

ATTACHMENT A

COVERSHEET

Commonwealth of Kentucky

Request for Proposal (RFP)

For

**Next Generation Kentucky Information Highway (NG-KIH) Initiative
Investment Partner
RFP 758 1500000027**

Release Date: July 21, 2014

Closing Date: August 29, 2014

Written Questions Due: August 4, 2014

Commonwealth's Response to Written Questions: August 12, 2014

Issued by

The Finance and Administration Cabinet

On Behalf Of

Finance and Administration Cabinet – Office of the Secretary

Commonwealth Buyer:

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SECTION 1 – INTRODUCTION AND OVERVIEW

1. Purpose

The purpose of this RFP is to pre-certify three (3) partners for investment in related Commonwealth public/private partnership (P3) projects. The Next Generation Kentucky Information Highway (NG-KIH) initiative may be the initial project to utilize one of the pre-certified investment partners.

The NG-KIH middle mile fiber optic infrastructure will be constructed to serve the needs of the Commonwealth stakeholders and customers outlined in Section 2 of this RFP.

The Commonwealth may establish one or more contracts using either this solicitation for investment partners or the NG-KIH Finance/Concessionaire RFP 758 -1500000003 released on July 11, 2014. The RFP is posted to the Kentucky Vendor Self Service site at <http://emars.ky.gov/online/vss/AltSelfService>. It is not necessary to register to access the solicitation. Unregistered vendors can access the solicitations by clicking on the public access tab.

The Finance/Concessionaire RFP may select a long-term concessionaire partner to finance, design, construct, operate and maintain the statewide NG-KIH middle mile infrastructure (segments and nodes) on behalf of all Commonwealth stakeholders and customers outlined below. If the concessionaire path is chosen, the Commonwealth anticipates the potential award of the Finance/Concessionaire RFP in the fall of 2014. If awarded, the vendor is required to implement the NG-KIH backbone segments by April 1, 2016.

If the investor path is chosen the Commonwealth may use existing contracts or issue new solicitations for vendors to design, construct, operate, and maintain the NG-KIH. One of the pre-certified partners will be chosen as the prime

investor to participate in the NG-KIH project based on their response to a defined scope of work.

The investment obligations will be the sole obligations of the project for NG-KIH infrastructure and do not constitute a debt, obligation nor carry any credit enhancement of the Commonwealth, or any other agency or political subdivision of the Commonwealth. Any funding provided to the project by the Commonwealth will be under a separate investment agreement and is intended to contribute capital funding to the project at a defined amount.

2. Issuing Office

The Commonwealth of Kentucky, Finance and Administration Cabinet, Office of Procurement Services, is issuing this RFP on behalf of the Commonwealth. The Finance and Administration Cabinet, Office of Procurement Services, is the only office authorized to change, modify, amend, alter, or clarify the specifications, terms and conditions of this RFP.

3. Access to Solicitation, RFP, and Addenda

The Commonwealth wants each prospective investment partner to have full and complete information on which to base a proposal response. Only information presented or referred to in this RFP and any additional written information that is supplied by the Commonwealth Buyer shall be used by Investment partners in preparing the response.

The solicitation, addenda, and attachments shall be posted to the Kentucky Vendor Self Service site at <http://emars.ky.gov/online/vss/AltSelfService>. It is not necessary to register to access the solicitation. Unregistered vendors can access the solicitations by clicking on public access.

In the event of any conflict or variation between the solicitation or modification as issued by the Commonwealth and the Vendor's response, the version as issued shall prevail.

4. RFP Terminology

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

- Proposer, Offeror, Contractor, Provider, Vendor, or Investment Partner
- Commonwealth Buyer, Buyer, Purchaser, or Contract Officer
- RFP, Solicitation, or Procurement
- Bid, Proposal, or Offer
- Commonwealth of Kentucky, Commonwealth, or State, Agency
- CRD, Center for Rural Development
- Fiscal Year will be defined as the Commonwealth fiscal year: July 1 through June 30
- Biennium will be defined as the Commonwealth biennium: July 1 of each even numbered year through June 30 of the next even numbered year

- Requirements that include the words “Shall”, “Will”, “Must” indicate a mandatory requirement

5. Restrictions on Communications

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

For violation of this provision, the Commonwealth shall reserve the right to disqualify the investment partners’ proposal response.

6. Written Questions Regarding this RFP

Investment partners are encouraged to submit written questions pursuant to Section 1, #9 of this RFP. Written questions shall be submitted to the Commonwealth Buyer via email at stephanier.williams@ky.gov or via fax at 502-564-6013. **Vendor should submit questions on Attachment F-Vendors Question Form.** No questions shall be accepted after the date(s) listed in Section 1, #9 unless the question(s) is considered material to the procurement. The Commonwealth shall respond to salient questions in writing by issuing an Addendum to the Solicitation. The Addendum shall be posted to the Kentucky Vendor Self Service site.

7. Notification of Award of Contract

The procurement process will provide for the evaluation of proposals and selection of the pre-certified investment partners in accordance with State law and regulations. KRS Chapter 45A of the Kentucky Model Procurement Code provides the regulatory framework for the procurement of services by State agencies.

