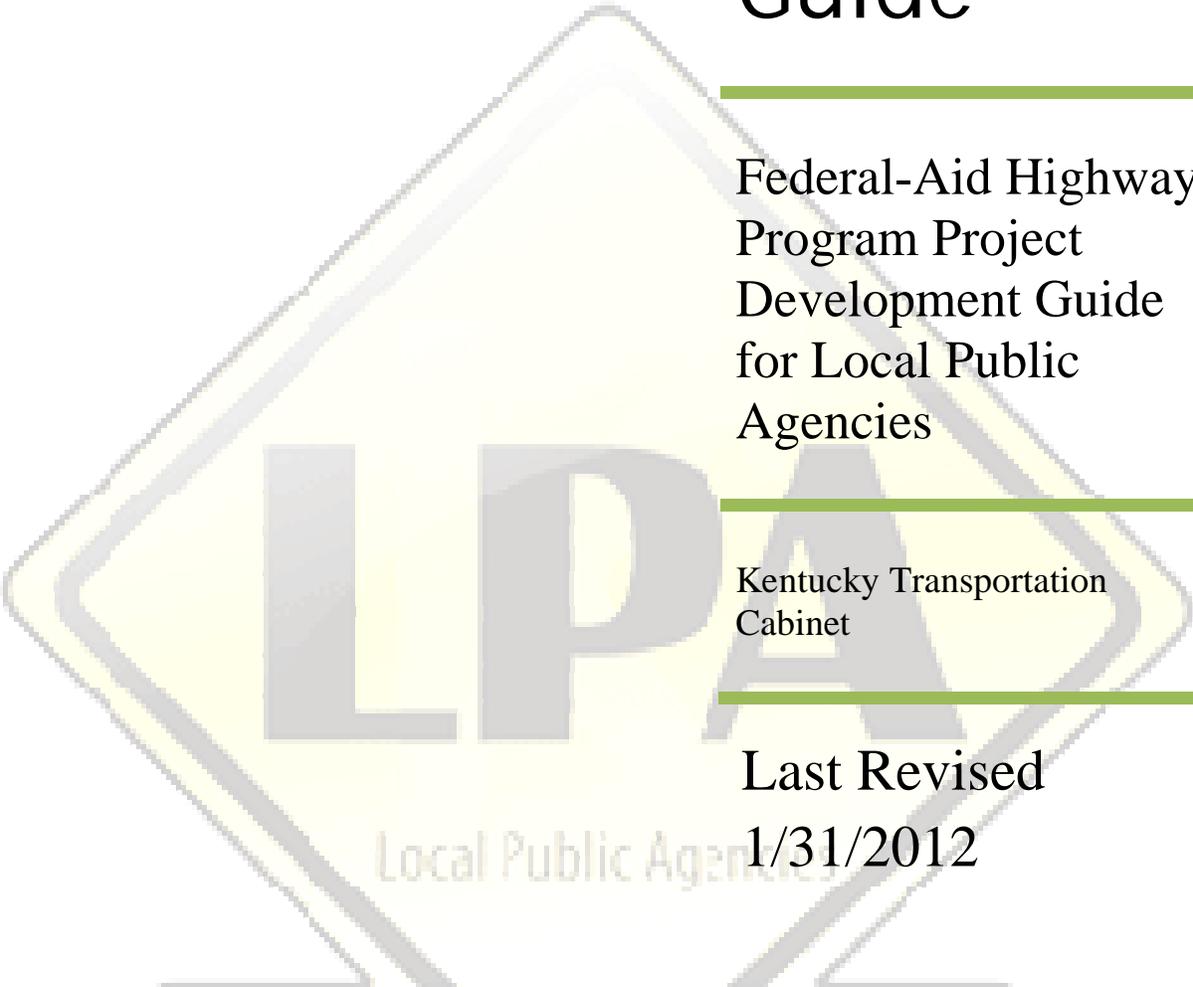

LPA Project Guide

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

Kentucky Transportation
Cabinet

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Kentucky Transportation
Cabinet

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FOREWORD:

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 guide is to briefly explain the federal and state processes and requirements for developing LPA projects in compliance with the applicable legislation and regulations. It is only intended to apply to Federal aid projects funded through FHWA.

Much of the guide focuses on explaining the Local Public Agency Project Development Checklist (“LPA-PDC”) which is required to obtain FHWA project approval. The guide and the LPA-PDC are organized chronologically whenever possible and are designed to help the LPAs navigate the 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 sidewalks, streetscape projects, installing signs, restoration of historic buildings, and any major construction project. Non-infrastructure projects include creating and distributing educational pamphlets, purchasing vehicles for any number of reasons, and promotional or educational events.

Throughout the guide there are references made to specific laws, regulations, policies and other guidance. If this guide is used online, these references are hyperlinked to the resource. The

LPA should explore these 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 LPAs are responsible for following the applicable legislation and regulations whether or not they are included in this guide. The guide also references the Forms Library. An LPA may access the Forms Library on the web at <http://www.transportation.ky.gov/highways/LPA/index.html> or it may request a paper version. Please keep in mind that the Forms Library is quite voluminous.

Federal LPA programs do not provide up-front grant money. These are reimbursement programs. Except in limited circumstances, an LPA must pay for the project costs up-front before receiving money to cover them. Federal LPA programs do not provide free money. In most, although not all, Federal Programs there is a matching requirement¹. The Federal Government will supply most of the money for the project, but the LPA must use some portion of its own money. Federal LPA programs do not provide easy money. There are many requirements to using federal funds. These provisions include environmental, hiring, 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. Federal LPA projects do not provide fast money. Due to Federal requirements, it is possible that an LPA project will take longer than some think necessary. The time the project takes can be limited by diligence and attention on the part of the LPA. Lastly, Federal LPA program awards should be thought of as an award of a defined project. They should 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.

¹ The chart in section I. indicates which programs have a matching component.

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 allow².

² <http://transportation.ky.gov/StewardshipPlan.pdf>. This document outlines KYTC’s duties in administering the Federal LPA programs

I. INTRODUCTION:

The following table illustrates the various FHWA Federal-aid project types and corresponding information. Each project type has specific eligibility requirements. Additionally, there may be Federal Transit Administration money 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.

Project Type	Administering Office	Local Match Required?	Project cost includes KYTC Direct Cost?	Applications Based?
Surface Transportation (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 Non-Infrastructure: Division of Planning (502) 564-7183	Yes	Yes	Yes, for the applicable area
Surface Transportation dedicated for Lexington (SLX)	Infrastructure KYTC Highway District 7 (859)246-3255 Non-Infrastructure: Division of Planning (502) 564-7183	Yes	Yes	Yes, for the applicable area
Surface Transportation dedicated or Henderson (SHN)	Infrastructure: KYTC Highway District 2 (270) 824-7080 Non-Infrastructure: Division of Planning (502) 564-7183	Yes	Yes	Yes, for the applicable area

Project Type	Administering Office	Local Match Required?	Project cost includes KYTC Direct Cost?	Applications Based?
Transportation Enhancement (TE)	KYTC Office of Local Programs (OLP) (502) 564-2060	Yes	No	Yes
Safe Routes to School (SRTS)	KYTC Office of Local Programs (OLP) (502) 564-2060	No	No	Yes
Congestion Mitigation and Air Quality (CMAQ)	KYTC Office of Local Programs (OLP) (502) 564-2060	Yes	No	Yes
Scenic Byways and Highways	KYTC Office of Local Programs (OLP) (502) 564-2060	Yes	No	Yes
Earmarks (HPP, IMD, PLH, Delta Region, etc.)	KYTC Division of Program Management (502) 564-3388	Varies	Yes	Sometimes
Transportation Community and System Preservation (TCSP) Earmarks	KYTC Office of Local Programs (OLP) (502)564-2060 or Division of Planning (502) 564-7183	Varies	Yes	Sometimes
Ferry Boat Earmarks (FBD)	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 Department of Highway Safety (502) 564-1438	Yes	Yes	No

I.1. Project Budget

Every project must have a budget³. 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, the LPA should allow 10% of its total budget for these oversight services⁴. 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. Additional funds needed to cover cost overruns will be the responsibility of the LPA. It is also important to ensure that the budget is not too large.

I.2. LPA Matching Requirement:

As indicated on the above chart, some types of federal funding require that the LPA contribute some of its own funds to the project. The matching requirement is usually paid in cash, but certain in-kind contributions can be used instead. All in-kind contributions must be approved by KYTC before the LPA can count them towards its matching requirement. The LPA must provide documentation of any in-kind contributions with its request for reimbursement discussed in Section 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 Section XII.

If real property is to be included in the LPA's matching requirements, it must be appraised by a prequalified KYTC appraiser⁵. 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 Section V.

³ See Forms Library for a sample project budget and scope of work.

⁴ See above chart to determine if the project requires KYTC direct costs for oversight.

⁵ 49 CFR § 18.24(b)(6). The process for hiring an appraiser is discussed in Sections III and V.

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 documentation⁶. 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.

If the LPA fails to meet the matching requirement it may be required to return all federal funds reimbursed previously.

I.3. Application Based Funding:

While some of the federal funds used by LPAs are dedicated for a particular area or project, other federal funds require LPAs to apply for them. For these projects, when federal funds are available, the Kentucky Transportation Cabinet, Office of Local Programs ("OLP") will notify the public that an application cycle is open. The notification will indicate the type and amount of funding available, the application deadline, and the eligibility requirements. The amount and type of funding available will vary between application cycles.

