

INVITATION TO BID

Bid Invitation Number: #15-2012

Date of Issue: 02/21/2012

Sealed bids will be received in the office of the Division of Central Purchasing, 200 East Main Street, Lexington, Kentucky, until **2:00 PM**, prevailing local time on **03/6/2012**. Bids must be received by the above-mentioned date and time. Mailed bids should be sent to:

Division of Central Purchasing
200 East Main Street, Rm 338
Lexington, KY 40507, (859) 258-3320

The Lexington-Fayette Urban County Government assumes no responsibility for bids that are not addressed and delivered as indicated above. Bids that are not delivered to the Division of Central Purchasing by the stated time and date will be rejected.

All bids must have the company name and address, bid invitation number, and the commodity/service on the outside of the envelope.

Bids are to include all shipping costs to the point of delivery located at: 1515 Old Frankfort Pike, Lexington, KY

Bid Security Required: Yes No Performance Bond Required: Yes No
Cashier Check, Certified Check, Bid Bond (Personal checks and company checks will not be acceptable).

QTY	Commodity/Service
PCT	Traffic Marking Paint
	See specifications

Check One: <input checked="" type="checkbox"/> Bid Specifications Met <input type="checkbox"/> Exceptions to Bid Specifications. <i>Exceptions shall be itemized and attached to bid proposal submitted.</i>	Proposed Delivery: 16-14 days after acceptance of bid.
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Procurement Card Usage	
<input checked="" type="checkbox"/> Yes	The Lexington-Fayette Urban County Government will be using Procurement Cards to purchase goods and services and also to make payments. Will you accept Procurement Cards?
<input type="checkbox"/> No	

Submitted by: Colorado Paint Company
Firm
4747 Holly St
Address
Denver, Co 80216
City, State & Zip

Bid must be signed:
(original signature) [Signature] - Vice President
Signature of Authorized Company Representative - Title
Scott Shannon
Representative's Name (Typed or printed)
303-388-9265 303-388-0881
Area Code - Phone - Extension Fax #
Scott.Shannon@Swarco.com
E-Mail Address

The Affidavit in this bid must be completed before your firm can be considered for award of this contract.

AFFIDAVIT

Comes the Affiant, Colorado Paint Company, and after being first duly sworn under penalty of perjury as follows:

1. His/her name is Leanna Booco and he/she is the individual submitting the bid or is the authorized representative of

Colorado Paint Company

the entity submitting the bid (hereinafter referred to as "Bidder").

2. Bidder will pay all taxes and fees, which are owed to the Lexington-Fayette Urban County Government at the time the bid 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. Bidder will obtain a Lexington-Fayette Urban County Government business license, if applicable, prior to award of the contract.

4. Bidder 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. Bidder 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 Bidder will not violate any provision of the campaign finance laws of the Commonwealth.

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

7. Bidder 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.

Joanna Booco

STATE OF

Colorado

COUNTY OF

Denver

The foregoing instrument was subscribed, sworn to and acknowledged before me

by Leanna Booco on this the 23rd day

of February, 2012.

My Commission expires:

8/27/12

Stephanie Prugh
NOTARY PUBLIC
STATE OF COLORADO

My Commission expires Aug. 27, 2012

Stephanie Prugh
NOTARY PUBLIC, STATE AT LARGE

Please refer to Section II. Bid Conditions, Item "U" prior to completing this form.

I. GREEN PROCUREMENT

A. ENERGY

The Lexington-Fayette Urban County Government is committed to protecting our environment and being fiscally responsible to our citizens.

The Lexington-Fayette Urban County Government mandates the use of Energy Star compliant products if they are available in the marketplace (go to www.Energystar.gov). If these products are available, but not submitted in your pricing, your bid will be rejected as non-compliant.

ENERGY STAR is a government program that offers businesses and consumers energy-efficient solutions, making it easy to save money while protecting the environment for future generations.

Key Benefits

- These products use 25 to 50% less energy
- Reduced energy costs without compromising quality or performance
- Reduced air pollution because fewer fossil fuels are burned
- Significant return on investment
- Extended product life and decreased maintenance

B. GREEN SEAL CERTIFIED PRODUCTS

The Lexington-Fayette Urban County Government is also committed to using other environmentally friendly products that do not negatively impact our environment. Green Seal is a non-profit organization devoted to environmental standard setting, product certification, and public education.

