



**REQUEST FOR PROPOSALS  
For Consultant Services**

**Rock Creek Corridor Improvements:  
Downtown Center to East Gateway  
Plan**

***Planning Sustainable Places Program***

**Requested by  
The Mid-America Regional Council**

**November 28, 2022**

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## **REQUEST FOR PROPOSALS**

### **A. PURPOSE AND INTRODUCTION**

The Mid-America Regional Council (MARC) seeks consulting services to complete the Rock Creek Corridor Improvements Project Development Plan for the City of Mission, Kan.

The PSP Program provides local governments with financial support to advance detailed local planning and project development activities in support of *Creating Sustainable Places*, *Connected KC 2050*'s Activity Centers and Corridors framework, and the Mid-America Regional Council's adopted policy statement on regional land use direction. The subject project is one of 15 across the region chosen for funding through the Planning Sustainable Places Program.

### **B. CREATING SUSTAINABLE PLACES INITIATIVE**

In October 2010, a consortium of more than 60 regional partners, led by the Mid-America Regional Council, received a \$4.25 million planning grant from the U.S. Department of Housing and Urban Development to advance the implementation of the Regional Plan for Sustainable Development, [Creating Sustainable Places](#).

Creating Sustainable Places is not only a regional vision and plan to guide how we grow and develop, but a strategy for moving our communities from planning to action. This strategy includes the following steps:

- Organizing for Success – Building on the region's strong track record of collaboration to provide leadership, coordinate outreach and education activities, broaden public understanding of and involvement in sustainability issues, and strengthen stakeholder capacity to address them.
- Enhancing Decision Making – Developing new tools, policies and practices necessary to make sound investments and accelerate sustainable development.
- Demonstrating New Models – Applying these new tools to key corridors and activity centers through demonstration projects that can help transform the ways neighborhoods and communities grow and develop.

The 2013 Planning Sustainable Places Program (PSP) combined funds dedicated to the demonstration projects component of Creating Sustainable Places and the Livable Communities Surface Transportation/Bridge Program awards to provide local governments with financial support to advance detailed local planning and project development activities. The program received 37 applications and funded 18 projects.

The 2015, 2017 and 2019 Planning Sustainable Places Programs (PSP) were funded solely through the Livable Communities Surface Transportation Program and thus funding was only available to jurisdictions and other government entities within the eight county MARC metropolitan planning organization boundary. In 2015, the program received 27 applications and funded 13 projects. In 2017, the program received 36 applications and funded 25 projects. In 2019, the program received 24 applications and funded 12 projects. In 2021, the program received 30 applications and funded 14 projects.

The Creating Sustainable Places Initiative and the region's long-range plan, *Connected KC 2050* (*CKC 2050*) outline a need to focus efforts on promoting concepts consistent with sustainable communities and place a focus on advancing site specific and project specific activities in support of these objectives. Projects awarded funding will be consistent with those goals.

The 2023 Planning Sustainable Places program will continue to serve as a single local government assistance program intended to specifically respond to these goals and facilitate the following objectives:

**Program Objectives:**

- Support the development and implementation of local activity center plans consistent with Creating Sustainable Places principles, identified regional activity centers, and the land use policy direction outlined in *Connected KC 2050*.
- Support localized public engagement and community consensus building.
- Support the identification and conceptualization of land use strategies, transportation projects, and related sustainable development initiatives that help to realize and advance the objectives identified in the Creating Sustainable Places initiative, *Connected KC 2050*, and the MARC Board's adopted policy statement on regional land use direction.
- Support the conceptualization, development, and implementation of Creating Sustainable Places projects.

Additional information about the [Planning Sustainable Places](#) program and the [Creating Sustainable Places](#) initiative can be found on the MARC website, [www.marc.org](http://www.marc.org).

The focus of this request for proposals (RFP) is to create a Sustainable Places Plan that addresses the following key priorities for the City of Mission:

- Study and develop a project plan for the Rock Creek corridor from Woodson Street in Mission's downtown commercial district to Roeland Drive at the city's East Gateway.
- Robust public and stakeholder engagement process.
- Evaluation of existing conditions within the study area for the Rock Creek channel: vacant and city-owned properties, connections impacting access and safety with pedestrian/bike and vehicular intersectionality, impervious/pervious surfaces, existing amenities and key points of interest, visual and functional attributes of the study area.
- Potential improvements that promote economic development, walkability/bike-ability, environmental sustainability, and address impacted vulnerable populations.
- Final conceptual designs and itemized budget to guide future implementation project(s) within the study area.