To apply, the LPA must submit its application for funding to the OLP. The application requirements and forms can be found at the OLP website⁷. After the application deadline, the FHWA and the OLP will review applications for eligibility and then forward the eligible applications, first to the Secretary of KYTC and then to the Office of the Governor for selection. Selection announcements will be made by the Office of the Governor. Once an announcement is made, the LPA and KYTC will work together to enter into a Memorandum of Agreement ("MOA") which will govern the use of the funds.

⁶ The use of LPA construction force account is discussed in Section VIII.8.

⁷ www.tea21.ky.gov

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 Division of Planning, MPO Team for information regarding how to request project funding.

Care should be taken if an LPA is planning to use multiple federal funding sources on one project. If multiple funding sources are to be used on a project the LPA is encouraged to use separate funding sources in different phases of the project. At the project team meeting eligibility and project administration concerns should be discussed to ensure there are no complications.

I.4. Project Agreement

The LPA and KYTC must enter into a MOA which will govern their relationship and dictate each party's duties to the other. There is some language that is required by law to be contained in the MOA but the form of the MOA will vary depending on the type of project 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 contain a resolution passed by the LPA; the scope of the project; clearly defined and measurable general objectives and benefits of the project; and the project budget⁸. Infrastructure project MOAs will also have a maintenance plan.

KYTC will draft the MOA and give it to the LPA to sign. Once the MOA is approved and signed, the federal funds are allocated as discussed in Section II, and the LPA has received a notice to proceed from its Administering Office, the LPA may begin work on the project. Any

⁸ The LPA must pass a resolution that it will enter the MOA and ensure the project complies with applicable state and federal laws. See Forms Library for Sample Resolution to entering into MOA.

amount the LPA spends on the project before receiving the notice to proceed will not be reimbursed⁹.

ANY ACTIVITY PERFORMED BEFORE FHWA AUTHORIZATION HAS BEEN RECEIVED, THE PROJECT AGREEMENT IS SIGNED, AND THE LPA HAS RECEIVED ITS NOTICE TO PROCEED WILL NOT BE ELIGIBLE FOR FEDERAL FUNDING.

I.5. Project Team Meeting:

All of the people who will affect or participate in a project must meet at least once, early in the project's life, to discuss the process and any potential problems. There should be an initial team meeting after the funds have been awarded, but before the MOA is signed. After the LPA has hired any design and environmental consultants necessary, it should request that its Administering Office schedule another project team meeting. The team for non-infrastructure projects might be the Administering Office representative and the LPA representatives. The team for an infrastructure project must include more KYTC representatives, particularly the District LPA Coordinator. If possible, it is preferred that the project team meeting be held at the district office for the district where the project will be located. For infrastructure projects, it is recommended that the project team do a site visit in conjunction with the project team meeting.

At the project team meeting the LPA representatives will be acquainted with the KYTC District professionals and other KYTC staff that can create a plan of action to meet the project requirements. For example, the project team might discuss whether the LPA would like to negotiate with utility companies affected by the project by itself or if they would prefer that KYTC staff do it and bill their time to the project. Most importantly, the team members will exchange contact information so that they can communicate effectively throughout the project.

⁹ 23 CFR § 630.106(a)(1)

II. FUND ALLOCATION:

For federal funds to be used they must be programmed. This means that they are allocated to the project budget and made available for use.

All LPA projects must be programmed in the Statewide Transportation Improvement Program (“STIP”)¹⁰. If an LPA project is located within the planning boundary of a Metropolitan Planning Organization (“MPO”) it must also be programmed in the Metropolitan Transportation Plan, Transportation Improvement Program (“TIP”)¹¹. A Map of the MPO planning boundaries can be found on the internet¹².

The Administering Office or, if the project is within an MPO planning boundary, the Division of Planning MPO Team will program the project funds¹³. The LPA must receive a notice to proceed and confirm that the funds have been programmed 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 ensure that they receive a notice to proceed and confirm that the funds have been programmed prior to starting each new phase of the project.

III. PROFESSIONAL SERVICES PROCUREMENT:

There are federal and state statutes the LPA must follow when hiring firms or individuals to perform Professional Services¹⁴. The purpose of these rules is to ensure that a qualified

¹⁰ 23 USC § 135; 23 CFR § 450.216

¹¹ 23 USC § 135; 23 CFR §§ 450.216, 450.322 and 450.324

¹² 23 CFR § 450.104. The LPA should check the map at http://www.planning.kytc.ky.gov/mpo_files/MPO_planning_boundaries.pdf or contact its Administering Office to determine if its project is in an MPO.

¹³ Projects in the Louisville MPO planning boundary are programmed through a different process. Contact the Division of Planning, MPO team for more information.

¹⁴ 40 USC § 1101-1104, 49 CFR §18.36, 23 USC § 112, 23 CFR § 172, KRS § 45A.735-750, and KRS § 45A.800-838. Professional Services are engineering related services; geotechnical services; program management;

consultant is obtained through an equitable selection process. Such processes are referred to as Qualifications Based Selection (“QBS”) processes¹⁵. The LPA can choose from several QBS processes depending on its needs and the expected value of the Professional Services contract.

III.1. QBS Process Documentation:

The LPA is required to provide the project’s Administering Office documentation confirming that the LPA chose the appropriate QBS process and that the LPA followed the QBS process chosen. This documentation must include 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 reasonable. After the Administering Office has reviewed the documentation and deemed it satisfactory, it will certify the QBS process. The Professional Service Provider may not begin reimbursable work until this certification is complete.

III.2. In House Staff:

If the LPA employs a person as part of its regular staff who can and will adequately perform the Professional Services, there is no need for the LPA to go through the QBS process¹⁶. It should be noted that 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 them must have these credentials. For example, if the Professional

construction management; 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. 40 USC § 1102(2)(C) and 23 CFR § 172

¹⁵ The Federal statute requiring that LPAs follow the QBS process when using federal funds is commonly referred to as the Brooks act.

¹⁶ The LPA should note that the Safe Routes to School Program does not allow reimbursement for Professional Services provided by the LPA’s in-house staff as they are considered recurring costs.

Services are engineering or engineering related services, the person performing them must be a Kentucky licensed Professional Engineer (“PE”).

III.3. Working Relationships with Firms:

LPAs often develop working relationships with firms and wish to contract with them on federal projects without going through a QBS process. This is only permitted if the LPA has a retainer contract in place with the firm 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 firm as part of one of the QBS processes described below.

III.4. KRS § 45A.730 – 45A.750 Process (“LPA Process”)¹⁷

The KRS § 45A.730-45A.750 LPA Process is one of three QBS Processes the LPA may follow to hire Professional Service providers. Before the LPA may begin the LPA Process, the LPA must pass a resolution adopting the applicable sections of KRS § 45A¹⁸. Pursuant to those sections the LPA must set a monetary limit¹⁹. This limit must be no greater than \$100,000 for engineering or engineering related services and no greater than \$50,000 for all other Professional Services. The LPA may then follow the LPA Process to procure Professional Services for which the anticipated fee is greater than the monetary limit²⁰. An LPA having adopted the LPA Process statutes should begin accepting qualification statements from firms engaged in the lawful practice of their professions. These qualification statements shall remain on file with the LPA

¹⁷ See LPA Process flow chart in Forms Library

¹⁸ KRS § 45A.740, 45A.745, 45A.750. See form resolution in the Forms Library.

¹⁹ KRS § 45A.735 (1)(a)

²⁰ KRS § 45A.735(1)(6)

for one year from the date they are submitted²¹. After that date the Professional Service Providers would have to provide an updated statement of qualifications.

When the LPA requires Professional Services, it must check to see if there is a KYTC prequalification category for the type of services required²². If there is, the LPA may only consider those firms which have been prequalified by KYTC. The LPA must then send a notice requesting proposals (“RFP”) from firms on the prequalification list²³.

If there is no prequalification category, the LPA must give notice of an RFP to the firms for which the LPA has valid qualifications statements on file. It may also decide to give a public notice of the proposed project with a request for qualification statements and statements of interest (“RFQ”) from firms²⁴. Lastly, the LPA can contact an appropriate professional organization for a list of firms capable of providing the required Professional Services and send an RFQ to those firms²⁵. To provide service providers Notices of RFPs and Notices of RFQs, the LPA should use the advertisement template located in the Forms Library.

Prior to giving notice of an RFP or RFQ, the LPA must obtain approval from its Administering Office. The LPA must provide these notices to the appropriate firms at least 21 days prior to the date the LPA intends to award the Professional Services contract. If the LPA is providing public notice for an RFQ it must post the notice online or in a newspaper of general circulation.

²¹ KRS § 45A.735 (2)

²² 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 type of Professional Services need.

²³ See form RFP in the Forms Library.

²⁴ See form RFQ in the Forms Library.

²⁵ KRS § 45A.740 (1)

In response to the LPA's RFQs and RFPs, firms will submit proposals. The LPA evaluates each firm's proposal according to statutorily defined criteria²⁶. The LPA may require interviews as part of this evaluation process. The LPA shall select at least three firms on the basis of the evaluations and rank them according to their qualifications²⁷. If fewer than three firms responded to the advertisement or if fewer than three firms are judged to be qualified then only those firms shall be ranked. The cost shall not be a factor in the evaluation of firms²⁸.

The LPA will then attempt to negotiate a contract with the top ranked firm for a fair and reasonable value²⁹. Fair and reasonable value is statutorily defined. If the LPA is unable to reach a contractual agreement with the highest ranked firm, it then begins negotiations with the second ranked firm, and so on. If negotiations with all of the ranked firms fail, the LPA shall reevaluate the Professional Services to be provided and begin the process again³⁰.