All applicable statutes, regulations, policies and requirements shall become a part of an Award as well as the Information Technology requirements.

To view the award of contract(s) and the investment partner(s) receiving the award(s) for this solicitation, access the Kentucky Vendor Self Service site at <https://emars.ky.gov/online/vss/AltSelfService>. Investment partners can search for the solicitation title or number in the keyword search field, or can filter their search for only awarded solicitations by clicking on Advanced Search and changing the status to awarded. The award(s) information can be accessed by clicking on the details button of the solicitation and clicking the “Notice of Award” tab. It is the investment partner’s responsibility to review this information in a timely fashion. No other notification of the results of an Award of Contract will be provided.

8. Protest

Pursuant to KRS 45A.285, any actual or prospective Offeror or Contractor, who is aggrieved in connection with solicitation or selection for award of a contract, may file protest with the Secretary of the Finance and Administration Cabinet.

9. Estimated Schedule of RFP Activities

The following table presents the anticipated schedule for major activities associated with the RFP distribution, proposal submission, proposal evaluation process, and contract award. The Commonwealth reserves the right at its sole discretion to change the Schedule of Activities, including the associated dates and times.

Release of RFP	July 21, 2014
Vendors' Written Questions due by 12:00 PM EST (SUBMIT QUESTIONS ON ATTACHMENT E-VENDORS QUESTION FORM)	August 4, 2014
Commonwealth's Response to Vendors' Written Questions	August 12, 2014
Proposals due by 3:30 PM EST	August 29, 2014

All bidders are cautioned to be aware of security in the Capitol Annex in Frankfort. In-person or courier delivered bids/proposals in response to a Commonwealth Solicitation should be delivered a minimum of thirty (30) minutes to one (1) hour earlier than the published closing time to allow for a security check-in. Delays due to building security checks shall not be justification for acceptance of a late bid or proposal. Vendor attention to this advisory is encouraged.

SECTION 2 – BACKGROUND, VISION, AND GOALS

1. Background

The Commonwealth's current networks supporting state government, higher education, K-12 education and local governments have independently evolved over the last 15-20 years. The Commonwealth Office of Technology (COT) is responsible for the current Kentucky Information Highway (KIH) through a contract with AT&T for a managed services multi-protocol label switching (MPLS) network. The current KIH contract also serves The Kentucky Educational Technology System (KETS) network.

The University of Kentucky, on behalf of the postsecondary education community has a contract with Windstream for the Kentucky Postsecondary Education Network (KPEN), also a managed services MPLS network. The University of Kentucky also has a contract for the use of indefeasible right of use (IRU) fiber in a loop connecting Louisville, Cincinnati, Lexington, and Frankfort as part of the Kentucky Regional Optical Network (KyRON). KyRON will connect to Internet2

in Louisville at 100 Gbps and in Cincinnati at 2 x100 Gbps. KPEN and KyRON are peered at 10 Gbps in Louisville and 10 Gbps in Lexington. Local city and county government entities utilize the current KIH contract AT&T or have negotiated contracts via independent competitive solicitations and awards.

2. Existing Commonwealth Network Environments and Contracts

The following subsections provide additional background information on the existing Commonwealth wide area networking environments, standards and related contracts that are currently in use across the public sector.

A. State Government Environment and the KIH3 Contract

The following websites provide information on this state resource:

<http://technology.ky.gov/services/Pages/DataCommunicationServices.aspx>

B. State Government Security Program

Policy has been created to align the Commonwealth's Enterprise Information Security Program with the security framework of the current National Institute of Security Standards (NIST) Special Publication 800-53.

[CIO-091 - Enterprise Information Security Program](#)

C. Center for Rural Development

The following website provides information on this organization and its focus on technology.

<http://centertech.com/technology/>

D. KEWS – Statewide Towers and Emergency Warning Radio System

The following website provides information on this state resource:

<http://technology.ky.gov/kews/Pages/default.aspx>

E. Higher Education Networks

The following websites provide information on this state resource:

<http://kyron.ky.gov/> and <http://www.kpen.org>

F. Council on Postsecondary Education (CPE)

The following website provides information on this state organization:

<http://cpe.ky.gov/>

G. Kentucky Community and Technical Colleges

The following website provides information on this state organization:

<http://www.kctcs.edu/>

H. Association of Independent Kentucky Colleges and Universities

This website provides information about this organization and the institutions that are a part of this association: <http://www.aikcu.org/>

I. First Responders, Public Safety and FirstNet

The following website provides additional information about this program that may be used to partially fund the networking initiative:

<http://www.ntia.doc.gov/page/about-firstnet>

J. Commercial Mobile Radio Services – Emergency Telecommunications Board

The following website provides information on this state program:

<http://cmrsboard.ky.gov/>

K. Kentucky Educational TV

The following website provides information on this organization and its focus on technology.

<http://www.ket.org/>

L. Kentucky Education Network – K-12

The following website provides information on this organization and its networking resources.

