

PUBLIC SERVICE COMMISSION OF KENTUCKY
REQUEST FOR PROPOSAL (RFP)

1. Invitation to Propose

Pursuant to KRS 278.183(4), the Kentucky Public Service Commission (“Commission”) is seeking proposals for all consulting services required to assist Commission Staff in the performance of a focused review of the applications and supporting materials of the amended environmental compliance plans of Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) (collectively “the Companies”). KU’s headquarters are located in Lexington, Kentucky and LG&E’s headquarters are located in Louisville, Kentucky.

In addition, the Commission expects that Kentucky Power Company, Duke Energy Kentucky, Inc., East Kentucky Power Cooperative, Inc., and Big Rivers Electric Cooperative may also file similar applications in the future. Therefore, the Commission also intends to develop a list of pre-qualified consultants to perform similar projects in the future. Respondents who are deemed qualified will also be placed upon the pre-qualified consultant list. **The Commission reserves the right to award future environmental compliance plan review contracts to the successful bidder of this specific review.**

Each person responding to this RFP is referred to hereinafter as a “bidder” until such time as they may be selected to undertake the engagement. A “Consultant” is a firm that has been selected to undertake the engagement. The Commission will accept proposals to this RFP under the terms and conditions set forth herein.

Upon selection to perform the focused review, a Letter of Agreement (“Agreement”) will be signed between the Commission, the Companies and the Consultant. This Agreement, described more fully herein, shall comprise the contract for the engagement.

2. Background Information

KU and LG&E are electric generation, transmission and distribution power companies supplying power in 79 counties across Kentucky.

KU serves approximately 515,000 customers in all or portions of 77 Kentucky counties, approximately 30,000 customers in five counties in southwest Virginia, and a small number of customers in Tennessee. KU’s total utility operating revenue for the year ended December 31, 2009 was \$1.356 billion with a net income of \$133 million.

LG&E serves approximately 395,000 customers in Jefferson County, Kentucky and in portions of eight other Kentucky counties. Natural gas service is provided to approximately 320,000 customers in its electric service area and eight additional counties in Kentucky. LG&E’s total combined electric and gas utility operating revenue for the year ended December 31, 2009 was \$1.281 billion with a net income of \$95 million.

On June 1, 2011, pursuant to KRS 278.020(1), KRS 278.183, and 807 KAR 5:001, Sections 8 and 9, the Companies filed applications for Certificates of Convenience and Necessity (“CPCN”) to construct pollution control facilities at various electric generating stations. The Companies also filed amendments to existing environmental compliance plans for the purpose of recovering the costs of the new pollution control facilities via an environmental surcharge. See Case Nos. 2011-00161

and 2011-00162. Copies of the Companies applications are available on the Commission's website at <http://psc.ky.gov>. The Companies filed applications with the Commission as part of ongoing efforts to comply with federal Clean Air Act rules, the proposed Clean Air Transport Rule ("CATR"), the proposed national emission standards for hazardous air pollutants ("HAPS") rule, the Resource Conservation and Recovery Act, and other environmental requirements that apply to the Companies' facilities.

3. Objectives and Scope of the Focused Review

Scope and Objectives

The primary objectives of this focused review are to assist Commission Staff in reviewing and analyzing all documentation and materials supporting the applications in order to ascertain whether the Companies' proposed actions and the associated costs are reasonable and cost effective. The ultimate purpose of this review is to aid the Commission in ensuring that the Companies' ultimate proposed plan represents the optimal choice in terms of environmental compliance, cost and reliability consistent with industry best practices for ratepayers.

In order to meet these criteria, the Commission believes it is imperative that the selected consultant possess an in-depth understanding of the electric generation utility industry and the environmental compliance issues confronting it. Experience with the various engineering and financial models used by electric generation utilities and environmental compliance implementation specifically will also be expected. The proposal should reflect the consultant's understanding of these issues and provide discussion of how they would likely affect the Companies.

The scope of this focused review should include a review of all documentation and supporting materials related to the Companies' proposed environmental compliance plan including:

1. an evaluation of the Companies' proposed actions;
2. an evaluation of compliance alternatives evaluated by the Companies, but not selected;
3. a determination of whether other viable actions (in terms of economic cost and reliability) should have been considered by the Companies; and
4. a determination of whether the Companies' selected actions collectively represent a reasonable long term plan in terms of environmental compliance, cost and reliability.

