



Flint Hills Metropolitan Planning Organization

206 Southwind Place, Suite 2B | Manhattan, KS | 66503
785.620.3070 | FHMPO@FlintHillsMPO.org
www.FlintHillsMPO.org

REQUEST FOR PROPOSALS: ELECTRIC VEHICLE READINESS PLAN

All responses are due February 9th, 2024 by 5:00 pm CST.

AGENCY OVERVIEW

The Flint Hills Metropolitan Planning Organization (MPO) was designated as the Metropolitan Planning Organization (MPO) for the Manhattan, Kansas Urbanized Area in February of 2013. The MPO serves a three-county area, including the Cities of Manhattan, Junction City, and Wamego, as well as the southern portion of the Fort Riley Military Installation.

The MPO is responsible, in cooperation with the Kansas Department of Transportation (KDOT) and the United States Department of Transportation (USDOT), for carrying out the metropolitan transportation planning process for the region.

PURPOSE

The MPO is soliciting interested consultant teams (Consultants) to submit proposals for a planning project that will develop an Electric Vehicle (EV) Readiness Plan (Plan) for the MPO. The Plan will be developed through coordinated engagement with EV partners and stakeholders. The MPO is seeking a Consultant with: (1) recent applicable experience in developing an EV readiness plan, (2) knowledge of issues and concerns related to the Flint Hills region, (3) knowledge of EVs and EV infrastructure, and related industry standards, and (4) knowledge of EV policies and ordinances at the local, state, and federal level. The Consultant is expected to have expertise in utility data and forecasting tools on EVs including the ability to tailor these products to the MPO region and create mapped analysis of priorities and future scenarios for future EV infrastructure, particularly to increase equitable access to such infrastructure.

SCOPE OF SERVICES

The MPO anticipates a project scope that includes the activities outlined below; however, applicants should detail a clear project approach that will effectively assess the needs of the MPO region and meet the MPO's purpose of creating a Plan with a vision, goals, and action-based strategies, policies, and recommendations. Specific elements of interest are called out within the anticipated tasks below and should be addressed within the proposed project approach. MPO staff will work with the successful Consultant to incorporate a mutually agreeable project scope into the contract. Regular, on-going communication with MPO staff will be expected throughout the project to coordinate efforts, including invoices (see Payment

section) and progress updates. The Consultant should also expect meetings with stakeholders, and potentially a final presentation before Flint Hills regional leadership.

1. STAKEHOLDER OUTREACH

Consultant will conduct outreach with stakeholders to identify existing conditions as well as obstacles to and opportunities for increasing use of EVs and EV infrastructure. Initial stakeholder outreach may include interviews/meetings with local city and county departments, Kansas State University, Fort Riley Military Installation, local energy companies, transit agencies, local groups with EV interest and ownership, representatives of other stakeholder groups, and technical experts. Because the MPO area is a regional hub for vehicular travel, it is expected the Consultant will look within and outside the MPO boundary to develop the Plan. Surveys may be used to gather information from residents and businesses, if needed. To assist with this task, MPO staff will help identify stakeholders.

2. ASSESSMENT

All assessments will examine existing conditions, as well as a series of future scenarios developed by the Consultant and MPO that are based on forecasts and potential EV adoption rates and timing.

Infrastructure:

Assessments will be completed to identify and evaluate critical barriers and gaps, identify key needs, identify potential programs and partnerships, and provide background for plan development. The Contractor's EV expertise including knowledge of EV infrastructure, trends, and research, along with industry partnerships, are critical to informing these assessments.

Plans and Goals:

This task shall include the review of pertinent local and regional plans in order to provide a community context and description of how the Plan aligns with or connects to other community goals, plans, and priorities. State plans and goals should also be incorporated.

Personal Electric Vehicles (PEVs):

This task shall also include the collection and assessment of existing PEV data, forecasts and tools, and work to tailor them to the Flint Hills region. It shall also include identification and description of current PEV charging infrastructure and existing PEV and EV services, available technologies, best practices, and other items.

Barriers:

The Consultant will perform needs and gaps research to identify barriers to PEV usage, including barriers in the areas of policy, infrastructure, services, zoning, parking, building and development codes, permitting and inspection, procurement, training and education, coordination, funding, and other items.

Opportunities:

The Consultant shall identify opportunities to support PEV usage, including partnerships, procurement, incentives, electric rate structures, non-financial public sector incentives and programs, outreach to local businesses and residents, funding, market based and other approaches.

3. EQUITY ANALYSIS

The Consultant shall assess equitable access to EV infrastructure and services. Opportunities to increase equitable access to such infrastructure and services for residents who have been traditionally underserved, such as multifamily housing residents, renters, lower- income residents, non-native English speakers, and communities of color, must be analyzed for incorporation into the vision, goals, and action-based strategies.

4. IDENTIFICATION OF NEEDED INFRASTRUCTURE

Consultant shall develop a MPO EV charging infrastructure plan that recommends upgrades, compiles and analyzes data and opportunities for EV charging station locations based on existing infrastructure and current demand, anticipated demand growth, and potential future scenarios. The Plan will distinguish between public and private opportunities, determine appropriate equipment types for each recommended location, i.e., Level 2 and/or Level 3 (DC fast chargers), and provide cost estimates for recommended improvements. The infrastructure plan should provide analysis of the potential grid impacts of EVs, across current, forecast, and scenarios demands, address

electricity rate structure, identify battery and other options needed to manage demand charging, and summarize predominant concerns and issues as well as preferred alternatives.

