



Lexington-Fayette Urban County Government

Request for Proposals

The Lexington-Fayette Urban County Government hereby requests proposals for **RFP #30-2018 Program Management Services –Capacity, Management, Operations and Maintenance (CMOM)** with terms, conditions and specifications established herein.

Sealed proposals will be received in the Division of Central Purchasing, Room 338, Government Center, 200 East Main Street, Lexington, KY, 40507, until **2:00 PM**, prevailing local time, on **September 20, 2018**.

Proposals received after the date and time set for opening proposals will not be considered for award of a contract and will be returned unopened to the Proposer. It is the sole responsibility of the Proposer to assure that his/her proposal is received by the Division of Central Purchasing before the date and time set for opening proposals.

Proposals must be sealed in an envelope and the envelope prominently marked:

**RFP #30-2018 Program Management Services –Capacity, Management,
Operations and Maintenance (CMOM)**

If mailed, the envelope must be addressed to:

Todd Slatin – Purchasing Director
Lexington-Fayette Urban County Government
Room 338, Government Center
200 East Main Street
Lexington, KY 40507

Additional copies of this Request For Proposals are available from the Division of Central Purchasing, Room 338 Government Center, 200 East Main Street, Lexington, KY 40507, (859)-258-3320, at no charge.

Proposals, once submitted, may not be withdrawn for a period of sixty (60) calendar days.

The Proposer must submit one (1) master (hardcopy), (1) electronic version in PDF format on a flashdrive or CD and seven (7) duplicates (hardcopies) of their proposal for evaluation purposes.

The Lexington-Fayette Urban County Government reserves the right to reject any or all proposals, and to waive technicalities and informalities when such waiver is determined by the Lexington-Fayette Urban County Government to be in its best interest.

Signature of this proposal by the Proposer constitutes acceptance by the Proposer of terms, conditions and requirements set forth herein.

Minor exceptions may not eliminate the proposal. Any exceptions to the specifications established herein shall be listed in detail on a separate sheet and attached hereto. The Lexington-Fayette Urban County Government shall determine whether any exception is minor.

The Lexington-Fayette Urban County Government encourages the participation of minority- and women-owned businesses in Lexington-Fayette Urban County Government contracts. This proposal is subject to Affirmative Action requirements attached hereto.

Please do not contact any LFUCG staff member or any other person involved in the selection process other than the designated contact person(s) regarding the project contemplated under this RFP while this RFP is open and a selection has not been finalized. Any attempt to do so may result in disqualification of the firm's submittal for consideration.

Laws and Regulations

All applicable state laws, municipal ordinances and regulations of all authorities having jurisdiction over the project shall apply to the contract, and shall be deemed to be incorporated herein by reference.

Equal Employment Opportunity

The Entity (regardless of whether construction contractor, non-construction contractor or supplier) agrees to provide equal opportunity in employment for all qualified persons, to prohibit discrimination in employment because of race, color, creed, national origin, sex or age, and to promote equal employment through a positive, continuing program from itself and each of its subcontracting agents. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices.

Kentucky Equal Employment Opportunity Act

The Kentucky Equal Employment Opportunity Act of 1978 (KRS 45.560-45.640) requires that any "county, city, town, school district, water district, hospital district, or other political subdivision of the state shall include in directly or indirectly publicly funded

contracts for supplies, materials, services, or equipment hereinafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin;
- (2) The contractor will state in all solicitations or advertisements for employees placed by or on behalf of the contractors that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin;
- (3) The contractor will post notices in conspicuous places, available to employees and applicants for employment, setting forth the provision of the nondiscrimination clauses required by this section; and
- (4) The contractor will send a notice to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding advising the labor union or workers' representative of the contractor's commitments under the nondiscrimination clauses."

The Act further provides:

"KRS 45.610. Hiring minorities -- Information required

- (1) For the length of the contract, each contractor shall hire minorities from other sources within the drawing area, should the union with which he has collective bargaining agreements be unwilling to supply sufficient minorities to satisfy the agreed upon goals and timetables.
- (2) Each contractor shall, for the length of the contract, furnish such information as required by KRS 45.560 to KRS 45.640 and by such rules, regulations and orders issued pursuant thereto and will permit access to all books and records pertaining to his employment practices and work sites by the contracting agency and the department for purposes of investigation to ascertain compliance with KRS 45.560 to 45.640 and such rules, regulations and orders issued pursuant thereto.

KRS 45.620. Action against contractor -- Hiring of minority contractor or subcontractor

- (1) If any contractor is found by the department to have engaged in an unlawful practice under this chapter during the course of performing under a contract or subcontract covered under KRS 45.560 to 45.640, the department shall so certify to the contracting agency and such certification

shall be binding upon the contracting agency unless it is reversed in the course of judicial review.

(2) If the contractor is found to have committed an unlawful practice under KRS 45.560 to 45.640, the contracting agency may cancel or terminate the contract, conditioned upon a program for future compliance approved by the contracting agency and the department. The contracting agency may declare such a contractor ineligible to bid on further contracts with that agency until such time as the contractor complies in full with the requirements of KRS 45.560 to 45.640.

(3) The equal employment provisions of KRS 45.560 to 45.640 may be met in part by a contractor by subcontracting to a minority contractor or subcontractor. For the provisions of KRS 45.560 to 45.640, a minority contractor or subcontractor shall mean a business that is owned and controlled by one or more persons disadvantaged by racial or ethnic circumstances.

KRS 45.630 Termination of existing employee not required, when

Any provision of KRS 45.560 to 45.640 notwithstanding, no contractor shall be required to terminate an existing employee upon proof that employee was employed prior to the date of the contract.

KRS 45.640 Minimum skills

Nothing in KRS 45.560 to 45.640 shall require a contractor to hire anyone who fails to demonstrate the minimum skills required to perform a particular job."

It is recommended that all of the provisions above quoted be included as special conditions in each contract. In the case of a contract exceeding \$250,000, the contractor is required to furnish evidence that his workforce in Kentucky is representative of the available work-force in the area from which he draws employees, or to supply an Affirmative Action plan which will achieve such representation during the life of the contract.

LFUCG Non-Appropriation Clause

Contractor acknowledges that the LFUCG is a governmental entity, and the contract validity is based upon the availability of public funding under the authority of its statutory mandate.

In the event that public funds are unavailable and not appropriated for the performance of the LFUCG's obligations under this contract, then this contract shall automatically expire without penalty to the LFUCG thirty (30) days after written notice to Contractor of the unavailability and non-appropriation of public funds. It is expressly agreed that the LFUCG shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this contract, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations.

In the event of a change in the LFUCG's statutory authority, mandate and mandated functions, by state and federal legislative or regulatory action, which adversely affects the LFUCG's authority to continue its obligations under this contract, then this contract shall automatically terminate without penalty to the LFUCG upon written notice to Contractor of such limitation or change in the LFUCG's legal authority.

Contention Process

Vendors who respond to this invitation have the right to file a notice of contention associated with the RFP process or to file a notice of appeal of the recommendation made by the Director of Central Purchasing resulting from this invitation.

Notice of contention with the RFP process must be filed within 3 business days of the bid/proposal opening by (1) sending a written notice, including sufficient documentation to support contention, to the Director of the Division of Central Purchasing or (2) submitting a written request for a meeting with the Director of Central Purchasing to explain his/her contention with the RFP process. After consulting with the Commissioner of Finance the Chief Administrative Officer and reviewing the documentation and/or hearing the vendor, the Director of Central Purchasing shall promptly respond in writing findings as to the compliance with RFP processes. If, based on this review, a RFP process irregularity is deemed to have occurred the Director of Central Purchasing will consult with the Commissioner of Finance, the Chief Administrative Officer and the Department of Law as to the appropriate remedy.

Notice of appeal of a RFP recommendation must be filed within 3 business days of the RFP recommendation by (1) sending a written notice, including sufficient documentation to support appeal, to the Director, Division of Central Purchasing or (2) submitting a written request for a meeting with the Director of Central Purchasing to explain his appeal. After reviewing the documentation and/or hearing the vendor and consulting with the Commissioner of Finance and the Chief Administrative Officer, the Director of Central Purchasing shall in writing, affirm or withdraw the recommendation.

SELECTION CRITERIA:

1. Specialized experience and technical competence of the person or firm with the type of service required. 15 pts.
2. Capacity of the person or firm to perform the work, including any specialized services, within the time limitations. 15 pts.
3. Past record and performance on similar contracts with the LFUCG or other governmental agencies and private industry with respect to such factors as control of cost, quality or work and ability to meet schedules. 20 pts.
4. Familiarity with the details of the project. 15 pts
5. Degree of local employment to be provided by the person or firm in the performance of the contract by the person or firm. 15 pts.
6. Submitted schedule of hourly rates in effect for the duration of contract for all employees of the firm which are reasonably expected to contribute to the final work product. 20 pts.

Proposals shall contain the appropriate information necessary to evaluate based on these criteria. A committee composed of government employees will evaluate the proposals.

Questions shall be submitted via IonWave at: <https://lexingtonky.ionwave.net>

Or submitted to:

Brian Marcum
Division of Central Purchasing
brianm@lexingtonky.gov

Affirmative Action Plan

All vendors must submit as a part of the proposal package the following items to the Urban County Government:

1. Affirmative Action Plan for his/her firm;
2. Current Work Force Analysis Form;

Failure to submit these items as required may result in disqualification of the submitter from award of the contract. All submissions should be directed to:

Director, Division of Central Purchasing
Lexington-Fayette Urban County Government
200 East Main Street, 3rd Floor
Lexington, Kentucky 40507

All questions regarding this proposal must be directed to the Division of Central Purchasing, (859)-258-3320.

AFFIDAVIT

Comes the Affiant, _____, and after being first duly sworn, states under penalty of perjury as follows:

1. His/her name is _____ and he/she is the individual submitting the proposal or is the authorized representative of _____, the entity submitting the proposal (hereinafter referred to as "Proposer").

