mutually agreed upon by the County and Respondent.

### 2.2. DUTIES AND RESPONSIBILITIES OF THE PRIVATE PARTNER

The Private Partner will engage in the following duties and responsibilities, as applicable to the components agreed to by the parties:

2.2.1. Review, collaborate with, and approve the County's design documents. Provide agreed upon services related to the construction, financing, operations, and maintenance of the Utility.

2.2.2. The County will be responsible for obtaining permits related to construction activities prior to bidding, to include road right-of-way permits, stream crossing permits and easements for construction. The Private Partner shall be responsible for all other necessary permits, licenses, and approvals, including from the Kentucky Public Service Commission. The Private Partner shall abide by all applicable laws, regulations, and ordinances of all Federal, State, and local governments in which work under this contract is performed, to include requirements under the EDA Grant.

The contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. However, the contractor need not be registered as a prerequisite for responding to the RFP. Additional local registration or license may be required. The contractor shall pay any required sales, use, and personal property taxes arising out of this contract and the transaction contemplated hereby. Any other taxes levied upon this contract, the transaction, or the equipment or services delivered pursuant hereto shall be borne by the Private Partner.

2.2.3. Provide maintenance bonds, warranties, guarantees, and letters of credit in connection with the Private Partner's activities in the forms and amounts satisfactory to the County, as required under KRS 65.028(5)(b).

2.2.4. Provide County with access to the Private Partner's personnel, documents, and the Project sites for the purpose of monitoring operational and maintenance performance, as agreed to be the parties and required under KRS 65.028(5)(d).

2.2.5. Maintain public liability insurance or self-insurance in a form and amount satisfactory to the County and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the Project, as required under KRS 65.028(5)(e).

2.2.6. Respond to contractual operational or maintenance requests within an agreed upon time.

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2.2.7. Participate in scheduled reviews of the Project's performance with the County and its designees.

2.2.8. Reasonably respond to the County's requests for information on the Project's status.

2.2.9. Coordinate all Project press engagements through the County's designee.

### 2.3. METHODS OF OVERSIGHT TO BE EMPLOYED BY WAYNE COUNTY

2.3.1. County employees, representatives, and other designees, to include outside consultants, will monitor the Project's progress and performance.

2.3.2. The County will request information from the Private Partners, inspect the Project sites, and interview personnel as necessary to ensure the Private Partner is meeting its obligations.

2.3.3. The County will hold regularly scheduled reviews of the Project's performance with the Private Partner.

### 2.4. DUTIES AND RESPONSIBILITIES OF THE COUNTY

The County will assume the following duties and responsibilities:

2.4.1. Oversee the Project as outlined in Section 2.3.

2.4.2. Provide design documents for Private Partner review and collaboration.

2.4.3. Coordinate with the Private Partner to apply for and secure any necessary permits or meet any other state or federal requirements.

2.4.4. Reasonably provide information as necessary for the Private Partner to meet its duties and responsibilities in Section 2.2 and the P3 Agreement.

2.4.5. Provide reasonable assistance and coordinate with other public agencies as necessary to accomplish the Project's Objectives.

2.4.6. The County will ensure the construction contractor obtains any required performance and payment bonds on the construction portion of the Project under KRS 45A.435 and KRS 65.028(5)(b).

## SECTION III: SUBMISSION PROCESS

### 3.1. PROPOSAL CONTENTS

Proposals should be prepared in such a way as to provide a straightforward, concise presentation adequate to satisfy the requirements of this RFP. Emphasis should be concentrated on

completeness and clarity. Respondents must sign and submit complete packages including the following in the order indicated to be considered:

1. Cover Letter
2. Private Partner Information
3. Experience and References
4. Financial Strength and History
5. Eligibility for Preferences
6. Proposal Description
7. Timeline
8. Budget

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3.1.1. COVER LETTER

Include a cover letter which outlines the overall capability of the Private Partner and a succinct summary of their collective ability to collaborate in the design and construction of the Utility and finance, operate and/or maintain the Project as described above.