III.5. Statewide Contracts:

The second way an LPA can hire a professional services consultant is by using one of the Statewide Contracts established by KYTC. The KYTC goes through a QBS process when entering into statewide contracts for Professional Services³¹. KYTC has entered into statewide contracts with general service design firms. If the LPA uses a firm with which KYTC has a statewide contract, it can save a lot of time for the LPA and can also eliminate the risk of non-reimbursement. The LPA may contact its Administering Office to employ one of these general service design firms under the firm's statewide contract with KYTC. KYTC will enter into a

²⁶ KRS § 45A.745 (1). See form evaluation sheet in the Forms Library.

²⁷ KRS § 45A.745(3)

²⁸ KRS § 45A.745 (2)

²⁹ See form Professional Services Contract in the Forms Library. KRS § 45A.750(1).

³⁰ KRS § 45A.750(3)

³¹ KRS § 45A.838

letter agreement for the LPA's specific project. The firm will act at the LPA's direction and will be paid by the LPA directly, but its contract will be with KYTC.

III.6. Price Contracts:

The third QBS Process is available to LPAs working on smaller projects. If the LPA is procuring services for a project where the Professional Services fee will be small enough, the LPA may choose to follow the small procurement statutes³². One such statute is the Price Contract statute³³. Price contracts may be awarded where the anticipated fees are less than \$50,000.00 for Professional Services³⁴.

If the LPA's Professional Service needs qualify and the LPA would like to negotiate a price contract, the LPA should contact its Administering Office to obtain a list of firms eligible for price contracting as well as the list of fees that must be used when entering into price contracts. The LPA must fill out a Price Contract Selection Form indicating why it chose the Professional Service Provider that it did³⁵. This form must be submitted for approval by the Administering Office prior to the LPA signing the price contract with the Professional Service Provider. Each LPA must keep careful track of the price contracts it awards. LPAs may only award \$100,000.00 in price contract fees to a particular Professional Service provider in each contract discipline per fiscal year³⁶. If more is awarded to a particular Professional Service Provider, any amount paid to the Professional Service Provider over the \$100,000.00 will not be reimbursed.

³² KRS § 45A.837, 23 CFR § 172.5(a)(2), 49 CFR § 18.36 (d)

³³ KRS § 45A.837.

³⁴ KRS § 45A.837(2)(c). See Forms Library for the LPA Price Contract Form

³⁵ See Forms Library for Price Contract Selection Form

³⁶ KRS 45A.837(2)(c). If the LPA has exceeded the Price Contract limit with a firm, but wishes to award that firm another Price Contract, the LPA must request that the Secretary of KYTC make a written determination that the award is in KYTC's best interest. This determination will only be made in rare instances with documentation showing the reasons provided.

III.7. Disadvantaged Business Enterprises (“DBE”):

In order to use federal funds, steps must be taken to ensure that firms qualified as DBE by the KYTC Office of Civil Rights and Small Business Development are used when possible. Some steps that may be appropriate depending on the nature of the project include placing qualified DBE firms on solicitation lists; assuring that DBE firms are solicited whenever they are potential sources; dividing total requirements into smaller tasks or quantities to permit maximum participation by DBE firms; establishing delivery schedules which encourage participation by DBE firms; and using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce³⁷. A directory of DBE firms can be found on the web³⁸.

IV. ENVIRONMENTAL REQUIREMENTS:

Environmental Approval must be received before the LPA can request FHWA Authorization for Final Design, ROW, Utilities, and Construction or be reimbursed for any work in these areas³⁹. For projects administered by the OLP, KYTC will generally complete the environmental requirements on behalf of the LPA. The following provisions may, therefore, be somewhat unnecessary for LPAs working on those projects. The project’s environmental compliance process should be discussed at the project team meeting.

LPAs must comply 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

³⁷ 49 CFR § 18.36(e); 23 CFR § 635.107; 23 USC § 1101(b)

³⁸ http://transportation.ky.gov/OBOD/directories/CERTIFIED_DB_E_DIRECTORY.pdf

³⁹ 23 CFR § 771.113(a). The exceptions to this rule are found in 23 CFR § 771.113(d).

Water Act, the Endangered Species Act, and any other applicable environmental laws and regulations⁴⁰.

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")⁴¹. The clearinghouse allows other governmental agencies to identify the 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 <http://dlg.ky.gov/clearinghouse>.

Once the clearinghouse document is requested, the different sections of state government have 60 days in which to make comments about the project. When this time period has expired, the DLG will send a copy of the clearinghouse document to the LPA and the Administering Office. It is important that the LPA read the Clearinghouse comments carefully. If KYTC is to do the environmental work for the project, the Administering Office will send the clearinghouse document along with the application to the KYTC Department of Environmental Analysis so that it may begin its evaluation process. If KYTC is not doing the environmental work, the LPA should give a copy of the clearinghouse document to whomever is doing it. It is important that the clearinghouse comments are incorporated into the environmental document.

IV.2. Environmental Documentation:

⁴⁰ For a more complete description of the environmental requirements, permits, and certifications required for federally funded projects please see the KYTC Highway Design Guidance Manual, January 2006 located at http://transportation.ky.gov/design/designmanual/Design_Manual.html, particularly Sections 400 through 600 and KYTC's Division of Environmental Analysis website at <http://transportation.ky.gov/EnvAnalysis/>.

⁴¹ See sample clearinghouse document in the Forms Library

To use Federal funds for any project, LPAs must comply with NEPA⁴². These 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 in the best overall public interest 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 project⁴³.

The LPA is required to submit an environmental document showing that the NEPA requirements have been met. The type of environmental document depends on the level of environmental impact the project will have⁴⁴. Some environmental review is required to determine environmental impact. The LPA may need to hire a consultant to perform these services⁴⁵. Depending on Project Type and amount awarded, KYTC may agree to prepare the environmental document on the LPAs behalf. KYTC will generally prepare the environmental document for all projects administered by OLP. If KYTC is to prepare the environmental document, this arrangement MUST be included in the MOA between KYTC and the LPA. The environmental document will be subject to FHWA and KYTC approval.

IV.3. Re-assessment or Re-evaluation:

If the environmental document required is an Environmental Impact Statement (“EIS”), the draft EIS must be re-evaluated if an acceptable final EIS is not submitted within three years

⁴² NEPA is found at 42 USC §4321-4327. The FHWA’s policies and procedures to implement NEPA are found at 23 CFR § 771. That regulation and 40 CFR § 1500-1508, which was promulgated by the Council on Environmental Quality, are a comprehensive set of requirements for NEPA compliance on highway and public transportation projects. 23 CFR § 771.101

⁴³ 23 CFR § 771.105

⁴⁴ Most LPA projects qualify for the simplest of environmental documents called a Categorical Exclusion. For an example please see the Sample Categorical Exclusion in the Forms Library. For the requirements concerning other types of environmental documents, the LPA must consult its Administering Office.

⁴⁵ See Professional Services Procurement Section. There is a Prequalification Category for Environmental Consultants.

from the date the draft EIS was circulated. Depending on the result of the re-evaluation, the draft EIS may have to be amended, supplemented or redone⁴⁶.

IV.4. Environmental Commitments:

If a project will impact a natural or human environment which environmental legislation seeks to protect, the LPA may be required to include commitments in their environmental document that must be carried out later in the project process⁴⁷. The LPA will agree to mitigate the damage done to the protected environment, either by changing the project or by doing something in another area that will benefit the protected environment. 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 effects natural or human environments protected by environmental regulation and in negotiating the environmental commitments if they 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 that they are honored.

IV.5. Environmental Permits:

Some projects may require environmental permits in addition to the environmental document. The LPA's Administering Office and its environmental design consultant, if applicable, will tell the LPA what permits are required for its project. It is not possible to determine with certainty if a permit is required until completion of the investigation required for the environmental document⁴⁸.

V. RIGHT-OF-WAY & UTILITIES:

⁴⁶ 23 CFR § 771.129(a)

⁴⁷ 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).

⁴⁸ For more information regarding permits relating to water please see the Energy and Environmental Cabinet, Division of Water. <http://water.ky.gov/pages/default.aspx>

V.1. ROW Certification:

FHWA requires a ROW Certification for all projects⁴⁹. If the project is non-infrastructure and involves no purchase of ROW most of what is discussed below will not apply. There are boxes to check on the ROW Certification for projects that do not require ROW acquisition. After the LPA has obtained all deeds, easements, and releases, and recorded them where appropriate, a copy of these recorded documents must be sent to the District LPA Coordinator with a copy of the project's design plans. The LPA District Coordinator will review this submittal and the Right of Way Supervisor will create and route a Right of Way Certification for signature. Once all signatures are received, the completed form will be forwarded to the LPA and the Administering Office for their files.

V.2. Right of Way:

The project's ROW requirements should be discussed at the project team meeting. The LPA's ROW acquisition depends on what entity owns the property on which the project will be built. First, the LPA must obtain a survey showing on what property the project will be located. If the LPA owns the property, then there is no ROW acquisition. If another entity owns the property, the LPA must comply with the applicable federal statutes to obtain property rights for a federally funded project⁵⁰. If ROW acquisition is required for the project, no offers for acquisition may be made prior to approval of the Environmental Document. When acquiring property from third parties, the LPA is required to follow the Uniform Relocation Assistance and

⁴⁹ See sample ROW Certification Form in the Forms Library.

⁵⁰ 23 CFR § 710; 49 CFR § 24; and 42 USC § 4601. In addition to these statutes the FHWA has published resources which help explain the ROW process. They are located at:

<http://www.fhwa.dot.gov/realestate/ua/index.htm>

<http://www.fhwa.dot.gov/realestate/pdg.htm>

<http://www.fhwa.dot.gov/realestate/lpaguide/index.htm> .