2. Proposer will pay all taxes and fees, which are owed to the Lexington-Fayette Urban County Government at the time the proposal is submitted, prior to award of the contract and will maintain a "current" status in regard to those taxes and fees during the life of the contract.

3. Proposer will obtain a Lexington-Fayette Urban County Government business license, if applicable, prior to award of the contract.

4. Proposer has authorized the Division of Central Purchasing to verify the above-mentioned information with the Division of Revenue and to disclose to the Urban County Council that taxes and/or fees are delinquent or that a business license has not been obtained.

5. Proposer has not knowingly violated any provision of the campaign finance laws of the Commonwealth of Kentucky within the past five (5) years and the award of a contract to the Proposer will not violate any provision of the campaign finance laws of the Commonwealth.

6. Proposer has not knowingly violated any provision of Chapter 25 of the Lexington-Fayette Urban County Government Code of Ordinances, known as "Ethics Act."

Continued on next page

7. Proposer acknowledges that "knowingly" for purposes of this Affidavit means, with respect to conduct or to circumstances described by a statute or ordinance defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists.

Further, Affiant sayeth naught.

STATE OF _____

COUNTY OF _____

The foregoing instrument was subscribed, sworn to and acknowledged before me
by _____ on this the _____ day
of _____, 2016.

My Commission expires: _____

NOTARY PUBLIC, STATE AT LARGE

EQUAL OPPORTUNITY AGREEMENT

The Law

- Title VII of the Civil Rights Act of 1964 (amended 1972) states that it is unlawful for an employer to discriminate in employment because of race, color, religion, sex, age (40-70 years) or national origin.
- Executive Order No. 11246 on Nondiscrimination under Federal contract prohibits employment discrimination by contractor and sub-contractor doing business with the Federal Government or recipients of Federal funds. This order was later amended by Executive Order No. 11375 to prohibit discrimination on the basis of sex.
- Section 503 of the Rehabilitation Act of 1973 states:

The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap.

- Section 2012 of the Vietnam Era Veterans Readjustment Act of 1973 requires Affirmative Action on behalf of disabled veterans and veterans of the Vietnam Era by contractors having Federal contracts.
- Section 206(A) of Executive Order 12086, Consolidation of Contract Compliance Functions for Equal Employment Opportunity, states:

The Secretary of Labor may investigate the employment practices of any Government contractor or sub-contractor to determine whether or not the contractual provisions specified in Section 202 of this order have been violated.

The Lexington-Fayette Urban County Government practices Equal Opportunity in recruiting, hiring and promoting. It is the Government's intent to affirmatively provide employment opportunities for those individuals who have previously not been allowed to enter into the mainstream of society. Because of its importance to the local Government, this policy carries the full endorsement of the Mayor, Commissioners, Directors and all supervisory personnel. In following this commitment to Equal Employment Opportunity and because the Government is the benefactor of the Federal funds, it is both against the Urban County Government policy and illegal for the Government to let contracts to companies which knowingly or unknowingly practice discrimination in their employment practices. Violation of the above mentioned ordinances may cause a contract to be canceled and the contractors may be declared ineligible for future consideration.

Please sign this statement in the appropriate space acknowledging that you have read and understand the provisions contained herein. Return this document as part of your application packet.

Bidders

I/We agree to comply with the Civil Rights Laws listed above that govern employment rights of minorities, women, Vietnam veterans, handicapped and aged persons.

Signature

Name of Business

WORKFORCE ANALYSIS FORM

Name of Organization: _____

Categories	Total	White (Not Hispanic or Latino)		Hispanic or Latino		Black or African-American (Not Hispanic or Latino)		Native Hawaiian and Other Pacific Islander (Not Hispanic or Latino)		Asian (Not Hispanic or Latino)		American Indian or Alaskan Native (not Hispanic or Latino)		Two or more races (Not Hispanic or Latino)		Total	
		M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Administrators																	
Professionals																	
Superintendents																	
Supervisors																	
Foremen																	
Technicians																	
Protective Service																	
Para-Professionals																	
Office/Clerical																	
Skilled Craft																	
Service/Maintenance																	
Total:																	

Prepared by: _____ Date: ____/____/____

(Name and Title)

Revised 2015-Dec-15

**DIRECTOR, DIVISION OF CENTRAL PURCHASING
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
200 EAST MAIN STREET
LEXINGTON, KENTUCKY 40507**

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL
EMPLOYMENT OPPORTUNITIES AND DBE CONTRACT PARTICIPATION**

Notice of requirement for Affirmative Action to ensure Equal Employment Opportunities and Disadvantaged Business Enterprises (DBE) Contract participation. Disadvantaged Business Enterprises (DBE) consists of Minority-Owned Business Enterprises (MBE) and Woman-Owned Business Enterprises (WBE).

The Lexington-Fayette Urban County Government has set a goal that not less than ten percent (10%) of the total value of this Contract be subcontracted to Disadvantaged Business Enterprises, which is made up of MBEs and WBEs. The Lexington Fayette Urban County Government also has set a goal that not less than three percent (3%) of the total value of this Contract be subcontracted to Veteran-owned Small Businesses. The goal for the utilization of Disadvantaged Business Enterprises as well Veteran –owned Small Businesses as subcontractors is a recommended goal. Contractor(s) who fail to meet such goal will be expected to provide written explanations to the Director of the Division of Purchasing of efforts they have made to accomplish the recommended goal, and the extent to which they are successful in accomplishing the recommended goal will be a consideration in the procurement process. Depending on the funding source, other DBE goals may apply.

For assistance in locating Disadvantaged Business Enterprises Subcontractors contact:

Sherita Miller, MPA, Division of Central Purchasing
Lexington-Fayette Urban County Government
200 East Main Street, 3rd Floor, Room 338
Lexington, Kentucky 40507
smiller@lexingtonky.gov

Firm Submitting Proposal: _____

Complete Address: _____
Street City Zip

Contact Name: _____ Title: _____

Telephone Number: _____ Fax Number: _____

Email address: _____

Lexington-Fayette Urban County Government
MWDBE PARTICIPATION GOALS

A. GENERAL

- 1) The LFUCG request all potential contractors to make a concerted effort to include Minority-Owned (MBE), Woman-Owned (WBE), Disadvantaged (DBE) Business Enterprises and Veteran-Owned Small Businesses as subcontractors or suppliers in their bids.
- 2) Toward that end, the LFUCG has established 10% of total procurement costs as a Goal for participation of Minority-Owned, Woman-Owned and Disadvantaged Businesses on this contract.
- 3) The LFUCG has also established a 3% of total procurement costs as a Goal for participation of Veteran-Owned Small Businesses (VOSB).
- 4) **It is therefore a request of each Bidder to include in its bid, the same goal (10%) for MWDBE participation and other requirements as outlined in this section.**

B. PROCEDURES

- 1) The successful bidder will be required to report to the LFUCG, the dollar amounts of all payments submitted to Minority-Owned, Woman-Owned or Veteran-Owned subcontractors and suppliers for work done or materials purchased for this contract. (See Subcontractor Monthly Payment Report)
- 2) Replacement of a Minority-Owned, Woman-Owned or Veteran-Owned subcontractor or supplier listed in the original submittal must be requested in writing and must be accompanied by documentation of Good Faith Efforts to replace the subcontractor / supplier with another MWDBE Firm; this is subject to approval by the LFUCG. (See LFUCG MWDBE Substitution Form)
- 3) For assistance in identifying qualified, certified businesses to solicit for potential contracting opportunities, bidders may contact:
 - a) The Lexington-Fayette Urban County Government, Division of Central Purchasing (859-258-3320)
- 4) The LFUCG will make every effort to notify interested MWDBE and Veteran subcontractors and suppliers of each Bid Package, including information on the scope of work, the pre-bid meeting time and location, the bid date, and all other pertinent information regarding the project.

C. DEFINITIONS

- 1) A Minority-Owned Business Enterprise (MBE) is defined as a business which is certified as being at least 51% owned and operated by persons of African American, Hispanic, Asian, Pacific Islander, American Indian or Alaskan Native Heritage.
- 2) A Woman-Owned Business Enterprise (WBE) is defined as a business which is certified as being at least 51% owned and operated by one or more Non-Minority Females.
- 3) A Disadvantaged Business (DBE) is defined as a business which is certified as being at least 51% owned and operated by a person(s) that are economically and socially disadvantaged.
- 4) A Veteran-Owned Small Business (VOSB) is defined as a business which is certified as being at least 51% owned and operated by a veteran and/or a service disabled veteran.
- 5) Good Faith Efforts are efforts that, given all relevant circumstances, a bidder or proposer actively and aggressively seeking to meet the goals, can reasonably be expected to make. In evaluating good faith efforts made toward achieving the goals, whether the bidder or proposer has performed the efforts outlined in the Obligations of Bidder for Good Faith Efforts outlined in this document will be considered, along with any other relevant factors.

D. OBLIGATION OF BIDDER FOR GOOD FAITH EFFORTS

- 1) **The bidder shall make a Good Faith Effort to achieve the Participation Goal for MWDBE and Veteran-Owned subcontractors/suppliers. The failure to meet the goal shall not necessarily be cause for disqualification of the bidder; however, bidders not meeting the goal are required to furnish with their bids written documentation of their Good Faith Efforts to do so.**
- 2) Award of Contract shall be conditioned upon satisfaction of the requirements set forth herein.
- 3) The Form of Proposal includes a section entitled “MWDBE Participation Form”. The applicable information must be completed and submitted as outlined below.
- 4) **Failure to submit this information as requested may be cause for rejection of bid or delay in contract award.**

E. DOCUMENTATION REQUIRED FOR GOOD FAITH EFFORTS

- 1) Bidders reaching the Goal are required to submit only the MWDBE Participation Form.” The form must be fully completed including names and telephone number of participating MWDBE firm(s); type of work to be performed;

estimated value of the contract and value expressed as a percentage of the total Lump Sum Bid Price. The form must be signed and dated, and is to be submitted with the bid.