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3.1.2. PRIVATE PARTNER INFORMATION

Include a summary statement highlighting the Private Partner's respective key qualifications and experience. Clearly identify the Private Partner entity team members and their respective roles and the individual team members to be dedicated to the Project. If multiple entities are involved, provide an organizational chart that illustrates the relationship between team members.

Identify professional consultants, to the extent they are known at the time of submission, collaborating with the Private Partner Team.

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3.1.3. EXPERIENCE AND REFERENCES

Provide a description of projects that highlight the Private Partner Team's experience in comparable or analogous projects and projects where team members have collaborated together in the past. Selected projects should include photographs to best communicate the project vision. Please list references familiar with Private Partner's work.

Provide at least three (3) references, within the past five (5) years/seasons, of clients for whom services have been performed that are comparable in quality and scope to that specified in this RFP. The references shall include names, addresses and telephone numbers of the clients for whom the prior work was performed, and include an explanation

of the services provided to these clients. Negative references may result in a reduction of points to Proposals.

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3.1.4. FINANCIAL STRENGTH AND HISTORY

Respondents must provide either annual financial statements audited by independent certified public accountants demonstrating a viable going concern, or if not available, other financial statements, demonstrating to the satisfaction of the County, sufficient financial backing and ability to perform the Project.

Respondents must provide bank references for the Private Partner members. It must include name, address, and current telephone number of the given financial institution(s). This should include a signed authorization for release of financial information from each bank listed.

Include a sworn statement with the following text: *“By signing this response to the Request for Proposals, I certify that I am in compliance with all state, federal and local laws and am not delinquent in paying any assessed and unprotested taxes levied by the federal, state or local government.”* If all members of the Private Partner Team cannot agree to this statement, explain why in a sworn statement.

Indicate whether any member of the Private Partner Team or any partnership, joint venture, and/or LLC has ever declared bankruptcy or participated in a restructuring of debt commitments of a distressed property. If applicable, describe the project(s) and circumstance(s).

Respondents must disclose and explain any liens or lawsuits that have been filed against them within the past five (5) years.

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3.1.5. ELIGIBILITY FOR PREFERENCES

Respondents must indicate whether they are eligible for the Small Business, Reciprocal Resident Bidder, and Qualified Bidder preferences and include any required affidavits as outlined in Section 4.3.

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3.1.6. PROPOSAL DESCRIPTION

Submit a detailed description of how the Private Partner would address the Project Scope.

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3.1.7. TIMELINE

Provide a detailed Project timeline.

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3.1.8. BUDGET

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Provide a detailed budget that clearly identifies the costs associated with each individual Component of the Project Scope. Proposals must include the five percent (5% Administration Fee and P3 Study as separate line items.

### 3.2. DISTRIBUTION OF RESPONSES

In order to be considered for selection, Respondents should submit a complete response to the RFP. One (1) original, ten (10) copies, and one (1) electronic copy of each response must be submitted. Proposals must be formatted as an 8-1/2" x 11" document, typed and arranged/divided in the sequence as indicated in Section 3.1 to facilitate evaluation. The Respondent shall make no other distribution of the responses.

The Responses should be placed in a sealed envelope or package for submittal marked "*Wayne Co. Natural Gas Distribution System RFP.*" All responses shall be received and time-stamped at the Lake Cumberland Area Development District no later than the date and time indicated on page 1. Proposals received after this time will not be opened.

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#### 3.2.1. PROPRIETARY OR CONFIDENTIAL DOCUMENTS OR TRADE SECRETS

If a Proposal contains information or documents the Respondent believes are proprietary, confidential or trade secrets, Respondents should identify the exempt information and the basis for such exemption under the Kentucky Open Records Act (KRS 61.870 to KRS 61.884) and submit an additional copy of the Proposal with the confidential or proprietary information redacted.

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#### 3.2.2. DISPOSITION OF PROPOSALS

All Proposals become the property of the County. The County reserves the right to use any and all of the ideas presented in any reply to this RFP. The successful Proposal shall be incorporated into the resulting contract by reference. Disposal of unsuccessful Proposals shall be at the discretion of the County.