**C. PROJECT BACKGROUND**

The Rock Creek Corridor Improvements: Downtown Center to East Gateway plan seeks to develop, in partnership with local private and non-profit entities, improvements that are congruent with neighboring jurisdiction area improvements and build on the momentum created by other Planning Sustainable Places projects. The study area, which encompasses properties and infrastructure adjacent to the existing Rock Creek Trail from Woodson Street to Roeland Drive, is bounded by Johnson Drive on the north and Martway Street on the south. The Rock Creek Trail is the main pedestrian connector from Mission's west side at Metcalf, abutting Overland Park, through the heart of the city to the east side at Roeland Drive, abutting Roeland Park. Several existing amenities and improvements have catalyzed downtown development, and potential key amenities along the corridor could drive continued sustainable growth in

Mission's downtown and east side. Trail and corridor improvements will provide a vibrant and active pedestrian and bicycle connection from Metcalf's commercial corridor to Roeland Park and beyond, to other regional hubs like the Country Club Plaza and Downtown Kansas City. The study area has been experiencing a significant level of multifamily development and new businesses and the City anticipates that higher population densities due to those developments will drive continued economic development in the area. Improvements in anticipation of these changes offer an opportunity for connected multi-modal transit and green infrastructure to reduce impacts and improve the environment and social equity for local and regional residents. This process will utilize innovative public engagement to develop solutions to transportation and mobility challenges that are synergistic with the environment and its people.

## **D. SCOPE OF SERVICES**

### Existing Conditions Analysis

To make recommendations for improvements that address stormwater, transportation, energy conservation and waterway protection, the consultant will develop a solid understanding of the existing conditions within the study area. The Comprehensive Plan (2022 anticipated adoption), Rock Creek Master Plan and public input will identify existing conditions to be addressed. A variety of existing conditions have been previously identified including:

- Trail connections to the Johnson Drive corridor
- Channelized Rock Creek between Woodson and Maple
- Vacant, city-owned parcels that are underutilized
- Martway from Nall to Roeland Drive, adjacent to the trail
- Mission's City Market area, adjacent to the Rock Creek Trail and Rock Creek on Johnson Drive from Outlook to Nall

Potential improvements are to be identified through the planning process and should include the following where appropriate:

- Trail improvements such as crossings, signalization, lighting enhancements and other safety enhancements
- Complete Streets strategies to improve safety, accessibility, and connections to transit
- Flood hazard mitigation to protect residential and/or commercial land uses
- Development of public amenities not limited to EV charging, green space, waterway interaction locations, food truck locations and amenities, public art, park benches, and interactive equipment for children and persons with special needs
- Renewable energy generation not limited to solar shade structures
- Green Infrastructure not limited to stormwater runoff buffers and pervious parking
- Placemaking strategies

In addition to the above, a data analysis of existing conditions and projected impacts of climate change will be evaluated and presented during the initial engagement process to help educate and drive concept generation. Ongoing analysis will evaluate projected upstream, project area, and downstream impacts with cost/benefit analysis for improvements.

Deliverables: existing conditions analysis report

### Public Engagement

A robust and equitable public engagement process is required to meet the needs of Mission and the requirements of the Planning Sustainable Places program. Early in the planning process public engagement workshops will be held to gather input about improvement locations. Focus groups will include but not limited to:

- Business owners
- Property owners within 300' of the study area
- Representatives for persons with disabilities/special needs
- Representatives of vulnerable populations
- Appointed/elected officials
- City staff
- Mission's special commissions such as the Sustainability Commission and the Parks & Rec Tree Board

At a minimum, 2 meetings with individual focus groups; depending on level of input required; three monthly steering committee meetings; plus regularly scheduled bi-weekly meetings with staff are required. Some, but not all, meetings may be virtual.

A steering committee will also be formed for the project. A kick-off meeting to establish groundwork, a mid-project review, and final closing presentation at project's end first for the steering committee, then for the public at large, are recommended.

Other engagement opportunities will include online maps, social media linked to surveys throughout the duration of the project planning process to generate feedback and drive design concepts and decision-making. New and innovative engagement techniques are strongly encouraged.

