

**Finding 3.1:**

Single-bid projects were common from January 2018 to July 2023 but typically occurred where there were fewer providers of asphalt. However, Fayette County and five surrounding counties had high rates of single-bid contracts despite the presence of five plants owned by four companies. These single-bid contract rates ranged from 68 percent to 94 percent of contracts. Another bordering county, Woodford, has no single-bid contract rates.

**Recommendation 3.1:**

The Kentucky Transportation Cabinet should monitor single-bid asphalt contracts in central Kentucky, where there are multiple potential contractors for the region. If the pattern continues, the Cabinet should contact non-bidding contractors to determine if there is a structural reason why they do not submit bids.

**KYTC Response 3.1:**

Standard Specifications for Road and Bridge Construction allow for disqualification of and rejection of the bid in instances of more than one bid submission on the same Project by an affiliate or subsidiary company. There are potentially seven (7) companies within hauling distance to the Fayette county area. Four (4) are located in adjacent counties, which makes timely access to some counties difficult (asphalt temperature at laydown). Three (3) of the seven companies are subsidiary companies. Receiving separate bids from subsidiary companies is widely discouraged among states to limit the potential for collusion.

Please see the Response for 3.6. Data Analytics software will determine areas lacking competition. KYTC will follow up with companies within reasonable distances of single-bid projects to understand if there are addressable reasons as to why there were not additional bids.

**Finding 3.2:**

The Cabinet publicly posts a list of potential bidders for each project. Federal guidance recommends that states not publish or release information regarding eligible bidders because it may encourage bid collusion and is less likely to create a competitive bidding environment. The Cabinet has indicated that the list of potential bidders is used by subcontractors to offer services to primary contractors.

**Recommendation 3.2:**

Kentucky Transportation Cabinet should transition to keeping plan holder lists confidential or waiting until there are at least three potential bidders on a project before releasing identities of plan holders. The Cabinet should provide an option for subcontractors to indicate interest in the project, so primary contractors can identify potential subcontractors.

**KYTC Response 3.2:**

The lists of plan holders is a significant method contractors and subcontractors use to develop bidding teams. Impacting this process needs to be done with care to ensure robust contracting teams are available to bid on projects. Additionally, the plan holder list supports the Disadvantaged Business Enterprise (DBE) process which is required by the Federal Highway

Administration (FHWA). Given the significant benefit KYTC derives from FHWA funding, it is imperative that the risks to this program are adequately considered.

KYTC surveyed Disadvantaged Business Enterprise (DBE) contractors to determine the benefit of posting the plan holder list. The responses indicated they utilized the plan holder's list to identify companies in which to provide quotes. KYTC supports keeping the plan holder's list confidential in principle. Based on the feedback from the DBE industry and the industry at large, KYTC will continue to carefully consider the broader implications of this recommendation.

**Finding 3.3:**

Kentucky's engineer's estimate appears to use a method suggested by federal guidance, but staff were unable to verify the actual methods. The engineer's estimate is the Cabinet's estimate of project costs and is used to evaluate bids. The Cabinet did not want to potentially undermine competitive bidding by releasing the methodology behind its engineer's estimate. Though appropriate, this choice could create the appearance of obfuscation and prevent the Cabinet from protecting itself against claims of high or low estimates.

**Recommendation 3.3:**

The Kentucky Transportation Cabinet should ensure it has an internal process to verify its engineer's estimate, to ensure that the estimate accurately represents project costs.

**KYTC Response 3.3:**

KYTC utilizes a similar process as many other DOTs across the nation, which combines cost-based and historical methods to develop project estimates. KYTC is not alone in how its estimating staff operates. The "Engineer's Estimate" is developed using a cost-based methodology combined with a historical methodology. KYTC estimating staff attends conferences and trainings to stay apprised of industry changes and how other states are handling any potential change. Additionally, KYTC is using an Independent Cost Estimator (ICE) to inform our internal process.

Periodically, KYTC and ICE personnel will explore best practices, observations, and trends impacting project estimating.

**Finding 3.4:**

The Cabinet complies with federal guidance on the evaluation of bids but does not have written procedures for justifying the award of contracts or the rejection of bids. Federal guidance recommends that states have written procedures for justifying the award or rejection of bids. The lack of a written policy can create the appearance of arbitrary decisions, even if patterns are evident in the Cabinet's actions.

**Recommendation 3.4:**

The Kentucky Transportation Cabinet should develop written guidelines for justifying the award or rejection of a bid. They should indicate when the Cabinet can make exceptions and how the exceptions should be documented.

**KYTC Response 3.4:**

The general parameters used for considering bids are established in the KYTC Construction Procurement policy manual. Our internal estimating process is similar to other states where competition may be limited in a particular region. It should be remembered that KYTC is required by KRS 176.080 to publish the Engineer's Estimate as part of the bid opening unless no bids are received. Providing such insight into the awards process would compromise attempts to re-bid projects that were initially rejected.

**Finding 3.5:**

While reviewing rejected bids, LOIC staff found that the Cabinet posted unit bid prices even when all bids were rejected. This practice can undermine competitiveness if the project is rebid, by allowing competitors to tacitly collude or adjust their bids based on known competitor prices. If KYTC cannot establish a valuable reason to provide unit prices after rejecting all bids, it should consider not releasing unit prices, in order to maintain competitive estimates on potential second lettings. This would not prevent the Cabinet from communicating why all bids were rejected.

**Recommendation 3.5:**

The Kentucky Transportation Cabinet should cease posting unit bid prices when it rejects all bids on a project, unless it can determine it is in the Cabinet's best interest to post the prices.

**KYTC Response 3.5:**

KYTC agrees with recommendation 3.5. Reports were revised to reflect the changes outlined in recommendation 3.5. These changes are planned in fiscal year 2025. Policy & Procedure manuals will be updated accordingly.

**Finding 3.6:**

Federal guidance stresses that states should consciously determine if bid rigging is ongoing or has occurred recently. The guidelines recommend a period of 5 years for the initial evaluation. In a 2017 survey, a majority of states said they use software to detect potential collusion.

**Recommendation 3.6:**

The Kentucky Transportation Cabinet (KYTC) should use procurement software to detect potential collusion. The Cabinet should have a policy to provide evidence to authorities if collusion is suspected.

**KYTC Response 3.6:**

KYTC personnel is engaged with Infotech, Inc. to explore the Data Analytics module of the AASHTOWare system. This module, a vital component of the AASHTOWare software, is dedicated to detecting collusion. Infotech, Inc. detailed its comprehensive service levels, which include expert data analysis and system overviews, ensuring a thorough and high-quality detection process.

Based on the findings and the recommendation listed for 3.6, KYTC agrees that an in-depth review of the bid history is warranted. Infotech, Inc. will provide KYTC with two different Data

Analytics services, explicitly focusing on competitive bidding, potential collusion issues, expert data analysis, training, and ongoing quarterly reviews.

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