



REQUEST FOR PROPOSAL

Kentucky's Electric Vehicle Charging Program

Addendum #6

Kentucky Transportation Cabinet

RFP Issue Date: June 15, 2023

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RFP Proposal Due Date: August 24, 2023



200 Mero Street
Frankfort, Kentucky
40601



Request for Proposal

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1. INTRODUCTION

The Kentucky Transportation Cabinet (KYTC), Division of Purchases, has issued this Request for Proposal (RFP) for the Commonwealth of Kentucky's (Commonwealth) Electric Vehicle (EV) Charging Program. The purpose of this RFP is to solicit Proposals from qualified entities (Proposers) to design, build, operate, and maintain Direct Current Fast Charging (DCFC) Electric Vehicle Supply Equipment Stations (EVSE Stations) at locations (Sites) across the Commonwealth. More information can be found on the [EV Charging Program website](#). Changes and updates to this RFP will be issued via addenda as detailed in **Section 2.6**.

This RFP outlines the process by which Proposers can submit Proposals for one or more EVSE Projects (Projects) at proposed sites (Candidate Sites). KYTC will evaluate Proposals based on established evaluation criteria, and award Contracts to select Proposers (Preferred Proposers) for select Sites. To receive National Electric Vehicle Infrastructure Formula Program (NEVI Formula Program) funds, Preferred Proposers will need to execute a Contract in the form of a Project Agreement (PA) with KYTC and agree to PA Terms and Conditions (see **Section 3** and **Attachment 4**) in relation to a particular Project. As per the PA Terms and Conditions, Preferred Proposers agree to serve as private-sector partners (Developers) for a Project located at a Site. Developers will be expected to carry out Site acquisition, design, purchase, construction, installation of hardware and software, operation and maintenance (O&M), and reporting services for a given Project. KYTC will not develop, own, operate, or maintain Projects. Note that Developers will not be able to utilize KYTC right-of-way (ROW) for any Project, nor will Developers be required to "handback" any Project or any portion thereof to KYTC at the end of the Contract term.

KYTC will accept and evaluate Proposals for individual Candidate Sites located in Corridor-Groups identified by KYTC (see **Section 1.3**). KYTC's intent is to then award one or more Sites in each Corridor-Group. While KYTC may elect to make no awards for Candidate Sites within a Corridor-Group, it is anticipated that KYTC will award Contracts to multiple Proposers, and thus select multiple Developers to build-out the Commonwealth's EV network. However, KYTC's goal is to make awards according to the Selection Process Schedule provided in **Section 2.2**. KYTC may also issue additional RFPs to ensure that the Commonwealth's EV network is built out in an optimal, cost-effective manner.

All Proposers must comply with terms, conditions, and requirements set forth by this RFP during this selection process.

For the purpose of this RFP, the following terms may be used interchangeably:

- ▶ Project Agreement, PA, Contract.
- ▶ Proposer or Offeror.
- ▶ Developer, Contractor, Provider, or Vendor.
- ▶ Commonwealth Buyer, Buyer, Purchaser, or Contract Officer.
- ▶ RFP, Solicitation, or Procurement.
- ▶ Bid, Proposal, or Offer.
- ▶ Commonwealth of Kentucky, Commonwealth, or State, Agency, Kentucky Transportation Cabinet.
- ▶ Fiscal Year will be defined as the Commonwealth fiscal year: July 1 through June 30.
- ▶ Biennium will be defined as the Commonwealth biennium: July 1 of each even numbered year through June 30 of the next even numbered year.
- ▶ **Requirements that include the words "Shall", "Will", "Must" indicate a mandatory requirement.**

Full definitions of Key Terms can be found in **Section 7**.

1.1. KYTC GOALS

The Commonwealth's EV infrastructure goals are to develop:

1. A corridor-based EV charging system that supports interstate and regional travel;
2. A local EV ecosystem that serves Kentucky's communities and travelers;
3. A comprehensive system that supports transportation choices for all of Kentucky's residents;
4. An interconnected, reliable, and resilient vehicle fueling system that can adapt to changes in market conditions and transportation technologies; and
5. A transportation system that reduces emissions and promotes clean air in Kentucky.

KYTC's goals specific to this RFP are to:

1. Attract multiple Proposers with proven knowledge and experience in EV charging;
2. Encourage self-sufficiency during design, construction, and operation of the EV Network while ensuring federal compliance and performance;
3. Execute the EV network build-out per the objectives contained in the [NEVI Formula Program Guidance](#) issued on February 10, 2022, the [NEVI Formula Program Questions and Answers](#) as updated on September 14, 2022, the [NEVI Formula Program Guidance](#) updated on June 2, 2023, and the National Electric Vehicle Infrastructure Standards and Requirements, Final Rule, Code of Federal Regulations Section 23, Part 680 (23 CFR 680) issued on February 15, 2023, (collectively, NEVI Requirements), and other requirements set forth by KYTC pursuant to the laws of the Commonwealth;
4. Achieve build-out along the Commonwealth's Federally designated Alternative Fuel Corridors (AFCs), as detailed in Phase 1 and Phase 2 of Kentucky's Electric Vehicle Infrastructure Deployment Plan (Plan); and
5. Select Projects, and Preferred Proposers, that are likely to remain viable beyond the five-year funding period offered by NEVI Formula Program.

1.2. PROGRAM BACKGROUND AND PURPOSE

The Infrastructure Investment and Jobs Act (IIJA), enacted November 15, 2021, established the NEVI Formula Program. The NEVI Formula Program provides \$5 billion to states to strategically deploy 500,000 EV chargers by 2030, through an interconnected network to facilitate data collection, access, and reliability. The Federal Highway Administration (FHWA) Fact Sheet for the NEVI Formula Program can be found here: [NEVI Fact Sheet](#).

The Joint Office of Energy and Transportation (Joint Office) was created through the IIJA to provide expertise and support on programs that seek to deploy a network of EV charging infrastructure. The Joint Office main website can be found here: [Joint Office](#). More information about NEVI Requirements as issued by FHWA and/or the Joint Office can be found in **Section 3.5.1**.

The Commonwealth will receive \$69.5 million in NEVI Formula Program funding between Fiscal Years 2022-2026. With the required 20% non-Federal match, which KYTC expects will be covered by private sector participation, the total funding available for the Commonwealth's EV network build-out is approximately \$87 million. Of these funds, \$25 million are currently available to assist with the expansion of EV charging infrastructure on the Commonwealth's primary interstates and parkways, which are the Commonwealth's Federally designated AFCs, as described in the [Plan](#). The AFCs provide enhanced connectivity to, and within, the Commonwealth.

The Plan, which was approved by the Joint Office on September 14, 2022, envisions a phased approach to create a reliable, accessible, convenient, and affordable EV charging network that supports transportation choices, energy diversification, economic development, and environmental sustainability for all Kentuckians.

The Plan was developed by KYTC in close coordination with Kentucky’s Energy and Environment Cabinet (EEC). The agencies established a Steering Committee that included the Public Service Commission (PSC) and FHWA to provide oversight and direction for the Plan as well as coordination with the Cabinet for Economic Development (CED). Public outreach was central to the development of the Plan. KYTC has been holding regular stakeholder meetings and presentations since February 2022.

KYTC issued a Request for Information (RFI) on August 24, 2022, to potential EV industry partners and stakeholders to solicit input on the Plan. KYTC offered all RFI Respondents the opportunity to meet one-on-one to further explore feedback from the market. The feedback received in stakeholder engagements, RFI responses, subsequent discussions, and comments received by KYTC on a Draft RFP have informed KYTC’s Plan implementation strategy and this RFP. See **Section 2.3** for more details.

This RFP focuses on Phases 1 and 2 of the Plan, which are aimed at achieving build-out on the AFCs. Once EV chargers have been installed per NEVI Requirements along the AFCs and approved by the Commonwealth and certified by FHWA as “built-out”, the Commonwealth can proceed to install chargers on other high-priority EV corridors as well as in other communities around the Commonwealth as part of Phases 3 and 4.

1.3. CORRIDOR-GROUP AND SITE DESCRIPTIONS

For the purposes of this RFP, KYTC has identified various Corridor-Groups and interchanges, or segments, within Corridor-Groups where Candidate Sites may be located. As described in **Section 5**, Proposers are asked to submit Proposals for one or more Candidate Sites within a Corridor-Group.

Below is a high-level map (**Figure 1**) of the Corridor-Groups along with a table providing details for each Corridor-Group. A more detailed map of the Corridor-Groups is provided in **Attachment 1**. The GIS layer (or a kmz file) for the Corridor-Groups is available upon request.

Figure 1: Corridor Groups

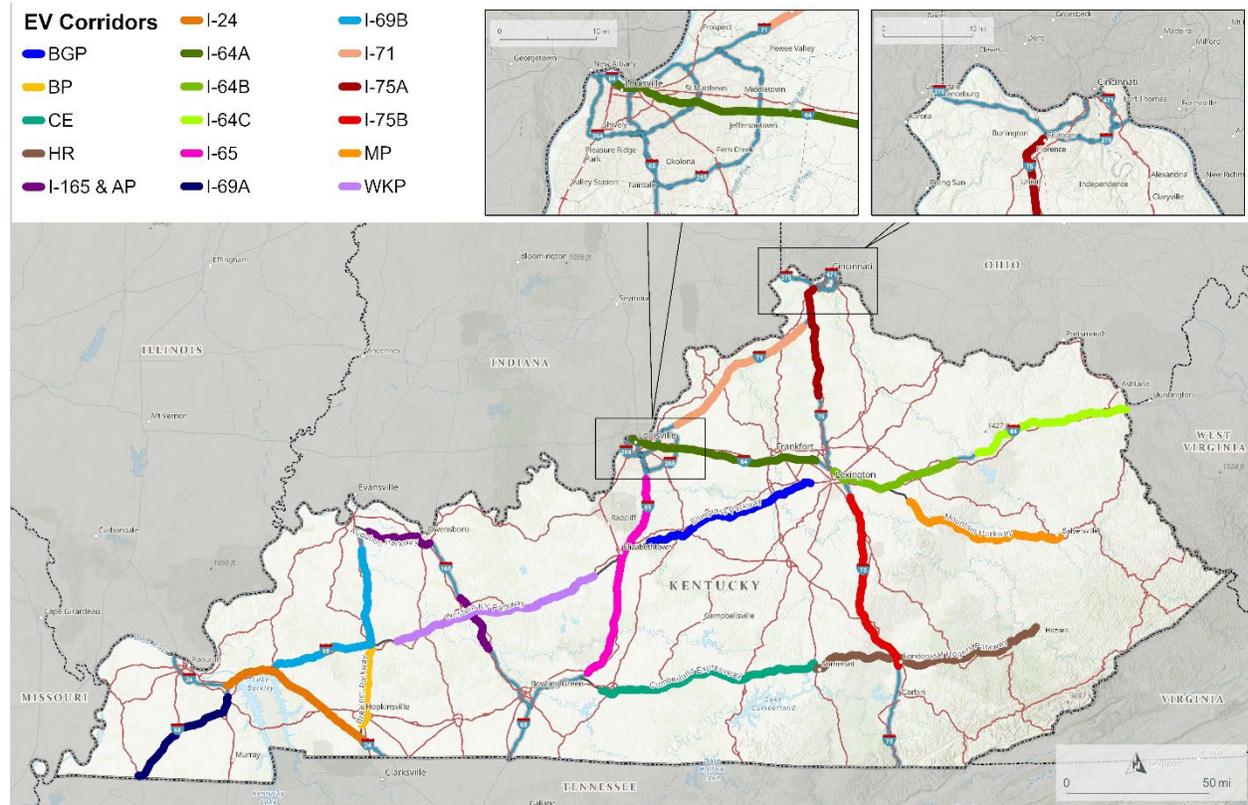


Table 1 lists the AFCs, Corridor-Groups, and the interchanges with corresponding exit numbers or segments, that comprise the individual Corridor-Groups. For AFCs that are limited access highways (i.e. access at grade separated interchanges only), Candidate Sites must be located at one or more of the identified interchanges. **Table 1** includes the list of interchanges/exits located within each Corridor-Group.

For portions of the AFC network that are not limited access, or AFCs without identified interchanges in **Table 1** (e.g., portions of the Hal Rogers Parkway), Candidate Sites can be located anywhere along the corridor if within a one-mile driving distance of the AFC per NEVI Requirements. The “Notes” column in the table provides guidance on KYTC’s preferences for Site locations within an individual Corridor-Group.

Table 1: Corridor-Groups

Alternative Fuel Corridors (AFC)	Corridor-Group (C-G) Name	Interchanges (Exit No.) or AFC Segments	Notes
I-24	I-24	Exits: 25, 27, 31, 40, 45, 56, 65, 73, 86	Candidate Sites in the Corridor-Group should take into consideration the presence of existing stations that fully comply with NEVI Requirements (AFC Creditable Stations) at Exit 4 in Paducah, KY and Exit 4 in Clarksville, TN. Candidate Sites that serve both I-24 and I-69 (i.e., where they overlap) could be beneficial for supporting network build-out on both AFCs.
I-69 / Julian M. Carroll Purchase Pkwy (Future I-69)	I-69A	Exits: 1, 2, 14, 21, 22, 24, 25, 27, 41, 43, 47	Candidate Sites in the Corridor-Group should facilitate the build-out of the I-69 AFC by providing appropriate spacing to the TN State line.
	I-69B	Exits: 71, 79, 81, 92, 108, 111, 114, 116, 120, 125, 134, 140	Candidate Sites should facilitate the efficient build-out of the I-69 AFC by considering the spacing to the current north end of I-69 as well as the distance to the state line on the future I-69. The 50-mile network distance should also be taken into consideration.
Edward T. Breathitt Pennyriple Pkwy (Breathitt Pkwy)	BP	BP Exits: 5, 6, 7, 8, 9, 11, 23, 33	Candidate Sites at several of the identified interchanges on the Breathitt (Pennyriple) Parkway could help facilitate the build-out of that AFC as long as the 50-mile network requirement is met.
Wendell H. Ford Western Kentucky Pkwy (Western KY Pkwy)	WKP	WKP Exits: 48, 53, 58, 75, 94, 107, 112, 124	Candidate Sites on the Western Kentucky Pkwy should take into consideration the distance to the ends of the Western Kentucky Pkwy AFC at I-69 and I-65.
I-165 & Audubon Pkwy / US 60	I-165 & AP	I-165 Exits: 26, 27, 33, 47 Audubon Exits: 5, 10, 18, 24 US 60 Exits: 10, 11, 12, 14, 16	Candidate Sites at any of the identified interchanges could facilitate build-out of the Audubon Pkwy AFC or the I-165 AFC. However, the 50-mile network distance should be taken into consideration.
I-65	I-65	Exits: 48, 53, 58, 65, 71, 76, 81, 86, 91, 94, 102, 105, 112, 114, 116, 117, 121	Candidate Sites in this Corridor-Group should take into consideration the presence of AFC Creditable Stations at Exit 28 in Bowling Green, KY and at Exit 4 in Clarksville, IN. The 50-mile network distance should also be taken into consideration.
Martha Layne Collins Bluegrass Pkwy (Bluegrass Pkwy), US 60, KY 4, KY 922	BGP	Exits: 10, 21, 25, 34, 42, 48, 59, 68, 72, US 60 (Versailles Rd) from MP 11.25 in Woodford Co. to MP 1.5 in Fayette Co. (3.4 miles)	Portions of this Corridor-Group are not limited access and distances cannot be measured to end of a ramp. Candidate Sites should be within a 1-mile driving distance of the AFC.

Alternative Fuel Corridors (AFC)	Corridor-Group (C-G) Name	Interchanges (Exit No.) or AFC Segments	Notes
I-64	I-64A	Exits: 3, 4, 8, 10, 15, 17, 28, 32, 35, 43, 48, 53, 58, 65, 69	Candidate Sites in this Corridor-Group should facilitate the efficient build-out of I-64 by providing efficient spacing to the IN state line.
	I-64B	I-75 Exits: 113, 115 I-64 Exits: 87, 94, 96, 101, 110, 113, 121, 123	Candidate Sites that serve both I-64 and I-75 could be beneficial for supporting network build-out of both AFCs.
	I-64C	I-64 Exits: 133, 137, 156, 161, 172, 179, 181, 185, 191	Candidate Sites in this Corridor-Group should facilitate the efficient build-out of the I-64 AFC by providing efficient spacing to the WV state line.
I-75	I-75A	Exits: 144, 154, 156, 159, 166, 171, 175, 178, 180, 181, 182, 184	Candidate Sites in this Corridor-Group could facilitate the efficient build-out of I-75 by being 25 miles or less from the Ohio Border and <50 miles from the AFC Creditable Station on I-75 at Exit 126 in Georgetown, KY. Candidate Sites that serve both I-75 and I-71 could be beneficial for supporting network build-out on both AFCs.
	I-75B	Exits: 38, 41, 49, 59, 62, 76, 77, 83, 87, 90, 95, 97, 99, 104	Candidate Sites in this Corridor-Group should facilitate build-out of I-75 given that there are AFC Creditable Stations at Exit 126 in Georgetown, KY and Exit 11 in Williamsburg, KY.
I-71	I-71	Exits: 14, 17, 18, 22, 28, 34, 43, 44, 55, 57, 62, 72	Candidate Sites in the Corridor-Group should facilitate the build-out of I-71 by providing efficient spacing between I-64 in Louisville and I-75 in Northern KY.
Bert T. Combs Mountain Parkway (Mountain Parkway)	MP	Exits: 10, 16, 18, 22, 33, 40, 42, 53, 57, 60, 70, 72, 75, and the intersection with US 460	Candidate Sites in this Corridor-Group should facilitate the efficient build-out of the Mountain Parkway by considering the 25-mile maximum distance to the east end of the Mountain Parkway as well as the 50-mile network spacing requirement.
Louie B. Nunn Cumberland Expwy (Cumberland Expwy)	CE	CE Exits: 8, 11, 14, 15, 27, 29, 46, 49, 62, 70, 78, 86, 88	Potential sites in this Corridor-Group should facilitate efficient AFC build-out by considering the required 50-mile network spacing.
Hal Rogers Parkway	HR	Hal Rogers Pkwy (KY 80 and KY 9006): US 27 to Hazard (Exit 59 at KY 15) US 27: Cumberland Expwy to Hal Rogers Pkwy (KY 80)	Portions of this Corridor-Group are not limited access and distances cannot be measured to end of a ramp. Candidate Sites should be within a one-mile driving distance of the AFC. Potential sites in this Corridor-Group should facilitate efficient AFC build-out by considering the 25-mile maximum distance to the east end of the Hal Rogers Parkway as well as the 50-mile network spacing requirement.

KYTC intends to build-out the AFC network in the Commonwealth in the most efficient manner possible. To accomplish that objective, Proposers are encouraged to propose Candidate Sites that take into consideration the principles described below. These principles are based on the June 2, 2023 FHWA guidance. They are subject to change based on any new guidance FHWA may issue or based on interpretations of the guidance that FHWA may make public.