5. IDENTIFICATION OF NEEDED SERVICES

Consultant shall identify needed services, such as local EV sales and servicing, among other desirable services, to support widespread EV usage and recommend methods to address, partners to provide, or incentivize solutions to ensure development of any missing key services.

6. IDENTIFICATION OF NEEDED PROGRAMS AND POLICIES

Consultant shall identify barriers and methods of increasing EV usage by residents and in public and private fleets, identify opportunities such as smart charging, renewable energy, and battery storage to optimize grid capacity, analyze innovative charging options like curbside, streetlight, solar, wireless, and their applicability in the MPO region, and investigate opportunities for partnerships across the region to increase EV usage and opportunities without encouraging increased vehicle usage in general.

7. STRATEGY AND RECOMMENDATIONS

Consultant shall make recommendations for implementation options by key stakeholders (such as state and local government entities and public-private partnerships) and other actions to further develop readiness and support for current and future implementation; such as estimated deployment to meet increasing demand of traveling public and legislation/ordinances as needed to implement accordingly. Recommendations needed to advance EV usage, leverage existing plans, efforts and data sources, and to lead to widespread deployment of public and private PEV infrastructure. Specific recommendations are expected in the areas of infrastructure, services, policies, programs, partnerships, leading by example, funding, and guidance.

8. FUNDING GUIDANCE

Consultant shall identify existing and potential funding opportunities, incentives, and rebates, including grants and funding sources for EV usage and EV Readiness Plan implementation. This may include local funds, private and public grants, and other funding mechanisms.

Consultant shall also research and recommend utility payment methods for PEV customer usage of public charger ports to recover costs and generate revenue. This includes developing guidance in regards to implementation of PEV related codes and ordinances. Consultant shall identify cost-effective strategies for the cities to support EV charging on municipal property and the public right of way for fleet and/or public use, analyzing factors such as ownership models, parking and charging fees, infrastructure costs, operations and maintenance costs, Low Carbon Fuel Standard credits, utility demand charges, synergies with other alternative transportation efforts, and new or complementary technologies including solar energy systems, battery storage, demand management systems, bidirectional charging, and possible integration with emerging autonomous vehicle (AV) technologies.

9. IMPLEMENTATION PLAN

Consultant shall develop timelines, estimated costs, and opportunities for funding, identify roles and responsibilities for the MPO and local governments, stakeholders, potential partners, and the community, and metrics and/or performance targets to track performance.

10. COMPLETE DRAFT OF EV READINESS PLAN

Consultants shall submit to MPO staff a complete draft of the Plan, which will be a comprehensive, organized document that addresses the elements listed above and includes specific goals, visions, and strategies. The draft will be developed in partnership with MPO members and stakeholders, to increase EV usage in the MPO area. The draft Plan will be presented to the MPO Technical Planning Committee and the public for review and feedback.

11. FINAL EV READINESS PLAN

Once the draft Plan has been refined based on public, stakeholder, and internal feedback, a final version of the Plan will be prepared and presented to the MPO Policy Board for adoption. Additionally, a presentation to MPO regional leaders at City-County-County (Manhattan-Riley County-Pottawatomie County) meeting may be requested. Any changes directed by the MPO Policy Board will be incorporated into the final Plan. In addition to being substantively strong, the MPO expects that the final Plan will be an attractive and graphically-rich document. It should be visually appealing and written in a clear, accessible manner. MPO staff will be provided with electronic copies of the final

version (both Word and PDF formats), including tables in Excel format and maps in GIS file format (as applicable).

PROJECT SCHEDULE

The MPO anticipates to begin the project in the spring of 2024 and to be completed (all items in the Scope of Services) by Summer 2025. Tasks, costs, timeline, and milestones for the development of the Plan and individual tasks should be submitted with the proposal.

Tentative Procurement Schedule:

Proposal Deadline: February 9th, 2024

Shortlisting: Week of February 19th, 2024

Consultant Interviews: Week of February 26th, 2024

Consultant Contract Approval: Early March, 2024

Project Start Date: Early April, 2024

PROPOSAL SUBMITTAL REQUIREMENTS

All proposals must include the following information:

- A detailed list of tasks and subtasks to be completed, including a description of how they will be completed;
- Documentation of project understanding;
- A timeline for completion of the requested services;
- A list of projects with similar size, scope, type, and complexity that the proposed project team has successfully completed in the past;
- Resumes (one-page each) for the proposed principal who will be responsible for the work, the proposed project manager, and lead project team members;
- A list of any sub-consultants, the tasks they will be assigned, the percent of work to be performed by each, a cost estimate for the work, and the staff that will be assigned;
- A list of client references for similar projects that the project team has worked with in the past;