The Consultant will be assisting Commission Staff in its evaluation and assessment of the Companies' proposed actions. As such, it will also be expected to assist Staff in developing appropriate recommendations for consideration by the Commission. It will not be necessary for the Consultant to make additional modeling runs. However, an independent assessment of the Companies' proposed actions is expected. Please note that the environmental compliance filing submitted by the Companies has a six month statutory timeline due to the inclusion of request for a certificate of public convenience and necessity.

4. Acceptance of Proposals

There will be **no bidders' conference** in conjunction with this RFP. As previously stated, the purpose of this RFP is to receive proposals for all consulting

services required to perform a focused review of the Companies proposed amended environmental compliance plans.

All properly submitted proposals will be accepted for consideration and reviewed by the Commission. However, the Commission reserves the right to request necessary amendments to any proposal, reject all proposals, reject any proposal that does not meet the mandatory requirements of this RFP, or cancel this RFP.

The Commission also reserves the right to waive minor irregularities in proposals, providing such action is in the best interest of the Commonwealth of Kentucky, the Commission and the Companies. Waiver of minor irregularities shall in no way modify this RFP's requirements or excuse the Consultant from full compliance with the RFP's specifications and other requirements set forth in any Agreement arising from this RFP.

If your firm is interested in performing this work, you should submit 15 bound copies, one unbound, copy-ready copy, and two Microsoft Word electronic version of your proposal **no later than 5:00 PM EST on June 17, 2011**. The Commission will not consider any proposal received after this deadline. **An electronic copy alone arriving at Commission offices on June 17, 2011 will be acceptable if and only if a hard copy of the proposal is received by 5:00 PM EST on June 20, 2011. If the electronic copy does not arrive for any reason by June 17, 2011, the proposal will be rejected regardless of whether a hard copy is received by June 20, 2011. Transmitting the proposal in Word format may aid in receipt of submissions.** Any questions regarding this RFP must be directed to John A. Rogness III Ph.D. in writing via mail, telefax (502-564-

7189) or email (john.rogness@ky.gov). All proposals become the property of the Public Service Commission of Kentucky. Upon selection of a Consultant to perform this engagement, all proposals will be made available for public inspection.

Your response should be addressed to:

Kentucky Public Service Commission
P.O. Box 615
211 Sower Blvd.
Frankfort, Kentucky 40602

ATTN: John A. Rogness III

Note that the P.O. Box number should be used for all regular mail and the street address is only necessary for overnight deliveries, i.e. Fed Ex, UPS, etc.

It is anticipated that the evaluation phase of the project, which will run concurrently with the case procedural schedules, will take about five (5) months to complete. The Commission will develop and issue procedural schedules as a part of its normal case processing procedures. The Consultant will be expected to follow the procedural schedule timeline. Since the Companies have already filed applications, the project will begin immediately upon selection of a Consultant.

5. Contents of Proposal

Bidders' proposals should include the following:

A. STATEMENT OF THE PROJECT

State in succinct terms your understanding of the project presented in this RFP.

B. MANAGEMENT SUMMARY

Include a narrative description of the proposed effort, a discussion of project management techniques, tools and practices, and a list of the end products that will be provided to the Commission throughout the project and at the conclusion of the project.

C. WORK PLAN

Task descriptions are to be the guide in describing your technical plan for accomplishing the work plan. The task descriptions should be in sufficient depth to afford the Commission and its staff a thorough understanding of your work plan. The description should include an estimate of the number of hours each primary member of the review team will devote to each task, functional area, and special interest area. **A proposal may be rejected if the work plan does not specifically detail how each of the task descriptions is to be accomplished.**

D. PRIOR EXPERIENCE

Submit a statement of similar projects conducted in the previous five years. Provide a copy of the Bidder's most recently completed relevant review report. This requirement would also apply to a subcontractor, if appropriate. Indicate specifically any projects of utilities and provide copies of such audit reports. Experience cited should be that performed by your firm and specifically by individual team members. **Projects referred to should be identified and the name of the client shown, including the name, address and phone number of the responsible official of the client utility or agency who may be contacted.**

E. PERSONNEL

Include the names of all personnel -- executive, professional, management analysts, systems analysts, auditors, staff Consultants, etc. -- who will be engaged in the review. Their education and experience in auditing and management/process evaluations, especially in the areas integrated resource planning, load forecasting, generation planning and modeling, electric generation environmental compliance, and reliability encompassing must be included. If an Agreement is awarded, the personnel assigned to conduct the review may not be changed without the written approval of the Commission or its designated representative. The Commission will notify the Companies of any such requested personnel change and allow the Companies input before written approval for the change is approved.