Go to www.Green Seal.org to find available certified products. These products will have a reduced impact on the environment and on human health. The products to be used must be pre-approved by the LFUCG prior to commencement of any work in any LFUCG facility. If a Green Seal product is not available, the LFUCG must provide a signed waiver to use an alternate product. Please provide information on the Green Seal products being used with your bid response.

C. GREEN COMMUNITY

The Lexington-Fayette Urban County Government (LFUCG) serves as a principal, along with the University of Kentucky and Fayette County Public Schools, in the Bluegrass Partnership for a Green Community. The Purchasing Team component of the Partnership collaborates on economy of scale purchasing that promotes and enhances environmental initiatives. Specifically, when applicable, each principal is interested in obtaining best value products and/or services which promote environment initiatives via solicitations and awards from the other principals.

If your company is the successful bidder on this Invitation For Bid, do you agree to extend the same product/service pricing to the other principals of the Bluegrass Partnership for a Green Community (i.e. University of Kentucky and Fayette County Schools) if requested?

Yes No

II. Bid Conditions

- A. No bid may be withdrawn for a period of sixty (60) days after the date and time set for opening.
- B. No bid may be altered after the date and time set for opening. In the case of obvious errors, the Division of Central Purchasing may permit the withdrawal of a bid. The decision as to whether a bid may be withdrawn shall be that of the Division of Central Purchasing.
- C. Acceptance of this proposal shall be enactment of an Ordinance by the Urban County Council.
- D. The bidder agrees that the Urban County Government reserves the right to reject any and all bids for either fiscal or technical reasons, and to award each part of the bid separately or all parts to one vendor.
- E. Minor exceptions may not eliminate the bidder. The decision as to whether any exception is minor shall be entirely that of the head of the requisitioning Department or Division and the Director of the Division of Central Purchasing. The Urban County Government may waive technicalities and informalities where such waiver would best serve the interests of the Urban County Government.
- F. Manufacturer's catalogue numbers, trade names, etc., where shown herein are for descriptive purposes and are to guide the bidder in interpreting the standard of quality, design, and performance desired, and shall not be construed to exclude proposals based on furnishing other types of materials and/or services. However, any substitution or departure proposed by the bidder must be clearly noted and described; otherwise, it will be assumed that the bidder intends to supply items specifically mentioned in this Invitation for Bids.
- G. The Urban County Government may require demonstrations of the materials proposed herein prior to acceptance of this proposal.
- H. Bids must be submitted on this form and must be signed by the bidder or his authorized representative. Unsigned bids will not be considered.
- I. Bids must be submitted prior to the date and time indicated for opening. Bids submitted after this time will not be considered.
- J. All bids mailed must be marked on the face of the envelope:

"Bid on #15-2012 Traffic Marking Paint"

and addressed to: Division of Central Purchasing
 200 East Main Street, Room 338
 Lexington, Kentucky 40507

The Lexington-Fayette Urban County Government assumes no responsibility for bids that are not addressed and delivered as indicated above. Bids that are not delivered to the Division of Central Purchasing by the stated time and date will be rejected.

- K. Bidder is requested to show both unit prices and lot prices. In the event of error, the unit price shall prevail.
- L. A certified check or Bid Bond in the amount of XX percent of the bid price must be attached hereto. This check must be made payable to the Lexington-Fayette Urban County Government, and will be returned when the material and/or services specified herein have been delivered in accordance with specifications. In the event of failure to perform within the time period set forth

in this bid, it is agreed the certified check may be cashed and the funds retained by the Lexington-Fayette Urban County Government as liquidated damages. Checks of unsuccessful bidders will be returned when the bid has been awarded.

- M. The delivery dates specified by bidder may be a factor in the determination of the successful bidder.
- N. Tabulations of bids received may be mailed to bidders. Bidders requesting tabulations must enclose a stamped, self-addressed envelope with the bid.
- O. The Lexington-Fayette Urban County Government is exempt from Kentucky Sales Tax and Federal Excise Tax on materials purchased from this bid invitation. Materials purchased by the bidder for construction projects are not tax exempt and are the sole responsibility of the bidder.
- P. All material furnished hereunder must be in full compliance with OSHA regulations.
- Q. If more than one bid is offered by one party, or by any person or persons representing a party, all such bids shall be rejected.
- R. Signature on the face of this bid by the Bidder or his authorized representative shall be construed as acceptance of and compliance with all terms and conditions contained herein.
- S. 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 sub-contracting agents. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices.
- T. 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 provisions of the non-discrimination 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 timetable.