- Required Disadvantaged Business Enterprise (DBE) Firms participation documentation;
Valid SAM.gov registration
- A cost structure for services, including:
 - actual cost, including a breakdown by specific task and subtask;
 - number of estimated hours, itemized to include category (project manager, planner, etc.), rate per hour, and total costs;
 - supplies and materials;
 - travel;
 - overhead; and
 - sub-consultant(s), if necessary. (Please note that the same detailed information for cost and price information must be shown for sub-consultants.)
- Review, complete, and submit the completed versions of the following RFP Attachments with the proposal:
 - RFP Attachment 1 (DBE CONTRACT GOAL)··· Ryne is sending an updated
 - RFP Attachment 2 (CONTRACTOR ASSURANCE)
 - RFP Attachment 3 (FEDERAL AID CONTRACTS UTILIZATION OF DISADVANTAGED BUSINESSES)—if applicable
 - RFP Attachment 4 (APPENDIX A TO PART 26 – GUIDANCE CONCERNING GOOD FAITH EFFORTS)
 - RFP Attachment 5 (KDOT Travel Policy)

All responses are due February 9th, 2024 by 5:00 pm CST. Proposals shall be submitted electronically in PDF format via email sent to Tremblay@FlintHillsMPO.org, or placed on a USB drive and delivered to:

Flint Hills MPO
c/o Jared Tremblay, Planning Manager
206 Southwind Pl., Ste. 2B
Manhattan, KS 66503

Questions

Questions regarding the RFP should be submitted in writing or by electronic mail. Questions and answers will be included as amendments to the RFP if deemed relevant and/or important. Questions should be addressed to Jared Tremblay at Tremblay@FlintHillsMPO.org.

Use of Disadvantaged Business Enterprise (DBE) Firms

The MPO encourages the use of DBE firms and a requirement of 10% of work must be completed by DBE firms. DBE Firms must be certified in Kansas at the time of proposal submittal.

PROPOSAL EVALUATION & SELECTION PROCESS

Consultant proposals will be evaluated by a Selection Committee. The MPO reserves the right to receive formal presentations and interview only those consultants whose proposals best match the project scope and requested content. The MPO Selection Committee may reject any and all proposals. Each consultant chosen to give a presentation will be required to be available for the interview. Consultants should be prepared to make a presentation on one week's notice.

Evaluation Criteria

The proposal submitted by each consultant or consultant team will be evaluated using a score sheet during the shortlisting and interview phases. The following criteria will be used (total of 25 points possible):

- Proposed Scope of Work in meeting the needs identified (max 10 pts)
- Experience of project team with similar projects and scopes (max 5 pts.)
- Project Cost (max 5 pts)
- Interview/Presentation (during interview phase) (max 5 pts)

Disclaimer

The MPO reserves the right to reject all proposals. Receipt of the RFP by a consultant or submission of a proposal by a consultant confers no rights upon the consultant nor obligates the MPO in any manner. The MPO reserves the right to make an award based on the greatest benefit to the MPO and not necessarily the lowest cost. If the MPO and the first-choice

consultant fail to reach a contract, the MPO may elect to negotiate a contract with the Selection Committee's second choice consultant. The MPO will not be liable for any costs incurred by consultants in the preparation and delivery of their responses to the RFP, nor for any subsequent discussions and/or product demonstrations. The MPO will not be liable for any costs incurred by consultants while becoming familiar with the particulars stated in this RFP. All proposals, including supporting documentation, shall become the property of the MPO.

Contract

The services will be procured through a contract between the MPO and the selected consultant, if and when the desired services become necessary. The estimated date for entering into the contract is March of 2024. The contract is to span from the Spring of 2024 through Summer 2025 and have maximum expenditures for the project. These details will be worked out during the contract negotiation. During the contract negotiation process, the consultant may be required to provide the following:

- 1) Detailed break out of its payroll charges and general overhead rate items; and
- 2) Documentation that the proposed rates have been approved by a federal government agency or a cognizant state agency for use in a federally funded project.

Prompt Payment Clause (to be included in contract)

To be included in contract between Local Project Sponsor and Prime Consultant: Upon receipt of each payment, [Insert name of Prime Consultant] shall (1) within ten (10) calendar days pay any sub-consultant or subcontractor engaged by it for satisfactory performance of their contract obligations and (2) within fifteen (15) calendar days submit a completed "Prompt Payment by Prime Consultant" Form together with supporting documentation to [insert name of local project sponsor] as verification that [Prime Consultant] has, in fact, promptly paid each sub-consultant or subcontractor. For any delay or postponement of payments to its sub-consultants or subcontractors hereunder, [Prime Consultant] shall justify the delay or postponement by showing good cause for it, or rectify the failure to pay. If [Prime Consultant], within fifteen (15) day period specified in (2) above, either (a) cannot verify prompt payment or (b) cannot show good cause for any delay or postponement of payment, then [local project sponsor] may withhold further payment to [Prime Consultant] until such time the delay in payment is rectified.

To be included in contracts between Prime Consultant and Sub-consultants (if any): Within ten (10) calendar days of [Prime Consultant's] receipt of payment from [local project sponsor] for satisfactory performance of its contract obligations, [Prime Consultant] shall pay [insert name of sub-consultant or subcontractor] for satisfactory performance of its subcontract obligations.

Payments

The selected consultant will submit invoices for work completed to the MPO on a monthly basis (unless the total expenses are less than \$5,000, then the consultant may combine monthly billings). Upon MPO review and approval of the invoice, the MPO's fiscal agent shall make payments to the consultant, after required services have been completed to the satisfaction of the MPO. Invoices shall include a summary of the work completed, a list of upcoming deliverables, number of hours per task, and other required documentation to be further described in the contract.