F. STATEMENT ON POTENTIAL CONFLICTS OF INTERESTS

The Bidder shall identify any relationships between itself and any of its affiliated companies or proposed subcontractors (including prior

relationships of individual personnel engaged in performing the review) and the Companies (or any affiliate). This would include any services provided during the last five years to the Companies, any subsidiaries, parent corporation, subsidiaries of the parent corporation, or any other related organizations associated with the electric utility industry. Any engagements, including but not limited to consulting or preparing studies or testimony, for another utility, a regulatory agency, consumer advocate group, attorney general, or similar entity (an "Interested Party") shall also be disclosed. If there have been no such relationships, a statement to that effect is to be included in the proposal.

The requirement to inform the Commission of any possible conflict of interest is a continuing obligation until the matter is completed. **If, during the focused review, it is determined that an undisclosed conflict exists or has existed between the Consultant and the Companies or other interested party, the Commission reserves the right to terminate the Agreement and shall not be obligated or liable for any payment otherwise owed to the Consultant for service rendered or anticipated to be rendered, for costs incurred or expenses.**

G. BUDGET ESTIMATES

For each task described in Section 5.C. above, a cost estimate shall be provided. The cost estimate for each task shall include manpower costs, costs of supplies and materials, subcontractor costs, transportation costs and total cost. The manpower costs should be broken down to identify the personnel or category of personnel, possible estimated hours, rate per hour and total cost. **A firm, total not-to-exceed cost for the focused review is not required. However, cost will be an important consideration in the selection of a Consultant for this review and subsequent placement on the pre-qualified environmental compliance bidders list. Therefore, an estimated project review cost shall be provided.**

H. TIME

For each task described in Section 5.C. above, an estimate of the time required for completion shall be provided in schedule form. Show all tasks, the estimated hours to complete each task, and the total estimated hours to complete the audit. An estimate of the percentage of time spent on-site shall also be provided.

I. WORK SPACE

Requirements for working space should be specified in the proposal.

J. PERIOD OF OFFER

A statement should be included stating that the Consultant's proposal shall remain valid for three months from the final date for submitting proposals as stated in Section 4 of this RFP.

K. WILLINGNESS TO WORK

The Bidder's willingness to work with the Staff Project Officer in the manner described in this RFP should be stated in the proposal.

L. SIGNATURES

All proposals must be signed by an authorized official of the Bidder.

6. Selection Criteria

All proposals received will be evaluated by the Commission and/or its authorized staff. There are several factors that will be considered in selecting the proposals that satisfy the requirements of this RFP. These factors include: the Bidder's understanding of the Commission's needs and a proposed approach that satisfies these needs; the Bidder's willingness to work with Commission staff; the experience and ability of the Bidder's staff assigned to the project and their capability to perform the proposed work; the proposal's description of tasks in the work plan to determine if the Bidder possesses the knowledge and understanding of the technical functions to be examined in the study; the Bidder's willingness to include the Commission Staff in the various stages of the review; the Bidder's demonstrated ability to meet stated deadlines; the Bidder's project management techniques and practices. **Cost will be an important consideration, although it will not necessarily be the deciding factor.**

7. Role of Commission Staff

John A. Rogness III Ph.D. will be the Staff Project Officer designated by the Commission to ensure satisfactory and timely performance of the proposed work in

accordance with any Agreement arising from this RFP. Upon the effective date of an Agreement, Dr. Rogness will be the sole contact for the Consultant in any discussions with the Commission.

The Consultant will be responsible for assisting Commission Staff in its review of the documentation and materials supporting the Companies' applications and including the members of the Commission Staff in all stages of the project as directed by the Staff Project Officer.

The Commission will rely upon the Staff Project Officer to answer questions from time to time about the progress and status of the project. It will be necessary, therefore, that the Staff Project Officer be involved in the work of the Consultant. This involvement may include monitoring the project's progress as to scope, budget, work plans, time, etc. It is expected that the Consultant will frequently discuss the Consultant's progress informally and directly with the Staff Project Officer and Commission Staff attorneys as necessary and that periodic written reports will be necessary in addition to the informal contact between the Consultant's staff and the Staff Project Officer. These reports are described below:

Monthly Written Status Reports: Based on the task plan submitted with the proposal, the monthly reports should consist of two parts:

- A. General narrative briefly describing progress to date and outlining reasons for any deviations from the task plan schedule. This narrative should also contain a statement indicating the status of the project in relation to time -- ahead, behind, or on schedule.
- B. Status sheet indicating actual hours logged by category (i.e., project manager, senior analyst or auditor, junior analyst or auditor, etc.), by Consultant, material and supplies cost, and other costs, showing percentage of each in relation to proposal costs.