- (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 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 to 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 work-force 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.

- U. Any party, firm or individual submitting a proposal pursuant to this invitation must be in compliance with the requirements of the Lexington-Fayette Urban County Government regarding taxes and fees before they can be considered for award of this invitation and must maintain a "current" status with regard to those taxes and fees throughout the term of the contract. The contractor must be in compliance with Chapter 13 from the Code of Ordinances

of the Lexington-Fayette Urban County Government. The contractor must be in compliance with Ordinance 35-2000 pursuant to contractor registration with the Division of Building Inspection. If applicable, said business must have a Fayette County business license.

Pursuant to KRS 45A.343 and KRS 45A.345, the contractor shall

- (1) *Reveal any final determination of a violation by the contractor within the previous five year period pursuant to KRS Chapters 136 (corporation and utility taxes), 139 (sales and use taxes), 141 (income taxes), 337 (wages and hours), 338 (occupational safety and health of employees), 341 (unemployment and compensation) and 342 (labor and human rights) that apply to the contractor; and*
- (2) *Be in continuous compliance with the above-mentioned KRS provisions that apply to the contractor for the duration of the contract.*

A contractor's failure to reveal the above or to comply with such provisions for the duration of the contract shall be grounds for cancellation of the contract and disqualification of the contractor from eligibility for future contracts for a period of two (2) years.

- V. Vendors who respond to this invitation have the right to file a notice of contention associated with the bid 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 bid 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 bid 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 bid processes. If, based on this review, a bid 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 bid recommendation must be filed within 3 business days of the bid 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.

III. Procurement Contract Bid Conditions

- A. The terms of this agreement shall be for 1 year from the date of acceptance of this contract by the Lexington-Fayette Urban County Government. This agreement may be extended for an additional 1 year renewal upon the written agreement of the bidder and the Lexington-Fayette Urban County Government. Said agreement must be in writing and must be executed prior to the expiration of the current agreement.
- B. Price Changes (**Space Checked Applies**)
- (XXX) 1. Prices quoted in response to the Invitation shall be firm prices for the first 90 days of the Procurement Contract. After 90 days, prices may be subject to revision and such changes shall be based on general industry changes. Revision may be either increases or decreases and may be requested by either party. There will be no more than one (1) price adjustment per quarter. Requests for price changes shall be received in writing at least twenty (20) days prior to the effective date and are subject to written acceptance before becoming effective. Proof of the validity of a request for revision shall be responsibility of the requesting party. The Lexington-Fayette Urban County Government shall receive the benefit of any decline that the seller shall offer his other accounts.
2. No provision for price change is made herein. Prices are to be firm for the term of this contract.
3. Procurement Level Contract
- C. If any contract item is not available from the vendor, the Lexington-Fayette Urban County Government, at its option, may permit the item to be back-ordered or may procure the item on the open market.
- D. All invoices must bear reference to the Lexington-Fayette Urban County Government Purchasing document numbers which are being billed.
- E. This contract may be canceled by either party thirty (30) days after delivery by canceling party of written notice of intent to cancel to the other contracting party.
- F. This contract may be canceled by the Lexington-Fayette Urban County Government if it is determined that the Bidder has failed to perform under the terms of this agreement, such cancellation to be effective upon receipt of written notice of cancellation by the Bidder.
- G. No substitutions for articles specified herein may be made without prior approval of the Division of Central Purchasing.

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

SPECIFICATIONS FOR TYPE I AND TYPE II WHITE AND YELLOW ACRYLIC WATERBORNE TRAFFIC MARKING PAINT

GENERAL: It is the intent and purpose of this specification to describe and/or define Traffic Marking Paint for highway road markings for permanent applications. This specification covers fast-dry white and yellow acrylic latex traffic marking paints for use with drop-on glass beads for application on bituminous or Portland cement pavements by department-owned spray equipment at applications temperatures of 50 to 115°F. The paints shall be capable of receiving and holding glass beads for producing reflectorized traffic markings and when applied with glass beads at pavement temperatures above 50°F and at relative humidity of up to 75 percent, the paint shall dry to a no-track condition within 3 minutes. The yellow paint shall be available with non-toxic organic yellow pigmentation. The white and organic pigmented yellow paints shall be free of toxic heavy metals.