Federal Funds

The services requested within this RFP will be funded with Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) funds. As such, the services requested by this RFP will be subject to federal requirements and regulations. The services performed under any resulting agreement shall comply with all applicable federal, state, and local laws and regulations. In addition, this contract will be subject to the requirements of 49 CFR 18. Cost eligibility/requirement will be subject to 48 CFR 31.2.

Project No. _____
 Contract No. _____

07-19-80-R12 (MPO)
 Sheet 1 of 1

**REQUIRED CONTRACT PROVISION
 DBE CONTRACT GOAL**

The DBE Goal to be subcontracted to KDOT-Certified DBE firms on this contract is 10 %.

List all KDOT-Certified DBE subcontractors to be utilized. For each DBE subcontractor, identify the line item(s) of work from the Unit Prices List and the percentage of the work proposed to be subcontracted to the DBE. The DBE subcontractor must be currently certified in Kansas in order to perform work as a DBE on the contract.

IDENTIFICATION OF DBE PARTICIPATION

Name of KDOT-Certified DBE Subcontractor	Type of Work	Percentage of work
		%
		%
		%
		%
		%
		%

Total KDOT-Certified DBE % _____

(Prime Bidding Consultant Name and Address)

If the Percentage of Work is zero, please attach the Prime Bidding Consultant's Good Faith Effort documentation.

A list of KDOT-Certified DBEs can be found in the Directory of Disadvantaged Business Enterprises at KDOT's website: <http://kdotapp.ksdot.org/dbcontractorlist/>

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

PREAMBLE

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d to 2000d-4) and other nondiscrimination requirements and the Regulations, hereby notifies all contracting parties that it will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, color, national origin, sex, age, disability, income-level or Limited English Proficiency (“LEP”).

CLARIFICATION

Where the term “contractor” appears in the following “Nondiscrimination Clauses”, the term “contractor” is understood to include all parties to contracts or agreements with the Secretary of Transportation, Kansas Department of Transportation. This Special Attachment shall govern should this Special Attachment conflict with provisions of the Document to which it is attached.

ASSURANCE APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”), agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in its Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration (FHWA), the Federal Transit Administration (“FTA”) or the Federal Aviation Administration (“FAA”) as they may be amended from time to time which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontractors, Including Procurements of Material and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA, Federal Transit Administration (“FTA”), or Federal Aviation Administration (“FAA”) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or, the FHWA, FTA, or FAA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA, FTA, or FAA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of the paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any

subcontract or procurement as the Recipient or the FHWA, FTA, or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

ASSURANCE APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- The Federal Aid Highway Act of 1973 (23 U.S.C. § 324 et. seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et. seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et. seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL No. 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with LEP, and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681)

State of Kansas
 Department of Administration DA-146a
 (Rev. 07-19)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to

comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

6. **Acceptance of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority to Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility for Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101, *et seq.*
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

REQUIRED CONTRACT PROVISION**FEDERAL AID CONTRACTS
UTILIZATION OF DISADVANTAGED BUSINESSES****I. INTRODUCTION.**

The specific requirements for the utilization of Disadvantaged Business Enterprises, hereinafter referred to as DBEs, are set forth in this Required Contract Provision and are imposed pursuant to 49 CFR Part 26, hereinafter referred to as the regulations. This provision meets or exceeds the regulatory requirements. The regulations always take precedence over normal industry practice.

A. ASSURANCE.

The Contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, religion, age, disability, income status, veteran status or gender in the performance of the Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract, or such other remedy as the Kansas Department of Transportation deems appropriate.

B. DEFINITIONS.

For the purpose of this Required Contract Provision, the following words and phrases shall have the meanings as stated herein:

- (1) Disadvantaged Business Enterprise (DBE) means a small business concern which is independently owned and controlled by one or more socially and economically disadvantaged individuals and which KDOT has certified as a DBE.
- (2) Small business concern means a small business as defined by Section 3 of the Small Business Act and relevant regulations except that a small business concern shall not include any firms or affiliated firms owned and controlled by the same socially and economically disadvantaged individual or individuals whose value has average, annual gross receipts in excess of \$22,410,000 over the previous three fiscal years.
- (3) Owned and controlled means a business:
 - (a) Which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals, and
 - (b) Whose management and daily business operations are controlled by one or more such individuals.
- (4) Socially disadvantaged individual means a person who is a citizen or lawful permanent resident of the United States, has suffered social disadvantage in education, employment, or business, and who is a(an):
 - (a) Black American (a person having origins in any of the black racial groups of Africa);
 - (b) Hispanic American (includes a person of Mexican, Puerto Rican, Cuban, Central or South American, or any Spanish or Portuguese culture or origin, regardless of race);
 - (c) Native American (includes a person who is American Indian, Eskimo, Aleut or Native Hawaiian);
 - (d) Asian-Pacific American (includes a person whose origin is from the original people of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands);

- (e) Subcontinent Asian American (includes a person whose origin is India, Pakistan, Bangladesh, Bhutan, Nepal, Sri Lanka, or the Maldives Islands);
- (f) Member of a group, or any other individual of any race or sex, found to be both economically and socially disadvantaged; or
- (g) Women.

(5) Economically disadvantaged means an individual who has a personal net worth of less than \$750,000 excluding the value of their ownership share of the applicant firm and personal residence. The individual has had diminished access to capital and credit compared to non-disadvantaged persons.

(6) Commercially useful function means the qualifying DBE owner performs manages and supervises subcontract work.