1. AFC Creditable Stations should be taken into consideration in the selection of proposed Candidate Sites. AFC Creditable Stations are existing stations that meet the requirements defined in section V-C of the [updated NEVI guidance](#). This includes AFC Creditable Stations in Kentucky as well as those in adjacent states. An example of an AFC Creditable Station in Kentucky is the station on I-24 at Exit 4 in Paducah, KY. Another example of an AFC Creditable Station in an adjacent state is the station on I-65 at Exit 4 in Clarksville, IN. Several of these stations will help Kentucky archive build-out by helping to fulfill the requirements outlined below.
2. Candidate sites (or existing AFC Creditable Stations) are needed within 25 miles of state borders on all AFCs, in all logical travel directions along AFCs, unless there is a potentially AFC Creditable Station in a location that would extend that distance. For borders without an AFC Creditable Station, it is often beneficial to be near the upper end of the 25-mile distance (i.e., nearer to the 25-mile mark) to support efficient AFC build-out within the state. I-64 at the West Virginia border is an example of a border without an existing AFC Creditable Station on the other side of the state line.
3. If there is an AFC Creditable Station on the other side of the state line, then the next station or stations in Kentucky must be within 50 miles of the AFC Creditable Station in all logical directions of travel along AFCs. If there are multiple AFCs that cross a state line in the same region, then all borders must be taken into account. If one border has an AFC Creditable Station and another does not, the one without the AFC Creditable Station may dictate where the nearest station or stations are located. Currently, there are potentially AFC Creditable Stations in the following locations: I-24 Exit 4 in Tennessee, I-65 Exit 4 in Indiana, and I-71 Exit 8 in Ohio. Note that the Indiana and Ohio stations are in regions with multiple AFC border locations and some of those borders do not have AFC Creditable Stations. Therefore, the 25-mile distance, in all logical directions of travel, should be considered when selecting sites in those regions.
4. AFC Creditable Stations are needed within 25 miles of the terminus of an AFC that does NOT end at a state line or at a connection to another AFC. In Kentucky, the eastern ends of the Mountain Parkway and the Hal Rogers Parkway do not end at a state line or connect to another AFC.
5. For the state's AFC network, AFC Creditable Stations are needed every 50 miles in all logical directions of travel. This network distance criteria applies to a single AFC (e.g., I-64 or I-24), but it also applies to intersecting AFCs when drivers might reasonably use them for long-distance travel. For example, the western end of the Cumberland Expressway (running east-west) intersects I-65 (running north-south). Each station on one those three legs must be no more than 50 miles from the stations on the other two legs, so that drivers traveling in any direction could stop and charge. This network distance criteria to achieve build-out applies to AFC Creditable Stations and candidate EVSE Stations in Kentucky as well as those across the border that will help with build-out in Kentucky (as discussed above).
6. EVSE Stations (stations that are built using NEVI funding) that serve multiple AFCs are beneficial for achieving build-out on more than one AFC. This includes EVSE Stations in areas where AFCs run concurrent such as I-71 and I-75 in Northern Kentucky. It also includes EVSE Stations located near the intersection of two AFCs such as in London, KY where the Hal Rogers Parkway crosses I-75. EVSE Stations must always be within one mile of both AFCs for it to be considered as serving both AFCs.
7. Proposed EVSE Stations should not be too close to AFC Creditable Stations to stretch the range between stations. A minimum distance used in the planning phase was 20 miles, with larger distances being more beneficial.
8. Candidate Site selection should consider the entire network of AFCs and KYTC's objective of efficiently building out the EV charging network. See **Section 6.3.**, **Table 4** and **Section 8, Table 8** for information on how Candidate Site location is considered in the evaluation process. Proposers may submit multiple

Candidate Sites that would work together to contribute to the efficient build-out of Kentucky's AFC network.

In addition to the above principles, proposed Candidate Sites should conform to NEVI Requirements with regard to distance from an AFC. The NEVI Requirements state that all sites should be within one mile of a designated AFC and that the one mile should be measured as the shortest driving distance from the Interstate Highway System exit or highway intersection to the EVSE station. Any Candidate Site over 1-driving mile, will not be eligible for consideration.

1.4. PROGRAM SPONSOR

KYTC's Division of Purchases is the only office authorized to change, modify, amend, alter, or clarify the specifications, terms, and conditions of this RFP. Proposals for this RFP are subject to competitive negotiations pursuant to 200 KAR 5:307 and subject to 23 CFR 636. Any Contract award from this RFP is invalid until properly approved and executed by the Division of Purchases. All communications for this RFP should be directed to the Commonwealth Buyer, Laura Hagan, at Laura.Hagan@ky.gov. Contact information for the Commonwealth Buyer is:

**Commonwealth Buyer:
Laura Hagan, NIGP-CPP, CPPO, CPPB
COMMONWEALTH OF KENTUCKY
Kentucky Transportation Cabinet
Division of Purchases
200 Mero Street
FRANKFORT KY 40601
(502) 782-3980
Laura.Hagan@ky.gov**

The Commonwealth Buyer shall be the sole point of contact throughout the procurement process. All communications, oral and written (regular, express, or electronic mail), concerning this procurement shall be addressed to the Commonwealth Buyer.

For violation of this provision, the Commonwealth shall reserve the right to disqualify a Proposer's Proposal.

1.5. UTILITY INFORMATION AND COORDINATION

1.5.1. UTILITIES IN KENTUCKY

The Commonwealth is served by fifty-nine (59) different electric utilities which operate in different parts of the Commonwealth. This includes five (5) investor-owned utilities (IOUs), twenty-four (24) rural electric cooperatives, and thirty (30) municipal utilities. (https://psc.ky.gov/agencies/psc/images/electric_service_areas_wall_map.pdf). Each potential Site along designated AFCs that could host an EVSE Stations is served by one of the types of utilities outlined above.

To comply with NEVI Requirements, EVSE Stations are expected to have a new connected electrical load of at least 600 kilowatts (kW), which will require a new utility interconnection in most, if not all, cases. Over the last year, KYTC has met with many of these utilities from across the Commonwealth to discuss the NEVI Formula Program. These utilities have indicated strong support for the Commonwealth's implementation of the Plan and indicated that they would generally be willing to provide the necessary interconnections in most locations if given sufficient lead time. Most interchanges along Kentucky's AFCs already have three-phase power available, but existing transformers may not have sufficient capacity to serve the EVSE load. As such, it is expected that some Candidate Sites will require upgrades to the utility's distribution system to be able to deliver the necessary power – for example a new or additional transformer

and associated equipment. Site Hosts or EVSE owners will be required to pay the cost of these upgrades, if necessary, which could vary significantly by location even within the same Corridor-Group.

As noted in **Section 5.4**, these utility upgrade costs should be included in the Cost Proposal for Candidate Sites. Also, as noted in **Section 4.3.1**, these costs are eligible project expenses for NEVI Formula Program funding. Therefore, requested reimbursement of a portion of these costs for a particular Candidate Site should also be included in the Cost Proposal for that Candidate Site.

In addition to understanding utility upgrade costs, early coordination with utilities is also essential due to long lead times for utility equipment. For example, at the time of release of this RFP lead times for new transformers can be between twelve (12) and eighteen (18) months, potentially putting the utility interconnection on the critical path for EVSE Station completion at many Candidate Sites.

As noted below, all Proposers should coordinate with the local utility to determine the cost and schedule for utility interconnection at their proposed Candidate Sites, prior to submitting a Proposal in response to this RFP. Proposals with more detailed information and greater certainty about expected utility interconnection costs and schedule for the proposed EVSE Station – as verified by the utility – will be taken into consideration in the Proposal evaluation process (see **Section 6**).

1.5.2. REQUIRED UTILITY INTERACTIONS

All Proposers are encouraged to identify and contact the electric utility which serves their proposed Candidate Site(s) as soon as possible to ensure that the required interconnection information can be included in their Proposal(s) and that accurate cost estimates are included in the Cost Proposal. See **Attachment 2** for:

- ▶ Utility Identification Information
- ▶ Utility Contact Table
- ▶ Utility Interconnection Request Form

The Utility Identification Information sheet in **Attachment 2** provides information that can be used to determine which utility serves a specific Candidate Site anywhere in the Commonwealth. To determine which utility serves a specific address, proposers can use one of two interactive web-based Geographic Information System (GIS) tools: [Kentucky Electric Service Areas \(KY DGI\)](#) or [Kentucky Electric Service Areas \(BRADD\)](#). Both web browsers offer address search functions, allowing the user to type in the address (number, street, city, zip code) in a search box on the upper right of the screen (“Find address or place”). The map view will then zoom to that location. For the KY DGI map the electric utility serving that site can be determined based on the map color at the location, using the legend along the left-hand axis of the map or by clicking on the map and clicking the ▶ at the top of the dialogue box to move to the second data record, which lists the electric utility serving the point clicked. The user can hover the cursor over the site on the BRADD map and it will identify the electric utility service provider. Additional information and instructions are provided in the Utility Identification Information sheet in **Attachment 2**.

The Utility Contact Table in **Attachment 2** lists the name and email address of a representative from each electric utility in the Commonwealth who has been designated to receive initial utility interconnection requests from Site Hosts or Proposers in relation to Candidate Sites. After identifying the utility that serves each Candidate Site, Proposers should use this list to identify the correct contact for submitting an interconnection request.

The EVSE Interconnection Request Form in **Attachment 2** includes fields for the minimum information that utilities will require for each Candidate Site to assess interconnection requirements and schedule. Proposers should fill out and submit this form to the listed contact at the electric utility which serves the Candidate Site.

Please note that **Attachment 2** is intended only to facilitate communication between Proposers and local utilities; it is not required to be submitted as part of the Technical Proposal or the Cost Proposal for a Candidate Site. Utilities require a separate form for each Candidate Site; requests for multiple Candidate Sites cannot be combined on a single form. Some utilities may require Proposers to submit additional information, or to fill out additional forms, but use of the Utility Interconnection Request Form – with all requested data elements completed – will allow all utilities to start the process.

Some utilities may request to meet with a representative of the Proposer, Site Host and/or their electrical contractor at the Candidate Site to confirm Project details. All utilities will need to conduct engineering reviews and preliminary design activities. The expected time frame for utilities to complete these activities and to provide information to the requestor on utility interconnection cost and schedule is estimated to range from one (1) to four (4) weeks. However, the actual timeline depends on the utility and location, as well as the volume of requests a particular utility might receive. All Proposers are encouraged to submit complete interconnection requests to the appropriate utility(s) as soon as possible.

1.5.3. ELECTRIC RATES DISCUSSION

EVSE Stations in Kentucky will generally be subject to General Service Commercial Electricity tariffs which include both energy charges (\$/kWh used) and monthly demand charges (\$/kW monthly peak demand). Proposers are encouraged to confirm with the serving utility the details of the specific tariff that will apply to each Candidate Site, to understand how monthly energy and demand charges will affect overall EVSE Station operating and maintenance costs.

Rural electric cooperatives and municipal utilities that purchase power from the Tennessee Valley Authority (TVA) have the option to adopt a TVA Wholesale EV rate, which would allow them to develop and offer to developers of public EVSE a corresponding retail EV electric rate. Four utilities have already adopted this TVA Wholesale EV rate, including the Warren Rural Electric Cooperative Corporation, and the municipal utilities in Murray, Franklin, and Bowling Green. The TVA wholesale EV rate has energy charges only (\$/kWh delivered) and no demand charges. While the wholesale – and corresponding retail – energy charges are higher than under typical Kentucky General Service Commercial tariffs the removal of demand charges could make these rates attractive for Proposers who intend to submit Proposals for Candidate Sites in rural areas. Proposers are encouraged to inquire about the availability of such rates from the municipal utilities and rural cooperatives that serve their proposed Candidate Sites. For Sites served by utilities that do not purchase power from the TVA, EVSE specific rates without demand charges are currently not available. However, the Kentucky Public Service Commission has already begun an investigation to determine whether such rates should be made available in the future to promote greater electrification of the transportation sector (Case no. 2022-00369). This investigation is expected to be completed no later than November 2023.

2. OVERVIEW AND SCHEDULE

2.1. METHODOLOGY

As described in **Section 1.3**, KYTC has identified seventeen (17) discrete Corridor-Groups along Kentucky's AFCs as shown in **Attachment 1** and **Table 1** above where EVSE Stations may be installed, or existing charging stations can be upgraded to become EVSE Stations, to achieve build-out in accordance with NEVI Requirements. Proposers shall propose at least one Candidate Site located within one Corridor-Group. Proposers may propose more than one Candidate Site within a Corridor-Group, or multiple

Candidate Sites within multiple Corridor-Groups. However, Proposers are not obligated to propose Candidate Sites in more than one Corridor-Group.

KYTC intends to award one or more Sites per Corridor-Group. KYTC may award more than one of Candidate Sites to the same Proposer if KYTC determines that the resultant award provides the best value and alignment with the goals of the Plan.

KYTC intends to award Proposals that demonstrate a Proposer’s intent to implement a design, build, operate and maintain (DBOM) best value procurement for EVSE Stations at a Site pursuant to the requirements of this RFP, the Plan, and existing and future NEVI Requirements. See **Section 3** for more details as to these requirements. This is a best-value procurement pursuant to 23 CFR 636. As such, KYTC will evaluate and award Projects located at specific Sites to Proposers in accordance with the process described in **Section 6**. Proposers shall prepare Proposals in accordance with **Section 5**.

2.2. SELECTION PROCESS SCHEDULE

The Selection Process Schedule is provided in **Table 2**. Note that these dates are subject to change.

Table 2: Selection Process Schedule

Activity	Date
RFP Draft Release	01/04/2023 (past)
Draft RFP Comments Due	01/27/2023 (past)
Networking Event	02/21/2023 (past)
RFP Release	06/15/2023 (past)
First Round of Questions Due	07/13/2023 (past)
Second Round of Questions Due	08/14/2023 (past)
Proposals Due	08/24/2023
Notice of Award	09/27/2023
Begin PA Executions and Notices to Proceed	On or before 12/20/2023

2.3. RFP QUESTIONS

A Draft RFP was released on January 4, 2023, to allow Proposers and other EV stakeholders the opportunity to formally submit comments before the release of this RFP. The purpose of the Draft RFP comment period was to (1) solicit feedback from Potential Proposers on the selection method and process, and (2) allow Potential Proposers to begin the process of coordinating with relevant stakeholders such as utilities, Site Hosts, EVSE suppliers, local contractors, etc. Comments received were evaluated by KYTC and are reflected in this RFP as appropriate. Proposers were not required to submit comments for this RFP, nor will Draft RFP comments be considered as part of the Proposal evaluation.

Proposers had the opportunity to submit an initial round of questions and inquiries regarding this RFP on or before July 13, 2023. KYTC posted those questions and answers to the [Kentucky Vendor Self Service website](#) as Addendum No. 4 on July 28, 2023. The RFP has been updated as of Addendum No. 5 to reflect certain of KYTC’s responses to the initial round of questions.

Proposers had the opportunity to submit a second round of questions and inquiries regarding this RFP on or before August 14, 2023. KYTC posted those questions and answers to the [Kentucky Vendor Self Service website](#) as Addendum No. 6 on August 17, 2023. The RFP has been updated as of Addendum No. 6 to reflect certain of KYTC's responses to the second round of questions.

Submitting questions was not a requirement for the RFP, nor will questions be considered as part of a Proposal submission and evaluation.

2.4. NETWORKING EVENT

On February 21, 2023, KYTC facilitated an event focused on networking opportunities for potential teaming partners in the procurement and implementation of the Kentucky EV Charging Program. This networking event was conducted virtually with a particular emphasis on Disadvantaged Business Enterprises (DBEs) and service provider participation. Participation in this networking event is not a requirement for the RFP, nor will Proposals be evaluated, or Contracts awarded, based on this networking event. KYTC may hold future networking related events upon the release of this RFP.

2.5. AWARD BASIS

Proposals will be evaluated and awarded according to a two-part evaluation process to determine the best-value Proposal: (1) Pass/fail Responsiveness, and (2) Scoring based on various specific criteria. More details about evaluation criteria and scoring can be found in **Section 6**. As stated above, Proposals will be evaluated against others in the same Corridor-Group; KYTC intends to award one or more Sites per Corridor-Group.

2.6. PROPOSAL DEADLINE; ADDENDA

The Commonwealth has made every effort to provide each Proposer with full and complete information on which to base a Proposal. Only information presented or referred to in this RFP and any additional written information that is supplied by the Commonwealth Buyer shall be used by Proposers in preparing the Proposal.

Any significant changes to the RFP or the Selection Process Schedule will be posted as an Addendum and an email announcement will be sent out to Proposers. The solicitation, addenda, and attachments shall be posted to the [Kentucky Vendor Self Service website](#). Proposers are not required to register on the website to access the solicitation. Unregistered Proposers can access solicitations and related documents by clicking "View Published Solicitations." In the Keyword Search enter 2300000290 and click "Search." Click the hyperlinked RFP-605-2300000290 to view the solicitation. Click on the "Attachments" Tab to download all associated documents. In the event of any conflict or variation between the solicitation or modification as issued by the Commonwealth and the Proposer's response, the version as issued shall prevail. Proposers must acknowledge they have reviewed all issued changes as part of the certifications in **Attachment 7 (Form A)**.

Proposals will be due according to the Selection Process Schedule as specified in **Table 2**. Proposals may be submitted before the Proposal Due Date by 5:00 pm Eastern Daylight Time/4:00 pm Central Daylight Time. Proposers may submit revisions and updates to their Proposal before and up to the Proposal Due Date in the form of a new complete Proposal package. Proposals and revisions must be submitted in accordance with submission guidelines.

KYTC does not anticipate considering any Proposals submitted after the Proposal Due Date. Prior to the Proposal Due Date, a submitted Proposal may be withdrawn by electronic or written notice by submitting a signed written request for its withdrawal to the Commonwealth Buyer.

Proposals shall be valid for a period of 180 days after the Proposal Due Date. No Proposer may withdraw its Proposal within the 180-day period, unless notified by KYTC that (a) no PA for the relevant Corridor-Group will be executed by KYTC pursuant to the RFP; or (b) KYTC does not intend to enter into a PA with the Proposer. Any Proposer may elect, in its sole discretion, to extend the validity of its Proposal beyond the time periods set forth above. If Preferred Proposer is not able to meet the Conditions Precedent requirements in **Section 3.2**, KYTC may select the next best Candidate Site for the Corridor-Group.

3. GENERAL TERMS, CONDITIONS, REQUIREMENTS AND EVSE SPECIFICATIONS

3.1. PROJECT AGREEMENT TERMS AND CONDITIONS

The PA Term Sheet (Heads of Terms) are provided in **Attachment 4**. Note that as per **Attachment 4**, Section 7, the effective date of the PA shall be the date signed by the Secretary, and the termination date shall be five (5) years following Final Completion.

3.2. CONDITIONS PRECEDENT TO PROJECT AGREEMENT EXECUTION

Prior to execution of a PA between KYTC and Preferred Proposer, the following Conditions Precedent shall be met by the Developer within 90 days after Notice of Award. If these conditions are not met, KYTC reserves the right to reject the Candidate Site and select the next best Candidate Site for the Corridor-Group:

1. Site Control/Site Host Agreement: Executed agreement in place between Preferred Proposer and Site Host which shall allow broad and unfettered access to Developer to develop, construct, operate, and maintain the Project throughout the term of the PA (regardless of whether the initial Site Host continues to own or have other possessory rights to the subject property), and also provide for Preferred Proposer's access to the Site prior to KYTC environmental review such that KYTC and its agents have the right to enter the property and visually examine the property and grounds, to complete environmental reviews (see below) necessary to comply with the National Environmental Policy Act (NEPA);
2. Project Confirmation: Clarifying remaining issues regarding scope, schedule, financing, or any other information provided by Preferred Proposer;
3. Utility Agreement: Executed agreement in place between Preferred Proposer and the appropriate utility to provide adequate power service to the Site within the timelines put forth in the Implementation Schedule as part of the Technical Proposal (See **Section 5.3**). If the timeline outlined in the Utility Agreement indicates a completion date more than 90 days beyond the completion date provided in the Implementation Schedule, KYTC reserves the right to reject the Candidate Site and select the next best Candidate Site for the Corridor-Group;
4. Environmental Review: Environmental review conducted by KYTC at KYTC's expense, in compliance with NEPA. The anticipated duration for the NEPA review is 60 days. If KYTC determines NEPA review will take longer than 60 days and would result in an undue cost to KYTC or an impact to the environment, KYTC reserves the right to request additional information or reject the Candidate Site and select the next best Candidate Site for the Corridor-Group. Note that KYTC may choose not to execute a PA with Preferred Proposer if a "no-build" alternative is selected as part of the NEPA process;
5. Buy America: Demonstration of Preferred Proposer's capability to comply with Build America, Buy America Act (BABA) requirements as set forth by U.S. Federal government (See **Attachment 7**, Form F and https://www.fhwa.dot.gov/construction/contracts/buyam_qa_baba.cfm for more information on Buy America requirements, and <https://www.fhwa.dot.gov/construction/cqit/buyam/implementation.cfm> for more information on the

status of the Waiver of Buy America Requirements for EV chargers). KYTC has yet to determine what role, if any, it will play in any waiver process, if applicable; and

6. Certificate of compliance with insurance requirements (details on insurance requirements are provided below).
7. Delivery of the payment and performance bonds required under **Section 3.4**.