<http://education.ky.gov/districts/tech/ksc/Pages/Ed-Tech-Resources.aspx>

3. NG-KIH Long-Term Vision and Goals

A coalition of key stakeholders supports the development of an integrated, statewide dark fiber optical network. This new network will serve the public sector, bridge service gaps (especially in rural areas), provide high-capacity fiber to enable private vendors to better deliver network services, and promote economic development. As high-capacity fiber is deployed, the Commonwealth will be positioned to form additional multi-state collaborations. The Commonwealth's centralized location also positions the state to become a significant national participant in the fiber long haul environment. This network will improve the quality, reliability, usability and access to shared network services, systems and information across the Commonwealth.

The Commonwealth is also working in conjunction with the Center for Rural Development (CRD) and the "S.O.A.R.: Shaping Our Appalachian Region" initiative created by U.S. Congressman Hal Rogers and Governor Beshear. Congressman Rogers and the CRD are focused on providing high-capacity and Internet access to one of Kentucky's most underserved areas, Eastern Kentucky. The Center for Rural Development was created in 1996 through the vision of Congressman Rogers and other leaders to be a state and national model for economic development.

The network is envisioned to be a unique collaboration of the following entities:

- State Government

- Cabinet for Economic Development <http://www.thinkkentucky.com>
- Local Governments: county and city
- Quasi-Governmental organizations: Center for Rural Development (CRD)
- Education: Higher education, community and technical colleges (KCTCS), K-12, KET, libraries and private colleges
- Public Safety: Administrative Office of the Courts, FirstNet (First Responders, Police and Fire), Homeland Security, Commercial Mobile Radio Services Board (911), Kentucky Emergency Warning System (KEWS)
- Health care: hospitals, health departments and not-for-profit clinics
- Local Community Networks: private or public used by community service facilities (libraries, museums, etc.) and citizens
- Federal Government: facilities and organizations

The new network will enable a variety of solutions that include:

- Enhanced disaster recovery and backup capabilities for all stakeholders
- More extensive use of cloud solutions
- High-quality video connections
- Exchange of large data files
- Enhanced collaboration services and applications
- Access to supercomputers and scientific data storage facilities
- Exchange of high-quality medical images and health information records
- Research applications for networking as well as computer science and large datasets and analysis in many areas.
- Virtual learning environments

The NG-KIH goals include:

- Promote economic development by sharing the backbone with the private sector and promoting the backbone in the recruitment of companies to locate in Kentucky and the retention of existing companies through growth.
- Support collaborative opportunities across and among the public and private sectors
- Enhance research, education and public service opportunities
- Increase economies of scale to allow:
 - Elimination of duplicate networking infrastructure projects and associated costs across the public sector
 - An opportunity to combine the buying power of the public sector to increase statewide access to affordable broadband services for government, organizations, businesses, communities and citizens
 - Dark fiber availability to the public sector and to the private sector technology service providers in un-served or underserved rural areas

- Maximizing shared services opportunities (clinical systems, advanced engineering systems, shared eLearning environments, etc.)

4. Architectural Direction

The NG-KIH architecture shall follow an open access network model whereby the operations of the network and services provided to users by various service providers may be independent of each other. The network shall be modeled to ensure reliability, redundancy, and resiliency. The network will be comprised of multiple node sites. The node sites will be connected by multiple, physically diverse, fiber connections in order to ensure high availability and low latency. The node sites will be strategically located throughout the Commonwealth and serve as aggregation points for last mile connections. NG-KIH may use existing education and government POP sites, thus limiting costs associated with leasing/building the physical space. Last mile connectivity may be achieved through various providers and local and regional fiber networks. Partnerships between local and regional fiber networks providers are encouraged.

A graphical overview of the tentative network segments and nodes is available for review at the following website. This map is for illustrative purposes and should not be construed as the final physical design:

[Next Generation Kentucky Information Highway](#)

5. Deployment Vision and Anticipated Benefits

The design and construction of the network shall ensure that sufficient physical fiber capacity (separate strands or separate lambdas on a single strand) will be available to support multiple entities. This feature will decrease concerns over network planning, capacity and control, and the ability of the network to meet the customer's specialized needs. The Commonwealth will retain the use of a sufficient quantity of fiber strands to support current and long term government, education, and economic development needs.

The deployment of the fiber network with the envisioned partnerships will expand opportunities and possibilities by supporting next generation applications within education, government, health care, homeland security, 911 services, emergency response organizations, etc. Other benefits include:

- Improved rural broadband connectivity to economically depressed areas, thereby creating new job opportunities for these communities
- Creation of a "Next Generation 911" network; a digital IP based system with the capacity to receive/transmit voice, text, data and video in 911 communications
- Creation of a public safety and emergency response network (i.e., FirstNet) to link law enforcement, homeland security and first responders
- Consolidation and cost reductions regarding the delivery of network services to Kentucky citizens and constituents

- Expanded use of telemedicine applications by hospitals and healthcare providers
- Increased monitoring capabilities including real-time video monitoring of critical infrastructure such as bridges, roads and power plants
- Reduction in the future expenses of increasing network bandwidth to constituents
- Enhanced online learning opportunities
- Enhanced connectivity for libraries and communities

SECTION 3 – FINANCE AND ADMINISTRATION REQUIREMENTS

Investment Partner Expectations and Responsibilities

The Investment partner shall agree that the investment obligations will be the sole obligations of the project for NG-KIH infrastructure and does not constitute a debt, obligation nor carry any credit enhancement of the Commonwealth, or any other agency or political subdivision of the Commonwealth. Any funding provided to the project by the Commonwealth will be under a separate investment agreement and is intended to contribute capital funding to the project at a defined amount.