Monthly reports should be in the hands of the Staff Project Officer by the tenth working day following the month's end and shall be submitted for any month worked.

8. Draft/Final Report

A Final Report is not contemplated at this time. However, the Commission reserves the right to require a written report if warranted.

Should a final report be required, it must evolve from a draft report prepared at least thirty (30) days prior to the submission of the Final Report. The draft report should contain functional area task reports, a management summary, which includes findings of operating effectiveness and efficiency, and recommendations. All reports provided to the Staff Project Officer (task reports, draft report, Final Report) must be fully footnoted. After review of the task reports has been completed, the Consultant will be required to prepare a draft report for review by the Staff Project Officer.

In the event that the Commission requires a Final Report, it must be in a narrative form and include terminology that will be meaningful to the Commission and others generally familiar with the subject areas:

- A. General Statement and Summary;
- B. Findings and Conclusions with Respect to the Primary Objectives of the Review;
- C. Recommendations, if any, relating specifically to the Task Areas.

Findings, conclusions and recommendations must be justified and accompanied by adequate supporting information. **A Final Report should consist of a chapter describing the project, a summary chapter that ties all the issues together and chapters for each Task Area.**

The Commission expects any report to be objective and balanced.

Should a Final Report be required, the Consultant shall provide the Commission with **15 bound copies, one electronic copy, and one unbound, copy-ready copy of the final report. In addition, the intervenors in the cases and the Companies shall be provided with a copy.**

9. Testimony

If a Final report is required, the Consultant may be required to testify at a public hearing before the Commission. The selected consulting firm must be willing to stand behind its findings, conclusions and recommendations in a Final report by testifying, upon request of the Commission, in a hearing before the Commission at the Consultant's agreed upon compensation rates as identified in the Agreement. In addition, if a Final Report is required, the selected firm can expect to be asked its opinion regarding any testimony submitted by the Companies or any intervenors in the proceedings.

All properly identified and related costs incurred by the Consultants for purposes identified under this Section will be paid by the Companies to the extent that: (a) the Consultant is providing testimony directly related to the content of the Final Report, should it be required; (b) such testimony is within two years of the Final Report completion; and (c) the Consultant is providing testimony at the request of the Commission.

10. Action Plans

There will be no action plans required as part of this project.

11. Work Papers

All work papers utilized by the Consultant during the course of the review shall be available to the Commission as appropriate during the review and shall be turned over to the Commission upon request. At a minimum, the work papers should include any special analyses prepared by the Consultant.

12. Contractual Arrangement

The Agreement for this engagement will be among the Commission, the Companies and the Consultant. KRS 278.183(4) provides for the Consultant to work for and under the direction of the Commission with the cost to be borne by the Companies. Payments to the Consultant on an Agreement entered into as a result of this RFP will be based upon hours actually expended and actual expenses incurred on this engagement at rates stated in the Agreement. Total cost includes itemized cost of supplies and materials, reasonable and customary cost of transportation and per diem expenses, and any reasonable and appropriate subcontract costs. Neither the Commission nor the Companies will be liable for any costs incurred prior to the making of any Agreement.

The review must be completed in a timely manner. The focused review project shall be completed no later than five (5) months from its commencement date, unless the Commission and the Consultant agree to the extension.

The Consultant's invoices, with supporting documentation, shall be presented to the Staff Project Officer by the 10th of each month for services provided and expenses incurred in the previous month. The Staff Project Officer shall review and approve all

invoices, and forward them to the Companies. The Companies shall make payment to the Consultant within 20 working days of receipt of the approved invoices.

13. Conflicts of Interest

It is the intent of the Commission to assure that any Consultant, any employees of a Consultant, any approved subcontractor of a Consultant and any employees of such sub-contractor, who are in a position to affect the outcome of the reports or services rendered under an Agreement arising from this RFP, shall, during the course of the Agreement, strictly comply with the following provisions concerning conflicts of interest:

A. Solicitation or Acceptance of Gifts or Favors or Offers of Gratuities

No consulting firm or persons shall solicit or accept anything of value to the recipient, including a gift, loan, reward, meal, promise of future employment, favor, or service (except the Companies' services that are provided under existing tariffs) from employees or representatives of the Companies (or any affiliate) in connection with an Agreement entered into as a result of this RFP.

By submission of a bid, the bidder certifies that no member or delegate of Congress, nor any elected or appointed official or employee of the Commonwealth of Kentucky has or will benefit financially or materially from this procurement. Any Agreement arising from this procurement may be terminated by the Commission if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned officials or employees from the Consultant, his agent or employee.