(7) Race and gender neutral measure means one that is used to assist any small business.

II. DBE CONTRACT GOALS.

A. KDOT strongly encourages all contractors to utilize DBE firms as subcontractors, suppliers, manufacturers, truckers, and brokers whenever possible and feasible. Greater voluntary participation will result in lower and fewer DBE contract goals. KDOT will set DBE contract goals only to meet the portion of its annual goal that is not met by race and gender neutral means and voluntary participation.

B. An eligible DBE is one who KDOT has certified and who is listed in the KDOT DBE directory located on the internet at: <http://www.ksdot.org/doingbusiness.asp>. KDOT also prints a paper directory quarterly, and Contractors may ask the KDOT Office of Civil Rights for a copy of the printed directory. However, as it is only published quarterly, Contractors should be aware that the printed directory may list DBE's who were decertified after the directory was printed, and these DBE's would not be considered eligible DBE's in a letting that followed decertification or when examining good faith efforts. Also, the printed directory will not list DBE's who have been certified after the directory was printed, but KDOT will consider these DBE's in a letting and when examining good faith efforts. Thus, the electronic directory controls as it is the most current information KDOT has available. Any bid proposal listing a firm that is not a KDOT certified DBE at the time of bidding will be considered nonresponsive.

C. Contractors shall, as a minimum, seek DBE firms working in the same geographic area in which they seek subcontractors for a given solicitation.

D. Contractors are required to make good faith efforts to replace a DBE subcontractor that is unable to perform successfully with another DBE firm. In order to ensure compliance with this requirement, any substitution of DBE subcontractors after the Contractor has submitted a bid to KDOT, must be approved by KDOT Office of Civil Rights. Substitutions will only be allowed for good and sufficient reasons. KDOT must receive a letter from the original DBE stating the reason for the DBE's inability to perform.

E. Contractors are also encouraged to use the services of banks owned and controlled by disadvantaged individuals.

F. When projects are State or Contractor tied, KDOT will construe DBE participation as if the tied projects are one project. To check DBE participation on tied projects the following method will be used:

(1) Add the DBE goal dollar amount for the individual tied projects. This becomes the required minimum dollar amount to be subcontracted to DBEs.

(2) If the total dollar amount actually subcontracted to DBEs on the tied contracts is equal to or greater than the minimum dollar amounts as computed above, it will be determined that the DBE goals have been met.

- (3) If a State of Kansas funded project is tied to a federal aid funded project, the DBE contract goals can only be met by DBE subcontractors on the Federal Aid Project.

III. MEETING DBE CONTRACT GOAL CRITERIA.

The award of the Contract will be conditioned upon satisfaction of the requirements herein established. The apparent low bidder must either meet or exceed the DBE goals for the contract or satisfy KDOT that good faith efforts were made to meet the goals prior to the bid letting.

A. REQUIRED DBE PARTICIPATION INFORMATION.

All bidders are required to submit to KDOT with the bid proposal the DBE participation information described below on the form provided in the proposal.

- (1) The names of KDOT certified DBE firms that will participate in the Contract (if none, so indicate);
- (2) A description of the work each named DBE firm will perform (if none, so indicate);
- (3) The actual dollar amount anticipated to be paid to each named DBE firm (if zero dollars, so indicate); except
- (4) If the named DBE firm is a supplier, enter 60% of the actual dollar amount anticipated to be paid (if zero dollars, so indicate);
- (5) The actual dollar amount (not to exceed 10 percent of DBE subcontract) to be paid ahead of work as DBE mobilization.
- (6) For federal aid contracts with a zero DBE goal, list all subcontractors to be utilized, including DBE firms, if any.

B. GOOD FAITH DETERMINATION.

It is the bidder's responsibility to meet the DBE contract goals or to provide information to enable KDOT to determine that, prior to bidding, the bidder made good faith efforts to meet such goals.

- (1) Good Faith Information Submittal. If the low bidder's required DBE information indicates that the DBE contract goals will be met, the contract will proceed toward award and the low bidder need not submit any further DBE information. Good faith documentation must be submitted within two working days of the bid opening. Example: if bids are opened on Wednesday at 2 p.m., the good faith documentation must be at KDOT Office of Civil Rights before 5 p.m. on Friday.
- (2) KDOT Review. KDOT will review all information submitted to determine if the low bidder has met the DBE contract goals and, if not, whether the low bidder made sufficient good faith efforts to meet such goals. The determination of good faith efforts is made on a case-by-case basis and depends on the particular circumstances of the procurement. The issue KDOT will consider is whether the bidder took those steps, a reasonable bidder would have taken to actively and aggressively obtain DBE participation sufficient to meet the goal. A KDOT determination that the low bidder's information failed to show sufficient good faith shall be just cause for rejection of the bid. If the low bid is rejected, the above procedure will be applied to the next lowest bidder, and other bidders if necessary, until a bidder is found that meets the DBE contract goals or establishes that good faith efforts were made to meet the goal. KDOT reserves the right to reject all bids and re-advertise the Contract.
- (3) Establishing Good Faith Efforts. To demonstrate good faith efforts to meet DBE contract goals, submit to KDOT documentation on the factors listed as (a) through (g). KDOT has assigned a percentage to each factor that shows the relative importance of each factor to KDOT and to the other

factors. These percentages are a guide only; the circumstances of a particular procurement may justify different percentages or consideration of factors not mentioned. In evaluating the reasonableness of the low bidder's efforts, KDOT may consider whether other bidders met the goal or failed to meet the goal. In evaluating the reasonableness of the low bidder's efforts, KDOT will consider all documentation submitted; yet, documentation created during the bidding process is more credible than documentation created after the letting.