SECTION 4 – PROCUREMENT REQUIREMENTS

1. Procurement requirements are listed under “**Procurement Laws, Preference, Regulations and Policies**” and “**Response to Solicitation**” located on the eProcurement Web page at <http://eprocurement.ky.gov> and <http://finance.ky.gov/services/eprocurement/Pages/VendorServices.aspx> respectively. The investment partner must comply with all statutes, regulations and policies.
2. **Contract Components and Order of Precedence**
The Commonwealth’s acceptance of the Investment partner’s offer in response to the Solicitation, indicated by the issuance of a Contract Award by the Office of Procurement Services, shall create a valid Contract between the Parties consisting of the following:
 - A. Any written Agreement between the Parties;
 - B. Any Addenda to the Solicitation;
 - C. The Solicitation and all attachments
 - D. Procurement Statutes, Regulations and Policies
 - E. Any Best and Final Offer;
 - F. Any clarifications concerning the Investment partner’s proposal in response to the Solicitation;
 - G. The Investment partner’s proposal in response to the Solicitation.

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

3. Final Agreement

The Contract represents the entire agreement between the parties with respect to the subject matter hereof. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this Contract.

4. Contract Provisions

If any provision of this Contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the Commonwealth and the Investment partner shall be relieved of all obligations arising under such provision. If the remainder of this Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

5. Addition or Deletion of Items or Services

The Office of Procurement Services reserves the right to add new and similar items, by issuing a Contract Modification, to this Contract with the consent of the Investment partner.

6. Changes and Modifications to the Contract

Pursuant to KRS 45A.210 (1) and 200 KAR 5:311, no modification or change of any provision in the Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the Commonwealth, and incorporated as a written amendment to the Contract and processed through the Office of Procurement Services and approved by the Finance and Administration Cabinet prior to the effective date of such modification or change pursuant to KRS 45A.210(1) and 200 KAR 5:311. Memorandum of understanding, written clarification, and/or correspondence shall not be construed as amendments to the Contract.

If the Investment partner finds at any time that existing conditions made modification of the Contract necessary, it shall promptly report such matters to the Commonwealth Buyer for consideration and decision.

7. Changes in Scope

The Commonwealth may, at any time by written order, make changes within the general scope of the Contract. No changes in scope are to be conducted except at the approval of the Commonwealth.

8. Contract Conformance

If the Commonwealth Buyer determines that deliverables due under the Contract are not in conformance with the terms and conditions of the Contract and the mutually agreed-upon project plan, the Buyer may request the Investment partner to deliver assurances in the form of additional Contractor resources and to demonstrate that other major schedules will not be affected. The

Commonwealth shall determine the quantity and quality of such additional resources and failure to comply may constitute default by the Investment partner.

9. Assignment

The Investment partner shall not assign the Contract in whole or in part or any payment arising there from without the prior written consent of the Commonwealth Buyer. Any purported assignment is void.

10. Investment Partner Cooperation in Related Efforts

The Commonwealth of Kentucky may undertake or award other contracts for additional or related work, services, supplies, or commodities, and the Investment partner shall fully cooperate with such other contractors and Commonwealth employees.

11. Investment Partner Affiliation

"Affiliate" shall mean a branch, division or subsidiary that is effectively controlled by another party. If any affiliate of the Investment partner shall take any action that, if done by the Investment partner, would constitute a breach of this agreement, the same shall be deemed a breach by such party with like legal effect.

12. Commonwealth Property

The Investment partner shall be responsible for the proper custody and care of any Commonwealth-owned property furnished for Investment partner's use in connections with the performance of this Contract. The Investment partner shall reimburse the Commonwealth for its loss or damage, normal wear and tear excepted.

13. Confidentiality of Contract Terms

The Investment partner and the Commonwealth agree that all information communicated between them before the effective date of the Contract shall be received in strict confidence and shall not be necessarily disclosed by the receiving party, its agents, or employees without prior written consent of the other party. Such material will be kept confidential subject to Commonwealth and Federal public information disclosure laws.

Upon signing of the Contract by all Parties, terms of the Contract become available to the public, pursuant to the provisions of the Kentucky Revised Statutes.

The Investment partner shall have an appropriate agreement with its Subcontractors extending these confidentiality requirements to all Subcontractors' employees.

14. Confidential Information

The Investment partner shall comply with the provisions of the Privacy Act of 1974 and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Commonwealth in writing to the Investment partner. All Federal and State Regulations and Statutes related to confidentiality shall be applicable to the Investment partner. The Investment partner shall have an appropriate agreement with its employees, and any subcontractor employees, to that effect, provided however, that the foregoing will not apply to:

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

15. Advertising Award

The Investment partner shall not refer to the Award of Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky.

16. Permits, Licenses, Taxes and Commonwealth Registration

The Investment partner shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all Federal, State, and local governments in which work under this Contract is performed.

The Investment partner shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. However, the Investment partner need not be registered as a prerequisite for responding to the RFP. Additional local registration or license may be required.