3.3. INSURANCE

On or before the date on which a PA is executed, Developer shall procure insurance at the minimum levels referenced in the PA. This insurance shall be provided by a reputable insurance provider and maintained during the term of the PA, unless otherwise specified. It is the responsibility of Developer to provide evidence of its insurance policies and defined limits prior to the PA execution.

3.3.1. WORKERS' COMPENSATION INSURANCE

Developer shall provide and maintain workers' compensation insurance in compliance with the workers' compensation laws of the Commonwealth, and any other applicable workers' compensation or disability laws.

3.3.2. COMMERCIAL GENERAL LIABILITY INSURANCE

For each Site, Developer shall provide and maintain commercial general liability insurance in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate. Such policies shall be written on an occurrence form and include all coverage necessary or advisable for the business of Developer, including, without limitation, contractual liability. The commercial general liability insurance coverage shall be in effect for the duration of the Operational Period.

3.3.3. UMBRELLA LIABILITY

For each Site, umbrella coverage in excess of the underlying liability policies in an amount not less than \$1,000,000 per occurrence / \$1,000,000 aggregate. The policy shall provide such supplemental coverage to all other policies (and extensions thereof) of Developer. The umbrella coverage shall be in effect for the duration of the Operational Period.

3.3.4. KYTC RIGHTS

Should any of the above-described insurance policies be cancelled, non-renewed, or be reduced in coverage or limits before the expiration date, Developer shall provide KYTC advance notice of a policy cancellation on the project promptly after Developer becomes aware of any such event. Prior to PA execution, Developer shall request that all policies include a provision that KYTC be notified of any policy cancellation. If such provision is not able to be achieved, Developer shall notify KYTC in advance of PA execution.

3.3.5. INSURANCE CERTIFICATE

Within 60 days of the Notice of Award but in any event at least ten days prior to execution of the Project Agreement, Preferred Proposer shall furnish an ACORD Certificate with respect to the coverage required in this **Section 3.3** with the following:

- ▶ The certificate holder listed as:
Kentucky Transportation Cabinet
Division of Purchases 4th Floor East
200 Mero Street

Frankfort, KY 40622;

- ▶ The Endorsement indicating the Commonwealth and its agents as an Additional Insured for the PA resulting from this solicitation; and
- ▶ The Contract number in the Description of Operations box.

Failure to furnish said certificates or to indicate the Contract number shall be grounds for cancellation of the PA. Preferred Proposer(s) shall provide an up-to-date copy of the certificate upon renewal of the policy. Failure to do so shall result in cancellation of the PA.

The insurance shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage limits, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the agencies.

The insurance coverage shall be in compliance with the laws of the Commonwealth and shall be placed with a licensed resident or non-resident agent who represents insurance companies authorized to do business in Kentucky. A list of authorized companies can be found at <http://insurance.ky.gov/company>. Failure to meet this requirement may result in the bid being deemed “Non-Responsive.”

The insurer shall have an AM Best rating of B+ or higher. Visit <https://web.ambest.com/home> for verification. Failure to meet this requirement may result in the Preferred Proposal being deemed Non-Responsive.

3.4. BONDING

Prior to and as a condition precedent to execution of a PA, Preferred Proposer shall obtain payment and performance bonds, acceptable in form and substance to KYTC, for each Site, which shall remain in effect until Final Completion as acknowledged by KYTC. The amount of the payment and performance bonds shall be 100% of the aggregate cost of all EVSE and construction for a Project.

On or before the date that is 10 days prior to the scheduled Final Completion, Developer shall obtain and maintain for the life of the PA a performance bond for O&M in form and substance acceptable to KYTC. The amount of such performance bond may “step down” in value during each year of operation during the term of the PA, starting with 100% of the aggregate five (5)-year O&M budget set forth by Proposer in **Attachment 10, Table 10-2 or Table 10-3**, as applicable. At the first anniversary of Final Completion, the amount of the bonds may be reduced to the aggregate budgeted amount for O&M for the remaining four (4) years of operations, and subsequently similarly reduced at each anniversary of Final Completion.

If either payment bonds or performance bonds are unavailable, Preferred Proposer may deliver to KYTC a clean, irrevocable letter of credit ([Letter of Credit](#)) established in KYTC’s favor in the amount equal to 100% of the aggregate cost of all EVSE and construction for a Project, or for operations as the case may be, issued by a federally insured banking or lending institution (i.e., insured by the FDIC) with a retail banking branch located within the Commonwealth of Kentucky. and reasonably acceptable to KYTC and in form and substance.

3.5. EVSE SPECIFICATIONS

3.5.1. NEVI REQUIREMENTS

Projects implemented by a Developer are subject to NEVI Requirements. **Proposers are required to stay abreast of any updates to NEVI Requirements, and/or supplemental rules that apply to the NEVI Formula Program. Projects must comply with current NEVI Requirements at all times during both the development and operations phases.** The NEVI Requirements include the National Electrical Vehicle Infrastructure Standards and Requirements, 23 CFR 680, published in 99 FR 12724 (02/28/2023) at

<https://www.federalregister.gov/documents/2023/02/28/2023-03500/national-electric-vehicle-infrastructure-standards-and-requirements>.

The NEVI Requirements address the topics set forth below; however, this list is not exhaustive of all NEVI Requirements, including the applicability of Federal statutes and regulations such as Title 23, U.S. Code.

- ▶ Installation, operation, and maintenance by qualified technicians of EV infrastructure.
 - Include at least four (4) DCFC ports for each Site that support output voltages between 250 and 920 volts DC and which have a continuous power delivery rating of at least 150 kW and supply power according to an EV's power delivery request up to 150 kW, simultaneously from each port at the Site.
 - Maintain continuous operations (24 hours a day, seven days a week, 365 days a year) and perform preventative maintenance by qualified technicians.
- ▶ Interoperability of EV charging infrastructure.
 - Including compliance with ISO 15118 for charger-to-EV communication and the appropriate Open Charge Point Protocol (OCPP) and Open Charge Point Interface (OCPI) standard versions for charger-to-network and network-to-network communications.
- ▶ Traffic control devices and on-premises signs acquired, installed, or operated.
- ▶ Data requested related to a Project funded under the NEVI Formula Program, including the format and schedule for the submission of such data.
 - Report one-time data submittal and report quarterly and annually on EVSE operations.
- ▶ Network connectivity of EV charging infrastructure.
- ▶ Information on publicly available EV charging infrastructure locations, pricing, real-time availability, and accessibility through mapping applications.
 - Customer service support.
 - Mechanisms to report outages, malfunctions, and other issues.
 - Management of payment collections for each EVSE Station.
 - Provide contactless payment method and accept all major credit and debit cards.
- ▶ Other Federal requirements.
 - BABA requirements, or Waiver of Buy America Requirements for Electric Vehicle Chargers, published in 88 FR 10619 (02/21/2023) at: <https://www.federalregister.gov/documents/2023/02/21/2023-03498/waiver-of-buy-america-requirements-for-electric-vehicle-chargers>.
 - Davis Bacon Federal Wage Rate requirements.
 - The Americans with Disabilities Act (ADA) requirements.
 - The Architectural Barriers Act (ABA) requirements at: <https://www.access-board.gov/tad/ev/> and <https://www.access-board.gov/files/usab-evse-guide.pdf>.
 - Title VI (non-discrimination) and Title VIII (fair housing) of the Civil Rights Act.
 - The Uniform Relocation Assistance and Real Property Acquisition Act, if funds will be used to acquire real property (real estate) or the project will result in displacement or relocation of persons from their homes, businesses, or farms.
 - NEPA requirements.
 - FHWA-1273 – Required Contract Provisions Federal-Aid Construction Contracts.

- Federal Acquisition Regulation 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.
- 23 USC, 23 CFR 636 Design Build Contracting, 23 CFR 637 Construction Inspection and Approval (as applicable to EVSE), 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- 23 CFR 655 applicable to traffic control devices in connection with each Project and 23 CFR 750 regarding outdoor advertising regulations applicable to on-site signage on each Site.

3.5.2. SUPPLEMENTS TO NEVI REQUIREMENTS

In addition to NEVI Requirements, Projects are subject to the following technical requirements as set forth by KYTC:

- ▶ Output Current Range – All charging ports shall be capable of output currents up to at least 350 ADC.
- ▶ Output Current Limit – The output current may be limited below 350 ADC based on the output voltage as long as the output power can reach the 150-kW minimum required level.
- ▶ Operating Temperature Range – EVSE shall be capable of operating at full power over an ambient temperature range of -10° to 120° Fahrenheit.
- ▶ Emergency Stop – All Sites must be equipped with one or more site-level emergency stop (E-Stop) button(s) that will remove power from the charging ports when operated. The E-Stop button(s) must either be: 1) located in a publicly accessible location and clearly marked, or 2) located on-site in a location that is: a) staffed by site personnel at all times that charging ports are available for use, and b) within line of sight of the charging ports. The E-Stop button(s) shall also comply with all local fire codes.
- ▶ Each port must be equipped with an SAE CCS 1 connector.
- ▶ Each port shall also be capable of connecting to and charging vehicles equipped with charging ports compliant with the North American Charging Standard (NACS). This can be accomplished via a second cord with NACS connector or by providing a permanently attached adapter - required to be kept in good working order - which allows for charging an NACS compliant vehicle via the SAE CCS 1 connector. KYTC recognizes that the industry requires additional time to design, test, certify and procure NACS cords, connectors, and adapters and may not be able to comply with this requirement when Projects first become operational. Based on information currently available, KYTC anticipates this date to be no later than January 1, 2025. Proposers shall indicate in their Proposals the starting date (month, year) in which they expect to provide NACS charging capability at all installed ports. KYTC will take this into consideration in the evaluation process. This should be done under Experience, Qualifications and Technical Approach - General Approach to Project Implementation (see **Section 6.3, Table 4** and **Section 8, Table 8**).

3.6. DBE REQUIREMENTS

While DBE requirements do not apply to NEVI Formula Program funds, KYTC encourages the involvement of traditionally disadvantaged firms and participation of these disadvantaged firms is included in the Technical Proposal scoring criteria as specified in **Section 6.3 (Table 4)**. However, the award of Sites and the execution of subsequent PAs will not be subject to DBE goals. Further guidance is contained in the [NEVI Formula Program Questions and Answers](#), the [NEVI Formula Program Guidance](#), and the National Electric Vehicle Infrastructure Standards and Requirements, Final Rule, Code of Federal Regulations Section 23, Part 680 (23 CFR 680).

3.7. DISADVANTAGED COMMUNITIES REQUIREMENTS

The Justice40 Initiative, established in January 2021 by [Presidential Executive Order 14008](#) on Tackling the Climate Crisis at Home and Abroad, provides a goal that at least 40 percent of the overall benefits of certain Federal investments flow to disadvantaged communities. KYTC encourages the submission of Proposals located within Justice40 areas as specified in **Section 6.3 (Table 5)**. Further guidance is contained in the [NEVI Formula Program Questions and Answers](#), the [EV Charging Justice40 Map tool](#), and the [USDOT Equitable Transportation Community Explorer](#) interactive web tool.

4. COMPENSATION AND COST ELIGIBILITY

4.1. PAYMENTS (FOR CAPITAL AND OPERATIONAL COST REIMBURSEMENT)

During the Design and Construction Period, KYTC will reimburse the Developer for a portion of funds used to cover eligible capital expenditures (CapEx), CapEx reimbursements will be paid upon Project completion and acceptance of certain milestones (Capital Milestone Payments) as detailed in **Table 3**. Information regarding cost eligibility is provided in **Section 4.3**.

Table 3: Capital Milestone Payments

Milestone	Payment of CapEx Reimbursements
Executed Purchase Order to EVSE manufacturer(s)	25%
EVSE Commissioning completed	25%
Final Completion	30%
Withholding for distribution during Operational Period	20%

As shown in **Table 3** above, KYTC will withhold 20% of the CapEx reimbursements and distribute these payments during the Operational Period (4% per year). These payments will be made in coordination with the timing of the operational expenditure (OpEx) reimbursement payments as described below. CapEx reimbursement payments withheld will be subject to deductions, or liquidated damages (LDs), as described further in **Section 4.4** for failure to meet certain EVSE Specifications.

During the Operational Period, after Final Completion, KYTC will reimburse the Developer for a portion of eligible OpEx according to the process described below and in **Section 4.2.2**. OpEx reimbursement payments will be paid in equal monthly or quarterly increments and will be subject to LDs as described further in **Section 4.4**

Reimbursement payments paid to the Developer (for CapEx and OpEx) will be in amounts such that the total payments to the Developer do not exceed: a) 80% of the eligible costs or b) the amount of Subsidy Requested, whichever is lower. In addition, the Project’s internal rate of return (IRR) may not exceed 20%, as described in Section 4.2.2. Note that KYTC is under no obligation to increase subsidy amounts should actual CapEx or OpEx increase versus original estimates as stated in Attachment 10.

Prior to making each Capital Milestone Payment, the Developer may be required to update the CapEx estimate for the Project (incorporating actual numbers to the extent possible) to determine the appropriate payment amount(s) based on the restrictions referenced above, and to ensure that the 20% CapEx reimbursement withholding carries into the Operational Period. The Developer may be required to return payments to KYTC at the end of the Design and Construction Period to align total payments with these restrictions. However, the intent of the process outlined above is to avoid this scenario to the extent possible.

Similarly, prior to making OpEx reimbursement payments, actual OpEx costs will be assessed to determine the appropriate amount based on the restrictions referenced above. The Developer may be required to return payments to KYTC at the end of each year of the Operational Period to align total payments with these restrictions. However, the intent of the process outlined above is to avoid this scenario to the extent possible.

KYTC may retain OpEx reimbursements, and/or CapEx reimbursements withheld, up to the amount of the LD cap (See **Section 4.5**). KYTC will pay any remaining OpEx reimbursement balance due, and any CapEx reimbursements withheld, as part of the payment against the final invoice submitted by the Developer, subject to any deductions related to LDs.

4.2. INVOICING

4.2.1. CAPITAL MILESTONES INVOICING

As stated in the previous section, eligible CapEx (detailed in **Section 4.3.1**) to procure equipment, construct the facility, provide utility connectivity to the Site, product warranties, etc. are reimbursable using Federal funds for up to 80% of the eligible costs, or the amount of the Proposer's Subsidy Requested in the Cost Proposal, whichever is lower. Capital Milestone Payments will only be made upon completion of the milestones as defined in **Table 3**.

Developer shall provide appropriate documentation to demonstrate actual costs prior to release Capital Milestone Payments, in addition to a Certification Letter (detailed in **Attachment 4**).

4.2.2. OPERATIONAL PERIOD INVOICING

KYTC shall pay the Developer upon receipt of valid monthly, or quarterly, invoices and Final Completion of the Project, subject to the following:

- a. As stated in **Section 4.1**, O&M costs for the five-year period following Final Completion are eligible for reimbursement for up to the 80% of the eligible costs (detailed in **Section 4.3**) or the amount of Subsidy Requested in the Cost Proposal, whichever is lower;
- b. In line with requirements regarding the use of program income as described in 2 CFR 200.307, Project eligible costs will be reduced by the revenue amount (in dollars) that the Project generates that causes the Project to exceed a 20% IRR threshold;
- c. For purposes of determining the reduction amounts (if any) of eligible costs related to program income as described above, the Project IRR will represent the discount rate at which the net present value of a Project's cash flows (Project inflows minus Project outflows) is zero. Project inflows are based on the sum of revenue from the operation of the Project and subsidy payments for eligible Capex and O&M costs. Project outflows are based on Developer invoices for eligible CapEx and O&M costs plus incidental costs not previously identified in **Attachment 10** (per 2 CFR 200.307(b));
- d. Developer shall provide valid monthly, or quarterly, invoices with actual costs and actual revenue for work related to EVSE O&M;
- e. Developer shall notify KYTC before Final Completion if invoices will be submitted on a monthly or quarterly basis;
- f. Developer shall provide Certification Letter (detailed in **Attachment 4**); and
- g. For each month or quarter following Final Completion, KYTC will reimburse the Developer for the appropriate amount, subject to the restrictions stated in **Section 4.2.2 (a)** and **Section 4.2.2 (b)** above.

To be considered a valid invoice, invoices must include the following information, without error:

- a. Developer name and address;

- b. Remittance address;
- c. Federal Employer Identification Number (FEIN) number, social security number, as appropriate;
- d. Invoice period (i.e., time period during which services covered by invoice were performed);
- e. Invoice date;
- f. Invoice number;
- g. KYTC assigned Contract administration/Project number;
- h. Goods or services provided;
- i. Revenue collected from goods or services provided;
- j. Payment amount due; and
- k. Any additional documentation required by regulation or the PA.

4.2.3. LIQUIDATED DAMAGES AND INVOICING

LDs may be applied to invoices during the Operational Period, as described in **Section 4.4** and KYTC may deduct the sum of LDs from any monies due or that may become due to the Developer under the PA, or if such monies are insufficient, the Developer or sureties thereof shall pay to KYTC any deficiency within thirty (30) calendar days.

4.3. COST ELIGIBILITY

4.3.1. ELIGIBLE EXPENSES

Applicants should refer to the [NEVI Formula Program Questions and Answers](#) (pages 5 through 8), the [NEVI Formula Program Guidance](#) (IV. Project Eligibility Provisions), and the National Electric Vehicle Infrastructure Standards and Requirements, Final Rule, Code of Federal Regulations Section 23, Part 680 (23 CFR 680) regarding eligible expenses. **As is the case with NEVI Requirements described in Section 3.5.1 , items considered eligible expense under NEVI are subject to change. Proposers are required to stay abreast of updates to National Electric Vehicle Infrastructure Standards and Requirements, or any supplement rules that apply to the NEVI Formula Program with respect to expense eligibility. Notwithstanding their eligibility under the NEVI Requirements, KYTC will not reimburse costs associated with the acquisition of real property.**

As stated in the NEVI Formula Program Q&A document:

“All construction costs for NEVI Formula Program projects, as defined under 23 U.S.C. 101(a)(4), are eligible so long as they are directly related to the charging of an electric vehicle (EV). These costs must be allowable, allocable, and reasonable in accordance with 2 CFR part 200. To be considered directly related to the charging of vehicles, the item must be a necessary component in the EV charging station, be a necessary component to connect the EV charging station to the electricity source (or to supply power from the electricity source), provide eligible signage to direct EVs to the charging station, or provide information to EV users about use of the charging stations.”

and

“The following operating costs are eligible although only for up to five (5) years after the charging station is commissioned:

- ▶ Charging equipment lease fees, in the case that an EV charging station operator opts to lease rather than purchase charging equipment.
- ▶ Cellular network fees, internet service fees, or other similar fees necessary to provide communications between EV charging stations and charging network providers.
- ▶ Hardware and software maintenance and repair costs, including service agreements with third party contractors and charging equipment manufacturers or warrantors.

- ▶ Other operating costs that are necessary and directly related to the charging of vehicles.
- ▶ After five (5) years, operating costs are no longer eligible reimbursements under the NEVI Formula Program.”

Supplemental Eligibility Information – CapEx:

- ▶ EVSE
 - Proposers may propose upgrading existing EV charging stations or adding additional charging infrastructure within a Candidate Site to comply with NEVI requirements, thus converting an existing station to an EVSE Station. The equipment purchase and installation costs for only the proposed upgrades are eligible to be included in the Proposer’s Cost Proposal (Subsidy Requested).
 - Proposers may propose installing more than the NEVI minimum required four (4) charge ports at charging stations, but the equipment purchase and installation costs for only four (4) ports are eligible to be included in the Proposer’s Cost Proposal (Subsidy Requested). If more than four ports are proposed, the full cost of utility interconnection can be included in the Cost Proposal (as a Project cost), and the Proposal will be given additional points in the evaluation process for including a future-proofing concept (see **Table 5 in Section 6.3**).
 - Proposers may propose to install a canopy(ies) directly over the area of the EVSE and the parking for vehicles in active charging to protect customers from inclement weather while connecting and disconnecting vehicles from EV charging ports, and in general the cost of such canopy(ies) may be included in the Proposer’s Cost Proposal (Subsidy Requested). However, the specific cost of such canopy(ies) shall be shown in the Cost Proposal separate from other costs, and KYTC reserves the right to reimburse only a portion of these costs if they are determined to be unreasonable.
- ▶ Utility Costs
 - Proposers should coordinate with electric utility prior to submission to determine cost and schedule for utility interconnection (See **Section 1.5**).
 - It is expected that many locations will require upgrade to utility distribution infrastructure to provide necessary power and that the cost of required upgrades will be charged to the Developer or Site Host. This cost should be included in the Cost Proposal (**Attachment 10**). If verified preliminary or final interconnection costs cannot be obtained from the utility in time for Proposal submission, Proposers may use internally developed estimates using comparable market data.
 - KYTC will not include in Capital Milestone Payments any utility interconnection costs not identified in the Cost Proposal.