- 2) Bidders not reaching the Goal must submit the “MWDBE Participation Form”, the “Quote Summary Form” and a written statement documenting their Good Faith Effort to do so. If bid includes no MWDBE and/or Veteran participation, bidder shall enter “None” on the subcontractor / supplier form). In addition, the bidder must submit written proof of their Good Faith Efforts to meet the Participation Goal:
 - a. Advertised opportunities to participate in the contract in at least two (2) publications of general circulation media; trade and professional association publications; small and minority business or trade publications; and publications or trades targeting minority, women and disadvantaged businesses not less than fifteen (15) days prior to the deadline for submission of bids to allow MWDBE firms and Veteran-Owned businesses to participate.
 - b. Included documentation of advertising in the above publications with the bidders good faith efforts package
 - c. Attended LFUCG Central Purchasing Economic Inclusion Outreach event
 - d. Attended pre-bid meetings that were scheduled by LFUCG to inform MWDBEs and/or Veteran-Owned businesses of subcontracting opportunities
 - e. Sponsored Economic Inclusion event to provide networking opportunities for prime contractors and MWDBE firms and Veteran-Owned businesses.
 - f. Requested a list of MWDBE and/or Veteran subcontractors or suppliers from LFUCG and showed evidence of contacting the companies on the list(s).
 - g. Contacted organizations that work with MWDBE companies for assistance in finding certified MWBDE firms and Veteran-Owned businesses to work on this project. Those contacted and their responses should be a part of the bidder’s good faith efforts documentation.
 - h. Sent written notices, by certified mail, email or facsimile, to qualified, certified MWDBEs soliciting their participation in the contract not less than seven (7) days prior to the deadline for submission of bids to allow them to participate effectively.
 - i. Followed up initial solicitations by contacting MWDBEs and Veteran-Owned Businesses to determine their level of interest.

j. Provided the interested MWDBE firm and/or Veteran-Owned business with adequate and timely information about the plans, specifications, and requirements of the contract.

k. Selected portions of the work to be performed by MWDBE firms and/or Veteran-Owned businesses in order to increase the likelihood of meeting the contract goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MWDBE and Veteran participation, even when the prime contractor may otherwise perform these work items with its own workforce

l. Negotiated in good faith with interested MWDBE firms and Veteran-Owned businesses not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection should be so noted in writing with a description as to why an agreement could not be reached.

m. Included documentation of quotations received from interested MWDBE firms and Veteran-Owned businesses which were not used due to uncompetitive pricing or were rejected as unacceptable and/or copies of responses from firms indicating that they would not be submitting a bid.

n. Bidder has to submit sound reasons why the quotations were considered unacceptable. The fact that the bidder has the ability and/or desire to perform the contract work with its own forces will not be considered a sound reason for rejecting a MWDBE and/or Veteran-Owned business's quote. Nothing in this provision shall be construed to require the bidder to accept unreasonable quotes in order to satisfy MWDBE and Veteran goals.

o. Made an effort to offer assistance to or refer interested MWDBE firms and Veteran-Owned businesses to obtain the necessary equipment, supplies, materials, insurance and/or bonding to satisfy the work requirements of the bid proposal

p. Made efforts to expand the search for MWBE firms and Veteran-Owned businesses beyond the usual geographic boundaries.

q. Other--any other evidence that the bidder submits which may show that the bidder has made reasonable good faith efforts to include MWDBE and Veteran participation.

Note: Failure to submit any of the documentation requested in this section may be cause for rejection of bid. Bidders may include any other documentation deemed relevant to this requirement which is subject to review by the MBE Liaison. Documentation of Good Faith Efforts must be submitted with the Bid, if the participation Goal is not met.



MINORITY BUSINESS ENTERPRISE PROGRAM

Sherita Miller, MPA
Minority Business Enterprise Liaison
Division of Central Purchasing
Lexington-Fayette Urban County Government
200 East Main Street
Lexington, KY 40507
smiller@lexingtonky.gov
859-258-3323

OUR MISSION: The mission of the Minority Business Enterprise Program is to facilitate the full participation of minority and women owned businesses in the procurement process and to promote economic inclusion as a business imperative essential to the long term economic viability of Lexington-Fayette Urban County Government.

To that end the city council adopted and implemented resolution 167-91—Disadvantaged Business Enterprise (DBE) 10% Goal Plan in July of 1991. The resolution states in part (a full copy is available in Central Purchasing):

“A Resolution supporting adoption of the administrative plan for a ten percent (10%) Minimum goal for disadvantaged business enterprise participation in Lexington-Fayette Urban County Government construction and professional services contracts; Providing that as part of their bids on LFUCG construction contracts, general Contractors shall make a good faith effort to award at least ten percent (10%) of All subcontracts to disadvantaged business enterprises; providing that divisions of LFUCG shall make a good faith effort to award at least ten percent of their Professional services and other contracts to disadvantaged business enterprises...”

A Disadvantaged Business Enterprise is defined as a business that has been certified as being at least 51% owned, operated and managed by a U.S. Citizen of the following groups:

- African-American
- Hispanic-American
- Asian/Pacific Islander
- Native American/Native Alaskan
- Non-Minority Female
- Economically and Socially Disadvantaged

In addition, to that end the city council also adopted and implemented resolution 167-91—Veteran-owned Businesses, 3% Goal Plan in July of 2015. The resolution states in part (a full copy is available in Central Purchasing):

“A resolution adopting a three percent (3%) minimum goal for certified veteran-owned small businesses and service disabled veteran-owned businesses for certain of those Lexington-Fayette Urban County contracts related to

construction for professional services, and authorizing the Division of Purchasing to adopt and implement guidelines and/or policies consistent with the provisions and intent of this resolution by no later than July 1, 2015.”

We have compiled the list below to help you locate certified MBE, WBE and DBE certified businesses. Below is a listing of contacts for LFUCG Certified MWDBEs and Veteran-Owned Small Businesses in (<https://lexingtonky.ionwave.net>)

Business	Contact	Email Address	Phone
LFUCG	Sherita Miller	smiller@lexingtonky.gov	859-258-3323
Commerce Lexington – Minority Business Development	Tyrone Tyra	ttyra@commercelexington.com	859-226-1625
Tri-State Minority Supplier Diversity Council	Susan Marston	smarston@tsmsdc.com	502-365-9762
Small Business Development Council	Shirie Hawkins UK SBDC	smack@uky.edu	859-257-7666
Community Ventures Corporation	Phyllis Alcorn	palcorn@cvky.org	859-231-0054
KY Transportation Cabinet (KYTC)	Melvin Byne	Melvin.bynes2@ky.gov	502-564-3601
KYTC Pre-Qualification	Shella Eagle	Shella.Eagle@ky.gov	502-782-4815
Ohio River Valley Women’s Business Council (WBENC)	Sheila Mixon	smixon@orwbc.org	513-487-6537
Kentucky MWBE Certification Program	Yvette Smith, Kentucky Finance Cabinet	Yvette.Smith@ky.gov	502-564-8099
National Women Business Owner’s Council (NWBOC)	Janet Harris-Lange	janet@nwbo.org	800-675-5066
Small Business Administration	Robert Coffey	robertcoffey@sba.gov	502-582-5971
LaVoz de Kentucky	Andres Cruz	lavozydeky@yahoo.com	859-621-2106
The Key News Journal	Patrice Muhammad	paatricem@keynewsjournal.com	859-373-9428



LFUCG MWDBE PARTICIPATION FORM

Bid/RFP/Quote Reference # _____

The MWDBE and/or veteran subcontractors listed have agreed to participate on this Bid/RFP/Quote. If any substitution is made or the total value of the work is changed prior to or after the job is in progress, it is understood that those substitutions must be submitted to Central Purchasing for approval immediately. **Failure to submit a completed form may cause rejection of the bid.**

MWDBE Company, Name, Address, Phone, Email	MBE WBE or DBE	Work to be Performed	Total Dollar Value of the Work	% Value of Total Contract
1.				
2.				
3.				
4.				

The undersigned company representative submits the above list of MWDBE firms to be used in accomplishing the work contained in this Bid/RFP/Quote. Any misrepresentation may result in the termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and false claims.

Company

Company Representative

Date

Title



LFUCG MWDBE SUBSTITUTION FORM

Bid/RFP/Quote Reference # _____

The substituted MWDBE and/or veteran subcontractors listed below have agreed to participate on this Bid/RFP/Quote. These substitutions were made prior to or after the job was in progress. These substitutions were made for reasons stated below and are now being submitted to Central Purchasing for approval. By the authorized signature of a representative of our company, we understand that this information will be entered into our file for this project.

SUBSTITUTED MWDBE Company Name, Address, Phone, Email	MWDBE Formally Contracted/ Name, Address, Phone, Email	Work to Be Performed	Reason for the Substitution	Total Dollar Value of the Work	% Value of Total Contract
1.					
2.					
3.					
4.					

The undersigned acknowledges that any misrepresentation may result in termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and false claims.

Company

Company Representative

Date

Title



MWDBE QUOTE SUMMARY FORM

Bid/RFP/Quote Reference # _____

The undersigned acknowledges that the minority and/or veteran subcontractors listed on this form did submit a quote to participate on this project. Failure to submit this form may cause rejection of the bid.

Company Name	Contact Person
Address/Phone/Email	Bid Package / Bid Date

MWDBE Company Address	Contact Person	Contact Information (work phone, Email, cell)	Date Contacted	Services to be performed	Method of Communication (email, phone meeting, ad, event etc)	Total dollars \$\$ Do Not Leave Blank (Attach Documentation)	MBE * AA HA AS NA Female	Veteran

(MBE designation / AA=African American / HA= Hispanic American/AS = Asian American/Pacific Islander/ NA= Native American)

The undersigned acknowledges that all information is accurate. Any misrepresentation may result in termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and claims.