(a) The bidder negotiated in good faith with interested DBEs. It is the bidder's responsibility to consider the available pool of certified DBEs when determining subcontract or supply needs. It is the bidder's responsibility to furnish DBEs with information about plans or specifications to facilitate the bid. Include names of DBEs considered, information given to the DBE, if any, and an explanation of why agreements could not be reached for DBEs to perform the work. (25%)

(b) The bidder selected portions of work for which KDOT has capable, certified DBE's to perform. This may include breaking out work items or subcontracting items the prime contractor normally performs. (20%)

(c) The bidder used good business judgment in rejecting a DBE quote, considering both price and capabilities. If a DBE quote represents a reasonable price for performing the work, the bidder should use that quote even though the DBE quote is higher than a non-DBE quote. However, bidders do not have to use excessive or unreasonable quotes. Before determining that a DBE quote is excessive, the bidder should inquire as to the reason for the disparity between the DBE and non-DBE quotes. The bidder should also evaluate what impact, if any, using a higher DBE price would have on the bidder's overall project bid. A higher DBE price may not be excessive or unreasonable if the price differential is a very small part of the project bid. (20%)

(d) The bidder solicited capable, certified DBEs through pre-bid meetings, advertising, telephone, mail, facsimile, e-mail, or a combination of the foregoing. The solicitation must have occurred within sufficient time to allow a DBE to respond. Follow up all initial contacts, whether the contact was solicited or unsolicited. If a DBE expresses an interest in the contract or a desire to quote and fails to submit a quote, follow up that contact, whether the contact was solicited or unsolicited. Receiving substantial unsolicited quotes may not be considered actively and aggressively pursuing DBE participation. (10%)

(e) The bidder assisted interested DBEs in obtaining equipment, supplies, or materials for the project being bid. (10%)

(f) The combinations of DBEs the bidder considered in trying to meet the goal. It is acceptable to use a portion of several DBE bids. (10%)

(g) The bidder assisted interested DBEs in obtaining bonding, credit, or insurance on the project being bid. (5%)

(4) Staff of KDOT's Office of Civil Rights and the Chief of Construction and Maintenance will review the documentation submitted and either accept or reject the good faith effort submittal.

(5) At the bidder's request, KDOT's Director of Operations will hold an informal hearing to discuss the bidder's good faith effort submittal. The bidder may have legal counsel present, at the bidder's expense. After the appeal hearing, the Director of Operations will issue the Agency's final administrative decision on whether the bidder made a good faith effort. The decision will be in writing and will explain the basis for the Agency's decision. This will be final agency action and a final order under the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et. seq.* Any petition for judicial review shall be served on the Secretary of Transportation, Kansas Department of Transportation, 700 S.W. Harrison St., Topeka, KS 66603-3754.

C. COUNTING DBE PARTICIPATION TOWARD DBE CONTRACT GOALS.

DBE participation shall be counted toward meeting the DBE contract goals pursuant to this contract as follows:

(1) A contractor may count toward its DBE contract goals the total dollar value of a contract paid to an eligible DBE, including an approved DBE protégé.

NOTE: At the time the bid is submitted on the DBE goal sheet, list the actual amount intended to be paid to the DBE. On Form 259, submitted after award, list the same amount as in the contract line item. If this amount differs from the DBE subcontract amount, list the latter amount on the bottom of the form with an explanation.

(2) A DBE, bidding as a prime contractor, may count toward its DBE contract goals the total dollar value of the work actually performed by the DBE prime contractor, including the cost of supplies and materials the DBE obtains. *Example: A DBE contractor bids as a prime contractor. The contract specifies a \$10,000.00 DBE goal. The DBE prime contractor performs \$50,000 of the work with its own forces. The DBE prime contractor has met the \$10,000 goal.*

(3) A contractor may count toward its DBE goals a portion of the total dollar value of a subcontract with an eligible DBE joint venture equal in proportion to the percentage of ownership and control of the DBE partner in the joint venture. *Example: A contract specifies a \$5,000.00 DBE contract goal. Prime contractor bids \$100,000.00 subcontracting with a joint venture DBE/non-DBE contractor for \$20,000.00 of the work. The percentage of ownership and control of the DBE/non-DBE joint venture is 25% DBE and 75% non-DBE. The prime contractor may count \$5,000.00 (\$20,000.00 x .25; i.e. total dollar value times the percentage of DBE ownership) toward the DBE contract goal, thus fulfilling the DBE requirements of the contract.*

(4) If a non-DBE contractor and DBE contractor form a joint venture and bid as a prime contractor, the joint venture contractor shall fully meet the DBE contract goals specified in the project special provision. The joint venture contractor may count toward its DBE contract goals the total dollar value of the work actually performed by the DBE participant in the joint venture.