Deliverables: public engagement plan; stakeholder engagement plan; meeting schedules; meeting materials; reports detailing public and stakeholder input from workshops, meetings, and online engagement/social media

### Recommendations

Utilizing the existing conditions analysis and information gathered from public and stakeholder engagement, the consultant will make recommendations improvements that will support transportation, safety, and green infrastructure along the trail. The recommendations will also serve to connect and support businesses and land uses by creating a sense of place. A quantitative and qualitative cost/benefit analysis for improvements examining economic, environmental, and social equity outcomes will be created to assist Mission in prioritizing improvements for future decision-making.

Deliverables: design concept renderings and maps created from public and stakeholder input, quantitative and qualitative cost/benefit analysis of potential improvements

### Rock Creek Corridor Improvements Plan

The final plan will include project background, a summary of public engagement efforts, the existing conditions analysis, final design concepts plan and budget to guide future implementation projects. Elements will include a multi-modal plan for the corridor with detailed bicycle/pedestrian safety strategies at specific locations, complete streets concepts for Martway, environmental and flood hazard mitigation strategies, alternative energy strategies, and design

concepts for green infrastructure implementation.

Deliverables: final plan including a prioritization matrix for scalable implementation

## E. STUDY SCHEDULE

Milestone	Date
RFP Released	November 28, 2022
Pre-Bid Workshop	December 7, 2022, at 10 am CST
Questions Due:	December 14, 2022, noon CST
Q&A Posted	December 16, 2022, EOB
Proposals Due	January 6, 2023, 3 pm CST
Review of Proposals	January 9 – 18, 2023
Interviews	Week of February 1, 2023
Negotiate Scope	February 6 – 10, 2023
MARC Board Authorization	February 28, 2023
Execute Contract	March 1 –10, 2023
Notice to Proceed	Within two weeks after receipt of signed contract
Project Kickoff Meeting with Staff	March 27, 2023
Steering Committee Meeting	April 5, 2023
Public Engagement Plan/Staff Check-in	April 14, 2023
Existing Conditions Report	April 21, 2023
Schedule Meetings with Stakeholders	Week of April 17-21, 2023
Steering Committee Meeting	Week of April 24-28, 2023
Staff Check-in	April 28, 2023
Stakeholder Meetings/Workshops	Week of May 1-5, 2023
Public Meeting/Online Engagement Launch	Week of May 8-12, 2023
Steering Committee	May 10, 2023
Staff Check-in	May 12, 2023
Initial Public and Stakeholder Engagement Report	May 19, 2023
Staff Check-in	May 26, 2023
Draft Recommendations	June 9, 2023
Steering Committee	Week of June 12-16, 2023
Stakeholder Feedback Meeting/Workshop	Week of June 19-23, 2023
Staff Check-in	June 23, 2023
Final Public/Stakeholder & Online Engagement Report	June 30, 2023
Staff Check-in	July 14, 2023
Staff Check-in	July 28, 2023
Staff Check-in	August 11, 2023
Final Recommendations/Plan Submittal	August 18, 2023

## F. PROPOSAL SUBMITTAL REQUIREMENTS

To be eligible for consideration, **one electronic** copy of the response to the RFP must be received by the Mid-America Regional Council no later than 3:00 pm CST, on **Friday, January 6, 2023**. Late submittals will not be considered and will be returned to submitter unopened. The font should not be smaller than 12 point. Covers, cover letter (single page max) and table of contents are not included in the 6-page limit. Further details regarding page counts follow:

Item	Page Requirements
1. Proposed Project Approach	Six total single letter-sized pages for items 1 and 2. Two to three pages of the six must detail the public engagement process.
2. Proposed Public Engagement Strategies	
3. Qualifications	Item 3 not included in the page count for items 1 and 2. Maximum three single-sided pages or their equivalent for narrative of qualifications. Three additional single pages total for resumes. Listing of relevant work within last 5 years not to exceed three pages.
4. Disadvantaged Business Enterprise (DBE) Goal	Not included in proposal page count.
5. Affirmative Action Checklist	Not included in proposal page count.
6. Certificate Regarding Debarment	Not included in proposal page count.