B. Conflicting Employment or Contractual Relationship

No consulting firm or persons shall have or accept any employment or enter into a contractual relationship with the Companies (or any affiliate) in connection with an Agreement entered into as a result of this RFP for a period of two years following the completion of the review. It is further required that any such relationship held or acquired during the course of any Agreement arising from this RFP with any other utility, which is subject to the regulation of this Commission, shall be discussed with this Commission as to the timing and subject of such relationships. The consulting firm selected shall certify that it will not perform subsequent work

for the Companies (or any affiliate) in Kentucky in connection with any Agreement entered into as a result of this RFP for a period of two years following the completion of the review unless authorized in writing by the Commission.

C. Disclosure or Use of Certain Information

No consulting firm or persons shall disclose to any other person or entity any confidential or proprietary information ("Confidential Information") concerning the Companies (or any affiliate or member) in connection with any Agreement entered into as a result of this RFP, which has been gained in the course of performing services under an Agreement, nor shall such firm or persons use such information for any purpose other than the subject audit, without the prior written approval of the Commission and the Companies which is the subject of the Agreement. The Consultant shall take all reasonable steps to safeguard such Confidential Information to prevent unauthorized disclosure or use. Access to the Confidential Information shall be limited to employees, representatives and agents of the firm who have a need to use the Confidential Information for the purposes of the review and who have executed a Nondisclosure Certificate, as provided by the Commission (the "Authorized Recipients"). Such Authorized Recipients agree not to disclose Confidential Information to any other persons or entities or to retain or use Confidential Information obtained hereunder for any purpose other than the review. In the event that disclosure of any Confidential Information is compelled by a lawful order of a court or administrative agency with jurisdiction over the subject matter, the Consultant shall promptly give the Commission and the Companies advance notice so that they can seek to protect any interests in keeping the information confidential.

The Companies have the obligation to clearly identify and mark any materials that it deems Confidential Information so as to alert the Consultant that such materials are governed by this provision and are to be maintained as confidential. The obligations of Consultants and Authorized Recipients hereunder shall survive the termination of any Agreement.

In the event of any unauthorized disclosure(s) of any Confidential Information by the Consultant, the Consultant shall immediately take any and all steps reasonably available to mitigate the harm from said disclosure(s) and shall immediately notify the Commission and the Companies of the unauthorized disclosure(s).

The forgoing shall not be construed to limit access to, or use of, any information gained by the Authorized Recipients during the course of the review by the Commission or its duly authorized staff.

D. Disclosure of Specified Interests

If any firm or person holds any interest (other than as described in Section 13.B.) or owns or acquires a material financial position in the net worth of the Companies (or any affiliate) that is the subject of a proposed agreement between the Commission and the Consultant, a statement shall be filed disclosing such interests prior to signing of any Agreement with the Commission, or immediately upon the establishment of such an interest, if it occurs during the course of the contractual obligation to this Commission. The holding of such an interest or material financial position shall constitute a basis for terminating the Agreement as set forth below.

E. Corporate Conflict of Interest Policy

All consulting firms desiring to do business with this Commission must submit, as part of their proposal or potential contract, a copy of their Corporate Conflict of Interest Policy, particularly in regard to stock ownership or financial relationships with clients. In the case of non-incorporated Consultants or where no corporate policy exists, a statement of intention to comply with the preceding provisions must be submitted.

14. Conditions

The following are additional conditions to performance of any Agreement arising from this RFP. Bidders must state in the proposal that they will comply with these conditions.

- A. General - The terms of the contract among the Commission, the Companies, and the Consultant shall be stated in the Agreement between the Commission, the Companies, and the Consultant, which shall expressly incorporate by reference: (1) this RFP and any amendments thereto; (2) the Consultant's proposal submitted in response to the RFP; and (3) any written amendments to the Consultant's proposal which are expressly approved by the Commission. In the event of a conflict or ambiguity in language among these documents, the provisions and requirements set forth in the Agreement, then the RFP, shall govern.

No modification or change of any provision in the Agreement shall be made unless agreed to in writing by the Consultant, the Companies, and the Commission.

The Agreement shall be construed according to the laws of the Commonwealth of Kentucky. Any legal proceedings against the

Commission or the Companies regarding this RFP or any resultant Agreement shall be brought in Commonwealth of Kentucky administrative or judicial forums to the extent permitted by law. Venue will be in Franklin County, Commonwealth of Kentucky.