### 3.3. COMMUNICATIONS AND SCHEDULE

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#### 3.3.1. RESTRICTIONS ON COMMUNICATIONS

The RFP Point of Contact named on the Cover Sheet shall be the sole point of contact throughout the procurement process. All communications, oral and written (regular, express, or electronic mail, or fax), concerning this procurement shall be addressed to the RFP Point of Contact.

For violation of this provision, the County shall reserve the right to disqualify the Respondent's Proposal.

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## 3.3.2. ANTICIPATED SCHEDULE

The anticipated dates for this Project are as outlined herein. The County may revise these dates as it deems necessary or appropriate.

Issuance of RFP:	October 21, 2022
First Written Questions Due:	November 2, 2022
Site Visit and Pre-Proposal Meeting:	November 7, 2022
Final Written Questions Due:	November 9, 2022
Final Response to Written Questions:	November 16, 2022
Private Partner Proposal Due:	November 23, 2022
Oral Presentations:	December 1-2, 2022
Selection of Private Partner:	Week of December 5, 2022

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## 3.3.3. SITE VISIT AND PRE-PROPOSAL MEETING

In order to provide each Respondent with as much information as necessary to produce a thoughtful and complete proposal, the County will host a site visit and a pre-proposal meeting at the County Courthouse with a Zoom option. The County will have representatives available to answer any questions in connection with the RFP.

All relevant questions submitted in writing before the First Written Questions due date will be answered at this time. The County will make a good faith effort to answer additional questions asked at the pre-proposal meeting, although it may need to wait to answer in written Addenda. All participants interested in submitting a Proposal are invited to attend. Respondents must register for the site visit by emailing [fara@lcadd.org](mailto:fara@lcadd.org) and indicating how many attendees the County should expect.

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## 3.3.4. WRITTEN QUESTIONS REGARDING THIS RFP

Respondents are encouraged to submit written questions to the RFP Point of Contact via email at [fara@lcadd.org](mailto:fara@lcadd.org). No questions shall be accepted after the date listed in Section 3.3.2 unless the question(s) is considered material to the procurement.

The County shall respond to salient questions in writing by issuing an addendum to the solicitation. Addenda shall be posted to the County website at <https://waynecounty.ky.gov/geninfo/Pages/bids.aspx>. Respondent agrees that Wayne County will not be responsible for any oral responses to questions.

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### 3.3.5. ACCESS TO SOLICITATION, RFP, AND ADDENDA

The County wants each prospective Respondent to have full and complete information on which to base a Proposal response. Respondents should only rely on the written information in this RFP, attachments, and addenda and not on any oral responses. The solicitation, addenda, and attachments shall be posted to Wayne County's RFP site at <https://waynecounty.ky.gov/geninfo/Pages/bids.aspx>. In the event of any conflict or variation between the solicitation or modification as issued by the County and the Respondent's response, the version as issued shall prevail.

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### 3.3.6. ACKNOWLEDGMENT OF ADDENDA

It is the Respondent's responsibility to check Wayne County's RFP site for any modifications to this solicitation. Respondents are encouraged to acknowledge each addendum by signing and submitting the latest addendum with their response. However, signing the face of the solicitation constitutes the Respondent's acknowledgement of and agreement to be bound by the terms of all addenda issued.

**Failure to specifically acknowledge addenda will not excuse the Respondent from adhering to all changes to the requirements of the solicitation set forth therein nor provide justification for any pricing changes.**

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### 3.3.7. PROTEST POLICY

Any actual or prospective Respondent, who is aggrieved in connection with solicitation or selection for award of a contract, may file protest with the Wayne County Clerk pursuant to the County's Bid Protest Policy (Attachment A: Bid Protest Policy).

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## SECTION IV: SELECTION AND EVALUATION PROCESS

### 4.1 SELECTION PROCESS

Respondents are asked to submit a detailed response to the RFP outlining their Proposal, along with specific information on their experience in operating similar projects and the expected elements of their Private Partner Team.

It is anticipated that upon receiving the RFP responses, the County's Selection Committee will review submissions and select a set of finalists for competitive negotiations based upon best value, determined by the extent to which those submissions meet the standards and qualifications contained in the Evaluation Criteria. At the conclusion of that process, the Selection Committee will recommend one of the finalists or multiple finalists as the Private Partner(s) for this Project.