KYTC has also published its own ROW manuals at:

<http://transportation.ky.gov/Row/Appraisaldocs/ROW-Complete%202007.pdf>

<http://transportation.ky.gov/kytci-forms/eBook/relocationAssistance.pdf> /.

Real Property Acquisition Policies Act of 1970 (“Uniform Act”) discussed in Section V.5. If the LPA would like to hire consultants rather than acquiring the property itself, it must do so through one of the QBS processes discussed in Section III. KYTC has a list of prequalified appraisers, relocation agents and acquisition consultants. It also has in place some statewide appraisal contracts on which the LPA can do a letter agreement in order to save time in the hiring process.

V.3. Encroachment Permit:

If the project will require any work within or abutting KYTC ROW, the LPA must obtain an encroachment permit. There are different types of encroachment permits depending on the type of work to be done. The LPA should discuss the types of encroachment permits that will be necessary with its Administering Office and at the project team meeting. More information regarding how to acquire an encroachment permit can be found in the “Guide for Obtaining Encroachment Permits on State Right of Way” Manual published by KYTC⁵¹.

V.4. Types of Acquisition:

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 public⁵².

If it will be necessary to enter any property, other than that owned by KYTC or the LPA, during the construction phase of the project, the LPA must obtain a signed Consent and Release or a Temporary Easement⁵³. A signed consent and release is usually the cheapest option for obtaining this type of permission but it is not recordable on the permanent property records which will allow other entities to obtain rights superior to the LPA’s⁵⁴. If the need to enter onto

⁵¹ The Guide for Obtaining Encroachment Permits on State Right of Way can be found at http://transportation.ky.gov/Maintenance/Permits_Data/forms%20for%20web/TC%2099-9.PDF

⁵² 23 CFR § 710.201(e)

⁵³ See Consent and Release Template and Temporary Easement Template in the Forms Library.

⁵⁴ 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

the property will be brief, a Consent and Release may be the appropriate option. Before a Consent and Release is obtained, the property owner must be informed of their right to just compensation. If the construction phase of the project will be of longer duration, a Temporary Easement may be necessary. If the LPA gets a temporary easement on property that is mortgaged to a bank, it must obtain a release from the bank⁵⁵. The LPA should contact its District ROW Division or its Administering Office to discuss which type of property interest is most appropriate.

If the project will be located on any property other than that owned by KYTC or the LPA, the LPA must either purchase all or a portion of the property, or obtain a permanent easement for those areas affected by the project⁵⁶. A permanent easement may be appropriate where the LPA does not need a substantial portion of the property, or where the LPA's use of the project will not substantially impact the existing property use. A permanent easement must allow the LPA the right to build, use and maintain the property for the project's purpose. It must also allow the LPA to later transfer an easement interest to KYTC if KYTC requires it⁵⁷.

Both a purchase and an easement must be recorded in the permanent property records. If the LPA acquires a permanent easement or a deed on property that is mortgaged to a bank, it must obtain a release from the bank⁵⁸. The LPA should contact its District ROW Division or its Administering Office to confirm which type of ROW acquisition is acceptable.

V.5. The Uniform Act:

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.

⁵⁵ If the LPA doesn't obtain a release, the bank is under no obligation to honor the easement if it forecloses.

⁵⁶ See Permanent Easement Template and Fee Simple Deed in the Forms Library. The templates will have to be altered to allow the construction and maintenance necessary for the particular project.

⁵⁷ The transfer of property rights to KYTC is discussed in Section XI.2.

⁵⁸ If the LPA doesn't obtain a release, the bank is under no obligation to honor the easement if it forecloses.

LPAs must follow the Uniform Act when acquiring any property interest from a third party⁵⁹. 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 activities⁶⁰. The LPA is required to provide notices to displaced persons⁶¹. The Uniform Act also requires that the LPA provide relocation assistance advisory services which include interviews with displaced persons to determine their needs and preferences⁶². The Uniform Act also requires that persons displaced because of a federally funded project receive compensation for relocation expenses⁶³.

Most importantly, 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.6) or the LPA determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000.00 or less, based on a review of available data⁶⁴. Appraisers must be prequalified by KYTC⁶⁵.

⁵⁹ 42 USC § 4601-4655

⁶⁰ 49 CFR § 24.205(a)

⁶¹ 49 CFR § 24.203

⁶² 49 CFR § 24.205(c)

⁶³ 49 CFR § 34.207

⁶⁴ 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, discussed in Section V.6.

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).

⁶⁵ 49 CFR § 24.103

ROW appraisals require two valuations of the property. One valuation will be of the property as it is. The other will be of the property as it will be after the ROW acquisition is made. The difference between the first appraised value and the second is equal to the just compensation the LPA must offer for the property. The LPA should discuss the need for appraisals with the District Office Right of Way Department and its Administering Office.

If the LPA determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the property is less than \$10,000.00 the LPA must do a Minor Acquisition Review (“MAR”) to determine the amount of compensation it must offer the property owner. The LPA must examine sales of comparable properties in the area to determine a value range for the property to be acquired. The form MAR and Comparable Chart found in the Forms Library outline how to do the calculation of the compensation using the value range. The LPA may also contact its Administering Office for more information. The MAR forms must be approved by the District ROW Supervisor prior to making an offer to the property owner.

If the property owner refuses to take an amount that the LPA has determined to be just compensation, it may be necessary 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 to avoid unnecessary delay to the project. LPAs should note, however, that there are substantial costs and delays associated with condemnation proceeds so a negotiated resolution is preferable.

V.6. 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 that they have the right to just

compensation for their property⁶⁶. 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.

After the property is donated, it is necessary to assign a value to donated property through the MAR process discussed in Section V.5, both so that the property owner may take an appropriate tax deduction and because donated property may be credited towards the LPA's matching funds where applicable⁶⁷. 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. Permission to use property that is not recorded in the permanent property records is not sufficient except in the case of the temporary Consent and Release forms discussed in Section V.4.⁶⁸.

V.7. Utilities⁶⁹:

If the project touches the ground, the LPA must follow the Utilities and Rails Guidance Manual⁷⁰. This is true even if the LPA is not acquiring new ROW. It is important to discuss the utilities policy and relocation process at the project team meeting. The LPA should begin the utility coordination and relocation process as soon as possible after approval of the environmental document so that coordinating with utility companies will not delay the project.

First, the LPA must contact its Administering Office or its District Utilities Supervisor and provide the location of the project. The Administering Office or the District Utilities Supervisor will provide a list of all the known utility companies that could be in the project area.

⁶⁶ 49 CFR § 24.108 and 23 CFR § 710.505

⁶⁷ 23 CFR § 710.507 and 23 CFR § 630.106(h)(1). See also Section I.2.

⁶⁸ 23 CFR § 710.201(e)

⁶⁹ In addition to the information provided in this Guide the LPA must comply with the Utilities and Rails Guidance Manual located at _____

⁷⁰ This process is governed by KRS § 177.035; KRS § 416.140; KRS § 179.265; 23 USC § 123. The Utilities and Rails Manual is located at _____.

If the MOA indicates that the LPA will negotiate with the utility companies itself, its representatives will contact each of the known utilities and find out if the utility is within the project scope. For each utility within the project scope, the LPA must identify any effect the project will have on that utility through reasonable means as identified in the Utilities and Rails Guidance Manual. It must also determine which of the utilities it must compensate for relocation work done⁷¹. 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 UR manual and applicable laws.

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. 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 due⁷². 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.

If the MOA indicates that KYTC will negotiate with the utility companies on the LPA's behalf, the District Utility Supervisor will perform the above described functions on the LPA's

⁷¹ KRS § 177.035 and KRS § 179.265 dictate when a utility company is due compensation for its relocation costs.

⁷² There are several forms of utility agreement. To determine which of these forms is appropriate see UR-1103 published by KYTC and located at www.ky.gov. This manual also lists all form agreements and form "no impact" letters.

behalf. All utility relocation agreements must be signed by the LPA's representative, the Director of the Division of ROW and the Utilities and Rail Branch Manager. The LPA must provide signed copies to the Administering Office.

In the event the LPA is unable to reach an agreement with a utility company, it should alert its Administering Office and request assistance.

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 begin⁷³. Utility Impact Notes must also include utility contact information. KY 811 language concerning calling before digging must be included in the construction Bid Proposal⁷⁴.

LPA's 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.

V.8. 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 statutes⁷⁵. If the project fits any of these descriptions, the LPA must contact the KYTC Railroad Coordinator immediately so that negotiations between the LPA and the Railroad can be set up. 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

⁷³ See form Utility Impact Notes in the Utilities and Rails Procedure manual located at www._____.ky.gov

⁷⁴ KRS § 367.4901 through KRS § 367.4917

⁷⁵ 23 CFR § 646. LPA's must comply with UR 2001 located at www._____.ky.gov

Railroad Coordinator⁷⁶. 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.

VI. NON-CONSTRUCTION PROCUREMENT:

This section only applies to Non-Infrastructure projects.

This section only applies to the purchasing of items that are not to be used as part of the construction of a project, that are not real estate and that are not professional services (For example: pamphlets, badges, buttons, vehicles)⁷⁷. The LPA is 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 needed items. There are several different non-construction procurement processes which are outlined below.