4.4. LIQUIDATED DAMAGES

LDs may be assessed against payments during the Operational Period for failure of Developer to comply with (1) EVSE Requirements related to up-time, and (2) Reporting requirements included in the PA Terms and Conditions, as detailed in this section, which align with, and will facilitate KYTC’s compliance with, NEVI Requirements for reporting. Total annual LDs shall be capped at no greater than 20% of the total of the maximum annual OpEx reimbursements plus CapEx reimbursements withheld (see **Section 4.1**) in accordance with the terms of the PA.

4.4.1. LIQUIDATED DAMAGES RELATED TO EVSE UP-TIME

If in any month the average annual up-time (rolling 12-month average) for a charging port drops below the 97% threshold established as part of the NEVI Requirements, KYTC will assess LDs against the next

monthly OpEx reimbursements. Damages are not assessed as a penalty, but as a reasonable estimate of and substitute for the damages sustained, which are recognized as incapable of precise measurement. For every one percent (1%) that the average annual uptime falls below 97% for the month, KYTC will assess LDs of \$75 per port. For example, if two ports achieve >97% up time, but one port achieves 96% and one achieves 93%, total LDs for the month would be \$375 ((1 x \$75) + (4 x \$75) = \$375). For this calculation actual annual average up time (12-month rolling average) for each port will be rounded up or down to the nearest whole percentage value. Note that for the purposes of the average annual up-time (rolling 12-month average) calculation, such calculations will not commence until thirty (30) days after Final Completion to provide the Developer with time to address any initial ramp-up issues.

Charging port uptime will be calculated in accordance with the equation included in the National Electric Vehicle Infrastructure Standards and Requirements (23 CFR Part 680.116(b)(3)). Note that the calculation excludes the number of outage hours not under the control of the Developer, provided that the Developer can demonstrate that the charging port would otherwise be operational. These excluded outage hours include: electric utility service interruptions, failure to charge or meet the EV charging customer's expectation for power delivery due to the fault of the vehicle, scheduled maintenance, vandalism, or natural disasters.

4.4.2. LIQUIDATED DAMAGES RELATED TO NEVI REPORTING REQUIREMENTS

If Developer fails to timely and comprehensively meet the quarterly and annual reporting requirements related to operations and use of EVSE Stations that are included in the PA per NEVI Requirements, KYTC will impose LDs of \$25 per day for every day past the obligated due date until KYTC receives a complete report with all required data elements. These LDs will be assessed against the next invoice submitted after the due date of the quarterly or annual report.

5. PROPOSAL INSTRUCTIONS

5.1. PROPOSAL ORGANIZATION AND DELIVERY

Proposals must be submitted via MoveIt/Secure File Transfer on <https://ftp.ky.gov> only. Do not submit Proposals more than one (1) time. Complete instructions for MoveIt/Secure File Transfer can be found in **Attachment 11**.

Proposers must submit all Proposal material by the Proposal Due Date of 5:00pm Eastern Daylight Time/4:00pm Central Daylight Time by the date specified in **Section 2.2**. All Proposal materials are to be organized and submitted as three (3) separate files in searchable Adobe PDF format, as follows:

- ▶ Administrative Proposal
- ▶ Technical Proposal
- ▶ Cost Proposal

HARD COPY OR FACSIMILE PROPOSALS SHALL NOT BE CONSIDERED.

If proposing for more than one Candidate Site, Proposers should submit both a Technical Proposal and a Cost Proposal for each Candidate Site. For example, if a Proposer wishes to submit for three (3) Candidate Sites, the Proposer should submit three (3) separate Technical Proposals and three (3) separate Cost Proposals corresponding to each Candidate Site. Only one Administrative Proposal is required per Proposer regardless of the number of proposed Candidate Sites. If proposing for more than one Candidate Site in the same Corridor-Group, please number the Proposals [Proposal No.] in the file names, as shown below. In addition, the Proposer is prohibited from making multiple Proposals with respect to a particular Candidate Site in a different form.

More detailed information about the contents of each Proposal section can be found later in this section.

File names must be submitted using the following format and naming convention:

- ▶ RFP 2300000290 [Proposer Name] Admin Proposal KY EV.pdf
- ▶ RFP 2300000290 [Proposer Name] [Corridor-Group] [Proposal No.] Tech Proposal KY EV.pdf
- ▶ RFP 2300000290 [Proposer Name] [Corridor-Group] [Proposal No.] Cost Proposal KY EV.pdf

Upon submission, all proposals become the property of the Commonwealth. The successful Proposal shall be incorporated into the resulting Contract by reference. Disposal of unsuccessful Proposals shall be at the discretion of the Commonwealth Buyer. Any information included in a Proposal that the Proposer believes is considered confidential or proprietary under Commonwealth law shall be listed as instructed in **Attachment 12**.

5.2. ADMINISTRATIVE PROPOSAL

The Administrative Proposal shall include a completed and signed version of the following:

1. Signature Page (See **Attachment 5**)
2. Proposer Information (See **Attachment 6**)
3. Proposer Certifications (See **Attachment 7, Form A**)

The Administrative Proposal shall also include a description of the Proposer qualifications and capabilities, including the following elements:

- ▶ Proposer Organization and Management:

Describe the Proposer's organizational structure and Project management approach, including an organizational chart identifying the Key Staff and their organizational placement and responsibilities.

Identify Project partners, subcontractors, suppliers, as well as any parent company, headquarters, regional offices, and subsidiaries of the Proposer.

Includes information regarding anticipated changes to the Project management organization across Project phases.

- ▶ Key Staff with Resumes:

List Key Staff and provide resumes or bios for each Key Staff member. Key Staff should ideally have a bachelor's degree from an accredited college or university appropriate to their discipline and role and/or at least five (5) years of relevant experience. The Project Manager will be considered Key Staff.

- ▶ Proposer Experience/Qualifications:

Provide a narrative on the Proposer's relevant experience, including:

- Number of years providing similar services;
- The number of clients/customers and geographic locations that the Proposer currently serves; and
- Kentucky relevant experience.

- ▶ Applicable Project References

Provide references - at least three (3) preferred, including the following information:

- General information;
 - Cost;
 - Description of EVSE used; and
 - Reference (contact) information.
- ▶ Financial Capability: Provide documentation that proves the Proposer's fiscal integrity (e.g., evidence of working capital). If available, the Proposer should include financial statements, preferably a Profit and Loss Statement and a Balance Sheet, for the last two (2) years (independently audited preferred).

In addition, the Proposer may supplement its response to this section by including one or more of the following with its response:

- Dun & Bradstreet Rating;
- Standard and Poor's Rating;
- Lines of credit;
- Evidence of a successful financial track record; and
- Evidence of adequate working capital.

5.3. TECHNICAL PROPOSAL

The Proposer shall provide in the Technical Proposal an explanation and description of the information described in this section and complete the forms provided in the RFP Attachments as indicated below:

1. General Work Plan

▶ Approach to Performing Services

The Proposer is to thoroughly describe their proposed Candidate Site, Project (including EVSE solution and any other third-party hardware and software), overall service approach, network connectivity, data flows, data storage and reporting capacity to meet the Project requirements.

▶ Procurement, Design, and Construction

Provide a narrative description of the Proposer's implementation approach, flowcharts, and exhibits to demonstrate how the Proposer will meet the EVSE Specifications set forth in the applicable sections of this RFP.

Provide a narrative that describes how the Proposer plans to coordinate with the local utility to implement necessary utility upgrades and achieve grid interconnection.

Provide anticipated lead times for EVSE and approaches to mitigate potential supply chain issues. If available, provide evidence of the Proposer's ability to secure EVSE according to the lead times provided.

▶ Approach to O&M

Provide a narrative description of their approach to O&M to meet the relevant requirements provided in **Section 3**.

Provide a narrative description of their approach to Site safety and security (both physical and cybersecurity), reliability and resiliency.

Provide a narrative description of how the Project will ensure a quality experience for the customer/end-user, including user interface, ongoing customer service, affordable rates, high-speed charging, and Site amenities.

▶ Approach to Pricing

Describe proposed rate structure and methodology (e.g., additional cost at peak times, discounts, etc.) that the Proposer will employ for charge customers for use of EVSE at a Candidate Site, as well as the methods of accepted customer payment, billing practices, and service fees.

▶ Approach to Data Interface and Reporting

Describe proposed application software, operating systems, database/file management programs, database schema, report generators and utilities (for achieving, backup, restore, etc.) that will be used to meet PA requirements.

Provide a narrative description of their approach to Contract management, reporting, and compliance with EVSE Specifications, including NEVI Requirements.

▶ Implementation Schedule

Provide a proposed Implementation Schedule. This schedule should include:

- A summary level Project schedule;
- The Project's critical path and detailed key milestones;
- Include elements related to necessary utility service upgrades;
- Activities and interdependences that enable the achievement of key milestones; and
- Anticipated durations for the proposed detailed activities and phases.
- Date (month, year) in which Proposer expects that all installed ports will have the capability to charge vehicles equipped with NACS charge ports.

2. Candidate Site/Project Information (completed form provided in **Attachment 8**)

- ▶ Site information
- ▶ Site Host information
- ▶ Site commercial structure
- ▶ Permit status
- ▶ EVSE upgrade information (if applicable)
- ▶ Utility upgrade information
- ▶ Site amenities
- ▶ Site access
- ▶ Site details
- ▶ Site schematic (i.e. drawing or Google Earth view with overlay of proposed EVSE and utility equipment locations)
- ▶ Site Host signature (indicating willingness to work with Proposer on the Project). Note: this signature does not indicate an executed Site Host Agreement, which is a Conditions Precedent to PA execution as stated in **Section 3.2**.

3. EVSE Information (see **Attachment 9**)

- ▶ EVSE Vendor Information
- ▶ EVSE Specifications Compliance

- ▶ Approach to providing capability to charge vehicles equipped with NACS charge ports (i.e. second cord and NACS connector, or CCS connector to NACS adapter)

4. Future-proofing Design Information (Optional)

Provide details on any elements included in the Project design specifically to “future-proof” the Candidate Site for expansion or increased charging rates to accommodate demand growth and/or future technology developments. Note that such elements are considered optional and not required. If provided such elements must be costed separately, as discussed in **Section 5.4** below.

5.4. COST PROPOSAL

The Proposer shall provide in the Cost Proposal the information requested in the subsections below.

1. Cost Proposal Narrative

The Cost Proposal shall also include a one-page narrative. The Cost Proposal Narrative should describe the major cost drivers and components for construction, operations, and maintenance. The Proposer should note and explain any major assumptions that affect the basis and narrative of the proposed cost.

2. Cost Information and Subsidy Requested (**Attachment 10**)

▶ Utility Costs

As stated in **Section 4.3.1**, if verified preliminary or final interconnection costs cannot be obtained from the utility in time for proposal submission, proposers may use internally developed estimates using comparable market data.

▶ Total Project Cost

- CapEx (including pre-construction, construction, utility costs, EVSE, and software)
- OpEx (including annual O&M, years 1-5)

▶ Total Subsidy Requested

- CapEx (including pre-construction, construction, utility costs, EVSE, and software)
- OpEx (including annual O&M, years 1-5)

The Proposer must provide funding for at least 20% of the Total Project Costs related to an individual Project. Costs shall reflect five (5) years of EVSE O&M after KYTC accepts the construction / installation of the Project.

▶ Cost for Future-Proofing Optional Design

If the Proposer opts to provide future-proofing design information as described in **Section 5.3** above, the Proposer is asked to specify the cost of this optional design layout as requested in **Attachment 10**.

The Proposer should include all costs in its Proposal which includes any taxes required or incurred in connection with the purchase goods or services for this Project or otherwise. In no event shall Developer directly charge KYTC for any taxes it incurs or pays in connection with the Project. Costs for developing the Proposals are solely the responsibility of Proposers. The Commonwealth shall not provide any reimbursements for such costs.

6. EVALUATION AND SELECTION PROCESS

6.1. EVALUATION PROCESS OVERVIEW

The Commonwealth has established an Evaluation Committee to review, evaluate and verify information submitted by the offeror, as described in **Section 6.2** through **Section 6.9** to score Proposals and make award recommendations.

The Commonwealth shall conduct a comprehensive, fair, and impartial evaluation of all Proposals. Upon receipt, the Administrative Proposals, Technical Proposals, and the Cost Proposals will first be reviewed for Responsiveness on a pass/fail basis. To be considered “Responsive”, Proposals must: (a) comply with the RFP instructions regarding organization, content, and format and (b) contain complete and accurate information as outlined below, and (c) satisfy certain Minimum Acceptance Criteria (i.e., pass/fail criteria) as described in **Section 6.2**. KYTC reserves the right to disregard or waive irregularities, omissions, non-conformities, and discrepancies.

KYTC may allow a Proposer to cure missing documentation and/or incomplete information. Otherwise, Proposals may be deemed Non-Responsive and excluded from further consideration, if the Proposal:

- ▶ Is missing documentation.
- ▶ Contains significant inconsistencies or inaccuracies.
- ▶ Contains a material misrepresentation of facts presented, such as Proposer experience, qualifications, certifications, financial information, etc.
- ▶ Contains pricing that not arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to such prices with any other Proposer or with any competitor.

If a Proposal is deemed Non-Responsive, the Proposer will be so advised.

After Proposals are reviewed for responsiveness, and to the extent a Proposal is deemed “Responsive”, each Technical Proposal and each Cost Proposal will be reviewed, evaluated, and scored according to the criteria provided in **Table 4** and **Table 6** below. Each Technical Proposal may be awarded additional points if it complies with the criteria described in **Table 5**.

Upon completion of the Technical Proposal and Cost Proposal evaluations and scoring, the Total Proposal Score for each Proposal in each Corridor-Group will be calculated as described in **Section 6.5**. Each Proposer is responsible for submitting all relevant, factual and correct information with their offer to enable the evaluator(s) to afford each Proposer the maximum score based on the available data submitted by the Proposer.

KYTC may elect to implement a Competitive Range/Best and Final Offer (BAFO) process as outlined below in **Section 6.5**.

The Proposal considered to be Responsive and receives the highest score in each Corridor-Group will be considered Preferred Proposer within a specific Corridor-Group (as detailed in **Section 6.6** below) and receive a Notice of Award. KYTC may elect to make multiple awards within a Corridor-Group to achieve build-out. The process will be repeated for each Corridor-Group.

For additional award information, Proposers may email the Commonwealth Buyer at Laura.Hagan@ky.gov.

6.2. PASS/FAIL EVALUATION

6.2.1. ADMINISTRATIVE PROPOSAL PASS/FAIL CRITERIA

For a Proposal to be considered Responsive, the Administrative Proposal must meet the following Minimum Acceptance Criteria:

- ▶ Includes completed forms and provides all information required by **Section 5.2**;
- ▶ Includes all certifications required to be compliant with **Attachment 7**;
- ▶ Includes responses as requested in **Attachment 7**; **any** responses that do not indicate an affirmative response must offer a suitable explanation the acceptance of which will be at the sole discretion of KYTC;
- ▶ The Proposer is not debarred or suspended from submitting bids or appears on the Federal List of Excluded Parties Listing System;
- ▶ The Proposer has not defaulted, has not had a contract terminated for cause by KYTC or the Commonwealth, and has either agreed not to bid or has had debarment proceedings initiated against the Proposer's company;
- ▶ KYTC has not identified evidence of collusion (see **Attachment 7, Form B**); and
- ▶ Contains no other omission, error, or act that, in the judgment of KYTC, renders the Proposal Non-Responsive.

6.2.2. TECHNICAL PROPOSAL PASS/FAIL CRITERIA

The Technical Proposal must meet the following Minimum Acceptance Criteria:

- ▶ The Technical Proposal includes completed forms and provides all information required by **Section 5.3**.

6.2.3. COST PROPOSAL PASS/FAIL CRITERIA

The Cost Proposal must pass the following Minimum Acceptance Criteria:

- ▶ The Cost Proposal includes completed forms and provides all information, including narrative, required by **Section 5.4**.

6.3. TECHNICAL PROPOSAL EVALUATION

The Technical Proposals (See **Section 5.3**) will be qualitatively evaluated based on the criteria described in **Table 4** below and will be scored according to each of the criteria, up to the maximum allowable points for each of the criteria. Guidelines that KYTC will use to determine the number of points allocated to a Proposal are provided in **Section 8**.

Table 4: Technical Proposal Points

Scoring Category	Scoring Criteria	Maximum Points
Experience, qualifications, and technical approach	Proposer experience and qualifications	100
	General approach to project implementation	100
	Site design and layout, including ADA compliance	100
	Site readiness, power availability, and coordination with local utilities	100

	Approach to operations and maintenance, including workforce training	100
	Approach to reliability and resiliency	50
	Approach to Contract management and reporting	50
Proposed user experience	Safety and security	75
	Complementary services and amenities at site	75
	User interface and customer service during Operational Period	50
	End-user pricing model	50
Equity and rural considerations	Use of local labor	50
	Use of traditionally disadvantaged firms	50
	Economic impact on rural and/or disadvantaged communities	50
Candidate Site location	EV network build-out optimization	400
Total		1,400

Additional points will be awarded for Proposals that include the criteria described in **Table 5** below. The totality of points included in **Table 5** will be awarded to Proposals for each of the criteria deemed to be fulfilled.

Table 5: Technical Proposal Additional Points

Scoring Category	Scoring Criteria	Additional Points
Site considerations	Site is located within Justice40 area	60
Experience, qualifications, and technical approach	Site design includes futureproofing concept	60
	At least one EV charging port at the station allows for a vehicle with a trailer to pull through and not have to back up when charging is complete	20
Proposed user experience	Additional charging capacity	60
Total		200

6.4. COST PROPOSAL EVALUATION

The Proposal with the lowest total Subsidy Requested in the Cost Proposal (See **Section 5.4**) for each of the Corridor-Groups will receive the maximum points as detailed in **Table 6** below. For each of the Corridor-Groups, the remaining Proposals will receive points in proportion to the lowest Subsidy Requested, as detailed in this section.

Table 6: Cost Proposal Points

Scoring Category	Scoring Criteria	Maximum Points
Subsidy	Total Subsidy Requested	600
Total		600

For each Cost Proposal, the score will be calculated as follows:

- ▶ Cost Proposal subsidy points = (Lowest Subsidy Requested / Proposal Subsidy Requested) * 600

6.5. COMPETITIVE RANGE/BEST AND FINAL OFFER

KYTC may establish a competitive range pursuant to 23 CFR 636.404 to promote an efficient competition. “Competitive range” means a list of the most highly rated Proposals based on the initial proposal rankings utilizing the evaluation criteria stated in **Section 6.3**. KYTC will provide written notice to any Proposer whose Proposal is no longer considered to be included in the [competitive range](#), and upon request will provide a debriefing thereafter to any Proposer whose Proposal is not in the competitive range.

If KYTC establishes a competitive range, and when in the best interest of the Commonwealth, KYTC may hold discussions, permit Proposers to revise their initial Proposals (pursuant to 23 CFR 636.501 through 636.514), and submit, in writing, a BAFO. KYTC may make an award without issuing a request for a BAFO.

6.6. DETERMINATION OF PREFERRED PROPOSER

The determination of Preferred Proposer(s) will be determined for each Corridor-Group. Proposals considered “Responsive” will be considered for award. The Proposer with the highest Candidate Site Score within the specific Corridor-Group will be selected as Preferred Proposer for that Corridor-Group. Each Corridor-Group will be scored in a similar manner.

For each Proposal, the Proposer’s score will be calculated as follows:

Total Proposal Score = Technical Proposal Score + Cost Proposal Score

Table 7: Total Available Points

Scoring Category	Available Points
Technical Proposal	1,400
Technical Proposal Additional Points	200
Cost Proposal	600
Total	2,200

Responses to this RFP will not be opened publicly.