Fast dry traffic paints intended for use under this specification shall include water reducible products that are single packaged and ready mixed. The water reducible traffic paint shall have the capability of being cleaned and flushed from the striping machines using regular tap water and any required rust inhibitors. The Volatile Organic Content (VOC) of the paint shall not exceed 150 grams per liter.

The attention of the bidder is specifically directed to the following requirement: Any paint furnished under this provision that: contains non-approved constituents, has been contaminated with any form of material, cannot be satisfactorily applied, or that does not otherwise meet these specifications shall be disposed of by the supplier and immediately replaced with acceptable material entirely at the supplier's expense, including handling and transportation charges. Furthermore, that disposal and replacement process shall include the total quantities of any contaminated paint caused by pumping unsatisfactory material into the department's paint tanks already containing paint. The Lexington-Fayette Urban County Government (LFUCG), Division of Traffic Engineering will randomly sample and evaluate the traffic paint at any time considered necessary. Any non-compliance can and will result in the vendor having to pick up and credit the division for any returned paint at their costs. It is to be expressly understood that this requirement is a part of the bid.

All materials shall be delivered in their original containers and all paint drums/buckets shall be new and shall show no signs of previous use. All drums shall be open-head, complying with current DOT requirements for the shipping and handling of quick-drying, waterborne pavement striping paints. Drums will not have bungs or drain holes in the side or drum head. Paint drums will have airtight drumhead gaskets of a type that prevents skinning of paint during shipment and storage. Drum heads will be secured with an outside locking ring or clamp. Drums will be lined with a suitable material to prevent direct contact of the paint with the steel drum or drum heads.

IDENTIFICATION

Each container will be labeled with the following information:

- Name and Address of the manufacturer
- *Color and type* of paint contained within the container
- Manufacturer's batch identification number, the unique identification established by the manufacturer to represent a single production batch
- Day, month and year the paint was produced

Containers shall have labels, meeting ANSI standards and giving adequate use instructions firmly secured to each container. Labels shall meet all federal regulations requirements of the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard CFR 1910.1200.

REQUIREMENTS:

General: The finished paint shall be formulated and manufactured from first-grade materials. The materials shall be as listed in the Standard Formula, unless otherwise authorized by the engineer. Any proposed equivalent materials shall equal or exceed, the quality and composition and the physical and chemical behavior after aging in the finished product, of the specified material. The final decision will be made by the Division Engineer.

Quality: The paint shall be formulated from first-grade materials and shall be suitable in all respects for application at elevated spray temperatures with drop-on glass beads using conventional traffic striping equipment. The finished paint shall be smooth and homogeneous, free of coarse particles, skins or any foreign materials that are detrimental to its use or appearance.

Dilution: The paint shall be capable of dilution with water such that the paint can be readily cleaned up with water only.

Storage Stability: After 30 days storage in three-quarters filled, closed container at temperatures ranging from 60° to 100°, the paint shall show no caking that cannot be readily remixed to a smooth, homogeneous state. No excessive skinning, livering, curdling or hard settling shall be present. The viscosity shall not change more than 5 Krieb Units from the viscosity of the original sample.

No-Tracking: Under field conditions, the paint shall dry to a no-tracking condition under traffic in a maximum of 60 seconds when applied at 15 ± 1 mil wet film thickness at 90-115° F, when applied at ambient temperatures with or without the use of glass beads. "No Tracking" shall be the time in minutes required for the line to withstand the running of a standard automobile over the line at a speed of approximately 40 mph, simulating a passing procedure without tracking of the reflectorized line when viewed from a distance of 50 feet.

Flexibility: The paint shall show no cracking or flaking when tested in accordance with Federal Specification TT-P-1952B.

Water Resistance: The paint shall conform to Federal Specification TT-P-1952B. There shall be no blistering or appreciable loss of adhesion, softening, or other deterioration after examination.

Heat Stability: The paint shall show no coagulation, discoloration or change in consistency greater than 10 Krieb Units, when tested in accordance with Federal Specification TT-P-1952B.