Company

Company Representative

Date

Title



LFUCG SUBCONTRACTOR MONTHLY PAYMENT REPORT

The LFUCG has a 10% goal plan adopted by city council to increase the participation of minority and women owned businesses in the procurement process. The LFUCG also has a 3% goal plan adopted by cited council to increase the participation of veteran owned businesses in the procurement process. In order to measure that goal LFUCG will track spending with MWDBE and Veteran contractors on a monthly basis. By the signature below of an authorized company representative, you certify that the information is correct, and that each of the representations set forth below is true. Any misrepresentation may result in termination of the contract and/or prosecution under applicable Federal and State laws concerning false statements and false claims. Please submit this form monthly to the Division of Central Purchasing/ 200 East Main Street / Room 338 / Lexington, KY 40507.

Bid/RFP/Quote # _____

Total Contract Amount Awarded to Prime Contractor for this Project _____

Project Name/ Contract #	Work Period/ From:	To:
Company Name:	Address:	
Federal Tax ID:	Contact Person:	

Subcontractor Vendor ID (name, address, phone, email)	Description of Work	Total Subcontract Amount	% of Total Contract Awarded to Prime for this Project	Total Amount Paid for this Period	Purchase Order number for subcontractor work (please attach PO)	Scheduled Project Start Date	Scheduled Project End Date

By the signature below of an authorized company representative, you certify that the information is correct, and that each of the representations set forth below is true. Any misrepresentations may result in the termination of the contract and/or prosecution under applicable Federal and State laws concerning false statements and false claims.

Company

Company Representative

Date

Title

LFUCG STATEMENT OF GOOD FAITH EFFORTS

Bid/RFP/Quote # _____

By the signature below of an authorized company representative, we certify that we have utilized the following Good Faith Efforts to obtain the maximum participation by MWDBE and Veteran-Owned business enterprises on the project and can supply the appropriate documentation.

_____ Advertised opportunities to participate in the contract in at least two (2) publications of general circulation media; trade and professional association publications; small and minority business or trade publications; and publications or trades targeting minority, women and disadvantaged businesses not less than fifteen (15) days prior to the deadline for submission of bids to allow MWDBE firms and Veteran-Owned businesses to participate.

_____ Included documentation of advertising in the above publications with the bidders good faith efforts package

_____ Attended LFUCG Central Purchasing Economic Inclusion Outreach event

_____ Attended pre-bid meetings that were scheduled by LFUCG to inform MWDBEs and/or Veteran-Owned Businesses of subcontracting opportunities

_____ Sponsored Economic Inclusion event to provide networking opportunities for prime contractors and MWDBE firms and Veteran-Owned businesses

_____ Requested a list of MWDBE and/or Veteran subcontractors or suppliers from LFUCG and showed evidence of contacting the companies on the list(s).

_____ Contacted organizations that work with MWDBE companies for assistance in finding certified MWDBE firms and Veteran-Owned businesses to work on this project. Those contacted and their responses should be a part of the bidder's good faith efforts documentation.

_____ Sent written notices, by certified mail, email or facsimile, to qualified, certified MWDBEs soliciting their participation in the contract not less than seven (7) days prior to the deadline for submission of bids to allow them to participate effectively.

_____ Followed up initial solicitations by contacting MWDBEs and Veteran-Owned businesses to determine their level of interest.

_____ Provided the interested MWDBE firm and/or Veteran-Owned business with adequate and timely information about the plans, specifications, and requirements of the contract.

_____ Selected portions of the work to be performed by MWDBE firms and/or Veteran-Owned businesses in order to increase the likelihood of meeting the

contract goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MWDBE and Veteran participation, even when the prime contractor may otherwise perform these work items with its own workforce

_____ Negotiated in good faith with interested MWDBE firms and Veteran-Owned businesses not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection should be so noted in writing with a description as to why an agreement could not be reached.

_____ Included documentation of quotations received from interested MWDBE firms and Veteran-Owned businesses which were not used due to uncompetitive pricing or were rejected as unacceptable and/or copies of responses from firms indicating that they would not be submitting a bid.

_____ Bidder has to submit sound reasons why the quotations were considered unacceptable. The fact that the bidder has the ability and/or desire to perform the contract work with its own forces will not be considered a sound reason for rejecting a MWDBE and/or Veteran-Owned business's quote. Nothing in this provision shall be construed to require the bidder to accept unreasonable quotes in order to satisfy MWDBE and Veteran goals.

_____ Made an effort to offer assistance to or refer interested MWDBE firms and Veteran-Owned businesses to obtain the necessary equipment, supplies, materials, insurance and/or bonding to satisfy the work requirements of the bid proposal

_____ Made efforts to expand the search for MWBE firms and Veteran-Owned businesses beyond the usual geographic boundaries.

_____ Other--any other evidence that the bidder submits which may show that the bidder has made reasonable good faith efforts to include MWDBE **and Veteran participation.**

NOTE: Failure to submit any of the documentation requested in this section may be cause for rejection of bid. Bidders may include any other documentation deemed relevant to this requirement which is subject to approval by the MBE Liaison. Documentation of Good Faith Efforts must be submitted with the Bid, if the participation Goal is not met.

The undersigned acknowledges that all information is accurate. Any misrepresentations may result in termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and claims.

Company

Company Representative

Date

Title

GENERAL PROVISIONS

1. Each Respondent shall comply with all Federal, State & Local regulations concerning this type of service or good.

The Respondent agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, *29 U.S.C. 650 et. seq.*, as amended, and KRS Chapter 338. The Respondent also agrees to notify the LFUCG in writing immediately upon detection of any unsafe and/or unhealthful working conditions at the job site. The Respondent agrees to indemnify, defend and hold the LFUCG harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.

2. Failure to submit ALL forms and information required in this RFP may be grounds for disqualification.
3. Addenda: All addenda, if any, shall be considered in making the proposal, and such addenda shall be made a part of this RFP. Before submitting a proposal, it is incumbent upon each proposer to be informed as to whether any addenda have been issued, and the failure to cover in the bid any such addenda may result in disqualification of that proposal.
4. Proposal Reservations: LFUCG reserves the right to reject any or all proposals, to award in whole or part, and to waive minor immaterial defects in proposals. LFUCG may consider any alternative proposal that meets its basic needs.
5. Liability: LFUCG is not responsible for any cost incurred by a Respondent in the preparation of proposals.
6. Changes/Alterations: Respondent may change or withdraw a proposal at any time prior to the opening; however, no oral modifications will be allowed. Only letters, or other formal written requests for modifications or corrections of a previously submitted proposal which is addressed in the same manner as the proposal, and received by LFUCG prior to the scheduled closing time for receipt of proposals, will be accepted. The proposal, when opened, will then be corrected in accordance with such written request(s), provided that the written request is contained in a sealed envelope which is plainly marked "modifications of proposal".
7. Clarification of Submittal: LFUCG reserves the right to obtain clarification of any point in a bid or to obtain additional information from a Respondent.
8. Bribery Clause: By his/her signature on the bid, Respondent certifies that no employee of his/hers, any affiliate or Subcontractor, has bribed or attempted to bribe an officer or employee of the LFUCG.

9. Additional Information: While not necessary, the Respondent may include any product brochures, software documentation, sample reports, or other documentation that may assist LFUCG in better understanding and evaluating the Respondent's response. Additional documentation shall not serve as a substitute for other documentation which is required by this RFP to be submitted with the proposal,
10. Ambiguity, Conflict or other Errors in RFP: If a Respondent discovers any ambiguity, conflict, discrepancy, omission or other error in the RFP, it shall immediately notify LFUCG of such error in writing and request modification or clarification of the document if allowable by the LFUCG.
11. Agreement to Bid Terms: In submitting this proposal, the Respondent agrees that it has carefully examined the specifications and all provisions relating to the work to be done attached hereto and made part of this proposal. By acceptance of a Contract under this RFP, proposer states that it understands the meaning, intent and requirements of the RFP and agrees to the same. The successful Respondent shall warrant that it is familiar with and understands all provisions herein and shall warrant that it can comply with them. No additional compensation to Respondent shall be authorized for services or expenses reasonably covered under these provisions that the proposer omits from its Proposal.
12. Cancellation: If the services to be performed hereunder by the Respondent are not performed in an acceptable manner to the LFUCG, the LFUCG may cancel this contract for cause by providing written notice to the proposer, giving at least thirty (30) days notice of the proposed cancellation and the reasons for same. During that time period, the proposer may seek to bring the performance of services hereunder to a level that is acceptable to the LFUCG, and the LFUCG may rescind the cancellation if such action is in its best interest.

A. Termination for Cause

- (1) LFUCG may terminate a contract because of the contractor's failure to perform its contractual duties
- (2) If a contractor is determined to be in default, LFUCG shall notify the contractor of the determination in writing, and may include a specified date by which the contractor shall cure the identified deficiencies. LFUCG may proceed with termination if the contractor fails to cure the deficiencies within the specified time.
- (3) A default in performance by a contractor for which a contract may be terminated shall include, but shall not necessarily be limited to:
 - (a) Failure to perform the contract according to its terms,

- conditions and specifications;
- (b) Failure to make delivery within the time specified or according to a delivery schedule fixed by the contract;
 - (c) Late payment or nonpayment of bills for labor, materials, supplies, or equipment furnished in connection with a contract for construction services as evidenced by mechanics' liens filed pursuant to the provisions of KRS Chapter 376, or letters of indebtedness received from creditors by the purchasing agency;
 - (d) Failure to diligently advance the work under a contract for construction services;
 - (e) The filing of a bankruptcy petition by or against the contractor; or
 - (f) Actions that endanger the health, safety or welfare of the LFUCG or its citizens.

B. At Will Termination

Notwithstanding the above provisions, the LFUCG may terminate this contract at will in accordance with the law upon providing thirty (30) days written notice of that intent, Payment for services or goods received prior to termination shall be made by the LFUCG provided these goods or services were provided in a manner acceptable to the LFUCG. Payment for those goods and services shall not be unreasonably withheld.