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#### 4.1.1. INITIAL REVIEW

The Selection Committee will conduct an initial review of all submittals received for completeness. Proposals shall be completed in all respects as required by this RFP. A Proposal

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may be rejected if it is incomplete, contains any alterations or other irregularities of any kind, and will be rejected if any such defect or irregularity can materially affect the quality of the Proposal. Proposals which contain false or misleading statements may be rejected. If, in the opinion of the County and Selection Committee, such information was intended to mislead the Selection Committee in its evaluation of the Proposal, and the attribute, condition, or capability is a requirement of this RFP, the Proposal will be rejected. The Selection Committee also reserves the right to waive minor technicalities or irregularities in Proposals if such action is in the County’s best interest and in accordance with applicable law. Such waiver shall in no way modify the RFP requirements or excuse the Respondent(s) from full compliance with the RFP and applicable law. Statements made by a potential Private Partner shall also be without ambiguity, and with adequate elaboration, where necessary, for clear understanding.

The Respondent, in responding to this RFP, must submit Proposals in the format identified in this RFP. The Proposal must address all requirements of the RFP even if a “no response” is appropriate. Costs for developing Proposals or in connection with any interview or negotiation related to this RFP are entirely the responsibility of the Respondent and shall not be chargeable to the County.

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4.1.2. EVALUATION

The County’s Selection Committee will evaluate complete submittals based on the Evaluation Criteria, the small business preference, the reciprocal preference for resident bidders, and the qualified bidder preference, as outlined below. The County reserves the right to request additional information from Respondents and may elect to visit Respondents’ completed projects.

The County reserves the right to require Oral Presentations/Demonstrations by some or all of the Respondents to verify or expand on the Technical or Cost Proposals. The County reserves the right to reject any or all proposals in whole or in part based on the oral presentations/demonstrations. The County reserves the right to not conduct oral presentations/demonstrations if they do not affect the final rankings.

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4.1.3. SELECTION OF PRIVATE PARTNER

Following the interviews, the Selection Committee will recommend to the County the Respondent(s) for competitive negotiations. The County will select the final Proposal(s) that is most advantageous to the County.

**4.2. EVALUATION CRITERIA**

The County will rely on the following criteria and corresponding weights to evaluate Proposals:

a. Technical Proposal Evaluation

<u>Criteria</u>	<u>Maximum Points Possible</u>
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Private Partner Expertise and Experience	150
Technical Proposal/Work Plan	250
<b>Maximum Points Possible</b>	<b>400</b>

b. Cost Proposal Evaluation

<u>Criteria</u>	<u>Maximum Points Possible</u>
Proposed Cost of Solutions	400
<b>Maximum Points Possible</b>	<b>400</b>

c. Oral Presentation

<u>Criteria</u>	<u>Maximum Points Possible</u>
Presentation	200
<b>Maximum Points Possible</b>	<b>200</b>

d. Total Proposal Evaluation

<u>Criteria</u>	<u>Maximum Points Possible</u>
Technical Proposal	400
Cost Proposal	400
Oral Presentation	200

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<b>Maximum Points Possible</b>	<b>1000</b>
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## 4.3. PREFERENCES AND CONDITIONS

### 4.3.1. SMALL BUSINESS PREFERENCE

Preference will be given to a Proposal that includes the involvement of small businesses as subcontractors, to the extent that small businesses can provide services in a competitive manner, unless any preference interferes with the qualification for funds, as required under KRS 65.028(5)(k). Proposals must include a statement explaining the involvement of small businesses in the delivery of the Project or lack thereof.

### 4.3.2. RECIPROCAL RESIDENT BIDDER PREFERENCE

If the Selection Committee awards the same score to a resident bidder and a nonresident bidder, preference shall be given to the resident bidder, as required under KRS 65.027(2), KRS 45A.490 to 45A.494, and 200 KAR 5:400. Any Respondent claiming resident bidder status shall submit along with its response a notarized affidavit that affirms that it meets the criteria to be considered a resident bidder as set forth in KRS 45A.494(2), available at the following link:

<https://finance.ky.gov/office-of-the-secretary/FinanceForms/Affidavit%20for%20Claiming%20Resident%20Bidder%20Status.pdf>.