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

17. EEO Requirements

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding \$500,000. The Investment partner shall comply with all terms and conditions of the Act.

<http://finance.ky.gov/services/eprocurement/Pages/VendorServices.aspx>.

18. Provisions for Termination of the Contract

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

19. Bankruptcy

In the event the Investment partner becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the Commonwealth's right to terminate this Contract may be subject to the rights of a trustee in bankruptcy to assume or assign this Contract. The trustee shall not have the right to assume or assign this Contract unless the trustee (a) promptly cures all defaults under this Contract; (b) promptly compensates the Commonwealth for the monetary damages incurred as a result of such default, and (c) provides adequate assurance of future performance, as determined by the Commonwealth.

20. Conformance with Commonwealth & Federal Laws/Regulations

This Contract is subject to the laws of the Commonwealth of Kentucky and where applicable Federal law. Any litigation with respect to this Contract shall be brought in state or federal court in **Franklin County, Kentucky**.

21. Access to Records

The investment partner, as defined in KRS 45A.030 (9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The investment partner also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

In the event of a dispute between the investment partner and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004. (See Attachment E).

22. Prohibitions of Certain Conflicts of Interest

In accordance with KRS 45A.340, the investment partner represents and warrants, and the Commonwealth relies upon such representation and warranty, that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services. The investment partner further represents and warrants that in the performance of the contract, no person, including any subcontractor, having any such interest shall be employed.

In accordance with KRS 45A.340 and KRS 11A.040 (4), the investment partner agrees that it shall not knowingly allow any official or employee of the Commonwealth who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this contract to voluntarily acquire any ownership interest, direct or indirect, in the contract prior to the completion of the contract.

23. No Contingent Fees

No person or selling agency shall be employed or retained or given anything of monetary value to solicit or secure this contract, excepting bona fide employees of the Offeror or bona fide established commercial or selling agencies maintained by the Offeror for the purpose of securing business. For breach or violation of this provision, the Commonwealth shall have the right to reject the proposal or cancel the contract without liability.

24. Investment partner Response and Proprietary Information

After a Contract is awarded in whole or in part, the Commonwealth shall have the right to duplicate, use, or disclose all proposal data submitted by Investment partners in response to this RFP as a matter of public record in accordance with the Kentucky Open Records Act, KRS 61.870 et sequitur.

SECTION 5 – NOTICES AND DOCUMENTATION

1. Agencies to Be Served

This contract shall be for use by the Finance and Administration Cabinet.

2. Extending the Contract Use to Other Agencies

The Finance Cabinet reserves the right to offer the Master Agreement/s resulting from this Solicitation to other state agencies and stakeholders as outlined in Section 2 – Background, Vision, and Goals.

3. Term of Contract and Renewal Options

The initial term of the Contract shall be for a period of **two (2) years** from the effective date of the Award of Contract.

This Contract may be renewed at the completion of the initial Contract period for **two (2) additional one (1) year** periods upon the mutual agreement of the Parties. Such mutual agreement shall take the form of a Contract Modification as described in Section 4 of this RFP.

The Commonwealth reserves the right not to exercise any or all renewal options. The Commonwealth reserves the right to extend the contract for a period less than the length of the above-referenced renewal period if such an extension is determined by the Commonwealth Buyer to be in the best interest of the Commonwealth.

4. Notices

After the Award of Contract, all programmatic communications with regard to day-to-day performance under the contract are to be made to the Agency contact(s) identified below.

Mike Hayden, Director
Finance and Administration Cabinet
Room 456
Capitol Annex
Frankfort, KY 40601

After the Award of Contract, all communications of a contractual or legal nature are to be made to the Commonwealth Buyer. The Commonwealth reserves the right to change the Agency contact throughout the life cycle of any contract awarded as a result of this RFP.

5. Investment Partner Fees

If selected as an investment partner for a Commonwealth project there shall be no direct investment partner fee/s for the documentation and establishment of the investment program.

SECTION 6 – PROPOSAL SUBMISSION

1. Disposition of Proposals

All proposals become the property of the Commonwealth of Kentucky. The successful proposal shall be incorporated into the resulting contract by reference. Disposal of unsuccessful proposals shall be at the discretion of the Commonwealth Buyer.

2. Rules for Withdrawal of Proposals

Prior to the date specified for receipt of offers, a submitted proposal may be withdrawn by submitting a signed written request for its withdrawal to the Commonwealth Buyer.

3. Submission

Each qualified Offeror shall submit only **one (1) proposal**. **Alternate proposals shall not be allowed**. Failure to submit as specified shall result in a non-responsive proposal.

The Investment partner should complete the "**Vendor**" **box** on the face of the Solicitation. An authorized representative of the Investment partner **shall sign** where indicated on the face of the Solicitation. If the solicitation is not signed the proposal shall be deemed non-responsive.

It is the Investment partner's responsibility to check the web site for any modifications to this Solicitation. If modifications have been made, the Investment partner's signature is required on the latest addendum. Failure to acknowledge the latest addendum of this Solicitation shall cause the bid to be deemed non-responsive if the latest addendum is material to the procurement. Acknowledgment shall be received prior to the hour and date specified for receipt of offers. Verbal acknowledgment shall not be accepted.