- 13. **Assignment of Contract:** The contractor shall not assign or subcontract any portion of the Contract without the express written consent of LFUCG. Any purported assignment or subcontract in violation hereof shall be void. It is expressly acknowledged that LFUCG shall never be required or obligated to consent to any request for assignment or subcontract; and further that such refusal to consent can be for any or no reason, fully within the sole discretion of LFUCG.
- 14. **No Waiver:** No failure or delay by LFUCG in exercising any right, remedy, power or privilege hereunder, nor any single or partial exercise thereof, nor the exercise of any other right, remedy, power or privilege shall operate as a waiver hereof or thereof. No failure or delay by LFUCG in exercising any right, remedy, power or privilege under or in respect of this Contract shall affect the rights, remedies, powers or privileges of LFUCG hereunder or shall operate as a waiver thereof.
- 15. **Authority to do Business:** The Respondent must be a duly organized and authorized to do business under the laws of Kentucky. Respondent must be in good standing and have full legal capacity to provide the services specified under this Contract. The Respondent must have all necessary right and lawful authority to enter into this Contract for the full term hereof and that proper corporate or other action has been duly taken authorizing the Respondent to enter into this

Contract. The Respondent will provide LFUCG with a copy of a corporate resolution authorizing this action and a letter from an attorney confirming that the proposer is authorized to do business in the State of Kentucky if requested. All proposals must be signed by a duly authorized officer, agent or employee of the Respondent.

16. **Governing Law:** This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event of any proceedings regarding this Contract, the Parties agree that the venue shall be the Fayette County Circuit Court or the U.S. District Court for the Eastern District of Kentucky, Lexington Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Contract or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.
17. **Ability to Meet Obligations:** Respondent affirmatively states that there are no actions, suits or proceedings of any kind pending against Respondent or, to the knowledge of the Respondent, threatened against the Respondent before or by any court, governmental body or agency or other tribunal or authority which would, if adversely determined, have a materially adverse effect on the authority or ability of Respondent to perform its obligations under this Contract, or which question the legality, validity or enforceability hereof or thereof.
18. Contractor understands and agrees that its employees, agents, or subcontractors are not employees of LFUCG for any purpose whatsoever. Contractor is an independent contractor at all times during the performance of the services specified.
19. If any term or provision of this Contract shall be found to be illegal or unenforceable, the remainder of the contract shall remain in full force and such term or provision shall be deemed stricken.

Signature

Date

Program Management Services
Lexington-Fayette Urban County Government
Division of Water Quality
Capacity, Management, Operations and Maintenance (CMOM)

General Information

Since 2011, Lexington-Fayette Urban County Government (LFUCG) has been operating its sanitary sewer system under the terms and conditions of a Federal Consent Decree. The Consent Decree required Lexington to develop and implement a Capacity, Management, Operations and Maintenance (CMOM) Program, including specific written plans that, if properly implemented, would facilitate Lexington's return to compliance. The following plans /reports have been approved by regulatory agencies and are available for inspection at:

<https://www.lexingtonky.gov/consent-decree>

1. CMOM Self-Assessment
2. Sewer Overflow Response Plan (SORP)
3. Fats, Oils, and Grease (FOG) Control Program
4. Pump Station Operation Plan for Power Outages (PSOPPO)
5. Gravity Line Preventative Maintenance Program

Each of these plans and reports has specific compliance criteria that must be followed in order for Lexington to be in compliance with its Consent Decree CMOM requirements. To date, Lexington has been able to fully implement all aspects of its CMOM program but continues to require program management services to prevent future, avoidable non-compliance.

The Scope of Services described below provides a broad perspective of Lexington's needs for CMOM program management. Any questions and inquiries related to this Request for Proposals / Scope of Services must be directed to the Division of Central Purchasing. The failure to follow this provision may result in disqualification of the proposer.

SCOPE OF SERVICES

LFUCG is accepting proposals from consulting firms interested in assisting LFUCG with the continued implementation of portions of the CMOM program. Work associated with developing, calibrating or maintaining the sanitary system hydraulic model is not part of this request and the selected firm will have no modeling responsibilities under this contract. The selected firm's association with the hydraulic model will be limited to compiling reported outcomes of the hydraulic modeling program as required by the quarterly and annual reporting sections of the Consent Decree. Information on and copies of the Federal Consent Decree, its appendices/attachments along, with prior Quarterly and Annual Reports are available at no cost on the LFUCG web page:

<https://www.lexingtonky.gov/consent-decree>

1. General Project Description

The selected consultant shall perform professional services as hereinafter stated which include technical writing, reporting, utility services program development/management, civil/sanitary engineering; and scheduling/planning to meet the obligations associated with CMOM deliverables contained in the Consent Decree (excluding Paragraph 16.b Capacity Assurance). The successful proposer will be awarded a 365-day contract for work associated with implementation of the applicable CMOM provisions. No automatic annual renewals of the CMOM contract will be issued.

The primary goal of this project is to provide LFUCG with the technical support necessary to successfully continue implementing the requirements of the following plans:

- A. CMOM Self Assessment
- B. Sewer Overflow Response Plan (SORP)
- C. Fats, Oils and Grease (FOG) Control Program
- D. Pump Station Operation Plan for Power Outages (PSOPPO)
- E. Gravity Line Preventative Maintenance Plan

The means and methods for continuing successful CMOM implementation are broad. Specific scope items of near-term priority for LFUCG are listed below. Previously produced examples of the reports and plans discussed below can be downloaded from LFUCG's Consent Decree Public Document Repository at:

<https://www.lexingtonky.gov/consent-decree>

2. Base Scope of Services

- A. Compilation of data and outcomes for the Consent Decree-required Quarterly Report
 - 1) Review and compile Sanitary Sewer Overflow (SSO) data provided by LFUCG and report in the formats currently found in the Quarterly Report.
 - 2) Collect CMOM program data from various sources and provide written text that documents progress made during the past quarter along with projecting progress for the upcoming quarter. Format must match current Quarterly Report formatting.
 - 3) Provide required charts, tables and text in formats suitable for merging with other content so that LFUCG can produce a compliant Quarterly Report.

- B. Compilation of data and outcomes for the Consent Decree-required Annual Report
 - 1) Review and compile Sanitary Sewer Overflow (SSO) data provided by LFUCG and report in the formats currently found in the Annual Report.
 - 2) Collect CMOM program data from various sources and provide written text that documents progress made during the past year along with projecting progress for the upcoming year. Format must match current Annual Report formatting.

- 3) Provide required charts, tables and text in formats suitable for merging with other content so that LFUCG can produce a complaint Annual Report.
- 4) Collect Performance Measure data contained in the Annual Report from various sources within the Division of Water Quality organization and synthesize that data into charts, graphs or other text for inclusion in the Annual Report.

C. Annual update of the sanitary Sewer Overflow Response Plan (SORP).

- 1) Compile and analyze completed capital improvement project outcomes as necessary to ensure that Sanitary Sewer Overflow (SSO) monitoring field maps and logs are representative of actual field conditions.
- 2) Produce modified SSO monitoring books and maps so that field crews have most current information.
- 3) By September 15 of each year, edit the existing SORP manual to reflect changed conditions.
- 4) Assist LFUCG in all matters related to submitting an updated annual SORP to the Kentucky Division of Water by October 15 of each year.

D. Review and update of selected operational SOPs.

Over 20 different written Standard Operating Procedures (SOPs) have been developed to assist LFUCG in its continued implementation of the CMOM program. The selected consultant will be required to review and revise SOPs as necessary to reflect changes in organization and/or technology. A list of the current SOPs in effect is provided in Attachment A.

E. Assistance and technical support for internal training programs.

The consultant will assist LFUCG in the development of a long-term CMOM implementation-training program for in-house CMOM implementation staff. The primary goal of the training program is to continually reinforce the content and objectives of the CMOM SOPs, and identify when changing conditions and technology merit modification of an SOP. The consultant, unless otherwise instructed, will be responsible for refining existing training materials, developing new training materials, conducting all training programs and administering post-training evaluations to determine the effectiveness of the training.

In addition to the Base Scope of Services tasks described above, LFUCG believes that occasional services will be required in the following areas:

- 1) The specification and procurement of specialized services and equipment. Specialized services may include the use of other vendors (examples: emergency equipment / rapid response procurement plan, industrial grade electrical contracting, sewer cleaning and CCTV inspection services, flow meters / monitoring and remote notification systems, etc.).
- 2) Field level performance evaluations of LFUCG staff and vendor-provided services in all aspects of CMOM implementation.

- 3) The development of written recommendations for potential efficiency opportunities within the overall CMOM program.

Due to the uncertainty of LFUCG's needs with implementation of a comprehensive CMOM program, all work associated with this RFQ will be assigned via written Task Order. The selected consultant will be issued a Base Scope of Services Task Order that will include a fee estimate for those services for a maximum duration of one year. Additional work, if needed, will be approved by separate Task Order. Written approval from the Director, Division of Water Quality (or their designee) must be received prior to initiating work associated with a Task Order. Approved Task Orders will specify the LFUCG Project Manager that will act as the primary LFUCG contact for completing the Task Orders. Under no circumstances should changes in Task Order scope or estimated fee occur without prior, written approval from the director (or their designee). A copy of Task Order format is provided as Attachment B of this solicitation.

The selected vendor may incur financial penalty in the event that deliverable deadlines contained in a written Task Order are missed as outlined in the enclosed Consent Decree Engineering Services Agreement (Attachment C).

3. Quarterly Meetings

The selected consultant should allocate a maximum of 6 (six) man-hours per quarter for attending Base Scope of Services meetings. The topics of these meetings will be varied but is intended as a means to define or clarify deliverables associated with the issued Base Scope of Services Task Order. The consultant can be represented by a maximum of two employees at these meetings. Other meetings, as necessary or additional consultant representation/participation will be addressed via specific Task Orders.

4. Schedule and Completion

The proposed timeline for this project is outlined in the following schedule. This timeline may be adjusted. The Division of Water Quality shall arrange the exact time and location of meetings.

