

RESOLUTION JB-2014-3

RESOLUTION OF JOINT BOARD APPROVING RECOMMENDATION OF ETC PROVIDER AND AUTHORIZING CERTAIN OTHER ACTIONS

WHEREAS, the State of Indiana and the Commonwealth of Kentucky have jointly undertaken a project to improve cross river mobility over the Ohio River between Louisville and Southern Indiana, authorized by the Federal Highway Administration in its revised Record of Decision dated June 20, 2012 (the "Project"); and

WHEREAS, the Indiana Finance Authority ("IFA") and the Indiana Department of Transportation ("INDOT") have been authorized to participate in the Project on behalf of the State of Indiana, and the Kentucky Public Transportation Infrastructure Authority ("KPTIA") and the Kentucky Transportation Cabinet ("KYTC") have been authorized to participate in the Project on behalf of the Commonwealth of Kentucky; and

WHEREAS, IFA, INDOT, KPTIA and KYTC (collectively the "States' Parties" and each individually a "State's Party") have (together with the Louisville and Southern Indiana Bridges Authority) entered into a Bi-State Development Agreement effective December 17, 2012 (the "Development Agreement") as well as an Interlocal Cooperation Agreement for the Design, Procurement, Construction, Financing, Tolling, Operation and Maintenance for the Louisville-Southern Indiana Ohio River Bridges Project effective as of December 17, 2012 (the "Interlocal Agreement"); and

WHEREAS, by Resolution JB-2013-7, INDOT was authorized by the Joint Board to undertake a procurement for an ETC contractor for the Project; and

WHEREAS, INDOT as Contracting Party has worked cooperatively with representatives of the Non-Contracting Parties, as these terms are defined in the bylaws of this Joint Board, to design and carry out a procurement process for an ETC contractor as so authorized; and

WHEREAS, the selection committee for this procurement has chosen a best value offeror in accordance with the results of the procurement process, descriptions of which have been provided by INDOT to this Joint Board; and

WHEREAS, INDOT recommends, both for itself on behalf of the Non Contracting Parties, the approval by the Joint Board of Kapsch TrafficCom USA ("Kapsch") as the proposed best value offeror for ETC contractor services; and

WHEREAS, a proposed contract, consistent with the terms of the procurement and the response of the recommended winner, has been prepared and made available to this Joint Board (the "Contract"); and

WHEREAS, INDOT, for itself and on behalf of the Non Contracting Parties, hereby recommends that the Joint Board approve and authorize the execution of said Contract in the form approved by INDOT after final negotiations with Kapsch, and with consent of the Non Contracting Parties.

NOW, THEREFORE, BE IT RESOLVED BY THIS JOINT BOARD as follows:

1. The recommendation of Kapsch as best value offeror for ETC Contractor services is hereby approved, and Kapsch is hereby designated as ETC Contractor, subject to execution and delivery of the Contract.

2. The Contract for ETC Contractor services referred to above, between INDOT and Kapsch, in a form acceptable to INDOT, with the consent of the Non Contracting Parties, is hereby approved. INDOT (in consultation with Non Contracting Parties) is authorized to negotiate the final terms of the Contract, and to execute and deliver the Contract.

3. The procurement and the Contract shall be administered and managed on behalf of the Joint Board and the States' Parties in conformance with the following:

a. The Contracting Party shall administer the Contract as authorized and directed by the Joint Board. The Kentucky Parties and the Indiana Parties shall each designate a representative for a total of two representatives to work with counsel and the Toll Oversight Advisor on the direction of the work of the ETC Contractor on behalf of the Joint Board after the Contract has been awarded.

b. Payment obligations on the Contract shall be shared equally by the Indiana State's Parties and the Kentucky State's Parties, and the Contract shall provide that each State shall only be responsible for one-half of the Joint Board's financial obligations under the Contract, such terms to be accepted in writing by the TSP in the Contract.

c. The Contracting Party shall absorb all of its costs of administering and managing the Contract. Each Non-Contracting Party shall absorb all its internal costs associated with its duties hereunder and under the Contract. Third party costs incurred by the Contracting Party with the consent of the Non-Contracting Parties shall be shared equally.

d. The Contracting Party, in full cooperation with the Non-Contracting Parties, will agree on a reporting and management system and on a schedule as may be appropriate for the Contract in writing. In the absence of an agreement, the Contracting Party will report on a monthly basis to the designated representatives of each of the Non-Contracting Parties as to the progress and status of the Contract, which shall include a description of any material issues affecting proper completion, the schedule for performance or the budget. The Contracting Party shall also ensure that current status reports will be available for Joint Board Meetings and Tolling Body Meetings when requested.

e. It is the goal of this resolution to promote and insure joint coordination, management, and communication between the ETC Contractor and the Contracting Party working in cooperation with the Non-Contracting Parties. To that end the Contracting Party will conduct periodic team meetings to formally coordinate, prioritize and track ongoing efforts of the ETC Contractor. These team meetings will be scheduled with appropriate frequency to insure adequate coordination and progress of the ETC Contractor's work. In any instance where project related communications are necessary

with only one member of the designated team, the team member privy to the communication will make every reasonable effort to relay the specifics of this communication to the non-participating member in writing in a timely manner, ideally the same business day.

f. The Contracting Party shall maintain all of the books and records relating to the Contract and shall make them available to representatives of the Non-Contracting Parties upon request.

g. The final Contract will not be issued or executed without prior notice to, and unanimous approval of, the Non-Contracting Parties.

h. The following actions shall be the responsibility of the Contracting Party. No action or directives may be made on the Contract without the joint approval of the members of the Non-Contracting Parties. The Contracting Party shall not take any of the following actions without prior notice and unanimous approval of all members of the Non-Contracting Parties:

- i. Invoices and contract payments on the Contract;
- ii. Claim determinations.
- iii. Issuance of a Punch List;
- iv. Final approval or acceptance.
- v. Approval of installation documents;
- vi. Approval of testing documents;
- vii. Approval of ongoing operations and maintenance work; and
- viii. Actions related to performance reviews of ongoing operations and maintenance work.

i. Changes in the scope of work, schedule or cost of work under the Contract may only be approved through an official action of the Joint Board.

j. Disputes amongst the representatives of the States' Parties as to administration of the Contract shall be submitted to the Joint Board for resolution according to the terms and conditions of the Bi-State Development Agreement.

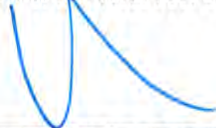
k. The States' Parties shall have equal access to work product generated pursuant to the Contract. Ownership of the work product shall be addressed in a future resolution.

l. The States' Parties shall be named as express Third Party Beneficiaries to the Contract.

m. Acts or Omissions of the Contracting Party that are contrary to or inconsistent with this Resolution shall be at the sole cost and responsibility of the Contracting Party.

Approved this 27th day of January, 2014.

INDIANA FINANCE AUTHORITY

By: 
Kendra W. York, Public Finance Director
of the State of Indiana

INDIANA DEPARTMENT OF
TRANSPORTATION

By: 
James P. Stark, Designee of Commissioner

KENTUCKY PUBLIC TRANSPORTATION
INFRASTRUCTURE AUTHORITY

By: 
Lori H. Flanery, Vice Chair

KENTUCKY TRANSPORTATION CABINET

By: 
Michael W. Hancock, P.E., Secretary of the
Transportation Cabinet