- B. Deviations from the RFP - Any deviations from the strict requirements of the RFP must be specifically defined in the Consultant's proposal which, if acceptable to the Commission, shall be expressly stated in the Agreement, but such deviations must not be in conflict with the basic nature of this offer.
- C. Entire Agreement - The Agreement supersedes all prior negotiations, representations or agreements, either written or oral, among the parties relating to its subject matter and shall be independent of and have no effect upon any other contracts.
- D. Advertising Award - The Bidder agrees not to refer to placement on the pre-qualified list or award of an Agreement pursuant to this RFP in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commission, the Companies, or the Commonwealth of Kentucky.
- E. Notices - Upon the effective date of an Agreement pursuant to this RFP, all notices shall be deemed duly given when: (1) delivered by hand; or (2) sent by registered mail, return receipt requested. All notices to the Commission are to be delivered to the Staff Project Officer. All notices to the Companies are to be delivered to the Companies' coordinator.
- F. Titles - Titles of paragraphs are used to facilitate ease of reference only and shall not be construed to express or infer a contractual construction of language.
- G. Agreement Effective Date – Any Agreement established from this RFP shall begin on the effective date stated in the Letter of Agreement.
- H. Termination of Contract - Any Agreement resulting from this RFP shall be subject to the following termination provisions. An Agreement may be terminated by the Commission for:
 - a. Default - Any Consultant who is determined by the Commission to be in breach of any of the terms or conditions of an Agreement with the Commission may, in the discretion of the Commission, be declared in writing to be in default and such Agreement may be terminated as a result of such default. A default in performance by a Consultant for which an Agreement may be terminated shall include, but shall not necessarily be limited to, failure to perform the contract according to its terms, conditions and specifications; or failure to make delivery

within the time specified or according to a delivery schedule fixed by the Agreement.

- b. Consultant Bankruptcy - In the event of the filing of a petition in bankruptcy by or against the Consultant, the Commission shall have the right to terminate an Agreement upon the same terms and conditions as a termination for default.
- c. Unavailability of Funds - In the event that the Commission determines that funds for an Agreement become unavailable, the Commission shall have the right to terminate an Agreement without penalty and upon the same terms and conditions as a termination for convenience. Availability of funds will be determined at the sole discretion of the Commission.
- d. Convenience - The Commission shall be authorized to terminate an Agreement for its own convenience when the Commission has determined that such termination will be in the public interest. When it has been determined that an Agreement should be terminated for the convenience of the Commission, the Commission shall be authorized to negotiate a settlement with the Consultant according to terms deemed just and equitable by the Commission.

The Consultant shall be paid all monies due for services rendered and expenses incurred up to the termination date, as well as all monies due for commitments which cannot be terminated at such termination date or be otherwise mitigated, except as provided in Section 5(F).

Whenever an Agreement is terminated for the convenience of the Commission, the Consultant shall have the burden of establishing the amount of the compensation due, by submission of complete and accurate cost data as presented in his proposal and evidence of expenses paid or incurred and services performed in connection with an Agreement from the effective date through the date of termination. Payment of the sum agreed to in settlement of an Agreement terminated for convenience of the Commission shall be made from the same source of funds or account as the original contract.

- I. Procedure on Termination - Upon delivery by certified mail to the Consultant of a Notice of Termination specifying the nature of the termination, the extent to which performance of work under an Agreement is terminated and the date upon which such termination becomes effective, the Consultant shall:
 - a. Stop work under the Agreement on the date and to the extent specified in the Notice of Termination.

- b. Place no further orders for services except as may be necessary for completion of such portion of the work under the Agreement as is not terminated.
- c. Terminate all orders to the extent that they relate to the performance of work terminated by the Notice of Termination.
- d. Upon request, assign to the Commonwealth in the manner and to the extent directed by the Commission all of the rights, titles, and interests of the Consultant under the orders so terminated. The Commonwealth shall have the right, at its discretion, to settle or cause payment of any or all claims arising out of the termination of such orders with the approval or ratification of the Commission and settle all outstanding liabilities arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of the Agreement.
- e. Complete performance of that part of the work not terminated by the Notice of Termination.
- f. Take such action as may be necessary, or as the Commission may direct, for the protection and preservation of the property related to the Agreement which is in the possession of the Consultant and in which the Commission has or may acquire an interest.

The Consultant shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item of reimbursable price under this clause.

- J. Termination Claims - After receipt of a Notice of Termination, the Consultant shall submit to the Commission any termination claim in the form prescribed by the Commission no later than two (2) months from the effective date of termination.