Example: A non-DBE contractor forms a joint venture with a DBE contractor and the joint venture bids the project as a prime contractor. The DBE contract goal is \$10,000.00. The DBE participant in the joint venture performs \$50,000 of the work with its own forces. The joint venture has met the \$10,000 goal. Example: A non-DBE contractor forms a joint venture with a DBE contractor and the joint venture bids the project as a prime contractor. The DBE contract goal is \$100,000.00. The DBE participant in the joint venture performs \$80,000 of the work with its own forces. The joint venture must obtain the remaining \$20,000 in goal through use of another certified DBE firm, or show good faith efforts if the joint venture fails to meet the \$100,000 goal.

(5) A contractor may count toward its DBE goals 60 percent of its expenditures for materials and supplies obtained from a DBE regular dealer, and 100 percent from a DBE manufacturer. A letter must be submitted to KDOT, detailing the amount, but the amount does not count as a subcontracted percentage.

(a) A manufacturer is a firm that operates a facility that produces goods from raw material on the premises.

(b) A regular dealer is a firm that owns, operates, or maintains a store, or warehouse where materials are stocked and regularly sold to the public. A regular dealer of bulk items (sand, gravel, etc.) need not stock the product if it owns or long-term leases distribution equipment. The supply of structural steel, steel assemblies and petroleum products do not count toward any KDOT DBE goal. A dealer must be responsible for material quality control and must deliver with its own or long term leased equipment to count toward the DBE goal.

(6) A contractor may count toward its DBE goals the following expenditures to DBE firms that are not manufacturers or regular dealers:

(a) The commission charged for providing a bona fide service in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of the contract, provided the commission is reasonable and customary.

(b) The commissions charged for bonds or insurance provided by a DBE broker for the specific performance of the contract, provided the fee is reasonable and customary. A letter must be submitted detailing the amount, but does not count as a subcontracted percentage.

(7) A contractor may count toward its DBE goals the amount paid to a DBE trucker for transportation or delivery services.

(a) A DBE trucker who picks up a product at point A and delivers the product to the contractor at point B provides a delivery service. The full amount paid for this service counts toward the DBE goal.

(b) Some DBE truckers are also a regular dealer (supplier) of a bulk item. In this case, the amount paid for the material delivered will count as 60 percent toward the DBE goal. The DBE trucker is responsible for the quality of the material.

(c) For DBE truckers or suppliers to be credited toward DBE contract goals, the contractor must submit a letter to KDOT detailing all information formerly found on Form 259, prior to the start of the trucking or supply of material and requesting DBE subcontract credit.

D. COMMERCIALLY USEFUL FUNCTION.

The prime contractor is responsible for ensuring that DBE firms under subcontract to meet a DBE goal perform a commercially useful function (CUF). Failure to fulfill this obligation is a breach of contract and KDOT may invoke the sanctions listed in Section IV (Sanctions). The three criteria for a CUF are:

(1) The DBE firm shall manage the work through personal direct supervision by the DBE owner or a skilled, knowledgeable, full-time superintendent. Management includes scheduling work, ordering equipment and materials, hiring and firing employees, and submitting all required forms and reports. The DBE is not in compliance with this provision if the DBE subcontracts out part or all of the work to another entity.

(2) The DBE shall own all equipment, long term lease all equipment, or own some equipment and long term lease the remaining equipment except for specialized equipment as noted below.

(a) If the DBE leases equipment, the DBE shall have a written lease that gives the DBE full control of the equipment during the lease period. The DBE shall use its own workers to operate leased equipment.

(b) A DBE may enter into long term leases with companies operating as prime contractors. The DBE is not in compliance with this provision if the DBE leases equipment from the prime contractor on the project for that project only.

(c) Exception for specialized equipment: The DBE may lease short term specialized equipment such as a crane from another contractor or third party if this equipment is necessary for the DBE to perform its work and the equipment is of such a nature that it is not economically feasible or practical for the DBE to lease the equipment long term. The contractor shall bill the DBE for this equipment and the DBE shall pay the contractor for the equipment. The DBE is not in compliance with this provision if the contractor deducts from the DBE's pay estimate specialized equipment costs rather than submitting an invoice to and receiving payment from the DBE.

(3) The DBE shall negotiate the cost of, arrange delivery of, and pay for materials, supplies, labor, and equipment. Invoices shall be billed to the DBE and paid by the DBE.

(4) KDOT will not count towards goal or give DBE contract goal credit for the following:

- (a) Monies the prime contractor pays directly for supplies, materials, labor or equipment on the DBE's behalf except for two-party checks approved under Section III.E below.
- (b) Costs deducted from a DBE's pay estimate for supplies, materials, labor or equipment the prime contractor or its affiliate provided.
- (c) Costs incurred for equipment the DBE leases from the contractor on the project if the DBE is using the equipment for that project only and the equipment is not part of a long term lease agreement.
- (d) Costs associated with a portion of a bid item that the Agency is unable to measure clearly.
- (e) Costs incurred for work subcontracted outside normal industry practices, just to meet a goal.

(5) KDOT's determination that a DBE is not performing or did not perform a CUF is not appealable to the US Department of Transportation. KDOT's determination will be final agency action and a final order under the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et. seq.* Any petition for judicial review shall be served on the Secretary of Transportation, Kansas Department of Transportation, 700 S.W. Harrison St., Topeka, KS 66603-3754.