4. Format

The **Proposal** should include one (1) marked original, ten (10) copies, and ten (10) CDs (in Microsoft Word, Excel or PDF).

Should differences be determined to exist between the hardcopy proposal and the electronic version, the hardcopy shall prevail.

Proposals shall be submitted to the Commonwealth Buyer by the RFP Closing Date (both are identified on the Cover Page of this RFP). **ANY PROPOSAL RECEIVED AFTER THE CLOSING DATE SHALL BE REJECTED AND RETURNED UNOPENED TO THE VENDOR.**

The outside cover of the package containing the Proposal should be marked:

**NG-KIH Investment Partner
RFP 758 150000027
PROPOSAL
Name of Offeror**

All submitted Proposals shall remain valid for a minimum of six (6) months after the proposal due date.

5. Proposal Content

1. Transmittal Letter

The transmittal letter should be on the Investment partner's letterhead, notarized and signed by an agent authorized to bind the Investment partner. The transmittal letter should include the following:

- A statement that **deviations** are included, if applicable;
 - *(Any deviations from the provisions of the Solicitation must be specifically identified by the Investment partner in its proposal, which if successful, shall become part of the Contract. Such deviations shall not be in conflict with the basic nature of Technical and Cost requirements of this Solicitation. Deviations must be outline in the Transmittal Letter. The Commonwealth reserves the right to reject any and/or all deviations in whole or in part. Proposals that take exception/deviations to procurement requirements may be deemed non-responsive.)*
- A sworn statement that, if awarded a contract as a result of this Solicitation, the Investment partner shall comply in full with all requirements of the **Kentucky Civil Rights Act**, and shall submit all data required by KRS 45.560 to 45.640;
- A sworn statement pursuant to KRS 11A.040 that the Investment partner has not knowingly violated any provisions of the **Executive Branch Code of Ethics**;
- A sworn statement of that the Investment partner is in compliance with Prohibitions of Certain **Conflicts of Interest**;
- A statement of certification in accordance with In accordance with Federal Acquisition Regulation 52.209-5, Certification Regarding **Debarment, Suspension, and Proposed Debarment** that to the best of its knowledge and belief, the Investment partner and/or its Principals is (are) not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any State or Federal agency.
- The name, address, telephone number, fax number, and email address of the **contact person** for this RFP. The address shall be one in which the major overnight delivery services will deliver; and
- The name, address, telephone number, fax number and email address of the **contact person** to serve as a point of contact for day-to-day operations.
- **Subcontractor** information to include name of company, address, telephone number and contact name, if applicable

- The new system should be DOD 5015.2 compliant. Please attach the appropriate evidence of such compliance to the Transmittal letter.

2. **Disclosure of Violation of Statutes**

Pursuant to KRS 45A.485, contractors are required to reveal final determinations of violation of certain statutes incurred within the last five (5) years and be in continuous compliance with those statutes during the contract. Where applicable, the Investment partner is required to complete and submit Report of Prior Violations of Tax and Employment Laws (See Attachment C) of this RFP.

3. **State Vendor Eligibility Request Form**

Revenue Form 10A100, "State Vendor Eligibility Request Form", effective July 2008, is a form to be completed by any person or entity wishing to contract with the Commonwealth to provide goods or services subject to sales and use tax pursuant to KRS 139.200. The form is located at this web-link as Attachment 5:

<http://finance.ky.gov/services/eprocurement/Pages/VendorServices.aspx>

In accordance with administrative regulation 200 KAR 5:390, this form has to be completed and submitted, before a contract can be awarded. Section 2 of the regulation also notes: "Failure to submit the required documentation or to remain registered and in compliance with the sales and use tax filing and remittance requirements of KRS 139.540 and KRS 139.550 throughout the duration of the contract shall constitute a material breach of the contract and the contract may be terminated."

4. **Registration with the Secretary of State by a Foreign Entity**

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by [KRS 14A.9-010](#) to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under [KRS 14A.9-030](#), **therefore, foreign entities should submit a copy of their certificate with their solicitation response.** If the foreign entity is not required to obtain a certificate as provided in [KRS 14A.9-010](#), the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within [KRS 14A.1-070](#).

Businesses can register with the Secretary of State at <https://secure.kentucky.gov/sos/ftbr/welcome.aspx>.

5. **Required Affidavits (see Attachments)**

6. **Completed and signed face of solicitation (See Section 6 (#4) of this RFP)**
7. **Signed face of latest addendum of the solicitation (See Section 6 (#4) of this RFP)**
8. **EEO Forms if applicable (See Section 4 (#17) of this RFP)**
9. **Regulatory and Compliance**

The investment partner should name the regulatory body overseeing the firm and dates of registration, as appropriate. The investment partner should also answer the following questions and include attachments as necessary:

 - Has any regulatory body or market authority issued any orders or other sanctions against your firm in the last five years? If yes, please describe.
 - Is your firm or any affiliate the focus of any pending or ongoing litigation, formal investigation, or administrative proceedings related to money management activities? If yes, please describe.
 - Have the principals of your firm been under investigation related to money management activities in the last five years? If yes, please explain.
 - Has your parent organization, firm, or any of the partners/key professionals been involved with any contract failures, contract breaches, or any civil or criminal litigation in the past five years? If so, please provide an explanation and the current status of such litigation.
 - Please disclose any prior or ongoing disciplinary action by regulators or alleged significant prior or ongoing investigation pending which involved the investment partner or investment partner's partners/key professionals in the last five years.
10. **Anti-Terrorism and Anti-Money Laundering Policies**

The investment partner should describe any anti-terrorism and anti-money laundering policies your firm maintains. If your firm invests monies outside the United States, indicate how you maintain compliance with federal executive orders regarding terror-sponsoring nations.
11. **Investment Partner Background and Corporate Organization Structure**

The investment partner should provide a description of firm ownership type (i.e. venture capital, buyout or special situations), primary business activities, legal structure, and the year the firm was founded. Please include prior names and the length of time the organization has been in business under its present name and ownership.

The investment partner should provide an organizational chart of the firm and include how the firm fits into the entire organization including parent firm (if any) and affiliations or subsidiaries (if any). A listing of all key personnel involved in the management and risk management of the firm including name, title, education, role at firm, total investment experience, tenure at the firm, short biography and resume must be provided.

The investment partner should detail any prior experience investing in the Commonwealth including industry and size.

The investment partner should outline the firm's investment philosophy, strategy and screening process including geographical (national, regional or global) and sector focus (industrial, telecommunications, healthcare, etc.) diversification. Describe your due diligence process in determining viability of project including source of funds to be used for investment.

12. **Financial Viability and Financial Statements**

The investment partner should submit financial statements for potential partner for the five (5) most recent completed fiscal years. This information must be provided to demonstrate financial capability of potential partner. If the entity has been in existence for less than five (5) fiscal years, they should expressly state that such entity has been in existence for less than five (5) fiscal years and shall provide financial statements for the number of fiscal years it has been in existence.

Financial statement information must be consolidated where required by Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS) and must include:

- Auditor's Report
- Balance Sheet
- Income Statement or Statement of Comprehensive Income
- Statement of Changes in Cash Flow
- Statement of Changes in Equity
- Footnotes to financial statements.

In addition, financial statements must meet the following requirements:

GAAP/IFRS: Financial statements must be prepared in accordance with U.S. GAAP or IFRS. If financial statements are prepared in accordance with principles other than U.S. GAAP or IFRS, a letter must be provided from a certified public accountant discussing the areas of the financial statements that would be affected by a conversion to U.S. GAAP or IFRS. A restatement of the financial information in accordance with U.S. GAAP or IFRS is not required.

Audited: Financial statements must be audited by an independent party qualified to render audit opinions (e.g. a Certified Public Accountant in the US or Chartered Accountant for foreign entities). If audited financials are not available for an entity, the statement of qualifications shall include unaudited financial statements for such entity, certified as true, correct and accurate by the chief executive, chief financial officer or treasurer (or equivalent position or role) of the entity.

Newly Formed Entity: If partner is a newly formed entity and does not have independent and historical financial statements, financial statements for the equity owners/members shall be provided (and the entity shall expressly state that the entity is a newly formed entity and does not have independent and historical financial statements).

SEC Filings: If any entity for which financial information is submitted hereby files reports with the Securities and Exchange Commission, then such financial statements shall be provided through a copy of their most recent annual report on Form 10K. For all subsequent quarters, provide a copy of any report filed on Form 10Q or Form 8-K which has been filed since the latest filed 10K.

Confidentiality: Investment partner shall identify any information which it believes is entitled to confidentiality by placing the word “confidential” on each page.

Material Changes in Financial Condition

The investment partner should provide information regarding any material changes in financial condition for potential partner for (i) the past five (5) years; (ii) the period from the most recent balance sheet to the date of the Statements of Qualifications; and (iii) for changes anticipated for the next reporting period. Information pertaining to pending material changes may be marked confidential if required by law. The partner shall update its response for any material changes in financial condition subsequent to submitting its Statement of Qualifications.

If no material change has occurred and none is pending, entity shall provide a letter from their respective chief executive officer, chief financial officer or treasurer (or equivalent position or role) so certifying.

In instances where a material change has occurred, or is anticipated, the affected entity shall provide a statement describing each material change in detail, actual and anticipated association changes or disruptions in

executive management, the likelihood that the developments will continue during the period of performance of the Project development, and the projected full extent, nature and impact, positive and negative, of the changes experienced and anticipated to be experienced in the periods ahead. Include discussion of how the change is anticipated to affect the organizational and financial capacity, ability and resolve of potential partner to remain engaged in this procurement and submit a responsive Proposal.

Estimates of the impact on revenues, expenses, assets, liabilities and the change in equity will be provided separately for each material change as certified by the chief financial officer or treasurer (or equivalent position or role).

References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material changes.

Where a material change will have a negative financial impact, the affected entity shall also provide a discussion of measures that would be undertaken to insulate the Project from any recent material changes, and those currently in progress or reasonably anticipated in the future.

Set forth below is a representative list of events intended to provide examples of what is considered a material change in financial condition. This list is intended to be indicative only. At the discretion of The Commonwealth, any failure to disclose a prior or pending material change may result in disqualification from further participation in the selection process.