6.7. NOTICE OF AWARD

Subsequent to identification of Preferred Proposers, the Director of the Division of Purchases will issue a Notice of Award to the applicable Preferred Proposer of the selection and proceed to negotiate a PA (pursuant to 23 CFR 636.513(a)) for the applicable Project, subject to the Conditions Precedent outlined in **Section 3.2**.

If a particular entity is identified as Preferred Proposer for more than one Corridor-Group, KYTC may elect to enter into a single PA with such entity covering multiple Projects/Sites. KYTC does not intend to negotiate material terms set forth in the RFP; rather, the negotiation should be largely administrative in nature to include information specific to Developer and Project(s)/Site(s) involved.

The procurement process will provide for the evaluation of Proposals and selection of the successful Proposal in accordance with Commonwealth law and regulations. KRS Chapter 45A of the Kentucky Model Procurement Code provides the regulatory framework for the procurement of services by Commonwealth agencies. All applicable statutes, regulations, policies and requirements shall become a part of an award as well as the Information Technology requirements.

The Commonwealth Buyer will email a Notice of Award to all Proposers who submitted a Proposal in response to the RFP. No other notification of the results of an award of Contract will be provided.

For additional award information, Proposers may email the Commonwealth Buyer.

6.8. NEGOTIATIONS AFTER NOTICE OF AWARD

In the event the Commonwealth cannot reach agreement with the top-ranked Preferred Proposer, the Commonwealth may present a Notice of Award to the next highest ranked Proposer, and so on. It is the Commonwealth's intent to execute a PA with Preferred Proposer. As a result of this RFP, the PA with the Developer will in no way obligate the Commonwealth to purchase any services or equipment under this Contract from the Developer. The Commonwealth agrees, in executing any Contract, to purchase only such services in such quantities as necessary to meet the actual requirements as determined by the Commonwealth.

Should any conflict of interest be detected any time after execution of a PA, the PA shall be null and void and the Developer shall assume all costs of the Project until such time that a new Preferred Proposer is selected.

Any PA resulting from this RFP shall be subject to the termination provisions set forth in 200 KAR 5:312.

6.9. PROTEST

Pursuant to KRS 45A.285, the Secretary of the Finance and Administration Cabinet, or his designee, shall have authority to determine protests and other controversies of actual or prospective offerors in connection with the solicitations or selection for award of a Contract. Any actual or Potential Proposer or Developer, who is aggrieved in connection with solicitation or selection for award of a Contract, may file a protest with the Secretary of the Finance and Administration Cabinet. A protest or notice of other controversy must be filed promptly and in any event within 2 calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto.

All protests or notices of other controversies must be in writing and shall be addressed and mailed to:

**Commonwealth of Kentucky
Finance and Administration Cabinet
Office of the Secretary
200 Mero Street, 5th Floor
Frankfort, KY 40622.**

The Secretary of Finance and Administration Cabinet shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken. The decision by the Secretary of the Finance and Administration Cabinet shall be final and conclusive.

7. DEFINITIONS OF KEY TERMS

- a. **AFC Creditable Station:** Existing stations that comply with NEVI Requirements.
- b. **Candidate Site:** A property identified by a Proposer within a Corridor-Group for the purpose of installing and maintaining EVSE in compliance with NEVI Requirements. A Site must be located within a one-mile travel distance from an interstate highway interchange ramp terminal at the exit numbers listed in **Table 1**.
- c. **Conditions Precedent:** As defined in **Section 3.2**.
- d. **Contract:** Project Agreement (PA).
- e. **Corridor-Group:** The combination of a specified AFC route number and group number that represents an area along the AFC where a Site is necessary to comply with NEVI Requirements.
- f. **Design and Construction Period:** The PA period that begins on the date of execution and ends at Final Completion.
- g. **Developer:** The Proposer who is awarded a PA and becomes Developer responsible for providing the goods and services specified in the awarded PA; and to whom payment will be made upon delivery of the terms of the PA.
- h. **Electric Vehicle Service Equipment (EVSE):** Please refer to the [NEVI Final Rule](#).
- i. **Evaluation Committee:** Employees of the Kentucky Transportation Cabinet (KYTC), Commonwealth of Kentucky, and third parties authorized by KYTC who will evaluate Proposals.
- j. **EVSE Commissioning:** Process to verify if the EVSE functions according to design objectives and technical specifications.
- k. **EVSE Utilization:** EVSE Utilization, denoted as a percentage (%), is the amount of time over a given period that an EVSE charging port is actively delivering power to a vehicle, divided by the total time in the period.
- l. **Final Completion:** Milestone when EVSE is installed, commissioned, is operational, and all construction, utility service, and ancillary construction activities are complete, including but not limited to site cleanup, landscaping, paving and patching, pavement marking, sign installation, etc., all in accordance with the PA.
- m. **Key Staff:** All Developer personnel identified in a Proposal that are essential to the work being performed under the PA.
- n. **Liquidated Damages:** A specific sum (or a sum readily determinable) of money stipulated by a Developer and KYTC as the amount to be recovered for the events described in **Section 4.4** of this RFP.
- o. **NEVI Requirements:** Those requirements of the NEVI Formula Program described in **Section 3.5.1** of this RFP and those that may become effective prior to or during the term of a PA.
- p. **Operational Period:** The PA period that starts when Final Completion has been achieved by the Developer.
- q. **Preferred Proposer:** A Proposer whose Proposal offers the best value to KYTC as assessed through the evaluation criteria and scoring described in the RFP and enables KYTC to optimally deploy an EV network in compliance with NEVI Requirements; and whose Proposal responds to all specifications and requested materials set forth in the RFP; and contains no irregularities or deviations from specifications that would affect the amount of the Cost Proposal or otherwise give the Proposer a competitive advantage; and whose experience, financial condition, conduct and performance on previous projects indicates the Proposer's ability to execute and perform under the PA.
- r. **Preferred Proposal:** The Proposal submitted by Preferred Proposer that is selected for award.
- s. **Project Agreement (PA):** The written Contract setting forth the terms and conditions by which the Project is to be conducted and executed by the successful Proposer pursuant to this RFP and KYTC.
- t. **Proposal:** The Proposer's response to this RFP that contains the completed Administrative Proposal, Technical Proposal(s), and Cost Proposal(s).

- u. **Proposer:** The entity that has signed and submitted the Proposal to this RFP; and who will be responsible if identified as a Developer to ensure the execution of the PA. Note that Proposers can represent Joint Ventures (JVs) between two or more entities.
- v. **Site:** A Candidate Site that has been approved by KYTC.
- w. **Site Host:** Property owner who may or may not also operate and maintain an EV charging station.

8. TECHNICAL PROPOSAL EVALUATION GUIDELINES

Table 8: Technical Proposal Evaluation Guideline

Scoring Category	Scoring Criteria	Evaluation Guideline
Experience, qualifications, and technical approach	Proposer experience and qualifications	<p>Extent to which the Proposer’s (and the Proposer’s Project partners, subcontractors, and suppliers) overall qualifications, including management background, experience, demonstrated operational capabilities (in achieving charger uptime/reliability goals), and technical competence, indicate the likely success of the Project in terms of meeting KYTC’s goals/objectives, the PA Terms and Conditions, and the EVSE Specifications.</p> <p>Qualifications shall include any qualifications listed in 23 CFR 680 and a showing of relevant projects with EVSE and charging infrastructure that the Proposer has completed. Proposer shall demonstrate that it can comply with the requirement for qualified technicians to conduct work on the Project under 23 CFR 680.106. Specific documentation and information are to be submitted with the Technical Proposal of this RFP.</p> <p>Proposer demonstrates financial capability that indicates that Proposer has the ability to cover up-front Project costs and will not likely be a going concern beyond the initial five-year NEVI funding period.</p>
	General approach to project implementation	<p>Extent to which the Proposer’s implementation approach including Project alignment with KYTC goals and objectives, plans for collaboration with stakeholders, risk management process/procedures, proposed technical concepts, scheduling and sequencing indicate the likely success of the Project in terms of meeting KYTC’s objectives, the PA Terms and Conditions, and the EVSE Specifications.</p> <p>Includes a narrative (understanding) of what work is to be accomplished in the procurement, design, and installation phase.</p> <p>Includes data flow diagram, data map to describe approach to data interfaces, product literature, manuals, and other reference information as appropriate.</p> <p>Includes innovative ideas or technical concepts and how Proposer may have positive impacts on Project schedule, costs, and quality. These may include EVSE type and design, manufacturing relationships, installation methods, etc.</p>

Scoring Category	Scoring Criteria	Evaluation Guideline
		<p>Describes the Proposer’s Implementation Schedule and factors that would affect the Implementation Schedule such as outside constraints, materials, equipment and labor availability, etc. Includes a schedule graphic outlining the major activities and their associated timeframes.</p> <p>Expected date by which Proposer will provide for charging of vehicles equipped with NACS charge ports (in no event later than January 1, 2025)</p>
	Site design and layout, including ADA	Describes how the selected approach to design will lead to a Project/Site that is compliant with NEVI Requirements, provides a level of detail and specificity that is likely to be sufficient for purposes of NEPA review, accommodates different vehicle sizes and models (e.g., pull through space for light duty vehicles, cord length sufficient to reach ports at different locations on vehicles), and complies to accessibility requirements from ADA and the U.S. Access Board Design Recommendations for Accessible Electric Vehicle Charging Stations .
	Site readiness, power availability, and coordination with local utilities	<p>Describes understanding of overall Candidate Site readiness, existing power availability, cost and schedule for utility upgrades (if required), applicable utility rate structure, required local and/or environmental permits, and firm commitment of Site Host. Proposal documents actual coordination conducted with the local utility to determine cost and schedule for required utility upgrades and indicates whether the Implementation Schedule provided in the Technical Proposal, and costs provided in the Cost Proposal, reflect preliminary estimates provided by the utility, final estimates provided by the utility, or internal estimates developed by the Proposer.</p> <p>Proposal includes a letter of commitment, or some other form of evidence, from a supplier to provide EVSE according to proposed timelines.</p>
	Approach to operations and maintenance, including workforce training	<p>Describes approach to meeting or exceeding O&M performance requirements, including required up time for the 5-year operations period.</p> <p>Describes approach to network communications and controls, back-office support, preventative, and emergency maintenance service level, charging operations management, power management, warranty management. Proposals that comply with OCPP 2.0.1 will be given more points in the technical evaluation.</p>
	Approach to reliability and resiliency	Describes approach to power outages, climate events, and resiliency.
	Approach to Contract management and reporting	Describes approach to reporting of performance indicators, charging sessions, EVSE uptime, and proposed reporting mechanisms and protocols.

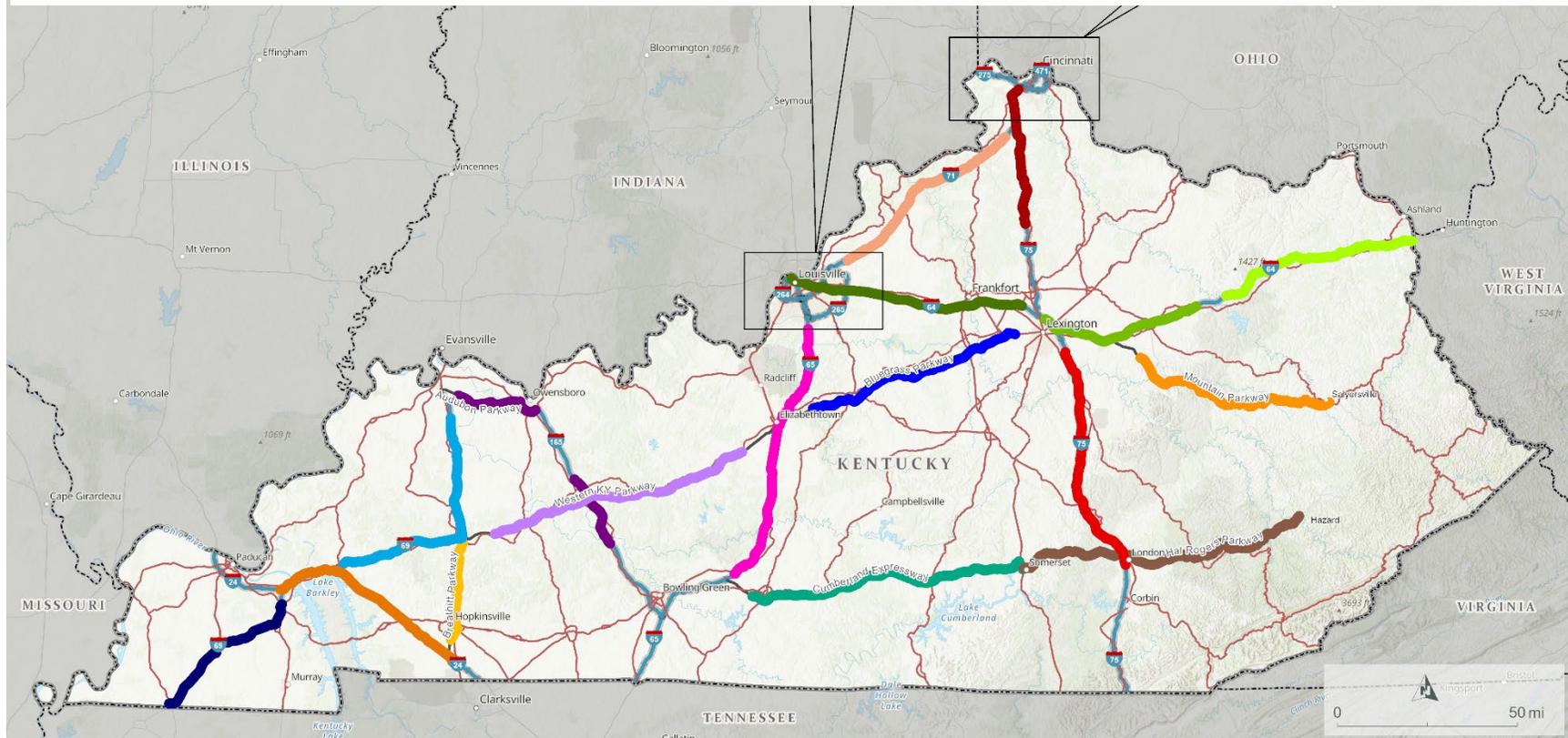
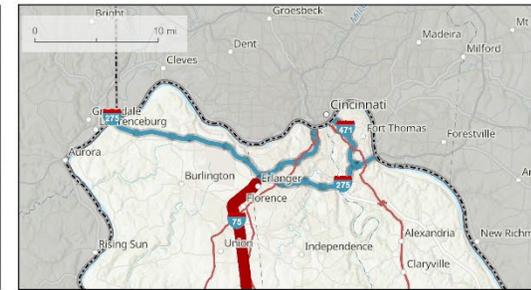
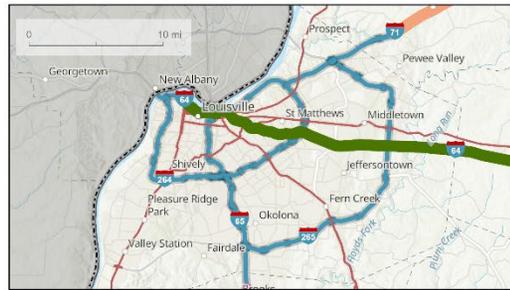
Scoring Category	Scoring Criteria	Evaluation Guideline
		Describes understanding of information to be reported under PA and privacy reporting standards.
Proposed user experience	Approach to safety and security	Describes approach to physical customer security, cybersecurity, and plan to meet federal guidelines.
	Complementary services and amenities at site	Describes EVSE and parking space availability to the public (e.g., 24/7), site staffing, and amenities at site (e.g., restrooms, food and resting services, retail, high speed internet, covered EVSE spaces (protection from the elements), sustainability elements, etc.). Off-site amenities may be described, to the extent these are effectively available and complement the services offered to EVSE users at the Candidate Site.
	User interface and customer service during operational period	Describes payment methods to the public (e.g., phone app, website, credit card reader). Specifies approach to dedicated customer support, including phone, web, or in-person support. Describes access and availability features (e.g., real time availability information).
	End-user pricing model	Proposed pricing structure demonstrates: 1) Affordability for customers and 2) Assurances that there will be no significant price increases in the future.
Equity and rural considerations	Use of local labor	Specifies the Proposer's commitments to use and leverage of local labor, including understanding of existing local workforce for the installation, operation, and maintenance of EVSE.
	Use of traditionally disadvantaged firms	Specifies how the Proposer intends to encourage participation of traditionally disadvantaged firms during the relevant phases of the Project.
	Economic impact on rural and/or disadvantaged communities	Describes the Proposer's understanding, capability, and experience in interacting and partnering with communities, businesses, and other stakeholders and explains the anticipated impact of the Project (e.g., job creation, tax revenue) during construction and transfer to the Operational Period.
Candidate Site location	EV network build-out optimization	Site provides coverage for multiple AFCs, is near optimum spacing from AFC Creditable Stations to achieve buildout, represents optimum spacing from State line(s) and/or AFC terminus to achieve build-out, or adding a Candidate Site would reduce the total number of remaining Sites required to achieve build-out. See Section 1.3 for more guidance.

Table 9: Technical Proposal Evaluation Guideline – Additional Points

Scoring Category	Scoring Criteria	Evaluation Guideline
Site considerations	Site is located within Justice40 area	Site is located within a Justice40 area, as shown in the Electric Vehicle (EV) Charging Justice40 Map tool.
Experience, qualifications, and technical approach	Future Proofing	Proposals that include future proofing concepts will be given more points in the technical evaluation. Such concepts could include installing more than the minimum required four charging ports; choosing Candidate Sites with sufficient real estate/parking locations and circulation lanes to add future ports; and/or installing make-ready utility or other on-site infrastructure to allow for installation of additional ports or faster charging speeds in the future at locations with expected future high utilization.
Proposed user experience	Additional charging capacity	<p>Describes number of charging ports that will be provided, and the capacity (kW) of each port during simultaneous operation. To comply with NEVI Requirements, at least four (4) ports must be provided, each of which will provide at least 150 kW charge rate with all four ports operating simultaneously. Also describes output voltage range and capacity of each port. To be compliant with minimum Federal standards, each port shall be capable to provide 150 kW output over the full output voltage range of 250 – 920 VDC.</p> <p>For higher charging rates power sharing across ports is allowable as long as minimum power for any port does not fall below 150 kW during simultaneous operation.</p> <p>Proposals will be given 15 points for each port that provides an available charging rate of or greater than 300kW, for up to 60 points in the technical evaluation.</p>

Attachment 1. Corridor-Group Map

- EV Corridors**
- I-24
 - BGP
 - BP
 - CE
 - HR
 - I-165 & AP
 - I-64A
 - I-64B
 - I-64C
 - I-65
 - I-69A
 - I-69B
 - I-71
 - I-75A
 - I-75B
 - MP
 - WKP



For a GIS layer (or a kmz file) of the Corridor-Groups, please email Laura.Hagan@ky.gov.

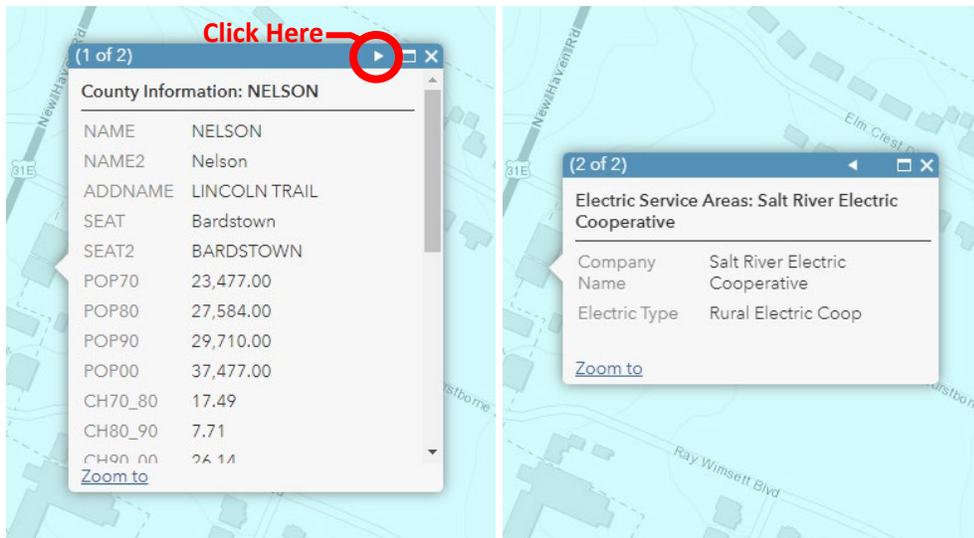
Attachment 2. Utility Information

UTILITY IDENTIFICATION INFORMATION:

To identify which utility serves a potential Site please use one of the following two websites. They should provide nearly identical results. Two options are provided to accommodate user preferences and ease of use.