E. BUSINESS INTEGRITY

Any person or entity will be found to be out of compliance with this required contract provision if any investigation reveals a commission or omission of any act of such serious or compelling nature that the act indicates a serious lack of business integrity or honesty. Such commission or omissions include, but are not limited to:

- (1) Violating any applicable law, regulation, or obligation relating to the performance of obligations incurred pursuant to an agreement with a recipient under a KDOT financial assistance program or,
- (2) Making, or procuring to be made, any false statement or using deceit to influence in any way any action of KDOT.

F. TWO PARTY CHECKS.

To comply with the current regulation, KDOT is implementing the following two party check procedures. The prime contractor is responsible for following the procedure and for ensuring that DBE subcontractors follow the procedure.

- (1) The DBE owner shall make the request for a two party check to the Office of Civil Rights and shall explain the benefit to the DBE firm.
- (2) The prime contractor shall send the check to the DBE owner who will endorse and forward the check to the supplier. This should be done within the 10 day prompt pay timeframe.
- (3) The amount of the check should not exceed the amount of material paid by KDOT on the latest estimate. *For example if the estimate was taken on 7/23, pay the material bill through 7/23 not through 7/31.*
- (4) Two party checks shall be issued only long enough to establish credit for the DBE firm.
- (5) KDOT will not count towards goal or give DBE contract goal credit for two party checks that have not been pre-approved by KDOT.

IV. SANCTIONS.

If KDOT finds any contractor, sub-contractor, DBE, joint venture, or mentor/protégé to be out of compliance with this required contract provision, KDOT may impose one or more of the following sanctions:

- (1) Withhold payment of progress payments until the contractor or DBE contractor complies with the payment requirements of this Special Provision.

- (2) Remove the non-complying DBE from the DBE directory until the DBE shows the company is meeting the requirements necessary to perform a CUF, including payment of all bills.
- (3) Deny goal credit as previously stated for failure to replace a non-performing DBE with another DBE (unless good faith effort was made), failure to meet the requirements necessary to perform a CUF, or failure to follow two party check procedures.
- (4) Assess and deduct as liquidated damages the monetary difference between the DBE goal amount and the amount actually paid to the DBEs for which KDOT has allowed DBE goal credit.
- (5) Reject the bidder's bid if the bidder failed to meet the DBE goal and failed to show good faith effort to meet the goal.
- (6) Refer the matter to the Office of the Attorney General, the US Department of Justice, or both for follow-up action.
- (7) Enforce all other remedies KDOT has under other contract provisions such as contract termination, contractor suspension, contractor debarment, and sanctions for failing to pay promptly.

01-26-09 OCR (DW/CDB)
Jul-09 Letting

Appendix A to Part 26—Guidance Concerning Good Faith Efforts

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by **DBE** firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a **DBE** goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient **DBE** participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain **DBE** participation sufficient to meet the **DBE** contract goal. Mere *pro forma* efforts are not good faith efforts to meet the **DBE** contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (*i.e.*, obtain a specified amount of **DBE** participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.

IV. The following is a list of types of actions which you should consider as

part of the bidder's good faith efforts to obtain **DBE** participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the **DBE** goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate **DBE** participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to **DBE** subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including **DBE** subcontractors, and

would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract **DBE** goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or

exceeds the average **DBE** participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

KDOT POLICY FOR
CONSULTANT CONTRACT REIMBURSEMENT
FOR
HOTEL AND PER DIEM

Attention Contract Partners:

The following policy for hotels and per diem rates will be effective January 1, 2023, for contracts with consultants and sub-consultants statewide.

	Daily Meals (max.)	Per Meal Allowance		Lodging before tax	Max Lodging Addl 50%*
Standard rate for all Kansas locations except Wichita & KC/OP	\$59.00	Breakfast \$8.85 Lunch \$20.65 Dinner \$29.50		\$98.00	\$147.00
Wichita (includes Sedgwick County)	\$64.00	Breakfast \$9.60 Lunch \$22.40 Dinner \$32.00		\$103.00	\$154.50
KC/Overland Park (includes Johnson, Wyandotte, & Leavenworth counties)	\$64.00	Breakfast \$9.60 Lunch \$22.40 Dinner \$32.00		\$123.00	\$184.50

*Prior approval required

No out-of-state hotel bills will be reimbursed without advanced written approval (for prime and/or sub-consultant). An amount above these daily rates or un-approved out-of-state stays will not be reimbursed.

Per diem will be allowed only with overnight travel. Per diem reimbursement/invoicing must be submitted with hotel receipt. If the hotel provides breakfast, breakfast per diem reimbursement will not be allowed except for extenuating circumstances. Extenuating circumstance justification must be provided in writing at time of invoice. Submit company's policy prior to starting work. A summary must be provided with billings recapping costs per day per individual. Please notify your sub-consultants of these rates.

Mileage will be limited to the State of Kansas approved rate of \$0.585/mile unless the company has audited vehicle usage rates for their company vehicles. Receipts are required for: Airport parking (limited to \$14/day); Tolls, Rental vehicles (economy class only), and Equipment Rentals. Equipment, vehicles, reproduction/printing, CADD, GPS, etc., charged as direct expense must have an audited rate to be used. Direct equipment expenses without an audited rate and "snacks" for meetings will not be allowed.

Reimbursement rates may change as State and/or Federal policies change.

Thank you.



Scott King, P.E., Interim Director
Division of Engineering and Design
Kansas Department of Transportation

01/11/2023

Date

C: Pam Anderson, Chief, Bureau of Fiscal Services