List of Representative Material Changes

- An event of default or bankruptcy involving the affected entity, or the parent corporation of the affected entity;
- A change in tangible net worth of 10% of shareholder equity;
- A sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger or acquisition which in any way involves the affected entity or parent corporation of the affected entity;
- A change in credit rating for the affected entity or parent corporation of the affected entity;
- Inability to meet material conditions of loan or debt covenants by the affected entity or parent corporation of the affected entity which has required or will require a waiver or modification of agreed

- financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties;
- In the current and five (5) most recent completed fiscal years, the affected entity or the parent corporation of the affected entity either: (i) incurs a net operating loss; (ii) sustains charges exceeding 5% of the then shareholder equity due to claims, changes in accounting policies direct charges to equity, write-offs or business restructuring; or (iii) implements a restructuring/reduction in labor force exceeding 200 positions or involves the disposition of assets exceeding 10% of the then shareholder equity;
 - Contingent liabilities disclosed in the notes to financial statements;
 - Other events known to the affected entity which represents a material change in financial condition over the past five (5) years, or may be pending for the next reporting period.

Off-Balance Sheet Liabilities

A letter from the chief financial officer or treasurer (or, if neither of these positions exist for an entity, an individual who serves in an equivalent capacity and whose title shall be specified in the certification) of the entity or the certified public accountant for each entity for which financial information is submitted, identifying all off-balance sheet liabilities in excess of \$5,000,000 in the aggregate.

Insurance

The Investment partner should provide information to document the various types of insurance currently in force.

Table of Insurance Coverage

Type	Carrier	Amount of Coverage
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In the event any carrier of such insurance exercises cancellation, notice of such cancellation shall be made immediately to the Commonwealth Buyer.

SECTION 7 – PROPOSAL EVALUATION

The Commonwealth shall conduct a comprehensive, fair, and impartial evaluation of all proposals. The Commonwealth may reject any proposal that is incomplete or in which there are significant inconsistencies or inaccuracies. The Commonwealth reserves the right to reject all proposals.

The Commonwealth has established a Proposal Evaluation Committee to review, evaluate and verify information submitted by the Offeror.

Each Investment partner is responsible for submitting all relevant, factual and correct information with their offer to enable the evaluator(s) to afford each Investment partner the maximum score based on the available data submitted by the Investment partner.

The Commonwealth shall evaluate the proposals by assigning scores as indicated below.

Proposal Evaluation	
Criteria	Points Possible
Regulatory and Compliance	P/F
Anti-Terrorism & Money Laundering Policies	P/F
Off-Balance Sheet Liabilities	P/F
Investment Partner Background and Staffing	1000
Financial Viability and Financial Statements	1000
TOTAL POINTS POSSIBLE	2000

Note: P/F above is Pass/Fail

The Commonwealth reserves the right to require oral presentations to verify or expand on the proposals. The Commonwealth reserves the right to reject any or all proposals in whole or in part based on the presentations.

If required, the top four (4) highest ranking investment partners will be invited to participate in the orals process. The three (3) highest scoring investment partners from the proposal evaluation and oral presentations will be selected for contract negotiations.

Once a vendor is pre-certified as one of the three investment partners, the Commonwealth may choose one partner as the prime investor to participate in the NG-KIH initiative and related P3 projects based on their response to a defined scope of work.

Oral Demonstration/Presentation Proposal Evaluation	
Criteria	Points Possible
Demonstration/Presentation, if required	500
Total Points Possible	500

Oral presentation scheduling will be at the discretion of the Commonwealth. The Commonwealth reserves the right to not require oral demonstrations/presentations if they do not affect the final rankings.

**PROPOSAL EVALUATION
TOTAL POSSIBLE POINTS**

Without Oral Demonstrations/Presentations	2000
With Oral Demonstrations/Presentations	2500

SECTION 8 – PROPOSAL SUBMISSION CHECKLIST

- TRANSMITTAL LETTER**
- REPORT OF PRIOR VIOLATIONS OF TAX AND EMPLOYMENT TAXES FORM**
- REVENUE FORM 10A100 “STATE VENDOR ELIGIBILITY REQUEST FORM**
- CERTIFICATE OF AUTHORITY (REGISTRATION WITH SECRETARY OF STATE BY A FOREIGN ENTITY)**
- REQUIRED AFFIDAVIT(S)**
- SIGNED AND COMPLETED SOLICITATION**
- LATEST ADDENDUM SIGNED**
- EEO FORMS IF APPLICABLE**
- PROPOSED SOLUTION (UNDER SEALED COVER)**

SECTION 9 –ATTACHMENTS

Attachments indicated below may be downloaded by accessing the “Attachment” link found on the Solicitation Details View page where this RFP was downloaded. Once the Attachment link is accessed, select the file name you wish to download, and select the “Download Attachment” hyperlink. For assistance with downloading these attachments please contact the Commonwealth Buyer.

ATTACHMENT A – This RFP Document

ATTACHMENT B – Report of Prior Violations of Tax and Employment Laws

ATTACHMENT C – Affidavits

ATTACHMENT D – Secretary's Order 11-004

ATTACHMENT E – Vendors' Question Form