Meeting to Negotiate Contract	October 1, 2018
Award of Contract	October 26, 2018
Issuance of Base Scope T.O.	November 1, 2018

5. Method of Billing, Invoice and Payment

In the hourly rates section of the proposal, hourly rates should be listed by position and not name; furthermore, every possible position that could be billed to this project should be listed. In addition, hourly rates are inclusive; therefore, no incidental expenses will be considered. Finally, no multiplier will be allowed, bill by hourly rate only.

The selected consultant may submit monthly invoices for basic services or work rendered, based upon the selected consultant's estimate of the portion of the specific Task Order actually completed during the billing cycle. Each invoice shall be accompanied by a breakdown of hours attributed to each sub-task for both the billing cycle and the cumulative project period. The LFUCG Project Manager assigned to any specific Task Order shall respond to the invoice within

thirty days, either denying or approving payment. Specific project time sheets and other payroll information may be subject to reviews and audits by the Lexington-Fayette Urban County Government.

6. Miscellaneous

1. Any plans, specifications and accompanying documents developed as part of this scope or associated, future Task Orders are subject to review by LFUCG's Division of Water Quality. The selected vendor shall be responsible for incorporating the comments and requirements of the division into all documents.
2. Any plans, specifications, reports and accompanying documents shall be submitted to LFUCG in their original, electronic format, and shall become the property of LFUCG.
3. Any data collection shall be compatible with existing Geographic Information System parameters used by LFUCG. Access Data Base formats will be provided.
4. This contract will be for a period of one year at which time a request for proposals will be issued for program management services.

ATTACHMENT A

CMOM - Standard Operating Procedures

1. SSO Building Back up
2. SOP Building Backup PDF
3. SOP Bypass Pumping for Containment –Flow Diversion
4. SOP Containment Dry Weather SSOs
5. SOP Flow Diversion of Dry Weather SSOs
6. SOP Preventative Maintenance List Draft
7. SOP Procedures for Pump Station Operation During Power Outages 8-18-16
8. SOP Pump Station Pump and Haul Protocol
9. SOP SO8 Dry Weather SSO
- 10.SOP SO8 Procedures for Normal Hours Wet Weather SSO Protocol
- 11.SOP SO8A Establish SORP Teams -10-6-17
- 12.SOP SO9 Procedures for After-Hours Wet Weather SSO Protocol
- 13.SOP SO9A Manhole SSO Alarm Protocol 9-14-17
- 14.SOP SO10 Fats, Oils, and Grease (FOG) Related SSO Protocol
- 15.SOP SO10 FOG Related SSO Compliance Protocol
- 16.SOP SO15 Follow Up Inspections 9-15-17
- 17.SOP SO18 Pump Station Alarm Response Protocol
- 18.SOP SO18 Pump Station Alarm Response PDF
- 19.SOP Wet Weather Surveys Level 1 Tier 2 Personnel Draft
- 20.SOP Wet Weather Surveys Level 1 Tier 2 Personnel PDF
- 21.SSO Cleanup Flowchart PDF
- 22.SSO Cleanup 9-15-17
- 23.Visio- After-Hours Wet Weather SSO Protocol 2-25-14
- 24.Visio- Dry Weather SSO 2-24-14
- 25.Visio-FOG Related SSO
- 26.Visio-Pump Station Alarm Protocol
- 27.Visio-SSO Follow up 2-26-14

**ATTACHMENT B
CMOM – TASK ORDER**

**LFUCG TASK ORDER NO. _____
UNDER LFUCG AGREEMENT WITH _____ FOR**

CONSULTANT

OWNER

	_____	Lexington Fayette Urban County Government
Street Address	_____	200 East Main Street
City, State, Zip	_____	Lexington, KY 40507
Contact Person	_____	Charles Martin
Telephone	_____	859-425-2400
Fax	_____	859-254-7787
E-Mail	_____	chmartin@lexingtonky.gov

Task Order Date: _____

Task Name: _____

Task ID: _____

SCOPE OF WORK/DELIVERABLES

See Attached

SCHEDULE OF WORK

See Attached

FEE

See Attached

ADDITIONAL PROVISIONS

<p>Because this is a Commonwealth Environmental Project, CONSULTANT understands and agrees that the performance of these services is related to the Consent Decree entered in a case styled <i>United States & Commonwealth of Kentucky v. Lexington Fayette Urban County Government</i>, United States District Court for the Eastern District of Kentucky, Civil Action No. 5:06-cv-386-KSF (the “CONSENT DECREE”), a copy of which has been made available for review by the CONSULTANT, and which is incorporated herein by reference. The CONSULTANT further agrees that the services performed pursuant to this task order are necessary for the OWNER to meet the deadlines of the CONSENT DECREE and that the following requirements and conditions, which are in addition to those provided in the Engineering Services Agreement, shall apply to all work and services performed by the CONSULTANT under this task order:</p>
--

1. Time is of the essence in the performance of the work and services. **CONSULTANT** is aware that the **OWNER** is subject to penalties for non-compliance with the **CONSENT DECREE** deadlines.

2. If delays result solely by reason of acts of the **CONSULTANT**, the **CONSULTANT** shall be held liable for any financial penalties incurred by the **OWNER** as a result of the delay, **including but not limited to those assessed pursuant to the CONSENT DECREE**. Section 6.5 of this Engineering Services Agreement (**Disputes**), shall apply in the event the parties cannot mutually agree upon the cause(s) associated with delays in completing project deliverables. The **CONSULTANT** must immediately notify the **OWNER** in the event of such delay, and provide the **OWNER** a written action plan within five (5) business days on how it will attempt to resolve the delay.

3. In the event that **CONSULTANT'S** delay or other nonperformance of its obligations hereunder results in the imposition of penalties against the **OWNER** pursuant to the **CONSENT DECREE**, or the **OWNER** otherwise suffers damage as a result of such delay or nonperformance, **CONSULTANT** shall be solely liable to **OWNER** for any and all such damages, including any costs and attorney's fees.

ACCEPTED BY:

AUTHORIZED BY:

Consultant's Authorized Signature

Owner's Authorized Signature

Date Signed

Date Signed

*Two originals of this work order shall be executed by the Consultant and returned to the Owner _____.
A fully executed copy will be returned to the Consultant.*

ATTACHMENT C

ENGINEERING SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of _____, 2018, between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to KRS Chapter 67A (“**OWNER**”) and _____ with offices located at _____ (“**CONSULTANT**”). **OWNER** intends to proceed with the _____ as described in the attached **EXHIBIT A**, Scope of Engineering Services and Related Matters RFP # _____ (the “**PROJECT**”). The **CONSULTANT** shall perform professional engineering services and deliverables as described in **EXHIBIT A** which include customary master planning, civil, geotechnical, electrical, mechanical, structural, programming, water quality and sanitary engineering services as related to providing the deliverables specific to this agreement—that will assist the **OWNER** in successfully implementing the **PROJECT** and complying with any requirements which are related to the Consent Decree entered in a case styled *United States & Commonwealth of Kentucky v. Lexington Fayette Urban County Government*, United States District Court for the Eastern District of Kentucky, Civil Action No. 5:06-cv-386-KSF (the “**CONSENT DECREE**”). The services are hereinafter referred to as the **PROJECT**. **The primary goal of the PROJECT is to provide the OWNER with the technical support necessary to successfully meet the CMOM obligations and deadlines of the CONSENT DECREE.** **OWNER** and **CONSULTANT** in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by **CONSULTANT** and the payment for those services by **OWNER** as set forth below.

CONSULTANT shall provide professional consulting services for **OWNER** in all phases of the **PROJECT** to which this Agreement applies, serve as **OWNER'S** professional engineering representative for the **PROJECT** as set forth below and shall give professional consultation and advice to **OWNER** during the performance of services hereunder.

SECTION 1 - BASIC SERVICES OF CONSULTANT

1.1. General

CONSULTANT shall perform professional services as hereinafter stated that include customary civil, geotechnical, structural, mechanical, electrical and sanitary engineering services incidental thereto.

1.2. Incorporated Documents

The following documents are incorporated by reference as part of this Agreement:

1. The **CONSENT DECREE**, as may be amended, including all appendices.
2. **EXHIBIT A** – Scope of Engineering Services and Related Matters RFP # _____ (Including Addendums).
3. **EXHIBIT B** – Certificate of Insurance and Evidence of Insurability.
4. **EXHIBIT C** – Proposal of Engineering Services and Related Matters (the **CONSULTANT**'s response to RFP # _____).
5. **EXHIBIT D** – Further Description of Basic Engineering Services and Related Matters (including schedule of hourly rates and/or fees)

To the extent of any conflict among the provisions of these documents and/or this Agreement, the provisions of this Agreement shall control, followed by the provisions of **EXHIBIT A**, then **EXHIBIT D**, and then **EXHIBIT C**.

1.3 Project Phase

A complete description of the duties and responsibilities of the **CONSULTANT** are as indicated in **EXHIBIT A**, Scope of Engineering Services and Related Matters RFP # _____, **EXHIBIT C** Proposal of Engineering Services and Related Matters, and **Exhibit D** Further Description of Basic Engineering Services and Related Matters. After written authorization to proceed from the **OWNER**, **CONSULTANT** shall:

- 1.3.1.** Notify the **OWNER** in writing of its authorized representative who shall act as Project Engineer and liaison representative between the **CONSULTANT** and the **OWNER**. **OWNER** has the right to approve the Project Engineer, or any change thereto, which approval shall not be unreasonably withheld.
- 1.3.2.** The **CONSULTANT** **must perform all duties necessary to fully complete the deliverables as further described in attached EXHIBIT A**, Scope of Engineering Services and Related Matters RFP # _____, attached **EXHIBIT C**, Proposal of Engineering Services and Related Matters, and attached **EXHIBIT D** Further Description of Basic Engineering Services and Related Matters **unless otherwise agreed to in writing by the parties**.
- 1.3.3.** The **CONSULTANT** shall provide written documentation of all meetings and be responsible for incorporating all comments and changes resulting therefrom in final work product.
- 1.3.4.** The **CONSULTANT** shall submit five (5) copies (hardcover) of all initial draft final work products for this **PROJECT** unless otherwise described in Exhibit A. The copies of the initial draft final reports are submitted for review and comment by the **OWNER**, and should be presented in person to the **OWNER**.
- 1.3.5.** After the **OWNER'S** detailed review, the **CONSULTANT** will revise the initial draft final for all work products for this **PROJECT**, and the **CONSULTANT** shall submit five (5) copies (hardcover) unless otherwise described in Exhibit A. One electronic copy of the all work products for this **PROJECT**, including all appendices, shall be provided and prepared in such a manner that it can readily be converted to a quick-link accessible form for the **OWNER'S** Website. The **OWNER** shall have ten (10) business days within which to accept or deny each such final draft. If it is denied, the **OWNER** shall provide a detailed explanation in writing for the basis of such denial. Once the **OWNER** accepts the draft as final, a total of ten (10) final copies (hardcover) are required in addition to an electronic copy unless otherwise described in Exhibit A.
- 1.3.6.** Immediately notify **OWNER** of any delay in the delivery of a work product or deliverable, regardless of cause. Give written notice to **OWNER** within five (5) business days whenever **CONSULTANT** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT'S** services, or any defect in the work of Contractor(s).