Reflectance: The daylight directional reflectance of the white paint shall not be less than 84% and not less than 50% for yellow paint of a 15 mil wet film applied to a 2A Leneta Chart or equal. After drying 24 hours, measure the reflectance of the paint over the black portion of the chart using a HunterLab D25-9 Colorimeter. (ASTM E 97)

Bleeding: The paint shall have a minimum bleeding ratio of 0.97 when tested in accordance with Federal Specification TT-P-1952B. The asphalt saturated felt shall conform to ASTM D 226 for Type 1.

Abrasion Resistance: No less than 190 liters of sand shall be required for removal of the paint film when tested in accordance with Federal Specification TT-P-1952B.

COMPOSITION:

Paint ingredients will provide a finished product that meets all of the requirements in this specification. Prime and extender pigments will be combined to produce either white or yellow waterborne traffic paint meeting the composition and color requirements as well as to produce a paint line that does not show appreciable discoloration due to sunlight exposure and aging. The paint will comply with the regulatory levels of 40 CFR 261.24 Table 1 for toxic heavy metals in the cured paint film. Both types of paint will have a 100% acrylic polymer for the non-volatile portion of the vehicle. For Type I, Rohm and Haas Fastrack 3427 latex or approved equivalent will be allowed. The Type II will be formulated with Rohm and Haas Fastrack HD-21A latex or approved equivalent.

TESTING AND ACCEPTANCE

For testing purposes, prior to the bid opening, submit three (3) one quart samples of both white and yellow paint that you propose to furnish to:

Lexington-Fayette Urban County Government

Division of Traffic Engineering

Attn: Levi Bourget

1515 Old Frankfort Pike

Lexington, KY 40504-1123

All samples will be labeled "LFUCG-TE-2005" to distinguish the samples from any that might be sent for other sampling and/or testing. Testing for this contract will be performed on the submitted bid sample and delivered paint is subject to field sampling and testing. In addition to all requirements listed here in, all material must meet the minimum Kentucky Department of Transportation, Department of Highways specifications as listed in their

Standard Specifications for Road and Bridge Construction, dated 2000 or any later versions as conforming to the composition listed below:

Compositional requirements (under laboratory conditions) of either Type I or Type II paint shall be as follows:

The vehicle shall be composed of a 100% acrylic polymer such as Rohm and Hass Rhoplex Fastrack 3427, or an approved equal.

Weight per gallon 77°F, lbs., min	13.0
Viscosity, Krebs Stormer, 77°F, K.U.	80-100
Grind, Hegman, minimum	3
Total Solids, % by weight, minimum	73
Non-volatile vehicles, % by weight, minimum	43
Pigment, % by weight, white	58-62
Pigment, % by weight, yellow	57-59
Titanium Dioxide, white paint, lbs./gal., min.	1.0
Dry Time, 12 mil. Wet film, @ 65% RH, minutes, max.	12
Dry Through, @ 90% RH, minutes, max.	120
Daylight Directional Reflectance, white, minimum	83
Daylight Directional Reflectance, yellow, minimum	50
Contrast Ratio, minimum	0.98
Bleeding Ratio, minimum	0.97
Flexibility and Adhesion	No cracking or flaking
Water Resistance	No blistering or loss of adhesion
Settling	Rating of 6 or better
Skinning, 48 hours	None
Track Free Time, minutes, maximum	3
pH, minimum	9.6
Lab Retro-reflectivity, white, minimum, mcd/m ² /lux	300
Lab Retro-reflectivity, yellow, minimum, mcd/m ² /lux	200
Field Retro-reflectivity, white, minimum, mcd/m ² /lux	275
Field Retro-reflectivity, yellow, minimum, mcd/m ² /lux	180

The prime pigment in the organic yellow paint shall be Color Index Pigment Yellow Number 65 or Number 75. The color of dry white paint shall be a pure flat white, free of tint. The color of the yellow paint shall closely match Color Number 33538 of Federal Standard 595 and shall conform to the following CIE Chromaticity limits:

$$x | 0.462 | 0.470 | 0.479 | 0.501 |$$

$$y | 0.438 | 0.455 | 0.428 | 0.452 |$$

Use the following test methods to determine the above properties:

Weight Per Gallon	ASTM D 1475
Viscosity	ASTM D 562
Fineness of Grind	ASTM D 1210
Total Solids	ASTM D 2369
Total Pigment	ASTM D 2371
Titanium Dioxide	ASTM D 4563; D 1394
Dry Time (12 mils wet)	ASTM D 711 (modified)
Daylight Directional Reflectance	ASTM D 2805

Contrast Ratio (15 mils wet)	ASTM D 2805
Bleeding Ratio	Fed Spec TT-P-85
Color	ASTM D 2805
pH	ASTM E 70

(or any later versions of these)

The white and organic yellow paints shall be free of lead, mercury, cadmium, hexavalent chromium and other toxic heavy metals as defined by the United States Environmental Protection Agency.