Respondents not claiming eligibility for resident bidder status shall indicate its state of residence.

### 4.3.3. QUALIFIED BIDDER PREFERENCE

Preference shall be given to qualified bidders. Any Respondent claiming qualified bidder status shall submit a notarized affidavit that affirms that it meets the criteria, available at the following link:

<https://finance.ky.gov/office-of-the-secretary/FinanceForms/Affidavit%20for%20Bidders%20Offerors%20and%20Contractors%20Claiming%20Qualified%20Bidder%20Status.pdf>.

### 4.3.4. NO CONTRACT GUARANTEED

Wayne County reserves the right to request necessary modifications, reject any or all Proposals, reject any Proposal that does not meet any mandatory requirements under this RFP or applicable law, or cancel this process at any time prior to execution of the P3 Agreement, according to the best interests of the County.

### 4.3.5. LOCAL GOVERNMENT P3 BOARD REVIEW

The Commonwealth of Kentucky's Local Government P3 Board must review and approve any P3 Agreement with a total contractual value that exceeds 30% of Wayne County's general fund

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revenues received in the previous year. The Local Government P3 Board is required to follow the procedures in KRS 65.028(12).

### 4.3.6. LEGISLATIVE APPROVAL REQUIRED

A P3 Agreement will only take full effect if approved by the Local Government P3 Board, if necessary, and executed by the Wayne County Fiscal Court.

## SECTION V: REQUIRED CONTRACT TERMS

By responding to this RFP, Respondents agree to the following terms in the P3 Agreement:

### **5.1. CONTRACT COMPONENTS AND ORDER OF PRECEDENCE**

The County's acceptance of the Private Partner's offer in response to the solicitation, indicated by signing the P3 Agreement, shall create a valid contract between the Parties consisting of the following:

1. Any written Agreement between the Parties;
2. Any Addenda to the RFP;
3. The RFP and all attachments;
4. Procurement Statutes, Regulations, Policies, and Ordinances;
5. Any Best and Final Offer;
6. Any clarifications concerning the Respondent's Proposal in response to the RFP;
7. The Respondent's Proposal in response to the Solicitation.

In the event of any conflict between or among the provisions contained in the contract, the order of precedence shall be as enumerated above.

### **5.2. FINAL AGREEMENT**

The contract represents the entire agreement between the parties with respect to the subject matter hereof. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this contract.

### **5.3. CONTRACT PROVISIONS**

If any provision of this contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the County and the Private Partner shall be relieved

of all obligations arising under such provision. If the remainder of this contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

#### **5.4. MODIFICATIONS AND WAIVERS**

No modification, change, or waiver of any provision in the contract shall be made, or construed to have been made, unless such modification or waiver is mutually agreed to in writing by the Private Partner and the County, and incorporated as a written amendment to the contract.

Memorandum of understanding, written clarification, and/or correspondence shall not be construed as amendments to the contract.

If the contractor finds at any time that existing conditions make modification of the contract necessary, it shall promptly report such matters to the County for consideration and decision.

#### **5.5. CHANGES IN SCOPE**

The County may, at any time by written order, make changes within the general scope of the contract. No changes in scope are to be conducted except at the approval of the County.

#### **5.6. CONTRACT CONFORMANCE**

If the County determines that deliverables due under the contract are not in conformance with the terms and conditions of the contract and the mutually agreed-upon Project plan, the County may request the Private Partner to deliver assurances in the form of additional contractor resources and to demonstrate that other major schedules will not be affected. The County shall determine the quantity and quality of such additional resources and failure to comply may constitute default by the Private Partner. The County reserves the right to award any contract to the next highest scoring Respondent, if the successful Respondent does not execute within a specified deadline the contract after selection of a preferred Private Partner.

#### **5.7. ASSIGNMENT**

The contract shall not be assigned in whole or in part without the prior written consent of the County.

#### **5.8. CONFORMANCE WITH LAWS AND REGULATIONS**

This contract is subject to the laws of the Commonwealth of Kentucky and, where applicable, Federal law. Any litigation with respect to this contract shall be brought in state or federal court in Wayne County, Kentucky.