VI.1. Non-Construction Procurement: Competitive Bidding

The first type of non-construction procurement is Competitive Bidding. Contracts must be awarded by competitive sealed bidding unless it is determined in writing that this method is not practicable or the procurement meets one of the other criteria discussed below. Competitively bid contracts shall be awarded based on best value⁷⁸. 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 LPA⁷⁹. Decisions must be based on objective and quantifiable criteria,

⁷⁶ See sample Railroad Agreement in the Utilities and Rails Procedure manual located at www._____.ky.gov

⁷⁷ To purchase items for construction see Section VIII. To purchase real estate see Section V. To procure professional services see Section III.

⁷⁸ KRS § 45A.080(1) and (2)

⁷⁹ KRS § 45A.070(1)

including price, which were communicated to potential bidders in the invitation for bids⁸⁰. 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)⁸¹. 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 days⁸². On the bid closing date, the LPA must either publically read the bids submitted or post them on a website available to the public⁸³. 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 responsive⁸⁴. Any questions the LPA has about any of the bids should 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 rejected⁸⁵. 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 agencies⁸⁶.

⁸⁰ KRS § 45A.070(1)

⁸¹ A RFB form is available in the Forms Library.

⁸² KRS § 45A.080(3)

⁸³ KRS § 45A.080(4)

⁸⁴ A responsible 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. KRS § 45A.345(19)

A responsive bidder 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. KRS § 45A.345(20)

⁸⁵ FAP 111-34-00(4) and KRS § 45A.340

⁸⁶ FAP 111-59-00

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 VI.5.

If the bids received are unsatisfactory the LPA may request approval to conduct the competitive negotiation process discussed in Section VI.2⁸⁷. Additionally, if bids received exceed available funds or one or no responsive bid was received, the LPA may request permission for non competitive negotiations⁸⁸.

VI.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 appropriate⁸⁹. The LPA may also request approval for competitive negotiation if it believes that the bids received by complete sealed bidding were either unreasonable or were not independently reached in open competition⁹⁰. 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 negotiate⁹¹.

⁸⁷ Approval will be given according to the criteria set in KRS § 45A.090(2).

⁸⁸ KRS § 45A.090(3), KRS § 45A.095, and KRS § 45A.375.

⁸⁹ KRS § 45A.080(1)

⁹⁰ KRS § 45A .085(3)

⁹¹ KRS § 45A.085(3)

In order to procure an item through competitive negotiation the LPA must draft a RFP⁹². 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 circulation⁹³. 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 responsive⁹⁴. Any questions the LPA has about any of the proposals should 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 rejected⁹⁵. 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 agencies⁹⁶.

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

⁹² A RFP form for non-construction procurement is available in the Forms Library.

⁹³ KRS § 45A.080(3)

⁹⁴ A responsible 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. KRS § 45A.345(19)

A responsive bidder 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. KRS § 45A.345(20)

⁹⁵ FAP 111-34-00(4) and KRS § 45A.340

⁹⁶ FAP 111-59-00

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.

VI.3. Non-Construction Procurement: Small Purchase Procedure

The third and most commonly used non-construction procurement procedure for the LPAs is the small purchases 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 satisfactory⁹⁷.

Quotes should be obtained in writing and should be kept in the LPA's project files as evidence that the quotes were obtained. The LPA may not artificially divide their procurement

⁹⁷ 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/>

needs in order to make the small purchase procedure applicable⁹⁸. The LPA must obtain approval from KYTC prior to beginning its small purchase procedure by submitting purchase information to its Administering Office.

VI.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 regulation⁹⁹. 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 projects¹⁰⁰. 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."¹⁰¹ Whenever it is practical, the LPA should solicit at least three suppliers for quotes and, if more than one supplier responds, the contract should be awarded to

⁹⁸ KRS § 45A.100(2)

⁹⁹ All of these exceptions are found in FAP 111-08-00

¹⁰⁰ FAP 111-09-00.

¹⁰¹ KRS § 45A.095(1)

whichever supplier offers the best price¹⁰². 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 file¹⁰³.

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.

VI.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 supplier¹⁰⁴. 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 terms¹⁰⁵. There are also federal contract provisions that must be included in the contract. These can be found in the sample 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 vendor¹⁰⁶. To obtain approval of the contract, the LPA should submit the contract to its Administering Office as soon as it is drafted, before

¹⁰² KRS § 45A.095(1)

¹⁰³ KRS § 45A.095(1)

¹⁰⁴ See Forms Library for Sample Non-Construction Procurement Contract

¹⁰⁵ 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

¹⁰⁶ The Determination & Findings is the LPA's record justifying decisions made during the evaluation process. For a sample, please see the Forms Library.

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.

VII. DESIGN SPECIFICATIONS:

This Section only applies to Infrastructure projects.

VII.1. Design Requirements:

KYTC has developed guidelines and specifications to ensure that projects built with federal money are of the required quality. Certain design work must be done by a licensed PE. Other design work may be done by design consultants such as architects or landscape architects or by the LPA employees as appropriate, as long as the person doing the design work has the appropriate licenses and certifications, as required by state statute. The PE and/or anyone the LPA hires to perform design work should be at the project team meeting so that they can be familiarized with KYTC's processes and requirements.

The LPA Design Review Checklist ("LDRC") acts to ensure that those creating designs for construction follow the requirements set by statute and regulation and should be filled out by whomever is doing the project design¹⁰⁷. The LPA must submit the project plans with the signed LDRC for review and approval by the District LPA Coordinator. The District LPA Coordinator will review the design plans to ensure the requirements shown on the LDRC are met.

If the Project affects any historic properties, the LPA must also submit a copy of the design plans and the LDRC to the Administering Office. The determination regarding whether or not the project affects any historic properties will be communicated to the LPA in the Administering Office's notice to proceed for the design phase. The Administering Office will forward the design plans and the LDRC to the KYTC State Historic Preservation Coordinator for

¹⁰⁷ See Form LPA Design Review Checklist in the Forms Library

his/her review. He/she will ensure that the designs meet all requirements relating to the historic nature of the project area.

Until the District LPA Coordinator and the State Historic Preservation Coordinator, if necessary, have signed the LDRC indicating that the design plans meet the design specification requirements, and the LPA has received a notice to proceed from its Administering Office, the LPA may not begin the construction procurement process.

VII.2. Communicating All Promises (“CAP”):

During the environmental, ROW and utilities phases the LPA may make promises or commitments to citizens, government agencies, or companies. These promises should be documented and signed by the promisee to prevent confusion regarding the terms of the promise. These promises must be incorporated into the project design plans and the Bid Proposal. This ensures that the contractor to whom the job is awarded is aware of and honors all of the promises during the construction phase of the project. The LPA must work with the PE or design consultant to ensure all promises are included in the plans. The District LPA Coordinator, in conjunction with the Administering Office, will look to ensure a CAP section is included in the plans, but will not know whether all promises have been incorporated. It is, therefore, very important that the LPA representative review the CAP section of the design plans.

VII.3. Materials Provided by the LPA:

Federal law requires that materials used on the project must be selected through the construction procurement process¹⁰⁸. If the design requires the LPA to provide materials or indicates that materials are to be obtained outside of the construction procurement process, the

¹⁰⁸ 23 CFR § 635.407

LPA must request that KYTC make a finding that it is in the public interest¹⁰⁹. The LPA may make such a request by contacting its Administering Office. If KYTC makes a finding that the deviation from the construction procurement process is in the public interest, the finding may have to be approved by FHWA¹¹⁰.

These approvals must be attached to the LDRC and design plans when they are submitted to the District LPA Coordinator for review. These materials and their sources should be included in the proposal to be bid on by the potential contractors discussed in section VIII.2.

VII.4. 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 process¹¹¹. This means 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 KYTC certifies that such an item is essential for synchronization with existing highway facilities, or that no equally suitable alternative exists, there is an exception. If the design plans require the use of such an item, the LPA can request that KYTC certify its necessity by contacting its Administering Office. This certification must be attached to the LDRC and design plans when they are submitted for review by the District LPA Coordinator. These materials and their sources should be included in the proposal to be bid on by the potential contractors discussed in section VIII.2.

¹⁰⁹ 23 CFR § 635.407(a)

¹¹⁰ KYTC/FHWA Stewardship Plan found at <http://transportation.ky.gov/Construction/Documents/StewardshipPlan.pdf>

¹¹¹ 23 CFR § 635.411. FHWA guidance is available regarding patented and proprietary materials at the following web address: <http://www.fhwa.dot.gov/construction/cqit/propriet.cfm>

VII.5. Engineer's Estimate:

After the Design plans have been approved, the LPA must obtain an Engineer's Estimate ("EE") prepared by whomever created the design plans¹¹². The EE acts as a safe guard on the Contract Letting process. No bid can be considered if it is 5% over the amount in the EE without approval from the Administering Office. The remaining project funding available should also be compared with the EE. If the project is estimated to cost more than the amount of funds available, the scope of the project will have to be adjusted or the LPA will have to provide a separate funding source to cover the amount of the overage.

The EE must list all construction tasks and materials ("Bid Items") and assign a cost to each. The cost assigned should reflect the amount the LPA considers fair and reasonable. The EE Bid Items should contain a similar level of detail to that used in the industry, for ease of comparison with the bids later in the process. The EE must be kept confidential to ensure that bidders give their best price, instead of merely meeting the prices set in the EE.

VIII. CONSTRUCTION PROCUREMENT:

This section only applies to Infrastructure Projects.

Once the design plans are complete and have been approved by the District LPA coordinator, the LPA must submit its LDRC, design plans, specifications and EE to the Administering Office. If construction is to be funded as a separate phase, the Administering Office will request authorization of the construction phase funds in the same amount indicated in the EE. The LPA cannot advertise the project for bid until it has received a Notice to Proceed from its Administering Office indicating that the funding authorization has been completed.