In addition to the tests listed above, LFUCG, Division of Traffic Engineering, at the discretion of the Traffic Engineer, may have tests performed for the accelerated settling tests on selected paint samples (**ASTM D 2243 Standard Test Method for Freeze-Thaw Resistance of Water-Borne Coatings**). The division will reject any paint which fails to obtain a rating of 8 or greater, exhibits a significant change in color or hiding, or no longer has a viscosity in the required range (80 to 100 KU) after five (5) complete test cycles.

LFUCG, Division of Traffic Engineering will reject any and all bids that fail to meet any of the compositional requirements. After a contract is awarded and prior to shipping of paint, test each lot or batch to determine compliance with this specification. Each shipment of the paint will include a certification of specification compliance containing actual test data for the lots or batches contained in that shipment.

ACCEPTANCE. The Lexington-Fayette Urban County Government, Division of Traffic Engineering, reserves the right to make field tests of the material at any time to determine its suitability for application and for purposes of determining compliance with the drying time requirements of this specification.

After storage for periods up to one year from date of receipt:

- a. Within a period of twelve months from the time of delivery, the paint shall not cake, settle, liver, thicken, skin, curdle, gel or show any other objectionable properties which cannot readily be corrected with minimal stirring, nor shall the paint skin or thicken in storage sufficiently to cause an undesirable change in consistency, nor show spoilage. Any paint with properties that make it unsuitable for use within the specified twelve months shall be returned at the supplier's expense for credit. It shall be the manufacturer's responsibility to add sufficient anti-settling agents, stabilizers and other additives to insure proper storage stability.
- b. The paint shall comply with all the provisions of these specifications and be capable of being redispersed with a smooth uniform condition of useable consistency.

PURCHASING. The ready-mixed paint shall be purchased by volume, and one gallon shall mean 231 cubic inches at 77° F.

All bids should include documentation of actual chemical composition and reference to governmental agencies and specifications whereby the materials bid are successfully being

used. The Lexington-Fayette Urban County Government reserves the right to reject delivered materials if a laboratory examination determines that the paint does not conform to the documentation included with the bid and/or does not meet the specifications as listed herein.

BID PRICING

<u>Description</u>	<u>Delivered unit Price per Gallon</u>
Yellow Paint (55 gallon drum)	Type I \$ <u>11.40</u> Type II \$ <u>11.75</u>
White Paint (55 gallon drum)	Type I \$ <u>11.40</u> Type II \$ <u>12.15</u>

(Type II may or may not be purchased)

2005/2006 Projected Purchases of Type I or equal:

Yellow -- 6,000 gallons

White -- 2,500 gallons

Optional (may or may not be purchased):

Yellow Paint (5-gallon can)	Type I \$ <u>11.50</u> Type II \$ <u>11.85</u>
White Paint (5-gallon can)	Type I \$ <u>11.50</u> Type II \$ <u>12.25</u>

(all prices are delivered per gallon)

Questions may be directed to:

Sam Williams, Division of Traffic Engineering at 859-425-2810 or

Debra Bright, Division of Central Purchasing at 859-258-3327.

CONTRACT PERIOD:

As determined by the Division of Central Purchasing, this price contract may be extended yearly by mutual agreement with both the Government and the supplier for a period of four years.

**RISK MANAGEMENT PROVISIONS
INSURANCE AND INDEMNIFICATION**

A. 1.0 DEFINITIONS.

The CONTRACTOR understands and agrees that the Risk Management Provisions of this Contract define the responsibilities of the CONTRACTOR to the OWNER.

As used in these Risk Management Provisions, the terms "CONTRACTOR" and "OWNER" shall be defined as follows:

- a. "CONTRACTOR" means the contractor 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, consultants, assigns, volunteers and successors in interest.