If the Consultant fails to submit the termination claim within the time allowed, the Commission may, subject to any review required by the Commonwealth procedures in effect as of the effective date of the Agreement, determine, on the basis of information available to it, the amount, if any, due to the Consultant by reason of the termination and shall direct that payment of that amount be made.

In the event the Consultant and the Commission fail to agree in whole or in part on the costs to be paid to the Consultant in connection with the total or partial termination of work, the Commission shall determine on the basis of

information available the amount, if any, due to the Consultant and shall direct that payment of that amount be made.

The Consultant shall have the right of appeal, as stated under Disputes, from any such determination made by the Commission.

- K. Consultant Personnel - Personnel commitments identified in the Consultant's proposal shall be considered mandatory to the work to be performed under this RFP. Personnel assignments in the proposal shall not be changed without prior written consent of the Staff Project Officer. Replacement of such personnel, if approved, shall be with personnel of equal or superior ability and qualifications. The Commission may, at any time, require the Consultant to reassign or otherwise remove any employee found not qualified or otherwise unacceptable to the Commission.

Any contract or agreement entered into by the Consultant and a subcontractor shall expressly incorporate by reference the terms of the Agreement between the Commission and the Consultant.

- L. Changes in Scope - The Commission may, at any time and in writing, change the general scope of an Agreement. If any approved change affects the cost of, or the time required for, the performance of any part of the work, an adjustment shall be made in the Agreement which shall be modified in writing accordingly.
- M. Force Majeure - Consultant shall not be liable for any damages for any inability to perform, or for any delays or interruptions beyond Consultant's reasonable control in performing any of Consultant's obligations under any Agreement, including but not limited to, those arising from acts of God, fires, floods, riots, insurrection, war, terrorism, sabotage, quarantines, strikes by Consultant's employees or embargoes. Consultant shall advise the Commission and the Companies immediately of any failure, delay, or interruption upon occurrence thereof. Any such inability, delay or interruption, even though existing on the effective date of the Agreement or on the date of the start of the work, shall require Consultant to submit a recovery plan detailing the manner in which the delay shall be remedied, the revised schedule and any added expenses. Consultant shall use reasonable diligence to proceed with the work notwithstanding the occurrence thereof. Force Majeure shall apply only to the part of the work directly affected by the particular failure, delay or interruption, and shall not apply to the work as a whole or any other unaffected part thereof.
- N. Disputes - Prior to the initiation of any action in a court by any party to an Agreement awarded as a result of this RFP concerning any contract, claim, or controversy, the Commission may, subject to any limitations or conditions imposed by regulations, settle, compromise, direct payment to

be made or otherwise adjust the claim by or against, or controversy with, the Consultant relating to the Agreement, including, but not limited to, a claim or controversy based on breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission. The Consultant also shall agree to participate in good faith in at least one mediation of any such dispute before any case is filed in a judicial or administrative venue.

- O. Disclosure of Proposal Contents - The contents of any proposal in response to this RFP shall be confidential and shall not be disclosed to anyone other than the Commission and its staff until an Agreement is entered into between the Commission, the Consultant and the Companies. Once an Agreement has been made, the proposal of the Consultant selected to perform the review and the proposals of all unsuccessful Consultants may be made available for public inspection.
- P. Confidentiality of Contract Terms - The Consultant and the Commission agree that all information communicated among them before the effective date of the Agreement shall be received in strict confidence and shall not be disclosed by the receiving party, its agents, or employees without prior written consent of the other parties. Such material will be kept confidential to the extent allowed by law until the effective date of the Agreement, at which time the Agreement may be made available for public disclosure. Nothing in this provision may modify the provisions relating to Confidential Information set forth above.
- Q. Consultant Responsibility - Any Agreement that may result from the RFP shall specify that the Consultant is solely responsible for fulfillment of the Agreement with the Commission. Any subcontractors shall be identified in the proposal.
- R. Consultant Affiliation - If any affiliate or subcontractor of the Consultant takes any action which, if done by the Consultant, would constitute a breach of the Agreement, the same shall be deemed a breach by the Consultant. For purposes of this section, "affiliate" shall mean a parent, subsidiary or other person controlling, controlled by or under common control with the Consultant.
- S. Assignment - The Consultant shall not assign its inclusion on the pre-qualified list or any Agreement entered into as a result of this RFP in whole or in part or any payment arising therefrom without the prior written consent of the Commission. Any assignment without the written consent of the Commission shall be void.