¹¹² 23 CFR § 630.106(4). Please see Forms Library for a sample EE.

While this authorization is being obtained, the LPA should be preparing its Bid Proposal as discussed below.

VIII.2 Bid Proposal:

The LPA must prepare a document describing the project on which the contractors will make their bids (“Bid Proposal”)¹¹³. 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. In the Bid Proposal, the LPA must inform the bidding contractors of any requirements that could cause a bid not to be considered¹¹⁴.

The LPA must include the language found in Form FHWA-1273 “Required Contract Provisions, Federal-aid Construction Contracts” in all of its Bid Proposals¹¹⁵. 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 contractor¹¹⁶. The Bid Proposal must also contain Equal Employment Opportunity (“EEO”) provisions which will be applicable to construction contracts and related subcontracts of \$10,000 or more¹¹⁷. Additionally, the LPA must include any applicable federal and state minimum wage rate requirements¹¹⁸. If any of the above language is required and is not included, the amounts due under any awarded contracts

¹¹³ An Example of a Bid Proposal is available at <http://transportation.ky.gov/Contract/Lettings/2011/0218/Proposals/201-MORGAN-11-4003.pdf>. There is also a checklist of all items which must be contained in the Bid Proposal in the Forms Library.

¹¹⁴ 23 CFR § 635.112(h)

¹¹⁵ 23 CFR § 633.102. <http://www.fhwa.dot.gov/programadmin/contracts/1273.cfm>.

¹¹⁶ 23 CFR § 633.102(e)

¹¹⁷ 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.

¹¹⁸ 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 of \$250,000 or greater.

will not be eligible for federal reimbursement. This required language can be found in the example bid proposals described above and should be copied exactly.

Those awarding contracts on federally funded projects must meet requirements to allow DBEs to participate in the project¹¹⁹. To qualify as a DBE the contractor or subcontractor must be included in the Certified DBE Directory¹²⁰. All of KYTC's prequalification requirements apply to DBE's as well. For a list of Certified and Prequalified DBE's please see the appropriate directory posted by the Office of Civil Rights and Small Business Development¹²¹.

The LPA should ask its Administering Office for a DBE goal as soon as possible after the design plans 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 goal indicates what percentage of the project cost must be awarded by contract to a DBE. If a bidder has not complied with the DBE goal, its bid will be considered non-responsive and it cannot receive the contract award¹²². The LPA may only count the value of the work actually performed by the DBE towards the DBE goal¹²³. Expenditures to a DBE contractor may only be counted toward the DBE goal if the DBE is performing a commercially useful function on the contract¹²⁴.

All Bid Proposals must 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 DBEs as potential subcontractors and that the contractor has made contact with

¹¹⁹ 23 CFR § 365.107 and 49 CFR § 26

¹²⁰ http://transportation.ky.gov/OBOD/directories/CERTIFIED_DBE_DIRECTORY.pdf

¹²¹ http://transportation.ky.gov/OBOD/directories/CERTIFIED_PREQUAL_DBE_DIRECTORY.pdf

¹²² There is an exception to this rule in rare cases. If a bidder can show that they made a good faith effort to meet the DBE goal but could not, it is possible that it can still be considered for the award. However, the good faith effort made must be fully documented.

¹²³ 49 CFR § 26.55(a). For more information regarding how to calculate that value please contact your Administering Office and/or read the 49 CFR § 26.55.

¹²⁴ 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.

potential DBE subcontractors; has affirmatively solicited their interest, capacity, and prices; and has documented the result of such contacts. Without this certification, the bid will be considered non-responsive and will not be considered.

FHWA also requires that the LPA include a non collusion provision in all Bid Proposals 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.”

It also requires that the LPA provide the required form for the affidavit to each prospective bidder¹²⁵. The bidder awarded the contract will also be required to provide a signed and notarized “Required Affidavit for Bidders, Offerors and Contractors” at the time the contract is signed¹²⁶.

The Bid Proposal must 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 projects¹²⁷. 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.

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

¹²⁶ The form for this affidavit can be found in the Forms Library

¹²⁷ 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.

Similar to the design plans, the Bid Proposal must 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.

It is strongly recommended that the LPA require the contractors to provide a 5% bid bond, a 100% payment bond and a 100% performance bond for the project. These bonds are required on all contracts that exceed \$40,000.00¹²⁸. 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. All other insurance requirements must also be contained in the Bid Proposal, particularly the requirement that if the project affects a railroad as discussed in section V.8., the contractor must have Railroad Liability Insurance¹²⁹.

Additionally, the Bid Proposal must contain a progress schedule which will identify controlling work items¹³⁰. The bidder that is awarded the contract will not be allowed progress payments until the controlling work items are completed.

In limited circumstances, a lump sum Bid Proposal, which includes unit pricing, might be appropriate. A lump sum Bid Proposal is one where the contractors are not bidding on the individual Bid Items, but rather on the construction project as a whole. Lump sum contracts

¹²⁸ KRS § 45A.185 and KRS § 45A.190

¹²⁹ 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.

¹³⁰ Spec Book 108.02

make it harder to calculate progress payments. They are also particularly troublesome where final contract quantities cannot be accurately projected in advance. Bid Proposals where the contractors are bidding on individual Bid Items are preferred, particularly where there may be unpredictable conditions such as in urban reconstruction projects.

To ensure that the LPA is able to use the available funds allocated to the project, the LPA may include additive alternatives in its Bid Proposal¹³¹. The LPA will publish a contract award limit in its Bid Proposal. The LPA should set 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 preference) 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. The LPA will not award a contract for a bid with added options exceeding the contract award limit.

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

¹³¹ For an example of a Bid Proposal with additive alternates please see the Forms Library.

the bid items within the budget, the project will be awarded to the lowest bidder. If only one bidder is able to provide 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.

VIII.3 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. 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. Inspections must be done by someone with the same qualifications as the individual who designed the project. If the LPA is to do the inspections in-house, 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 Section III. The LPA must obtain approval of its inspection plan from the Administering Office prior to letting the contract for bid.

VIII.4 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 public¹³². The LPA must provide adequate notice to the public that the plans and specifications are available. This may include posting notice in a

¹³² 23 CFR § 635.112(b)

newspaper or on the internet, either on the LPA's website or on KYTC's website¹³³. 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 it may post its advertisement and begin making its Bid Proposal and the design plans and specifications available to potential bidders.

VIII.5 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 should not open them until the close of the advertising period. The LPA should screen bidders during this time to ensure that, if there is an applicable prequalification category, they are prequalified with KYTC for the type of work the Bid Proposal requires.

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. 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 should ensure that all required affidavits, certifications, proof of insurance, and bonds are included in the contractor's bid packet. It should

¹³³ KRS § 45A.080(3). To post the notice on KYTC's website, the LPA must submit it to its Administering Office.

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 should 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 should not read or post it.

Once all of the bids are read, the contract is to be awarded to the lowest responsive bidder, unless, upon further examination, the LPA determines that the bid was not responsive. After the bids are posted on the web or read in public, the LPA should compare the lowest bid to the EE to ensure that the bid was not more than 5% above the estimate project cost and that the bidder is not federally debarred or suspended¹³⁴. The individual bid items on the EE should also be compared to the bid items in the lowest bid to ensure the bid is not materially or mathematically unbalanced¹³⁵. The EE can also be used to ensure that the bid does not charge an unreasonable amount for any particular Bid Item.

The LPA must also examine the lowest bid to ensure that the DBE goal was actually met and that the plan to meet it is feasible and requires the DBEs to perform a Commercially Useful Function. The DBE used to meet the goal must meet all of the certification and prequalification criteria discussed in Section VIII.2. If a bidder is using subcontractors to meet its DBE goal the signed contract between the contractor and the DBE must be provided to the LPA along with proof of the DBE's insurance and an Affidavit for Bidders, Offerors, and Contractors signed by each DBE subcontractor. The LPA must verify that none of the DBE subcontractors listed in the

¹³⁴ The LPA can determine whether or not the contractor is federally suspended or debarred by going to <https://www.epls.gov/>

¹³⁵ 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.

bid are federally suspended or debarred. The above items take more time, so they are not done prior to reading the bids. If the lowest bid is determined to be unresponsive, the LPA should examine the next lowest bid to determine its responsiveness.

VIII.6 Awarding the Contract:

Prior to awarding the contract, the LPA must submit all of its bid tabulations and analysis 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 the LPA may begin the process of awarding the contract.

The contract must be awarded to the lowest responsive bidder. Once it is determined which responsive bid is the lowest, the LPA should send that contractor the project construction contract¹³⁶. The Contractor should return the signed contract along with a signed "Required Affidavit for Bidders, Offerors and Contractors" for itself and each of its subcontractors along with its performance bond and payment bond.

When all of the documentation is in order the LPA must send a copy of the signed contract and the attached affidavits to the Administering Office. At that point the Administering Office will issue a notice to proceed to the LPA. The LPA can then pass this along to their contractor. Until the notice to proceed is issued, the contractor may not begin work on the project.

If the lowest bid is more than \$250,000.00 lower than the construction funds authorized, KYTC must reduce the amount of construction funds authorized¹³⁷. This money will continue to be assigned to the project and will be available for reauthorization in the event that a change

¹³⁶ 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.

¹³⁷ 23 CFR 630.106

order increasing the amount needed for construction is approved. If the lowest bid is higher than the amount authorized for construction and there are still remaining funds assigned to the project these funds can be added to the amount authorized for construction. LPAs should be aware that obtaining authorization of these additional funds may cause some delay. It is very important that the EE be as accurate as possible.