2.0. INDEMNIFICATION AND HOLD HARMLESS PROVISION

CONTRACTOR shall defend, indemnify, and hold harmless OWNER from and against all liability, claims, losses, actions, costs, expenses, obligations, fines, and assessments of whatever kind, including defense costs and 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, in whole or in part, from or by: (a) CONTRACTOR's negligent acts or misconduct, or errors or omissions, in connection with the performance of this contract; (b) CONTRACTOR's performance or breach of the contract provided the claim or loss is attributable to death, illness, personal injury, or property loss or damage or loss of use, and not caused by a negligent act or omission, or the willful misconduct of the OWNER; or (c) the condition of any premises, equipment or other property being used or operated by the CONTRACTOR in connection with the performance of this contract. In the event OWNER is alleged to be liable based upon the actions or inactions of CONTRACTOR, CONTRACTOR shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all 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. This Indemnification and Hold Harmless Provision shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this contract.

3.0 FINANCIAL RESPONSIBILITY

The CONTRACTOR understands and agrees that it shall, prior to final acceptance of its bid and the commencement of any work, demonstrate the ability to assure compliance with the Indemnity Agreement and other provisions of this Contract.

4.0 INSURANCE REQUIREMENTS

BIDDERS' ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW, AS BIDDERS MUST CONFER WITH THEIR RESPECTIVE INSURANCE AGENTS, BROKERS, OR CARRIERS TO DETERMINE IN ADVANCE OF BID SUBMISSION THE AVAILABILITY OF THE INSURANCE COVERAGES AND ENDORSEMENTS REQUIRED HEREIN. IF AN APPARENT LOW BIDDER FAILS TO COMPLY STRICTLY WITH THE INSURANCE

REQUIREMENTS BELOW, THAT BIDDER MAY BE DISQUALIFIED FROM AWARD OF THE CONTRACT.

4.1 Required Insurance Coverage

CONTRACTOR shall procure and maintain for the duration of this contract 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 CONTRACTOR. The cost of such insurance shall be included in any bid:

<u>Coverage</u>	<u>Limits</u>
General Liability aggregate (Insurance Services Office Form CG 00 01)	\$1 million per occurrence, \$2 million or \$2 million combined single limit
Commercial Automobile Liability occurrence (Insurance Services Office Form CA 0001)	combined single, \$1 million per occurrence
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 a Products and Completed Operations endorsement or Premises and Operations Liability endorsement unless it is deemed not to apply by OWNER.
- d. 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.
- e. 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.

4.2. Additional insurance coverage and amounts required, if any, are stated below:

NONE

4.3. 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.

4.4. Deductibles and Self-Insured Programs

IF CONTRACTOR INTENDS TO SUBMIT SELF-INSURANCE PLAN FOR BID, THIS MUST BE FORWARDED TO LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, DIVISION OF RISK MANAGEMENT, 200 EAST MAIN STREET, LEXINGTON, KENTUCKY 40507 NO LATER THAN A MINIMUM OF FIVE (5) WORKING DAYS PRIOR TO BID OPENING DATE.

Self-insurance programs, deductibles, and self-insured retentions in insurance policies are subject to separate approval by Lexington-Fayette Urban County Government's Division of Risk Management, upon review of evidence of CONTRACTOR'S financial capacity to respond to claims. Any such programs or retentions must provide OWNER with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance coverage. If CONTRACTOR satisfies any portion of the insurance requirements through deductibles, self-insurance programs, or self-insured retentions, CONTRACTOR agrees to provide Lexington-Fayette Urban County Government, Division of Risk Management, the following data prior to the final acceptance of bid and the commencement of any work:

- a. CONTRACTOR'S latest audited financial statement, including auditor's notes.
- b. Any records of any self-insured trust fund plan or policy and related accounting statements.
- c. Actuarial funding reports or retained losses.
- d. CONTRACTOR'S Risk Management Manual or a description of CONTRACTOR'S self-insurance and risk management program.
- e. A claim loss run summary for the previous five (5) years.
- f. Self-Insured Associations will be considered.

4.5. Verification of Coverage

Prior to award of bid, CONTRACTOR agrees to furnish OWNER with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf. If requested, CONTRACTOR shall provide OWNER copies of all insurance policies, including all endorsements.

4.6. Right to Review, Audit and Inspect

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

5.0 **DEFINITION OF DEFAULT**

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

CONTRACTOR also agrees that OWNER may elect at 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 CONTRACTOR for any such insurance premiums purchased, or suspending or terminating this Contract.

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