SECTION 2 - EXTRA WORK BY CONSULTANT

- 2.1. The **OWNER** may desire to have the **CONSULTANT** perform work or render services in connection with this **PROJECT** other than provided by the expressed intent of this Agreement. Such work shall be considered as Extra Work, subject to a change order, supplemental to this Agreement, setting forth the character and scope thereof and the compensation therefore. Work under such change order shall not proceed until the **OWNER** gives written authorization. Should the **OWNER** find it desirable to have previously satisfactorily completed and accepted plans or parts thereof revised, the **CONSULTANT** shall make such revisions as directed, in writing, by the **OWNER**. This work shall be considered as Extra Work and shall be paid as such.
- 2.2. All Extra Work is subject to prior written authorization of **OWNER** and necessary appropriations made by the Urban County Council.

SECTION 3 - OWNER'S RESPONSIBILITIES

OWNER shall:

- 3.1. Provide criteria and information as to **OWNER'S** requirements for the **PROJECT**, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.
- 3.2. Assist **CONSULTANT** by placing at his disposal available information pertinent to the Project.
- 3.3. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by **CONSULTANT**, and provide written approval or disapproval thereof within a reasonable time so as not to delay the services of **CONSULTANT**.
- 3.4. Designate in writing a person to act as **OWNER'S** representative agent with respect to the services to be rendered under this Agreement (see Section 8.1.1.). Such person shall have complete authority to transmit instructions, receive information, interpret, and define **OWNER'S** policies and decisions with respect to materials, equipment, elements, and systems pertinent to **CONSULTANT'S** services.
- 3.5. Give written notice to **CONSULTANT** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT'S** services, or any defect in the work of **CONSULTANT**.
- 3.6. Furnish or direct **CONSULTANT** to provide, Extra Work as stipulated in Section Two (2) of this Agreement or other services as required.

SECTION 4 - PERIOD OF SERVICES

- 4.1. Time is of the essence in the performance of this Agreement. **CONSULTANT** is aware that the **OWNER** is subject to penalties for non-compliance with the **CONSENT DECREE** deadlines. See attached **EXHIBIT A** for the overall current project schedule.
- 4.2. The provisions of this Section Four (4) and the various rates of compensation for **CONSULTANT'S** services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the **PROJECT** through completion.
- 4.3. If a delay results from the acts of **OWNER** or another entity that is required to permit or approve the work or services, an extension of time for such delay will be considered by **OWNER**.
 - 4.3.1. If the above type of delay occurs and **CONSULTANT** wants an extension of time, it must, within ten (10) days from the date of the delay, apply in writing

to **OWNER** for an extension of time for a reasonable period, which must be agreed upon by **OWNER**.

- 4.3.2. If the extension of time is approved by **OWNER**, the **PROJECT** schedule shall be revised to reflect the extension. Such extension of time to the completion date shall in no way be construed to operate as a waiver on the part of **OWNER** of any of its other rights in the Agreement.
 - 4.3.3. If the above type of delay would prevent complete performance of the **PROJECT** within sixty (60) days of the time specified therein, **OWNER** shall have the option of cancelling the **PROJECT** or otherwise adjusting the scope of the services or work.
 - 4.3.4. If the parties cannot mutually agree to an extension of time or an adjustment, Section 6.5 under “DISPUTES” of this Agreement shall apply.
- 4.4. If delays result solely by reason of acts of the **CONSULTANT**, the **CONSULTANT** shall be held liable for any financial penalties incurred by the **OWNER** as a result of the delay, **including but not limited to those assessed pursuant to the CONSENT DECREE**. Section 6.5 of this Agreement (**Disputes**), shall apply in the event the parties cannot mutually agree upon the cause(s) associated with delays in completing project deliverables. The **CONSULTANT** must immediately notify the **OWNER** in the event of such delay, and provide the **OWNER** a written action plan within five (5) business days on how it will attempt to resolve the delay.

SECTION 5 - PAYMENTS TO CONSULTANT

5.1. Methods of Payment for Services of CONSULTANT.

5.1.1. For Basic Services

OWNER shall issue individual task orders for each work assignment performed under this Agreement by **CONSULTANT** or its sub-consultant/s. Each task order shall contain scope of work, fee, and schedule for performance of the work. Individual task orders shall be of the form included in **EXHIBIT D**.

5.1.1.a Fee payable to **CONSULTANT** under individual task order shall be developed using hourly rates included in **EXHIBIT D** or as amended in accordance with provisions therein.

5.1.1.b Terms of payment to **CONSULTANT** shall be specified in each task order. For assignments with defined scope, lump sum task orders shall be issued. Otherwise, task orders shall include time and materials payment terms.

5.1.1.c Each task order issued shall receive prior written approval of **OWNER** prior to **CONSULTANT** proceeding with said work. The **OWNER's** designated agent in Section 8.1.1. shall be the only person authorized to provide such approval.

5.1.2. For Extra Work

Extra Work shall be paid for by the **OWNER** on the basis of a fixed fee, the amount of which shall be determined by negotiation. The **OWNER** shall have the right to negotiate alternate methods of payment for Extra Work if the **OWNER** determines that the fixed fee basis is not feasible. In the event the **OWNER** and the **CONSULTANT** are unable to agree upon the amount of payment for Extra

Work, then the amount of such payment shall be determined pursuant to Section 6.5 (**Disputes**).

5.2. Times of Payment

5.2.1 **CONSULTANT** shall submit to **OWNER** detailed monthly statements for Basic Services and Extra Work rendered. The Statements will be based upon **CONSULTANT'S** estimate of the proportion of the total services actually completed at the time of billing. **OWNER** shall respond to **CONSULTANT'S** monthly statements within thirty (30) days, either denying payment or making payment.

5.3. Other Provisions Concerning Payments

5.3.1. In the event the Agreement is terminated by the **OWNER** without fault on the part of the **CONSULTANT**, the **CONSULTANT** shall be paid for the work performed or services rendered for which it has not already been paid in an amount bearing the same ratio to the total Agreement fee as the amount of work completed or partially completed and delivered to the **OWNER** is to the total amount of work provided for herein, as determined by mutual agreement between the **OWNER** and the **CONSULTANT**.

5.3.2. In the event the services of the **CONSULTANT** are terminated by the **OWNER** for fault on the part of the **CONSULTANT**, the **CONSULTANT** shall be paid reasonable value of the work performed or services rendered and delivered for which it has not already been paid, and the amount to be paid shall be determined by the **OWNER**.

SECTION 6 - GENERAL CONSIDERATIONS

6.1. Termination

6.1.1. **CONSULTANT** may only terminate this Agreement due to **OWNER'S** material breach of the terms hereof which breach causes **CONSULTANT** to be unable to perform its duties and responsibilities under this Agreement and upon forty-five (45) days written advance notice to **OWNER**.

6.1.2. The **OWNER** may terminate this Agreement for cause upon seven (7) business days written advance notice to the **CONSULTANT**. The **OWNER** reserves the right to terminate the Agreement for any reason whatsoever, with or without cause, at any time upon thirty (30) days written advance notice to the **CONSULTANT**.

6.2. Ownership and Reuse of Documents

All documents, including raw data, reports, drawings and specifications, prepared by the **CONSULTANT** pursuant to this Agreement shall be delivered to and become the property of the **OWNER**. The **OWNER** shall have the right to reuse same without restriction or limitation, but without liability or legal exposure to **CONSULTANT**.

6.3. Legal Responsibilities and Legal Relations

- 6.3.1.** The **CONSULTANT** shall familiarize itself with and shall at all times comply with the **CONSENT DECREE** and all federal, state, and local laws, ordinances, and regulations that in any manner affect the services of this Agreement.
- 6.3.2.** In performing the services hereunder, the **CONSULTANT** and its consultants, employees, agents and representatives shall not be deemed or construed to be employees of **OWNER** in any manner whatsoever. Except as otherwise provided in this Agreement, the **CONSULTANT** shall be acting as an independent contractor. The **CONSULTANT** shall not hold itself out as, nor claim to be, an officer or employee of **OWNER** by reason hereof and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of **OWNER**. The **CONSULTANT** shall be solely responsible for any claims for wages or compensation by **CONSULTANT'S** employees, agents and representatives, including consultants, and shall save and hold **OWNER** harmless therefrom.
- 6.3.3.** The parties hereto agree that causes of actions between the parties shall be governed by applicable provisions of the Kentucky Revised Statutes, and that venue of any legal action shall be a court of appropriate jurisdiction in Fayette County, Kentucky. The parties further agree that Kentucky law shall apply with respect to the interpretation of any provision of this Agreement.