For Website #1 Click Here: [Kentucky Electric Service Areas \(KY DGI\)](#) This website will open up a color-coded map of Kentucky showing the electric utility service areas. Once the map is loaded enter the Site property address in the upper right search window where it reads “Find address or place” and then hit “enter”. After you hit “enter” the map will automatically zoom to that location. If you do not know the address or if you are exploring several Sites, you can also navigate directly to a location on the map using a mouse or trackpad and the zoom in / zoom out buttons in the upper left of the map screen.

Once you have found your Site of interest click on the map at that location. A dialogue box will pop up with county information (see image below). Click on the ► as shown in the image below to move to the second record which is the electric utility serving that site. Alternatively, you can click on the legend in the upper left of the window. That will show all of the utilities with their corresponding colors and hatching. You can then match the color at your site with the legend to determine the electric utility.



For Website #2 Click Here: [Kentucky Electric Service Areas \(BRADD\)](#) This website will open up a blue map of Kentucky showing the electric utility service areas. Once the map is loaded click on the magnifying glass in the upper right corner to open the address search function. Then type the Site property address in the search window where it reads “Find address or place...” and hit “enter”. After you hit “enter” the map will automatically zoom to that location. If you do not know the address or if you are exploring several Sites, you can also navigate directly to a location on the map using a mouse or trackpad and the zoom in / zoom out buttons on the right side of the map screen. Once you have found your Site of interest click on the map at that location. A dialogue box will pop up with the name of the electric utility serving that site (see the third row of data in the pop-up dialogue box).

Note: If you are near a service area border, you may need to contact both utilities directly to determine which serves your site.

UTILITY CONTACT TABLE:

This table lists contact information for individual(s) designated by each Kentucky electric utility to receive interconnection requests for proposed EVSE Stations at Candidate Sites to be proposed in response to this RFP.

Table 2-1: Utility Contact Table

Utility	Contact Name	Email	Phone Number	Approximate Response Time
Duke Energy		NEVI@duke-energy.com		2 Weeks
Kentucky Power	Barry Nolen	blnolen@aep.com	606-923-5279	1 Month
	Shane Allen	sdallen2@aep.com	606-671-0898	1 Month
LG&E and KU		Emerging.Tech@lge-ku.com		2 Weeks to Several Months
Berea Municipal Utilities	Kevin Howard	khoward@bereaky.gov		1-2 Weeks
Frankfort Plant Board	Travis McCullar	tmccullar@fewpb.com	502-352-4608	1-2 Weeks
Hopkinsville Electric System	Dustin Love	dlove@hop-electric.com	270-887-4207	2-5 Business Days
Rural Cooperatives				
Big Rivers Electric	Chris Bradley	chris.bradley@bigrivers.com		1 Week
Big Sandy RECC	Jeff Prater	jprater@bigsandyrecc.com	606-229-7869	2-4 Weeks
Bluegrass Energy	Chris Brewer	evdata@bgenergy.com	888-546-4243	2 Weeks
Clark Energy	Todd Peyton	tpeyton@clarkenergy.com	859-901-9236	Few days
Cumberland Valley Electric	Mark Abner	mark.abner@cumberlandvalley.coop	606-521-5955	1 Week
	Rich Prewitt	rich.prewitt@cumberlandvalley.coop	606-524-3971	1 Week
Fleming-Mason Energy	Brandon Hunt	bhunt@fme.coop	606-845-2661	2 Weeks
Farmers RECC	Chris Childress	cchildress@farmersrecc.net	270-651-2191 x8153	1-2 Weeks
Gibson EMC	Barry L Smith	bsmith@gibsonemc.com	731-414-1240	2 Weeks
Grayson RECC	Scott Speaks	Scott.speaks@graysonrecc.com	606-474-2134	3 Weeks
	Brian Poling	Brian.poling@graysonrecc.com	606-474-2122	3 Weeks
Inter-County Energy	David Phelps	davidp@intercountyenergy.net	859-936-7818	2 Weeks
Jackson Energy	Seth Jones	sethjones@jacksonenergy.com	606-364-1000 x7025	2 Weeks
Jackson Purchase Energy	Travis Spiceland	travis.spiceland@jpenergy.com	270-441-0856	2-3 Weeks

Utility	Contact Name	Email	Phone Number	Approximate Response Time
Kenergy	Scott Atherton	satherton@kenergycorp.com	270-689-6110	1-2 Weeks
Licking Valley RECC	John May	jmay@lvrecc.com	606-743-3540	2-3 Business Days
Meade County RECC	Mike French	mfrench@mcrecc.com		2 Weeks
Nolin RECC	Devon Woosley	dwoosley@nolinrecc.com	270-765-6153 x2702	1-2 Weeks
Owen Electric	Jennifer Taylor	jktaylor@owenelectric.com		2 Weeks
Pennyriple RECC	Anthony Ervin	aervin@precc.com	270-886-2555	1-2 Months
Salt River Electric	Daniel Carrico	dcarrico@srelectric.com	502-350-1606	1 Week
Shelby Energy	Dylan Staples	dylan@shelbyenergy.com	502-437-8170	1 Week
South Kentucky RECC	Dakota Brown	dakotab@skrecc.com	606-451-4110	1 Week
Taylor County RECC	Mike Skaggs	muskaggs@tcrecc.com		Several Weeks
Tri-County Electric	Jim Beecham	jbeecham@tcemc.org	800-369-2111 x100	2 Weeks
Warren RECC	Jenny Rich	jrich@wrecc.com	270-842-6541	2 Weeks
West Kentucky RECC	Justin McCann	jmccann@wkrecc.com	618-922-1809	3-6 Months

KY NEVI FORMULA PROGRAM UTILITY INTERCONNECTION REQUEST FORM

Use this form to request a utility interconnection for a proposed EVSE site. Complete one form for each separate Candidate Site. Submit to the electric utility which serves the Candidate Site, using contact information from Utility Contact Table above. This form is intended only to facilitate communication between proposers and local utilities. It is NOT required to be submitted as part of the Technical Proposal or the Cost Proposal for any Candidate Site.

Table 2-2: Utility Interconnection Request Form

Request Date			Notes
Submitted to	Utility name		
	Contact name, email		
Requested Energize Date			<i>Earliest realistic date that you want/need power</i>
Applicant	Company Name		
	Contact Name, Address, email, phone		
Site Host <i>(if different than applicant)</i>	Company Name		
Electrical Contractor <i>(if known)</i>	Company name		
	Contact name, email, phone		
	Available to meet on-site?		YES/NO
Site Address	Street, City, State, ZIP		<i>At minimum provide address and latitude & longitude of proposed EVSE location on site. If possible, provide scaled site drawing with nearest street(s), location of existing transformer and meter, and proposed location(s) of EVSE marked.</i>
	EVSE site plan		

Requested Service Voltage, Primary or Secondary		<i>Secondary voltage from the utility, 480 V /3PH, is typical for NEVI Formula Program-compliant stations, which will require a utility-owned transformer on site. Some proposers may choose to take primary voltage from the utility (i.e. 12.5 kV, 3 PH) and themselves own/install the required transformer to feed on-site EVSE</i>
Connected Load (kW)		<i>600 kW minimum for NEVI Formula Program-compliant station. If requesting additional capacity for future load growth, provide details</i>
Requested panel size (amps)		<i>800 A typical for minimum NEVI Formula Program-compliant station</i>
Power factor (%)		<i>90% – 100% typical</i>
Expected load profile	At what hour of day will peak load occur?	
	How is load expected to vary across the day?	
Projected Monthly Energy use (kWh)		
Will the EVSE load be added to an existing meter/account, or will a new account be requested?		<i>If existing account, provide account number</i>
Potential for solar/net metering at this site?		<i>YES/NO. If yes, provide details. Note that site solar requires more in-depth utility reviews and system studies, which will increase required time for utility response</i>

Will batteries be installed at the site to reduce or manage peak demand?

YES/NO. If yes, provide details Note that on-site battery storage requires more in-depth utility reviews and system studies, which will increase required time for utility response

Attachment 3. RFP Question Form

Please submit this form as a PDF to Laura.Hagan@ky.gov no later than 2:00pm Eastern Daylight Time on the applicable due date set forth in RFP Section 2.2. KYTC will directly respond to questions and inquiries. Questions and answers will be posted publicly on the [Kentucky Vendor Self Service](#) website approximately one week after questions are due. Organization and contact information of question submitters will be kept anonymous and will not be made public. *Questions should address a specific section(s) and be shared using the format below:*

Organization name: _____

Organization Type (indicate all applicable):

- Site Host — property owner who may or may not also operate and maintain an EV charging station
- Developer — entity who facilitates the development of the EV charging station (not the property owner or EV charging station operator)
- Owner/operator — entity that owns and operates the charging equipment
- Utility — entity who supplies electricity and electrical equipment to an EVSE Station
- Other (please specify)

Address: _____

Contact Information: _____

Question #:		Section – page #:	
Please type your question below:			
Answer:			

Attachment 4. Project Agreement Term Sheet (Heads of Terms)

1. **Project Schedule; Budget.** Developer shall undertake and complete the Project in accordance with its Implementation Schedule, a copy of which is attached hereto within Exhibit [] (Developer's Proposal), and which Implementation Schedule is required of the Developer pursuant to Section 5.3 of the RFP. Any costs in excess of awarded amount that are necessary for completion of the Project and any authorized or unauthorized changes to the Project are the sole responsibility of Developer.
2. **Notice to Proceed.** After the PA is signed by the Secretary, KYTC shall issue a Notice to Proceed (NTP) authorizing Developer to commence design on the Project (NTP1) as well as initiating procurement of long-lead EVSE and service requests and discussions with local electric utility companies, subject to these work elements being included in the approved General Work Plan (as described in **Section 5.3** of the RFP). Developer shall acknowledge to KYTC within two (2) days its receipt of NTP1 that design of Project has commenced. Developer shall submit its design to KYTC within the number of days agreed for a particular Project. KYTC shall review such design to verify that it complies with NEVI Requirements. Once KYTC has provided written notification of compliance with NEVI Requirements, KYTC will issue NTP authorizing construction work to commence (NTP2). Within 10 days of issuance of NTP2, Developer shall notify KYTC that construction work has commenced. Expenditures made by Developer prior to issuance of NTP1 are not allowable and shall not be considered eligible costs, and shall not count towards Developer's required match.
3. **NEVI Requirements and Other Federal Requirements.** Those requirements of the NEVI Formula Program described in Section 3.5.1 of the RFP (NEVI Requirements), including federal requirements and certain supplements to NEVI Requirements identified in Section 3.5.2 of the RFP (Supplements to NEVI Requirements), shall be incorporated by reference to the PA; provided, further, that the Developer shall adhere to NEVI Requirements and other federal requirements that may become effective after execution of the PA and remain in effect through Final Completion and the Operational (or O&M) Period of the Project. A copy of Developer's Title VI Assurances Certification is included within Exhibit [] (Developer's Proposal) attached hereto and made a part hereof.
4. **Administration and Inspection of Work.** Developer shall be responsible for all aspects of administration, testing, and inspection to ensure the materials and work meet applicable specifications. This shall include providing on-site inspection of any work activities by third parties and the prompt processing of required paperwork associated with any contract to perform the work.
5. **Software; Data.** Developer must maintain, and as requested by KYTC, demonstrate sound IT security and data retention policies, and comprehensive data recovery and back up plans to prevent unauthorized access or destruction of data.
6. **General Maintenance Obligation.** Developer, its successors, subsidiaries, and assigns, shall maintain the real property and facilities improved pursuant to and in connection with the Project in a condition suitable for functioning of the Project as a service to the public for the term of the PA. Pursuant to 2 CFR 200.313, Developer shall provide an equipment management plan and annual reports on the condition of the EVSE until the earlier of (1) the date that is five years from commencement of use of the EVSE, or (2) the date on which the value of the EVSE falls below \$5,000. If the former, Developer shall provide a plan for the remainder of useful life of the EVSE within 60 days prior to the expiration of the PA. If Developer transfers or sells all or part of the EVSE under the PA, causing the EVSE to no longer be used for purposes of the NEVI Formula Program, before the EVSE has reached the end of its useful life, Developer shall remit to KYTC within 30 days the proceeds from such transfer or sale in proportion to the share of the total cost of the Project funded with federal funds.

7. **Operations and Maintenance (O&M) Plan.** Developer shall provide KYTC with a written O&M Plan within thirty (30) days after NTP1. This O&M Plan shall detail how ongoing maintenance and service requirements will be met over the life of the PA. The O&M Plan shall detail all preventive maintenance that will be performed by the Developer as well as roles, responsibilities, and procedures for identifying, troubleshooting and repairing in-service failures of EVSE Stations. This O&M Plan shall also establish the key performance indicators (KPIs) that the Developer will track and include in reports submitted to KYTC (see Reporting requirement below).
8. **EVSE Vendor.** Developer has identified an EVSE vendor in its Proposal. Developer may change the proposed EVSE vendor; provided that the substitute EVSE vendor meets the EVSE specifications described in Section 4 of the PA; provided further that a change in the proposed EVSE vendor shall not result in an adjustment to compensation to the Developer, an adjustment to the Implementation Schedule, or any other modification to the PA. A copy of the proposed EVSE vendor information is included within Exhibit [] (Developer's Proposal) attached hereto and made apart hereof.
9. **Payment.** Except as expressly agreed in writing by KYTC:
 - a. KYTC's share of the total cost of the Project shall be based on the Subsidy Requested as set forth in **Attachment 10** to the RFP or 80% of the eligible costs, whichever is lower, as described in **Section 4.1** of the RFP. Developer shall contribute at least 20% of the Project budget as set forth in **Attachment 10** to the RFP.
 - b. The reimbursable Project costs allowed by the PA shall be those eligible costs described in Section 4.3 of the RFP that are reasonable and supported by appropriate documentation as required by the RFP and with the certification letter reference in 6(c) below.
 - c. **Certification Letter.** In conjunction with the invoicing requirements covered in **Section 4.2**, Developer shall submit a letter to KYTC that certifies that: (1) the work detailed in the expenses has been performed and the costs have been incurred in accordance with the PA; (2) that the costs shown are verified and are true and correct; and (3) that the expense documentation involves no degree of duplication.
 - d. KYTC will make payment within 30 working days of receipt of Developer's invoice, consistent with Section 4.2 of the RFP, or of acceptance of goods and/or services in accordance with KRS 45.453 and KRS 45.454. Payments are predicated upon successful completion and acceptance of the described work, services, supplies, or commodities, and delivery of the required documentation. Invoices for payment shall be submitted to the agency contact person or his or her representative.
 - e. This Section 9 is subject to withholding in the form of liquidated damages (LDs) as set forth in Section 4.4 of the RFP; provided, however, that if the amount of any remaining monies due to Developer hereunder are insufficient to cover such LDs, then Developer or its sureties shall pay the amount of any LDs that are assessed within thirty (30) days of invoice from KYTC.
10. **Duration; Execution and Effective Date.** The effective date of the PA shall be the date signed by the Secretary, and the termination date shall be the date that is five (5) years after Final Completion. Should KYTC agree in its sole discretion to another date for Final Completion, the termination date of the PA shall be revised accordingly.

11. **Reporting.** Developer must submit to KYTC or its authorized representatives, as may be designated from time to time in writing by KYTC, one-time, quarterly, annual, and other reports and updates as KYTC may require to comply with 23 CFR 680.112 or any other Federal statute or regulation.
12. **Breach of Contract; Termination.** If Developer fails to perform any one of its obligations under the PA it will be in breach of Contract. If Developer's breach is unable to be cured (to the extent it is curable) within a reasonable time as may be designated by KYTC, KYTC may terminate the PA by written notice to Developer with no further obligation to the Developer. Reasons for termination may also include Developer bankruptcy, violations of State or Federal laws, subcontractor material breach, failure to pay for materials or suppliers, failure to maintain licensures, use of unapproved products. KYTC may pursue any remedy available at law, including termination of all payments under the PA and the immediate return of funds already paid to Developer.
13. **Insurance.** Developer shall obtain and maintain insurance policies as set forth in Section 3.3 of the RFP.
14. **Bonding.** Developer shall obtain and cause to remain in effect payment and performance bonds as set forth in Section 3.4 of the RFP.
15. **Force Majeure.** Except for certain reporting and up time requirements, if KYTC or Developer is unable to perform any part of its obligations under the PA by reason of force majeure, the party will be excused from its obligations to the extent that its performance is prevented by force majeure, for the duration of the event. The party must remedy with all reasonable speed the cause preventing it from carrying out its obligations under the PA. The term "force majeure" means without limitation: acts of God; emerging epidemics; direct lightning; earthquakes; fires; storms; hurricanes; tornadoes; floods; washouts; droughts; any other severe weather; explosions; restraint of government and people; war; labor strikes; and other like events. Force majeure shall not include events that are caused in whole or in part by Developer.
16. **Audit and Inspection; Availability of Data and Records.**
 - a. **Audits.** Developer shall and shall cause Site Host to permit KYTC or its authorized representatives, which shall include without limitation KYTC's NEVI inspection contractors, to conduct field reviews, to interview any officer or employee, and to inspect and audit all phases of the Project. Developer agrees (and shall cause Site Host) to allow KYTC or its authorized representatives access to the Site, any books, documents, papers, records, or other evidence (including emails and other forms of documentation), which are directly pertinent to the PA for the purpose of financial audit or program review as outlined in the PA. Each Contract and subcontract shall specifically require this permission.
 - b. **Post-Audit Fund Reimbursement.** If an audit finds that Developer failed to meet its obligations under the PA, upon written notification by KYTC, Developer shall promptly reimburse KYTC the grant funds for unallowable expenditures.
 - c. **Records Retention.** All checks, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other such documents. Developer shall maintain all Project records for three (3) years after the termination of the PA.
 - d. **Prohibited Interest.** Developer agrees to be bound by and shall comply with the requirements of the Executive Branch Code of Ethics KRS Chapter 11A and KRS 45A.340 in its dealings with any member, officer, employee, or agent of KYTC during his or her tenure and for one year thereafter.

- e. **Access to Records.** Developer certifies that it is in compliance with the provisions of KRS 45A.695, "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." This shall include all data and records KYTC may request in connection with compliance with the NEVI Requirements. Developer is a Contractor, as defined in KRS 45A.030, and as such agrees that KYTC, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to the PA for the purpose of financial audit or program review. Records confidentially disclosed as part of the Proposal process shall not be deemed as directly pertinent to the PA and shall be exempt from disclosure as provided in KRS 61.878(1)(c). Developer also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review, or otherwise, shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.
17. **Independent Contractor.** It is fully understood and agreed that Developer is an independent contractor and is not an agent, servant, or employee of the Commonwealth of Kentucky (Commonwealth). Developer must declare that it is engaged as an independent business and has complied with all applicable Federal, State, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any Federal, State, municipal or other tax liabilities. Additionally, Developer understands that as an independent contractor, it is not a public employee and is not entitled to contributions from the Commonwealth to any public employee retirement system.
18. **Subcontractor.** Developer is permitted to make subcontract(s) with any other party for furnishing any of the work or services herein. Subcontractor(s) shall be identified by Developer in the General Work Plan. Any proposed replacement of or modification to subcontractor(s) not identified in the General Work Plan or proposed to be added after NTP1 shall be communicated and requested by Developer (no less than 10 days before such change is anticipated to become effective) and approved by KYTC. Developer may not enter into any such subcontract without KYTC's express written approval. Subcontracts for furnishing any of the work or services herein are subject to compliance with applicable requirements under the PA. Developer shall be solely responsible for performance under the entire agreement, whether or not subcontractors are used. The Commonwealth shall not be involved in the relationship between the prime Contractor (i.e. Developer) and the subcontractor. Any issues that arise as a result of this relationship shall be resolved by Developer. All references to "Developer" or "Contractor" shall be construed to encompass both Developer and any subcontractors of the Developer. Subcontractors referenced in Proposals that are selected for Award are deemed approved by KYTC. All payments will be made directly to the contracted vendor (i.e. Developer). It is Developer's responsibility to make payment to the subcontract. No payments will be made to the subcontractor by the Commonwealth. Subcontractors having nonpayment issues that could not be resolved with Developer, should report in detail these incidents to the Division of Purchases as set forth in Section [22] of the PA. Developer shall ensure that all contractors or subcontractors comply with all applicable federal, State, and local laws, regulation, mandates, and terms of the RFP and the PA.
19. **Severability.** If any provision of the PA or application of any such provision shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions shall remain in full force and effect.
20. **Payroll.**
- a. Payrolls and basic records relating thereto shall be maintained by the Developer during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security

number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Developer shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Developers employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- b. (1) The Developer shall submit weekly for each week in which any contract work is performed a copy of all payrolls to KYTC (i.e. the contracting agency) on TC 14-308 form or WH-347 form. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/government-contracts/construction/payroll-certification> or its successor site. The prime Contractor (i.e. Developer) is responsible for the submission of copies of payrolls by all subcontractors. Developers and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to KYTC for transmission to the FHWA or the Wage and Hour Division of the Cabinet of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to KYTC.

