



July 28, 2020

Dear Interim State Government Committee Members,

For reasons not entirely clear, the Kentucky General Assembly exempted the Transportation Cabinet (KYTC) from the Model Procurement Code decades ago.<sup>1</sup> As a result, KYTC is the only cabinet in the executive branch not required to run their procurements through the Finance and Administration Cabinet.

Single-bid awards have a long history at KYTC. A 2015 University of Kentucky study<sup>2</sup> reported the following:

*It is clear that firms in single-bid auctions are able to raise bids above the competitive level. (The lack of a second bidder) cost Kentucky taxpayers nearly \$100 million of the \$608 million spent on paving contracts during 2005-07.*

Competitive bidding results in higher quality goods and services at market-based prices. Noncompetitive single-bid awards waste resources and diminish public trust that government agencies represent the taxpayers' best interests.

The Bluegrass Institute for Public Policy Solutions examined KYTC's project bids from October 2019 to April 2020. We compared the bid price awarded to single bidders versus the cabinet engineer's estimate for the projects.<sup>3</sup>

The examination revealed single bid awards remain pervasive at KYTC. Sixty-four single bid awards totaling \$186,880,616 were awarded over the six month period, resulting in \$10,067,211 in spending above the cabinet engineer's estimates.

Eighteen contractors were awarded projects in forty-six counties through single bid awards. Two awards alone accounted for \$8,661,072 in spending above the engineer's estimates.

<sup>1</sup> See KRS 45A.050, KRS 45A.800 to 45A.835 and KRS 176

<sup>2</sup> Barrus & Scott, "Single Bidders and Tacit Collusion in Highway Procurement Auctions." University of Kentucky. April 2015.

<sup>3</sup> KYTC's publication of bid awards is not user friendly. Every effort was made to ensure absolute accuracy of our evaluation. We acknowledge there is opportunity for minor errors in analyzing the data available.

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Twenty-four single bids were rejected during the same time period. No details are provided for why any single bid is rejected.

The General Assembly should require greater transparency and oversight of road and bridge construction procurements. HB 454 was introduced last session to provide a path forward. The legislation would:

- Require KYTC to adhere to the principles of the Model Procurement Code.
- Prohibit the Cabinet's explicit signal to bidders that single-bid opportunities exist.
- Authorize the Auditor of Public Accounts to determine if, in fact, the industry is engaging in more sophisticated abuses of the bidding process.

In addition, the Bluegrass Institute recommends that the legislation includes a requirement for KYTC to provide detailed explanations for decisions to award single bid contracts exceeding engineer's estimates.

The State Government Committee has the primary legislative responsibility to establish policy for state government procurement. We respectfully request your committee's attention to this matter during the interim session.

Respectfully,

Andrew V. McNeill  
Visiting Fellow  
The Bluegrass Institute for Public Policy Solutions

CC: Interim Joint Committee on State Government members  
Secretary Jim Gray, Kentucky Transportation Cabinet  
Honorable Mike Harmon, Auditor of Public Accounts