- T. Hold Harmless - The Consultant agrees to indemnify, defend, and hold harmless the Commonwealth, the Commission and the Companies, their officers, agents, and employees from:
- a. Any claims or causes of action by or any losses to any person or firm alleging injury or damage resulting from the intentional or negligent acts of the Consultant, its officers or employees in the performance of any Agreement arising from this RFP.
 - b. Any failure of the Consultant, its officers or employees to observe the laws or regulations of the Commonwealth of Kentucky or the United States of America, including but not limited to, labor and minimum wage laws.
- U. Permits, Licenses, Taxes and Registration - The Consultant 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 any Agreement is performed.

The Consultant shall pay any sales, use or personal property taxes arising out of any Agreement and the transaction contemplated hereby. Any other taxes levied upon the transaction, equipment or services delivered pursuant hereto shall be borne by the Consultant.

- V. Employment Practices - The Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, political affiliations, or handicap; except as otherwise provided by law. The Consultant must take affirmative action to ensure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliations, or handicap. Such action shall include, but is not limited to, the following: employment, promotion, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this clause.

The Consultant shall, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or handicap, except where it relates to a bona fide occupational qualification.

The Consultant shall comply with the nondiscrimination clause contained in Federal Executive Order 11246, as amended by Federal Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor and with 41 CFR Chapter 60. The Consultant shall comply with related laws and regulations of the Commonwealth of Kentucky.

The Consultant shall comply with regulations issued by the Secretary of Labor of the United States in 20 CFR Part 741, pursuant to the provisions of Executive Order 11758 and the Federal Rehabilitation Act of 1973.

The Consultant shall comply with the Civil Rights Act of 1964, and any amendments thereto, and the rules and regulations thereunder, and Section 504 of Title V of the Vocational Rehabilitation Act of 1973 as amended, and the Kentucky Civil Rights Act.

- W. Rights and Remedies - The rights and remedies of the Commission provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or under any Agreement arising from this RFP.
- X. Contract Severability - If any provision of an Agreement (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then the Commission, the Consultant, and the Companies shall be relieved of all obligations arising under such provision. If the remainder of the Agreement is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.
- Y. Waiver - No covenant, condition, duty, obligation, or undertaking contained in or made a part of any Agreement arising from this RFP will be waived except by written agreement of the parties, and forbearance or indulgence in any other form or manner by any party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed or discharged by the party to which the same may apply; and until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, any other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.
- Any consent by any party to or waiver of a failure by the other, whether express or implied, shall not constitute consent of, waiver of, or excuse for any other different or subsequent failure.
- Z. Insurance - The Consultant will provide public liability, property damage and worker's compensation insurance, insuring as they may appear, the

interests of all parties to any Agreement arising from this RFP against any and all claims which may arise out of the Consultant's actions or the actions of its subcontractors or agents under the terms of an Agreement. In the event any carrier of such insurance exercises cancellation, notice will be made immediately to the Commission of such cancellation.

- AA. Accounting Requirements - The Consultant shall establish and maintain an accounting system in accordance with Generally Accepted Accounting Principles (GAAP). The accounting system shall maintain records pertaining to the tasks defined herein and any other costs and expenditures made under an Agreement.
- BB. Audit Requirements - The Consultant shall maintain books, documents, and other evidence pertaining to the administrative costs and expenses of any Agreement arising from this RFP to the extent necessary and in such detail as shall properly reflect all costs, direct and apportioned, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of such an Agreement. Accounting records related to the provision of service under any Agreement arising from this RFP shall be open to the Commission at any time from the commencement date through 12 months subsequent to the review's conclusion.
- CC. Contract Records Retention - The Consultant shall preserve and make available to the Commission and the Companies all books, documents, papers, and records related to any Agreement arising from this RFP for a period of one year from the date of expiration or termination of the Agreement.

Records involving matters in litigation shall be kept for one year following the final termination of litigation and associated appeals, if any.

Authorized representatives of the Commission may examine and copy the items listed above during the Agreement period and during the periods described above. The Companies may also examine and copy the items listed above during the Agreement period and during the periods described above after the Consultant's review has been completed.

- DD. Legal Fees - In the event that the Commission or the Companies prevail in a legal action to enforce any provision of an Agreement arising from this RFP, the Consultant agrees to pay all expenses of such action, including reasonable attorney's fees and costs at all stages of litigation as set by the court or hearing officer.
- EE. Independent Price Determination - By submission of a proposal the Consultant certifies the following:

- a. Prices in the proposal have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other Consultant or with any competitor.
- b. Unless otherwise required by law, the prices that have been quoted in the proposal have not been knowingly and will not knowingly be disclosed by the Consultant prior to award directly or indirectly to any other Consultant or to any competitor.
- c. No attempt has been or will be made by the Consultant to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.