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

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

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

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

(3) The weekly submission of a properly executed certification set forth on the reverse side of

Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

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

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

21. **Indemnification.** Developer shall indemnify and hold harmless the Commonwealth, including KYTC and FHWA, all of its officers, agents, contractors and employees from all suits, actions, or claims of any character arising from any injuries, payments or damages received or claimed by any person, persons, entities, agencies, or property in connection with its work on, and completion and operations and maintenance of the Project. Developer must require any successor or assignee of Developer with respect to the PA provide such indemnification.

22. **Notices.** All programmatic communications with regard to day-to-day performance under the PA are to be made to the agency technical contact(s): [contact to be identified during the negotiation phase of the procurement]. All communications of a contractual or legal nature are to be made to the Commonwealth, as follows:

**Laura Hagan, NIGP-CPP, CPPO, CPPB
COMMONWEALTH OF KENTUCKY
Kentucky Transportation Cabinet
Division of Purchases
200 Mero Street
FRANKFORT KY 40601
(502) 782-3980
Laura.Hagan@ky.gov**

23. **Contract Components and Order of Precedence.** KYTC's acceptance of Developer's Proposal in response to the RFP, indicated by the execution of the PA by KYTC, shall create a valid Contract between the parties consisting of the following:

- a. Procurement Statutes, Regulations and Policies
- b. The PA;
- c. Any Addenda to the RFP;
- d. The RFP and all attachments;
- e. Any Best and Final Offer;
- f. Any clarifications concerning Developer's proposal in response to the RFP;
- g. Developer's Proposal in response to the RFP, a copy of which is attached to the PA as Exhibit [].

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

24. **Final Agreement.** The PA represents the entire agreement between the parties with respect to the subject matter hereof. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be subject to the order of precedence above, as applicable, or otherwise be of no effect upon the PA.
25. **Project Agreement Provisions.** If any provision of the PA (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both KYTC and the Developer shall be relieved of all obligations arising under such provision. If the remainder of the PA is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.
26. **Substitution of Items or Services.** Should Developer wish to substitute suppliers and/or equipment from those indicated in its Proposal for equal or higher quality providers or products during the term of the PA, which shall be at Developer's sole cost and expense, Developer shall notify the KYTC in writing and provide a detailed explanation prior to making such substitution, and any such substitution shall be subject to KYTC's approval. Any such change is further subject to "Changes and Extra Work" under 23 CFR 635.120 and KYTC Standard Specification 108.07 with respect to schedule modifications.
27. **Changes and Modifications to the PA.** Pursuant to KRS 45A.210(1), 200 KAR 5:311, KYTC Standard Specification 108.07 with respect to schedule modifications, and 23 CFR 635.120, no modification or change of any provision in the PA shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by Developer and KYTC, and incorporated as a written amendment to the PA and processed through the Division of Purchases Services prior to the effective date of such modification or change pursuant to KRS 45A.210(1), 200 KAR 5:311, KYTC Standard Specification 108.07 with respect to schedule modifications, and 23 CFR 635.120. Memorandums of understanding, written clarification, and/or correspondence shall not be construed as amendments to the PA. If Developer finds at any time that existing conditions made modification of the PA necessary, Developer must notify (in writing) KYTC within 10 calendar days of the date that the Developer knew of or should have known of the conditions for consideration and decision. Developer shall bear all costs in connection with or arising out of any changes or modifications to the PA as agreed pursuant to this paragraph.
28. **Contract Conformance.** If KYTC determines that deliverables due under the PA are not in conformance with the terms and conditions of the PA and the mutually agreed-upon project plan, KYTC may request Developer to deliver assurances in the form of additional Developer resources and to demonstrate that other major schedules will not be affected. KYTC or its designee shall determine the quantity and quality of such additional resources. Developer must submit a revised Attachment 9 upon request by KYTC in connection with such further assurances related to EVSE above. Failure to comply shall constitute default by Developer.
29. **Assignment.** The PA shall not be assigned in whole or in part without the prior written consent of KYTC.
30. **Developer Affiliation.** "Affiliate" shall mean a branch, division or subsidiary that is effectively controlled by another party. If any affiliate of Developer shall take any action that, if done by Developer, would constitute a breach of the PA, the same shall be deemed a breach by such party with like legal effect.
31. **Confidential Information.** The Developer shall comply with the provisions of the Privacy Act of 1974 and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Commonwealth or KYTC in writing to Developer. All Federal and State Regulations and statutes related to confidentiality shall be applicable to Developer.

Developer shall have an appropriate agreement with its employees, and any subcontractor employees, to that effect, provided however, that the foregoing will not apply to:

- a. Information which the Commonwealth or KYTC has released in writing from being maintained in confidence;
- b. Information which at the time of disclosure is in the public domain by having been printed and published and available to the public in libraries or other public places where such data is usually collected; or
- c. Information, which, after disclosure, becomes part of the public domain as defined above, through no act of the Developer.

32. **Advertising Award.** Developer shall not refer to the award of a Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by KYTC without the expressed written consent of KYTC.
33. **Patent or Copyright Infringement.** Developer shall report to KYTC promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the performance of the PA of which Developer has knowledge. KYTC agrees to notify Developer promptly, in writing, of any such claim, suit or proceeding, and at Developer's expense give Developer proper and full information needed to settle and/or defend any such claim, suit or proceeding. If, in Developer's opinion, the equipment, materials, or information mentioned in the paragraphs above is likely to or does become the subject of a claim or infringement of a United States patent or copyright, then without diminishing Developer's obligation to satisfy any final award, Developer may, with KYTC's written consent, substitute other equally suitable equipment, materials, and information, or at the Developer's option and expense, obtain the right for KYTC to continue the use of such equipment, materials, and information. KYTC agrees that Developer has the right to defend, or at its option, to settle, and Developer agrees to defend at its own expense, or at its option to settle, any claim, suit or proceeding brought against KYTC on the issue of infringement of any United States patent or copyright or any product, or any part thereof, supplied by Developer to KYTC under the PA. Developer agrees to pay any final judgment entered against KYTC on such issue in any suit or proceeding defended by Developer. If principles of governmental or public law are involved, KYTC may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of Developer without Developer's written consent.
34. **Permits, Licenses, Taxes and Commonwealth Registration.** Developer shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all Federal, State, and local governments in which work under the PA is performed. Developer shall maintain certification of authority to conduct business in the Commonwealth during the term of the PA. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. However, Developer need not be registered as a prerequisite for responding to the RFP. Additional local registration or license may be required. Developer shall pay any sales, use, and personal property taxes arising out of the PA and the transaction contemplated hereby. Any other taxes levied in connection with the PA, the transaction, or the equipment or services delivered pursuant hereto shall be borne by Developer.
35. **EEO Requirements.** The Equal Employment Opportunity Act (the Act) of 1978 applies to all government projects in the Commonwealth with an estimated value exceeding \$500,000. The Developer shall comply with all terms and conditions of the Act (<https://finance.ky.gov/eProcurement/Pages/doing-business-with-the-commonwealth.aspx>). A copy of Developer's Employment Opportunity Certification is included within Exhibit [] (Developer's Proposal) attached hereto and made a part hereof.

36. **Bankruptcy.** In the event Developer becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the Commonwealth's or KYTC's right to terminate the PA may be subject to the rights of a trustee in bankruptcy to assume or assign the PA. The trustee shall not have the right to assume or assign the PA unless the trustee (a) promptly cures all defaults under the PA; (b) promptly compensates the Commonwealth for the monetary damages incurred as a result of such default, and (c) provides adequate assurance of future performance, as determined by the Commonwealth or KYTC.
37. **Conformance with Commonwealth & Federal Laws/Regulations.** The PA shall be governed by and construed in accordance with the laws of the Commonwealth. The PA shall not be deemed to create a "public private partnership" pursuant to KRS Chapter 175B. Any action brought against the Commonwealth on the Contract, including but not limited to actions either for breach of Contract or for enforcement of the PA, shall be brought in Franklin Circuit Court, Franklin County, Kentucky in accordance with KRS 45A.245.
38. **Accessibility.** Vendor hereby warrants that the products or services to be provided under the PA comply with the accessibility requirements of Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Developer further warrants that the products or services to be provided under the PA comply with existing Federal standards established under Section 255 of the Federal Telecommunications Act of 1996 (47 U.S.C. § 255), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1193, to the extent the Developer's products or services may be covered by that act. Developer agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention.
39. **Prohibitions of Certain Conflicts of Interest.** In accordance with KRS 45A.340, Developer represents and warrants, and the Commonwealth or KYTC relies upon such representation and warranty, that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services. Developer further represents and warrants that in the performance of the PA, no person, including any subcontractor, having any such interest shall be. In accordance with KRS 45A.340 and KRS 11A.040 (4), Developer agrees that it shall not knowingly allow any official or employee of KYTC or the Commonwealth who exercises any function or responsibility in the review or approval of the undertaking or carrying out of the PA to voluntarily acquire any ownership interest, direct or indirect, in the Contract prior to the completion of all of its obligations under the PA.
40. **No Contingent Fees.** No person or selling agency shall be employed or retained or given anything of monetary value to solicit or secure the PA, excepting bona fide employees of the offeror or bona fide established commercial or selling agencies maintained by the offeror for the purpose of securing business. For breach or violation of this provision, KYTC shall have the right to terminate the PA without liability.
41. **Limitation of Liability.** The liability of the Commonwealth related to contractual damages is set forth in KRS 45A.245.
42. **Bidder, Offeror, or Contractor Mandatory Representations Compliance with Commonwealth Law.** Developer represents that, pursuant to KRS 45A.485, it and any subcontractor performing work under the PA will be in continuous compliance with the KRS chapters listed below and have revealed to the Commonwealth or KYTC any violation determinations within the previous five (5) years:
- a. [KRS Chapter 136](#) (CORPORATION AND UTILITY TAXES)
 - b. [KRS Chapter 139](#) (SALES AND USE TAXES)
 - c. [KRS Chapter 141](#) (INCOME TAXES)

- d. [KRS Chapter 337](#) (WAGES AND HOURS)
- e. [KRS Chapter 338](#) (OCCUPATIONAL SAFETY AND HEALTH OF EMPLOYEES)
- f. [KRS Chapter 341](#) (UNEMPLOYMENT COMPENSATION)
- g. [KRS Chapter 342](#) (WORKERS' COMPENSATION)

43. **Boycott Provisions.** If applicable, Developer represents that, pursuant to KRS 45A.607, it is not currently engaged in, and will not for the duration of the PA engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which the Commonwealth can enjoy open trade. Note: The term Boycott does not include actions taken for bona fide business or economic reasons, or actions specifically required by Federal or State law. If applicable, Developer verifies that, pursuant to KRS 41.480, it does not engage in, and will not for the duration of the PA engage in, in energy company boycotts as defined by KRS 41.472.
44. **Lobbying Prohibitions.** Developer represents that it, and any subcontractor performing work under the PA, has not violated the agency restrictions contained in [KRS 11A.236](#) during the previous 10 years, and pledges to abide by the restrictions set forth in such statute for the duration of the Contract awarded. Developer further represents that, pursuant to [KRS 45A.328](#), it has not procured an original, subsequent, or similar contract while employing an executive agency lobbyist who was convicted of a crime related to the original, subsequent, or similar contract within 5 years of the conviction of the lobbyist.

Attachment 5. Signature Page

By signing below, the Proposer indicates that the Proposer attests to all statements made in this RFP (including any addenda) and that the Proposer has read, understands and hereby agree to be bound by all of KYTC's terms, conditions, specifications, requirements and addenda relating to this RFP.

Date: _____

By: _____
Signature of Authorized Representative

Printed Name and Title of Authorized Representative

Attachment 6. Proposal Form – Proposer Information

1. Company/Joint Venture/Partnership Name (includes all member companies of Joint Venture or Partnership):

2. Federal Tax ID No.:

3. Company Address (capable of receiving commercial overnight delivery service):

4. Contact Person and Phone Number:

5. Email Address:

6. Parent Company Name/Changes in Company Name (past 5 years):

Attachment 7. Transmittal Letter and Proposer Certifications and Federal Funds Forms

Each Proposer shall submit a transmittal letter on its letterhead and signed by an agent authorized to bind the Proposer. The transmittal letter shall include the following:

1. A statement that **deviations** from the RFP are included, if applicable. Proposed deviations must be outlined in the transmittal letter. Any deviation from the provisions of the solicitation must be specifically identified by the vendor in its proposal, which if successful, shall become part of the Contract. Such deviations shall not be in conflict with the basic nature of this solicitation. The Commonwealth reserves the right to reject any and/or all deviations in whole or in part.
 2. A sworn statement that, if awarded a contract as a result of this solicitation, the vendor shall comply in full with all requirements of the **Kentucky Civil Rights Act**, and shall submit all data required by KRS 45.560 to 45.640;
 3. A sworn statement pursuant to KRS 11A.040 that the vendor has not knowingly violated any provisions of the **Executive Branch Code of Ethics**;
 4. A sworn statement of that the vendor is in compliance with Prohibitions of Certain **Conflicts of Interest** (i.e. **Form A** below);
 5. **Subcontractor** information to include name of company, address, telephone number and contact name, if applicable.
 6. **Registration with the Secretary of State by a Foreign Entity:** Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a State contract to a person that is a foreign entity required by KRS 14A.9-010: to obtain a certificate of authority to transact business in the Commonwealth (“certificate”) from the Secretary of State under KRS 14A.9-030: <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=40424> therefore, foreign entities should submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate as provided in KRS 14A.9-010: <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=44318>, the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within KRS 14A.1-070: <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=50474>. Businesses can register with the Secretary of State at <https://www.sos.ky.gov/bus/business-filings/Pages/default.aspx>.
-

Please thoroughly read and fill out Forms A through I.

Proposer name:

FORM A: PROPOSER CERTIFICATIONS

The Proposer certifies that:

1. It has carefully examined and is fully familiar with all the provisions of the RFP, has reviewed all materials provided, any Addenda, and KYTC's responses to questions, and is satisfied that the RFP provides sufficient detail regarding the obligations to be performed by the Proposer and does not contain internal inconsistencies.
2. It is familiar with and understands the NEVI Requirements, National Electric Vehicle Infrastructure Standards and Requirements, Final Rule, Code of Federal Regulations Section 23, Part 680 (23 CFR 680), and acknowledges that compliance with NEVI Requirements in effect at any given time during the Project will be the responsibility of the Proposer should it be chosen as a Developer for one or more Projects.
3. The information and supporting data provided by the Proposer are accurate and reasonably complete to the best of its knowledge.
4. It has carefully checked all the words, figures, and statements in the Proposal.
5. It has notified KYTC of any deficiencies or omissions in the RFP or other documents provided by KYTC.
6. Neither the Proposer nor its employees, members, agents, consultants, or advisors have entered either directly or indirectly into any agreement, participated in any collusion, participated in ex parte communications, or otherwise taken any action in restraint of free competitive selection in connection with its Proposal with respect to a particular Candidate-Site.
7. No person, broker or selling agency has been employed, retained, or given anything of monetary value to solicit or secure this Contract, except bona fide employees of KYTC.
8. Its responses to the following statements are true and accurate. The Proposer's answers apply to the last seven years. Please indicate yes or no for each row.

Yes/No	Description
	The Proposer has had a contract terminated for default for cause.
	The Proposer has been assessed any penalties in excess of \$10,000, including LDs, under any of its existing or past contracts with any organization (including any governmental entity).
	The Proposer, nor any of its officers, directors, or management, are or have been plaintiffs or defendants in connection with any civil suit with claims in excess of \$100,000.
	The Proposer was the subject of any governmental action limiting the right of the Proposer to do business with that entity or any other governmental entity (e.g., debarment, disqualification, removal, prevented from bidding, etc.).
	Trading in the stock of the company has ever been suspended.
	The Proposer, any officer of the Proposer, or any owner with a 20% interest or greater in the Proposer has been convicted of a felony or is currently under indictment on any felony charge.

FORM B: NON-COLLUSION AFFIDAVIT

State of _____

County of _____

I state that I am _____ of _____ and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and, officers. I am the person responsible in my firm for the amounts, percentages and other figures presented in this Proposal.

I state that:

- (1) The Proposal has been arrived at independently and without consultation, communication or agreement with any other Proposer or potential Proposer with respect to the same Candidate-Site (as defined in the Request for Proposals).
- (2) This Proposal has not been disclosed to any other firm or person who is a Proposer or potential Proposer, and they will not be disclosed before the selection of a Developer for the Site(s).
- (3) No attempt has been made or will be made to induce any firm or person to refrain from submitting a Proposal or to submit any noncompetitive Proposal or other form of complementary Proposal.
- (4) The Proposal of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Proposal.
- (5) _____ its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows:

I state that _____ understands and acknowledges that the above representations are material and important and will be relied on by the Kentucky Transportation Cabinet in determining selection for which the Proposal is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the Kentucky Transportation Cabinet of the true facts relating to the submission of this Proposal.

(Signature)

(Signatory's Name)

(Signatory's Title)

SWORN TO AND SUBSCRIBED
BEFORE ME THIS _____ DAY
OF _____ 20____

Notary Public My Commission Expires _____

FORM C: CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

The undersigned certifies, on behalf of Proposer to the best of his or her knowledge and belief, that:

- (a) the Proposer and any subcontractor anticipated to perform work under the PA, have not violated the agency restrictions contained in [KRS 11A.236](#) during the previous ten (10) years;
- (b) pursuant to [KRS 45A.328](#), neither the Proposer nor any subcontractor anticipated to perform work under the PA have procured an original, subsequent, or similar contract while employing an executive agency lobbyist who was convicted of a crime related to the original, subsequent, or similar contract within five (5) years of the conviction of the lobbyist.

(Signature)

Name: _____

Title: _____

Entity Making Certification: _____

Date: _____

FORM D: TITLE VI ASSURANCES

The United States Department of Transportation (USDOT)

Standard Title VI/Non-Discrimination Assurances

DOT Order No. 1050.2A

The Subrecipient (herein referred to as the “Recipient”), **hereby agrees that**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through its various operating administrations and bureaus, which include but are not limited to, the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Federal Aviation Administration (FAA), Office of the Secretary, National Highway Traffic Safety Administration, and Federal Motor Carrier Safety Administration (FMCSA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

- (ii) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- (iii) 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964);
- (iv) 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964); and

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, “for which the Recipient receives Federal financial assistance from DOT, including, but not limited to, the FHWA, FTA, FAA, Office of the Secretary, National Highway Traffic and Safety Administration, and the FMCSA.””

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted program that is the subject of this Agreement.