VIII.7 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 contract¹³⁸. The construction project may not be artificially divided so as to constitute a small purchase¹³⁹.

VIII.8 Construction Performed by Local Forces :

Federal statute requires that construction shall be done by a party hired as a result of competitive bidding¹⁴⁰. If the LPA wishes to use its own employees to construct the project, 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 effective¹⁴¹. KYTC will review the request, make recommendations and pass it along to FHWA. Under very limited circumstances

¹³⁸ 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/>

¹³⁹ KRS § 45A.100(2)

¹⁴⁰ 23 CFR § 635.204

¹⁴¹ 23 CFR § 635.204(c)

KYTC and FHWA will determine that the use of local forces for some portion of the project is the best option to construct the project.

Any decision to use local forces should be included in the proposal to be bid on by the potential contractors discussed in section VIII.2.

IX. CONSTRUCTION AND INSPECTION:

This section only applies to Infrastructure Projects.

IX.1. Sub Contractor Prequalification

The prime contractor awarded the project construction contract will likely use subcontractors for some phases of the project construction. Subcontracts 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 by filling out a subcontractor request form¹⁴². It must also submit an Affidavit for Bidders, Offerors, and Contractors signed by each subcontractor. The prime contractor must perform at least 30% of the work and must perform more than any single subcontractor¹⁴³.

IX.2 Construction Inspection

The LPA must inspect the contractor's work on the project pursuant to their inspection plan discussed in Section VIII.3. These inspections ensure that the project is well built, safe for the public, 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.

¹⁴² 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 subcontractor request form is in the Forms Library.

¹⁴³ Spec Book Section 108

The inspector must be on the project's job site at some time every day. Whoever is doing the inspections must create Daily Work Reports ("Inspection Reports")¹⁴⁴. If the inspection reports show any deviation from the design plans or the Spec Book these deviations should be discussed with the contractor and remedied. 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 of 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 Section VIII.2. The inspector will test the materials according to the testing requirements indicated in the Spec Book and provide the LPA with a material

¹⁴⁴ See sample Inspection Report in the Forms Library

certification which will provide sufficient information to determine that the materials incorporated into the project meet the contract specification requirements¹⁴⁵.

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 the work done as these milestones are met. The contract between the LPA and the contractor, therefore, must not allow for withholding retainage. 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 1 ½ % 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 Section IX.3.

IX.3. 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, 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 Administering Office will coordinate with the LPA to revisit the project site and ensure that the Punch List changes were made. If they were, the

¹⁴⁵ See Forms Library

appropriate KYTC representative will certify that the project was constructed in accordance with the plans and specifications and he/she will complete a KYTC Formal Acceptance Report (“Acceptance Report”)¹⁴⁶ and forward it to the Administering Office. 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 signature¹⁴⁷. A list of final quantities and work will be attached. If the contractor agrees with the statements in the Release it 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.

X. CHANGE ORDERS:

Sometimes unexpected things happen or are discovered during construction or implementation of a project that require a change in the project plans. If this occurs, the LPA and the contractor, if applicable, must follow the change order process as indicated in the Spec Book¹⁴⁸. The LPA must submit a formal request for change order approval to its District LPA Coordinator and provide all supporting documentation concerning the reason the change order is needed. The supporting documentation must clearly show the justification for the change order. The LPA may be required to do an independent estimate to ensure that the change order prices are fair and reasonable. If the change order relates to a time extension it must indicate how the extension will affect the project’s schedule. The change order must be signed by the head of the LPA and the Professional Service Provider that designed the Project.

The District LPA Coordinator will review the change order to ensure that the change is within the original scope of the project, that it meets all construction and design requirements. It

¹⁴⁶ See Forms Library for a sample Acceptance Report.

¹⁴⁷ See Forms Library for a Release form template.

¹⁴⁸ See Forms Library for Change Order Form

will then submit the change order to the Administering Office, which will ensure that the redistribution of the allocated funds is acceptable and provide its approval¹⁴⁹. The Administering Office will then request approval from the Secretary of KYTC. Without special permission, no work can be done on the change order until KYTC provides the LPA with written approval.

No additional funds will be allocated for the LPA's project above the amount of the project award. Cost overruns are the LPA's responsibility.

XI. REIMBURSEMENT (GETTING PAID):

XI.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.

Indirect costs (such as overhead) are not eligible for reimbursement unless the LPA has an approved Cost Allocation Plan¹⁵⁰. For information regarding what indirect costs are eligible for reimbursement and the requirements for a Cost Allocation Plan please see the OMB Circular A-87 (as revised). If the LPA wishes to be reimbursed for its indirect costs it must obtain approval of its Cost Allocation Plan from its Administering Office.

XI.2. Reimbursement Process:

All LPA projects operate on a reimbursement basis¹⁵¹. The LPA pays project expenses up front and then submits a request for reimbursement to the Administering Office on the Reimbursement Request Form¹⁵². The request for reimbursement must be appropriately

¹⁴⁹ 23 CFR § 635.121

¹⁵⁰ OMB Circular A-87 (as revised); FHWA Memorandum: "Indirect Costs Eligibility and other TEA-21 Revisions to Title 23 USC § 302," September 24, 1998.

¹⁵¹ 49 CFR § 18.21(d)

¹⁵² See Forms Library for the Reimbursement Request Form

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, and cancelled checks (front and back) proving the LPA has paid the vendors. The LPA must also provide any other supporting documents as appropriate to explain expenditures submitted for reimbursement.

Requests for reimbursement should be made on a periodic basis, usually monthly. 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. It may be up to 30 business days before payment is received. .

The LPA must ensure that all subcontractors are being promptly paid in accordance with statute. Prime contractors must be paid within 7 days of the date the LPA receives its reimbursement from KYTC. 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 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 performed its services regardless of whether or not it has received reimbursement or payment.

The Reimbursement Request Form requires that certain documentation be submitted with it so that the Office of Civil Rights and Small Business Development may ensure that the DBE goal is being met and that DBE's 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 LPA is seeking reimbursement for employee time and equipment usage for construction force account expenditures, as discussed in Section VIII.8, 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.

XII. PROJECT COMPLETION (CLOSING THE PROJECT):

XII.1. Project Closing Documentation

When the original scope of the project is completed, the LPA must submit a Project Closure Form and pictures documenting the project to its Administering Office¹⁵³. 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 and will be available for future LPA projects. The LPA will not be permitted to enlarge the scope of its project, even if funds remain.

Projects administered by a KYTC office other than OLP may follow a different project closing process. The LPA must contact its Administering Office to determine specific requirements for project closing.

XII.2. Transfer of Easement to KYTC

For infrastructure projects, the LPA is responsible for maintaining their Federal-aid project facilities in perpetuity on a non-profit basis. The cost of future maintenance for a project will be the sole responsibility of the LPA. All arrangements for funding long term maintenance should be included in the MOA between the LPA and KYTC.

¹⁵³ See Forms Library for Project Closure Form

The LPA's maintenance responsibilities may be reinforced in an easement the LPA may be required to grant to KYTC¹⁵⁴. KYTC will make the decision to require an easement on a case by case basis depending on the amount of the award at stake and the sensitivity of the project. The easement will describe the condition of the project at the time its construction is complete and require that the LPA or any future owner of the property maintain the project in the condition indicated by the baseline document. The easement will not preclude the LPA or any future owner from improving the property for the purpose of the project¹⁵⁵. In the event the LPA or current property owner fails to maintain the property, the easement will also give 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.

Projects involving historic property require a historic preservation easement¹⁵⁶. 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 the property, the easement will also give 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.

¹⁵⁴ See Forms Library for the Easement Form. The form will have to be altered to indicate maintenance duties appropriate for the type of project.

¹⁵⁵ 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 as discussed below.

¹⁵⁶ See Forms Library for Historic Preservation Easement Form. The form will have to be altered to indicate the maintenance duties and the historic preservation concerns specific to the property.

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 is not eligible to receive its final reimbursement payment until it has signed the easement document. This easement requirement does not apply to non-infrastructure projects.

XII.3. Audits and Record Retention

FHWA may elect to conduct a comprehensive audit of any project receiving Federal-aid funding. LPA's administering projects funded through KYTC are also subject to audit by KYTC and the Kentucky Auditor of Public Accounts. LPAs are required to retain all records relating to their federally funded projects for three years from the time the final project closing documentation is completed¹⁵⁷. Copies or electronic versions of the documents are acceptable¹⁵⁸. The retention period begins at the time the KYTC submits its last expenditure report for the period¹⁵⁹. 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 transcripts¹⁶⁰.

¹⁵⁷ 49 CFR § 18.32(b)

¹⁵⁸ 49 CFR § 18.32(d)

¹⁵⁹ More complete information regarding when the retention period begins can be found in 49 CFR 18.32(c).

¹⁶⁰ 49 CFR § 18.32(e)

Appendix 1: LPA-(PDC)

Local Public Agency – Project Development Checklist (LPA-PDC)

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:

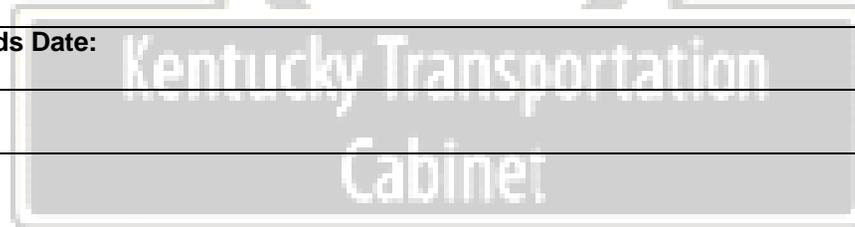
Route (If applicable) :

Description:

Contract ID No. :

Proposed Advertisement for Bids Date:

Proposed 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) 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.