6.4. Successors and Assigns

- 6.4.1.** **CONSULTANT** binds itself and its partners, successors, assigns and legal representatives to this Agreement. **CONSULTANT** shall not assign any interest in this Agreement without prior written consent of **OWNER**. **OWNER'S** consent shall not relieve the **CONSULTANT** of any responsibility for compliance with the provisions of this Agreement.
- 6.4.2.** **In no event shall** the **CONSULTANT** subcontract more than fifty percent (50%) of the work, based upon dollar value of the work.
- 6.4.3.** Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than **OWNER** and **CONSULTANT**.

6.5. Disputes

Except as otherwise provided in this Agreement, any dispute hereunder may be resolved by agreement of the **OWNER'S** Agent (Section 8.1.1) and the **CONSULTANT**. In the absence of such an agreement, the dispute shall be submitted to the **OWNER'S** Commissioner, Department of Environmental Quality, whose decision shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder, the **CONSULTANT** shall proceed diligently with the performance of the Agreement in accordance with the directions of the **OWNER**.

6.6. Accuracy of Consultant's Work

CONSULTANT shall be required to perform this Agreement in accordance with the degree of ordinary and reasonable skill and care usually exercised by professional engineers prevailing at the time, place and under similar conditions as the services hereunder are rendered. **CONSULTANT**

shall be responsible for the accuracy of all work, even though raw data, reports, Drawings and Specifications have been accepted by **OWNER**, and it shall make any necessary revisions or corrections resulting from its errors and/or omissions for no additional compensation. By submission of reports, soils and subsurface information, quantities estimates, calculations and Drawings and Specifications to **OWNER**, **CONSULTANT** has made an incontrovertible representation that the information is accurate within the appropriate standard of skill and care. Failure on the part of **CONSULTANT** to provide the expected level of accuracy may be grounds for **OWNER** to terminate this Agreement

6.7. Security Clause

The **CONSULTANT** certifies that he shall not at any time release or divulge any information concerning the services covered by this Agreement to any person or any public or private organization without prior approval of the **OWNER** unless otherwise required by law

6.8. Access to Records

The **CONSULTANT** and its sub-consultants shall maintain all books, documents, papers, and accounting records, and make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement for inspection by the **OWNER**, and copies thereof shall be furnished if requested. Failure to maintain such records for three (3) years after the date of final payment may be grounds for the **OWNER** to disqualify the **CONSULTANT** from consideration for future consultant engineering Agreements.

6.9. Risk Management Provisions, Insurance and Indemnification

6.9.1. DEFINITIONS

The **CONSULTANT** understands and agrees that the Risk Management Provisions of this Agreement define the responsibilities of the **CONSULTANT** to the **OWNER**.

As used in these Risk Management Provisions, the terms “**CONSULTANT**” and “**OWNER**” shall be defined as follows:

- a. **CONSULTANT** means the consultant and its employees, agents, servants, owners, principals, licensees, assigns and subcontractors of any tier.
- b. **OWNER** means the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, boards, assigns, volunteers, and successors in interest.

6.9.2. INDEMNIFICATION AND HOLD HARMLESS PROVISION

- a. It is understood and agreed by the parties that **CONSULTANT** hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of **CONSULTANT** or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier (hereinafter “**CONSULTANT**”)

under or in connection with this agreement and/or the provision of goods or services and the performance or failure to perform any work required thereby.

- b.** **CONSULTANT** shall indemnify, save, hold harmless and defend the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, volunteers, and successors in interest (hereinafter “**OWNER**”) from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney’s fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by **CONSULTANT**’s performance or breach of the agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the **CONSULTANT**; and (b) not caused solely by the active negligence or willful misconduct of **OWNER**.
- c.** Notwithstanding, the foregoing, with respect to any professional services performed by **CONSULTANT** hereunder (and to the fullest extent permitted by law), **CONSULTANT** shall indemnify, save, hold harmless and defend **OWNER** from and against any and all liability, damages and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney’s fees, for any damage due to death or injury to any person or injury to any property (including the loss of use resulting therefrom) to the extent arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of **CONSULTANT** in the performance of this agreement.
- d.** In the event **OWNER** is alleged to be liable based upon the above, **CONSULTANT** shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all reasonable attorneys’ fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by **OWNER**, which approval shall not be unreasonably withheld.
- e.** These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this agreement.
- f.** **OWNER** is a political subdivision of the Commonwealth of Kentucky. **CONSULTANT** acknowledges and agrees that **OWNER** is unable to provide indemnity or otherwise save, hold harmless, or defend the **CONSULTANT** in any manner.

6.9.3. DAMAGES RELATED TO NONPERFORMANCE OR DELAY BY CONSULTANT

In the event that **CONSULTANT**’S delay or other nonperformance of its obligations hereunder results in the imposition of penalties against the **OWNER** pursuant to the **CONSENT DECREE**, or the **OWNER** otherwise suffers damage as a result of such

delay or nonperformance, **CONSULTANT** shall be solely liable to **OWNER** for any and all such damages, including any costs and attorney's fees.

6.9.4. FINANCIAL RESPONSIBILITY

The **CONSULTANT** understands and agrees that the **CONSULTANT** shall, prior to final acceptance of the **CONSULTANT'S** proposal and the commencement of any work; demonstrate the ability to assure compliance with the Indemnity Agreement and other provisions of this Agreement.

6.9.5. INSURANCE REQUIREMENTS

6.9.5.1. Required Insurance Coverage

CONSULTANT shall procure and maintain for the duration of this Agreement the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to **OWNER** in order to protect **OWNER** against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by **CONSULTANT**. The cost of such insurance shall be included in any proposal:

<u>Coverage</u>	<u>Limits</u>
General Liability (Insurance Services Office Form CG 00 01)	\$1 million per occurrence, \$2 million aggregate or \$2 million combined single limit
Commercial Automobile Liability (Insurance Services Office Form CA 0001)	combined single, \$1 million per occurrence
Professional Liability	\$1 million per occurrence, \$ 2 million aggregate
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00

The policies above shall contain the following conditions:

- a.** **OWNER** shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy.
- b.** The General Liability Policy shall be primary to any insurance or self-insurance retained by **OWNER**.
- c.** The General Liability Policy shall include Business Interruption coverage.
- d.** The Contractor shall carry Builders Risk coverage at a level sufficient to cover the replacement cost of any equipment or machinery used at the work site, if applicable.

- e. The General Liability Policy shall include a Pollution Liability endorsement and/or Environmental Casualty coverage unless it is deemed not to apply by **OWNER**.
- f. The General Liability Policy shall have a Professional Liability endorsement (including Errors and Omissions), which shall include Business interruption coverage and this policy or endorsement shall include Environmental Casualty coverage for any services performed pursuant to the contract, and/or a separate Professional Liability Policy shall be obtained unless it is deemed not to apply by **OWNER**. (**OWNER** does not need to be named as additional insured).
- g. **OWNER** shall be provided at least 30 days advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.
- h. The Professional Liability policy shall be maintained for a minimum of three years beyond the completion date of the project, to the extent commercially available. If not commercially available, **CONSULTANT** shall notify **OWNER** and obtain similar insurance that is commercially available and acceptable to **OWNER**.
- i. Said coverage shall be written by insurers acceptable to **OWNER** and shall be in a form acceptable to **OWNER**. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

6.9.5.2. Renewals

After insurance has been approved by **OWNER**, evidence of renewal of an expiring policy must be submitted to **OWNER**, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

6.9.5.3. Right to Review, Audit and Inspect

CONSULTANT understands and agrees that **OWNER** may review, audit and inspect any and all of **CONSULTANT'S** records and operations to insure compliance with these Insurance Requirements.

6.9.6. SAFETY AND LOSS CONTROL

CONSULTANT shall comply with all applicable federal, state, and local safety standards related to the performance of its works or services under this Agreement and take necessary action to protect the life, health and safety and property of all of its personnel on the job site, the public, and **OWNER**.

6.9.7. DEFINITION OF DEFAULT

CONSULTANT understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default under this Agreement.

CONSULTANT also agrees that **OWNER** may elect as its option any single remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging **CONSULTANT** for any such insurance premiums purchased, or suspending or terminating this Agreement.

SECTION 7 - EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, the **CONSULTANT** agrees as follows:

- 7.1. The **CONSULTANT** will not discriminate against any employee or application for employment because of race, color, religion, national origin, sex, age, or handicap. The **CONSULTANT** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, national origin, sex, age, or handicap. Such action shall include, but not be limited to the following: 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 apprenticeships. The **CONSULTANT** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- 7.2. The **CONSULTANT** will, 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, national origin, sex, age (between forty and seventy), or handicap.

SECTION 8 - SPECIAL PROVISIONS, EXHIBITS, AND SCHEDULES

- 8.1. This Agreement is subject to the following provisions.
 - 8.1.1. Pursuant to subparagraph 3.4 of this Agreement, **OWNER** has assigned Charles H. Martin, P.E., Director of the Division of Water Quality (the "**OWNER'S** Agent"), as the authorized agent of **OWNER**, to monitor, direct and review the performance of work of the **CONSULTANT**. Documents, data, reports, and all matters associated with carrying out this Agreement shall be addressed to the **OWNER'S** Agent or his designee. Questions by the **CONSULTANT** regarding interpretations of the terms, provisions and requirements under this Agreement shall be addressed to the **OWNER'S** Agent or his designee. The **CONSULTANT** shall look only to the **OWNER'S** Agent or his designee for direction in its performance under this Agreement; no other direction shall be binding upon **OWNER**. **OWNER** shall respond to written requests by **CONSULTANT** within thirty (30) days.
- 8.2. This Agreement, together with the Incorporated Documents (Section 1.2) constitutes the entire Agreement between **OWNER** and **CONSULTANT** and supersedes all prior written or oral understandings. This Agreement and **EXHIBITS A, B, C and D** and any related schedules or documents may only be amended, supplemented, modified or canceled by a duly executed written instrument.

EXHIBIT A

Scope of Engineering

Services and Related Matters

RFP # _____

EXHIBIT B

Certificate of Insurance

and

Evidence of Insurability

EXHIBIT C

Proposal of Engineering Services

and

Related Matters

EXHIBIT D

Further Description of Basic Engineering Services

and

Related Services