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with the federally-assisted transportation program and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

“The Recipient, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

3. The Recipient will insert the clauses of Appendix A and B of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
5. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
6. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
7. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
8. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the Recipient also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the Federal agencies’ access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the Federal agencies. You must keep records, reports, and submit the material

for review upon request to the Federal agencies, or their designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the federally-assisted program. This ASSURANCE is binding on the Commonwealth of Kentucky, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the federally-assisted program. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

(Name of Recipient)

by _____
(Signature of Authorized Official)

DATED _____

TITLE VI ASSURANCES, APPENDIX A

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation (U.S. DOT), through its various operating administrations and bureaus, which include but are not limited to, the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Federal Aviation Administration (FAA), Office of the Secretary, National Highway Traffic Safety Administration, and Federal Motor Carrier Safety Administration (FMCSA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.
2. **Non-discrimination:** The Contractor, with regard to the work performed by it during the Contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor’s obligations under this Contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the U.S. DOT, through its various operating administrations and bureaus, which include but are not limited to, the FHWA, FTA, FAA, Office of the Secretary, National Highway Traffic Safety Administration, and FMCSA, to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the U.S. DOT, through its various operating administrations and bureaus, which include but are not limited to, the FHWA, FTA, FAA, Office of the Secretary, National Highway Traffic Safety Administration, and FMCSA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor’s noncompliance with the Non-discrimination provisions of this Contract, the Recipient will impose such Contract sanctions as it or the U.S. DOT, through its various operating administrations and bureaus, which include but are not limited to, the FHWA, FTA, FAA, Office of the Secretary, National Highway Traffic Safety Administration, and FMCSA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the Contractor under the Contract until the Contractor complies; and/or
 - b. cancelling, terminating, or suspending a Contract, in whole or in part.

6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the U.S. DOT, through its various operating administrations and bureaus, which include but are not limited to, the FHWA, FTA, FAA, Office of the Secretary, National Highway Traffic Safety Administration, and FMCSA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

TITLE VI ASSURANCES, APPENDIX B

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- (v) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- (vi) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- (vii) Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- (viii) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- (ix) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- (x) Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- (xi) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- (xii) Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- (xiii) The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- (xiv) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- (xv) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- (xvi) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

FORM E: EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The undersigned certifies on behalf of _____, that:
_____ (Name of entity making certification)

[check one of the following boxes]

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- It will develop and will file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs). *[Note: Check this box only if the member of the Proposer Team is not yet formed and is subject to 41 C.F.R. Part 60-2]*

[check one of the following boxes]

- It has not participated in a previous contract or subcontract subject to the equal opportunity section described in Executive Orders 10925, 11114, or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity section described in Executive Orders 10925, 11114, or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Title: _____

Date: _____

If not Proposer, relationship to Proposer: _____

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts which are subject to the equal opportunity section. Contracts that are exempt from the equal opportunity Section are set forth in 41 C.F.R. 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

FORM F: BUY AMERICA CERTIFICATION

[Instructions: To be signed by authorized signatory(ies) of Proposer]

The undersigned certifies on behalf of itself, and all Subcontractors (at all tiers) that only domestic steel and iron will be used in the Project.

- A. Proposer and all Subcontractors shall comply with the Federal Highway Administration (FHWA) Buy America Requirements of 23 CFR 635.410 and https://www.fhwa.dot.gov/construction/contracts/buyam_qa_baba.cfm. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States, and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. Notwithstanding any other provision of this certification, this requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the guaranteed maximum price.
- B. A false certification is a criminal act in violation of 18 USC 1001. Should this Contract be investigated, Proposer has the burden of proof to establish that it is in compliance.
- C. At Proposer's request, the Project Team may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, Proposer certifies that it, and all Subcontractors will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by the Project Team.
- D. All material fully incorporated into the Project must be certified to comply with Buy America on the appropriate material certification documents. Material certification documents must be signed by the appropriate material suppliers and not Proposer or its subcontractors.

Date: _____

Proposer's Name: _____

Signature: _____

Name (printed or typed): _____

Title: _____

FORM G: DEBARMENT CERTIFICATION FORM

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion First Tier Covered Transactions¹

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Parts 180 and 1200.

- a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal, State or local department or agency;
 - (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment, including a civil settlement, rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
 - (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

¹ Note to Proposers: before completing the certification, please read the instructions on the next page which are an integral part of the certification.

ATTESTATION

By signing this report, I certify to the best of my knowledge and belief that the foregoing is true, complete, and accurate. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Sections 3729-3730 and 3801-3812).

Company Name

Name and Title of Authorized Representative

Signature

Date

FORM H: PROPOSER COMMONWEALTH LAWS CERTIFICATION

Form H is attached on a separate page. See “Required Affidavit for Bidders, Offerors, and Contractors.”



Required Affidavit for Bidders, Offerors and Contractors (KRS 45A.110 & 45A.115)

Affidavit Effective for One (1) Year from Date of Execution

Instructions: Pursuant to [KRS 45A.110](#) and [45A.115](#), a bidder, offeror, or contractor (“Contractor”) is required to submit a Required Affidavit for Bidders, Offerors, and Contractors to be awarded a contract, or for the renewal of a contract. An authorized representative of the contracting party must complete the attestation below, have the attestation notarized, and return the completed affidavit to the Commonwealth.

Attestation

As a duly authorized representative for the Contractor, I swear and affirm under penalty of perjury, that that the Contractor has not knowingly violated campaign finance laws of the Commonwealth of Kentucky and that the award of a contract will not violate any provision of the campaign finance laws of the Commonwealth. For purposes of this attestation, "Knowingly" means that the bidder or offeror is aware or should have been aware of the existence of a violation. The bidder or offer understands that the Commonwealth retains the right to request an updated affidavit at any time.

Signature

Printed Name

Title

Date

Bidder or Offeror Name: _____

Address: _____

Commonwealth of Kentucky Vendor Code (If known): _____

Subscribed and sworn to before me this ____ day of _____, _____.

State of: _____ Notary: _____

County of: _____ My Commission Expires: _____

FORM I: VIOLATION OF TAX AND EMPLOYMENT LAWS

[KRS 45A.485](#) requires awardees to reveal to KYTC, prior to the execution of a Contract, any final determination of a violation by the awardee within the previous five (5) year period of the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the State sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the awardee shall report any such final determination(s) of violation(s) to KYTC by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the State agency which issued the final determination.

Proposers shall identify one of the following:

- The Proposer has not violated any of the provisions of the above statutes within the previous five (5) year period.
- The Proposer has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). A list of such determination(s) is attached to this form and included with the Technical Proposal.

Proposer:

Name and Title of Authorized Representative:

Signature

Date

Attachment 8. Proposal Form – Site and Project Information

Proposer to confirm the Candidate Site, Site Host, and Project information in the tables below. Note that Site Hosts can submit a Proposal as both the Proposer and the Site Host.

Site Information	
Candidate Site Name:	
Corridor-Group: Reference RFP, Table 1	
Exit No.:	
Physical Address:	
City:	
County:	
Zip:	
Charger Coordinates (approximate):	
Site Host Information	
Candidate Site Host Name:	
Site Ownership Status (check one):	<input type="checkbox"/> Owner <input type="checkbox"/> Lessee
If Lessee, please provide details of lease terms, expirations, and renewal or attach a copy to this Form. Attach details, if necessary, in accordance with RFP, Section 5 (Proposal Instructions).	
Contact Name:	
Contact Telephone Number:	
Contact Email Address:	
Site Commercial Structure	
Describe the commercial structure for the Candidate Site. Include general description of Project ownership, financial flows between main stakeholders, and relevant funding/financing structure.	

Permit Status

Identify the status of all necessary permits or other approvals required for the Candidate Site.

Permit / Agreement Description	Not applicable	Required – Application not submitted	Application submitted	Permit received / approved	Unsure if required
Air /Land Use					
Electrical					
Structural					
Zoning					
Environmental – Water					
Environmental – Other					
Local Agency					
Other (fill in as needed)					

Utility Upgrade Information

Describe what utility upgrades are required for the Candidate Site, including cost estimates, interconnection requirements, and service requirements.

Site Amenities

Describe all amenities at Candidate Site, such as restroom access, grocery store, dine-in restaurant, Wi-Fi accessibility, trailer parking area, etc.:

Site Access

Describe Candidate Site access features (e.g., easement, lease, permit, license, etc.) for the construction and operation of EVSE.

Site Details

Describe major characteristics of the Candidate Site (e.g., specific street, building, or parking lot); explain why the Candidate Site is applicable for the Project; describe significant details of the Candidate Site, including vehicular access, surrounding roads and traffic patterns; and confirm the Candidate Site is compliant with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et seq. and 49 U.S.C. 322 or describe modifications proposed to make it compliant.

Site Schematic

Provide a site schematic for the Candidate Site using a diagram or schematic showing the parking space(s) (final engineering plans are not required). Show locations of existing and proposed designated EV charging parking space(s), EVSE, point of sale equipment, and electric service to the Candidate Site. Also indicate any space available for futureproofing design layout, if available.

Signature of Candidate Site Host Representative (indicating willingness to work with Proposer on the Project):

Company Name:

Contact Person and Phone Number:

Signature:

Attachment 9. EVSE Vendor Information and Specifications Compliance

Proposer to confirm EVSE specifications below. Note that Preferred Proposer may change the EVSE vendor post-award, as long as the EVSE meets EVSE specification as outlined in Section 3.5. Note that such a change would not affect the amount of the award.

EVSE Vendor Information and Specifications		
EVSE Vendor (Entity) Name:		
EVSE Make and Model:		
Contact Name:		
Email address:		
<p>Confirm that the Proposer will supply the minimum on-site chargers and ports that comply with the Plan including but not limited to four (4) ports at the Candidate Site and the minimum charger specifications as follows:</p>		
Charging station power capacity at or above 600 kilowatts (kW) with minimum power per DCFC port at or above 150-kW.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Explain if "No":	
DCFC port at or above 300-kW.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Explain if "Yes":	
Each charger must be capable of simultaneously DC charging four EVs and providing at least 150-kW per SAE Combined Charging System (CCS) standard port.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Explain if "No":	
Each Port must be equipped with an SAE CCS 1 connector and also be capable of charging vehicles compliant with the NACS charging standard. Please indicate how charging of NACS compliant vehicles will be accomplished	<input type="checkbox"/> Second cord with NACS connector	<input type="checkbox"/> Permanently attached adapter
	If adapter, explain attachment method to ensure it will always be available:	
Chargers are not required to have CHAdeMO compliant connectors, however at their discretion Proposers may include them, as well connectors compliant with any other proprietary charging standard. Please note if either of these will be included.	<input type="checkbox"/> CHAdeMO	<input type="checkbox"/> Other
	Explain if "Other":	
EVSE complies with OCPP 1.6J protocol.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Explain if "No":	

Provide list of main EVSE components to be deployed:

For purposes of compliance with 23 CFR 637, for each listed component, please attach appropriate certifications as to capacity, quality, conformance with industry standard, and any other relevant certifications as to the EVSE. Manufacturer certifications are acceptable for this purpose.

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Links to additional specifications:	
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Links to product literature:	
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Attachment 10. Cost Proposal Form

Proposers shall complete the Cost Proposal Form in accordance with **Section 5.4** (Cost Proposal) for each Site. A separate form shall be used for each Site. Proposer must provide funding for at least 20% of the entire costs related to a Site.

The Cost Proposal Form shall contain all price information in the format specified on these pages. Complete the Cost Proposal Form only as provided in this section. Do not amend, alter, or leave blank any items on the Cost Proposal Form. If option costs are included, Proposers must submit pricing for each option year and related component. Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

Proposers shall provide estimated costs for the items and services identified in this RFP. The proposed subsidy amount included in **Table 10-2: Cost Proposal Form** and **Table 10-3: Cost Proposal Form, including Futureproofing Design Layout** must be the actual price KYTC will pay for the specific item or service identified in this RFP and may not be contingent on any other factor or condition in any manner.

All cost calculations shall be rounded to the nearest dollar.

All Cost Proposal costs entered below are to be fully loaded costs that include all costs/expenses associated with the provision of services as required by the RFP. The Cost Proposal costs shall include, but is not limited to, all: labor, profit/overhead, general contractor's and subcontractor's markups, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts other than the ones described in **Attachment 10** will be paid to the Proposer.

Total estimated Utility costs, as detailed in **Table 10-1**, shall be included in **Table 10-2**. If the Proposer elects to submit a futureproofing design layout configuration, estimated Utility Costs shall be updated accordingly and submitted in **Table 10-3** only.

Table 10-1: Utility Costs

Description	Type	Quantity	Unit Cost	Total Cost
Power Transformer				
Transformer Pad				
Utility Pole				
Pole Riser				
Pole Terminator				
3-Phase Primary Line Extension				
Protection				
Others (please identify)				
Total Estimated Utility Cost				

Table 10-2: Cost Proposal Form

Costs

	Design and Construction	Operational Period					Total Cost
		Year 1	Year 2	Year 3	Year 4	Year 5	
Design and Permitting							
Utility Costs							
Construction							
EVSE Hardware and Software							
Operations							
Maintenance							
Total Cost							

Subsidy Requested

	Design and Construction	Operational Period					Total Subsidy
		Year 1	Year 2	Year 3	Year 4	Year 5	
Design and Permitting							
Utility Costs							
Construction							
EVSE Hardware and Software							
Operations							
Maintenance							
Total Subsidy							

Proposers may optionally propose futureproofing design layout specification costs through the format below. If proposed, these specifications will replace the capital costs proposed in the Cost Proposal form. It is at KYTC’s discretion to accept or reject the optional costs, if proposed. Proposers will only propose these optional specifications for the capital components related to the futureproofing of the Sites.

Table 10-3: Cost Proposal Form, including Futureproofing Design Layout

Costs

	Design and Construction	Operational Period					Total Cost
		Year 1	Year 2	Year 3	Year 4	Year 5	
Design and Permitting							
Utility Costs							
Construction							
EVSE Hardware and Software							
Operations							
Maintenance							
Total Cost							

Subsidy Requested

	Design and Construction	Operational Period					Total Subsidy
		Year 1	Year 2	Year 3	Year 4	Year 5	
Design and Permitting							
Utility Costs							
Construction							
EVSE Hardware and Software							
Operations							
Maintenance							
Total Subsidy							

Attachment 11. MOVEit Transfer Instructions for KYTC Vendors



MOVEit TRANSFER

<https://ftp.ky.gov>

This application is used for:

Secure File Transfer: upload/download files with the FTP application and share the secure location with other registered MOVEit users with no size limit. NOTE: the retention of files on all MOVEit applications is 90 days unless otherwise requested.



- Encrypted File Transfer and Messaging
- HTTPS, FTPS and SFTP (SSH), Optional Client Certs/Keys
- ISO 27001, HIPAA, PCI, GDPR, SOX, BASEL I/II/III, FISMA, GLBA, FFIEC, ITAR Compliant
Ky.gov An Official Website of the Commonwealth of Kentucky



Login:

Username: kytcbid

Password: Submitter20

Forgot Password - you cannot change the password on this account.

Unable to login –

Contact the CommonwealthServiceDesk@ky.gov and they will notify the MOVEit team to assist you. You can also call 502-564-7576.

After you login to the system, you will see this screen.

The screenshot shows the MOVEit Progress web interface. At the top, there are logos for the Commonwealth Office of Technology and MOVEit Progress. A navigation bar indicates the user is signed on as 'Kentucky RFB Submitter engineering (kyrfb)'. The main content area contains instructions for file submission, including retention and size policies, and a list of instructions for the upload process. At the bottom, there is an 'Upload' button and a 'Home Folder' section.

COMMONWEALTH OFFICE OF TECHNOLOGY

MOVEit Progress

Encrypted File Transfer and Messaging
- HTTPS, FTPS and SFTP (SSH), Optional Client Certs/Keys
- ISO 27001, HIPAA, PCI, GDPR, SOX, BASEL I/II/III, FIS, FIS

Ky.gov An Official Website

Signed on to Commonwealth of Kentucky as Kentucky RFB Submitter engineering (kyrfb). MY ACCOUNT

HOME

All time and date stamps displayed on this site are GMT -4, except time and date stamps recorded during standard time (GMT -5).

Powered by
MOVEit > ipswitch

Files are retained for 90 days.
No size restrictions are placed on attachments.

For service and support click the TECH SUPPORT link in the upper right hand corner.

This site is for submitting RFB/RFPs.

INSTRUCTIONS:
To submit your proposal, locate the folder below that corresponds to the Proposal identification number listed in the vendor self-service portal.

- Open the folder, browse to your files and select the files to upload, make sure to click Upload.
- When the upload is complete a green check mark will appear to the left of your files and the bottom of the window will have the close button.
- Click Close and
- Sign out of the application.

Your files will automatically be transferred to our procurement staff and verification of receipts will be sent to you via email.

Thank you for your submission. - FINRFPSubmitter

Upload

Home Folder

Notice the instructions on the screen for submission.

Scroll down the page to see the list of RFP's available for submission.

Folders

Home > Distribution > KyAgencies > KYTransportation > Purchasing > RFP

Go To Folder...

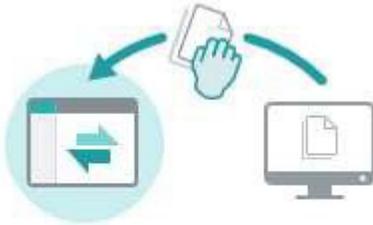
Drop files to upload.

<input type="checkbox"/>	Name	<input checked="" type="checkbox"/>	Size/Contents	Creator	Created
	↑ Parent Folder				
<input type="checkbox"/>	RFP 20-302				3/24/2020 8:42:19 AM
<input type="checkbox"/>	RFP 20-306				3/24/2020 8:42:27 AM
<input type="checkbox"/>	RFP 20-330				3/24/2020 8:42:35 AM
<input type="checkbox"/>	RFP 20-332				3/24/2020 8:42:40 AM

Click on the folder that corresponds to the project you are bidding on.

*** Highly Recommended *** NOTES Section – Use this section to input your contact information or make comments about the files being uploaded.

Click on Drag and Drop Files or the **Upload Button**.



Drag and drop file to add files!

Or click the "Upload Files" button

Click Browse or Drag and Drop.

Navigate to the folder location of the file(s), then select the file(s) that you want to send. You can also drag and drop files into this field. There is not a size limit for file uploads.

Once all files have been added, the file(s) will show on the screen. Click Upload.

A green check mark will appear to the left of each successful upload.

*** We highly recommend that you print the screen as verification for your records that the file(s) were submitted.

Click Close at the bottom of the window. Sign out.

MY ACCOUNT

SIGN OUT

TECH SUPPORT

The **Sign Out** Link will exit you from the application.

The **Tech Support Link** will provide links to the User Guide under MOVEit Transfer Help, and Information on how to Contact the COT MOVEit Team.

FOR TECHNICAL ASSISTANCE WITH MOVEit/FTP

- Non-Commonwealth third parties should contact the Commonwealth Service Desk. Commonwealthservicedesk@ky.gov and cc: COTMOVEITFTP@ky.gov. Or call 502-564-7576.
- In the request for assistance please include the following -- kyrfb, telephone number, and a detailed description of any errors or messages received.

Attachment 12. Proprietary Information

The below list identifies the page numbers and, where relevant, page numbers of every occurrence where Proposer believes a trade secret or proprietary information is included within the Proposal.

- ▶ [Proposer to detail page numbers and sections]

Attachment 13. Form FHWA-1273 Required Contract Provisions – Federal-Aid Construction Contracts

Begins on next page.

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

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

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

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

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

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

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

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

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

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

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

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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

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

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

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

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

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

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

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

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

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

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

1. Minimum wages (29 CFR 5.5)

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

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

2. Withholding (29 CFR 5.5)

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics,

including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records (29 CFR 5.5)

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or

subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

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

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

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

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

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

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

4. Apprentices and trainees (29 CFR 5.5)

a. Apprentices (programs of the USDOL).

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

Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

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

b. Trainees (programs of the USDOL).

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

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

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

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

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

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

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

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

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor

set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility (29 CFR 5.5)

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1 of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section. 29 CFR 5.5.

* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) as may be adjusted annually by the Department of Labor; pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990).

3. Withholding for unpaid wages and liquidated damages.

The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section. 29 CFR 5.5.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or

equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on longstanding interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance

with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.326.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders

or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.326.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant

who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is

submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(b) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(c) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier

subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.
2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.