Fund Allocation

Checklist Item		Yes	No	N/A	Comments
1.	Is the project programmed in the Statewide Transportation Improvement Program and/or approved amendments or modifications? (23 CFR 450.216 & 23 USC 135)	<input type="checkbox"/>	<input type="checkbox"/>		
2.	If this project is located within a Metropolitan Planning Organization area, is it programmed in the Metropolitan Transportation Plan, Transportation Improvement Program, and/or approved amendments or modifications? (23 CFR 450.322, 450.324, 450.216 & 23 USC 135)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Professional Services Procurement

Checklist Item	Yes	No	N/A	Comments
<p>1. Does the project require professional services?</p> <p>If yes, who is performing the service? <input type="checkbox"/> Consultant <input type="checkbox"/> In-house staff</p> <p>If a consultant is performing the task, which Qualifications Based Selection (QBS) process was utilized to hire them?</p> <p><input type="checkbox"/> Statewide Contract – KRS 45A.838</p> <p><input type="checkbox"/> LPA Process pursuant to KRS 45A.730-750</p> <p><input type="checkbox"/> Price Contract - KRS 45A.837</p> <p>Documentation submitted, showing that the LPA chose and followed the appropriate QBS process?</p> <p> Date sent to KYTC Administering Office: _____</p> <p> Date approved by KYTC Administering Office: _____</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p>	<p></p>	<p></p>

Environmental Requirements

Checklist Item	Yes	No	N/A	Comments
<p>1. Has KYTC received all Clearinghouse Documentation? Date received by KYTC Administering Office: _____</p>	<input type="checkbox"/>	<input type="checkbox"/>		
<p>2. Has the environmental documentation for the project been approved? Please check the type of environmental documentation below. (23 CFR 771)</p> <p><input type="checkbox"/> Categorical Exclusion Minor (CE-M) Date Approved: _____</p> <p><input type="checkbox"/> Categorical Exclusion Level 1 (CE-1) Date Approved: _____</p> <p><input type="checkbox"/> Categorical Exclusion Level 2 (CE-2) Date Approved: _____</p> <p><input type="checkbox"/> Categorical Exclusion Level 3 (CE-3) Date Approved: _____</p> <p><input type="checkbox"/> Environmental Assessment / FONSI Date FONSI Approved: _____</p> <p><input type="checkbox"/> Environmental Impact Statement / ROD Date ROD Approved: _____</p>	<input type="checkbox"/>	<input type="checkbox"/>		
<p>3. Is a re-assessment or re-evaluation of the environmental document needed? (23 CFR 771.129) Date of most recent re-assessment/re-evaluation: _____</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>4. 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.</p> <p>Historic Preservation (36 CFR 800, 16 USC § 470f)</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

	<p>Stream/Wetland Mitigation (23 CFR 777)</p> <p>Noise Abatement (23 CFR 772)</p> <p>Section 4f (23 CFR 774, 23 USC § 138, 49 USC § 303)</p> <p>Endangered Species Act (50 CFR 402.12(c))</p> <p>Other: _____</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
5.	<p>Have all applicable environmental permits for the project been secured? If not, please explain.</p> <p>Please check yes or no to indicate if the permit has been obtained and N/A if it is not required.</p> <p>Section 401 – Water Quality</p> <p>Kentucky Pollutant Discharge Elimination System (KPDES)</p> <p>Individual Storm Water Discharge Permit</p> <p>Section 404 – USACE Individual Stream Permit (23 CFR 777)</p> <p>Section 404 – USACE Individual Wetlands Permit (23 CFR 777)</p> <p>Section 404 – USACE Nationwide Permit (23 CFR 777)</p> <p>Coast Guard (23 CFR 650 Subpart H)</p> <p>Other: _____</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	

	<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.	<p>Is the project located on or adjacent to or require the adjustment of railroad facilities or property?</p> <p>If yes, has the railroad agreement been approved?</p>	<input type="checkbox"/> <input type="checkbox"/>	<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.	<p>What method of procurement will be used?</p> <p><input type="checkbox"/> Competitive Bidding RFB approved by KYTC _____</p> <p><input type="checkbox"/> Competitive Negotiation KYTC approval _____ RFP approval by KYTC _____</p> <p><input type="checkbox"/> Small Purchases Procedure KYTC approval _____</p> <p><input type="checkbox"/> Printing</p> <p><input type="checkbox"/> Other KYTC approval _____</p>				
2.	<p>Purchasing procedure chosen was followed and Purchase Contract drafted</p> <p>KYTC approval _____</p>	<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.	<p>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)</p> <p>Public Interest Finding approved by KYTC</p> <p>Date Approved: _____</p> <p>Public Interest Finding approved by FHWA (if applicable per current KYTC/FHWA Stewardship Plan)</p> <p>Date Approved: _____</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
5.	<p>Are patented or proprietary materials shown in the plans or specifications? (23 CFR 635.411)</p> <p>Use of Material Approved by KYTC</p> <p>Date Approved: _____</p> <p>Use of Material Approved by FHWA (if applicable per current KYTC/FHWA Stewardship Plan)</p> <p>Date Approved: _____</p>	<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.	<p>Does the Bid Proposal incorporate by reference the most current version of the <u>Standard Specifications for Roadway & Bridge Construction</u> book?</p>	<input type="checkbox"/>	<input type="checkbox"/>		
7.	<p>Does the Bid Proposal contain the contract times and dates and any special scheduling provisions? (23 CFR 635.121)</p> <p>Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> Completion Date: _____</p> <p>Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> Work Days: _____</p> <p>Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> Calendar Days: _____</p>	<input type="checkbox"/>	<input type="checkbox"/>		
8.	<p>Who will perform the construction inspection services for the project?</p> <p><input type="checkbox"/> LPA to perform inspection?</p> <p><input type="checkbox"/> Consultant, hired pursuant to Professional Services Procurement procedures, to perform the inspection?</p>				
9.	<p>Will the LPA use the small construction procurement process? KYTC Approval _____</p>	<input type="checkbox"/>	<input type="checkbox"/>		
10.	<p>Is State or local force account construction work to be utilized on this project? (23 CFR 635.204)</p> <p>Cost Effective Determination Approved by KYTC</p> <p>Cost Effective Determination Approved by FHWA (if applicable per current KYTC/FHWA Stewardship Plan)</p> <p>Date Approved: _____</p>	<input type="checkbox"/>	<input type="checkbox"/>		

11.	<p>Have the following proposed Bid Letting Documents been submitted to the Administering Office for approval?</p> <p>Engineers Estimate</p> <p>Bid Proposal</p> <p>Design Plans</p> <p>Inspection Plans</p> <p>Bid Advertisement & Advertising Locations</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
12.	<p>Is the contractor that submitted the lowest bid responsive?</p> <p>Is the contractor federally debarred or suspended?</p> <p>Is the contractor prequalified by KYTC in the necessary work areas?</p> <p>Did the contractor submit proof of insurance?</p> <p>Did the contractor submit a bid bond? (Note: For contracts over \$40,000.00, a bid bond is required.)</p> <p>Did the contractor provide all necessary certifications and affidavits?</p> <p>Did the contractor bid on all bid items?</p> <p>Did the contractor acknowledge addendums to the Bid Proposal?</p> <p>Is the bid within a reasonable amount, similar to the Engineers Estimate, including individual bid items?</p> <p>Did the contractor meet its DBE goal?</p> <p>Was the contractor using subcontractors to meet the DBE goal?</p> <p>If yes, did the contractor provide:</p> <p>Signed subcontract?</p>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	

	<p>Proof of insurance for DBE subcontractor?</p> <p>Is the subcontractor prequalified to do the required work by KYTC?</p> <p>Has the subcontractor been federally suspended or disbarred?</p>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>	
--	---	--	--	--------------------------	--

13.	<p>Have the Construction Contract Documents been submitted to KYTC for approval?</p>	<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.

Appendix 2: Explanation of Acronyms

FHWA	Federal Highway Administration
KYTC	Kentucky Transportation Cabinet
LPA	Local Public Agency
LPA-PDC	Local Public Agency - Project Development Checklist
OLP	Kentucky Transportation Cabinet, Office of Local Programs
ROW	Right of Way
MOA	Memorandum of Agreement
MPO	Metropolitan Planning Organization
STIP	Statewide Transportation Improvement Program
TIP	Metropolitan Transportation Plan, Transportation Improvement Program
QBS	Qualifications Based Selection
PE	Professional Engineer
RFP	Request for Proposals
RFQ	Request for Qualifications
DBE	Disadvantaged Business Enterprises
NEPA	National Environmental Policy Act
DLG	Governor's Department of Local Government
EIS	Environmental Impact Statement
RFB	Request for Bids
LDRC	LPA Design Review Checklist
CAP	Communicating All Promises
EE	Engineer's Estimate



Appendix 3: Glossary

Administering Office

For projects funded by any or a combination of the TE, TCSP, SRTS, CMAQ and 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, sub-contractor, 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 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 meet 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 some LPA projects the LPA must provide some percentage of the project cost from its own funds. This percentage 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.

Professional Services

Professional Services are engineering related services; geotechnical services; program management; construction management; 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.

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 Process

The federally mandated type of selections process for hiring professional service providers which requires that hiring decisions be based on the qualifications of the candidates rather than on the price those candidates offer.

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>