If mailing a flash drive or CD/DVD, the envelope should be addressed to:

Mid-America Regional Council  
Attn: Beth Dawson  
600 Broadway, Suite 200  
Kansas City, MO 64105  
Fax: 816-421-7758

If emailing your submission, please email to Beth Dawson at [bdawson@marc.org](mailto:bdawson@marc.org). If you email the file it is your responsibility to ensure that the proposal has been received and not blocked by a spam filter or rejected due to file size. To confirm receipt of the file, contact Beth Dawson at [bdawson@marc.org](mailto:bdawson@marc.org) or 816.701.8325 prior to 3:00 pm CST, on **Friday, January 6, 2023**.

Questions should be directed to Beth Dawson at [bdawson@marc.org](mailto:bdawson@marc.org) or 816-701-8325. DO NOT CONTACT CITY OF MISSION, KAN., REGARDING THIS REQUEST FOR PROPOSALS, YOU WILL BE DIRECTED TO BETH DAWSON.

All questions must be received by noon CST on Wednesday, December 14, 2022. All questions will be posted to a Question-and-Answer page on the MARC website by close of business on [insert date]. A link to that page will be posted on the RFP page, <https://www.marc.org/about-marc/funding-and-rfps>.

\*\*\* PLEASE NOTE, ALL CONSULTANT FIRMS ACTING AS A PRIMARY CONSULTANT MUST HAVE AN ACTIVE SAM.GOV REGISTRATION TO BE ALLOWED TO INTERVIEW.\*\*\*

The following items must be addressed in all proposals:

1. **PROPOSED PROJECT APPROACH:** Responses should include a proposed approach to the project that includes the proposer's understanding of the project's objectives and local context, tentative schedule for project completion, a description of your approach to each of the tasks listed in Section D, description of all project deliverables and tentative public engagement process. Please provide your staff capacity for meeting the project requirements. Identify the key team members who are likely to be assigned to this contract if your proposal is selected along with a description of their roles and responsibilities. State approximate date your business/firm is available to begin work on



the Project. Provide a list of subcontractors to be included on the consultant team, along with a brief description of their qualifications and services they are likely to perform.

2. **PROPOSED PUBLIC ENGAGEMENT STRATEGIES:** Responses should include a proposed approach to public outreach and engagement including process, meetings, tools and techniques to be utilized for engaging the community and key stakeholders in this project.
3. **QUALIFICATIONS:** Proposals should indicate general and specific qualifications of the proposer in disciplines appropriate to this project and specifically convey the role of the proposer in each case cited. An emphasis and priority in evaluation will be placed on firms with qualifications and experience that have resulted in successful implementation of comparable projects. A brief narrative (three pages maximum) may also be included regarding the firm's capabilities to carry out this project, including special assets, areas of expertise, analytical tools, data sources, etc. to which the firm may have access.

Proposals shall also include:

- a. A listing and summary of similar projects undertaken within the last five (5) years, by proposing firm and/or its subcontractors, showing contract amounts, description of work performed, client contact persons, phone numbers, and e-mail addresses;
  - b. Resumes of key professional staff who will be assigned to this project (3 single pages maximum);
  - c. Description of the existing and anticipated workload of individuals assigned to this project during the period of this study. Any reassignment of designated key staff shall not occur without mutual consultation and the consent of the Mid-America Regional Council and City of Mission, Kan.
  - d. References. (3 – 4 including contact name, phone number and email address)
4. **DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL:** Studies funded in part by USDOT are required to follow 49 CFR part 26 Disadvantage Business Enterprise Program (DBE). The proposed study has a minimum DBE goal of 10%. Required attachment for consultant acting as DBE.
5. **AFFIRMATIVE ACTION CHECKLIST:** If applicable, proposers must complete and enclose with their proposal company's Affirmative Action Plan (see Attachment B Affirmative Action Checklist). Required for all contractors, primary or sub, who have 50 or more employees.
6. **CERTIFICATION REGARDING DEBARMENT:** Each proposer is required to certify by signing the "Certification Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusion" (Attachment C). "Certification Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusion" is a certification that the proposer is not on the U.S. Comptroller General's Consolidated Lists of Persons or Firms Currently Debarred for Violations of Various Contracts Incorporating Labor Standards Provisions. Required of primary only.
7. **CERTIFICATION REGARDING LOBBYING:** See Attachment D. Required for primary only.

**8. GOVERNMENT SPECIAL PROVISIONS:** See Attachment E.

**G. SELECTION PROCEDURE**

The review committee shall adhere, as closely as possible, to the following review schedule. The sponsor reserves the sole right to change this review schedule to meet the needs of the review committee.

<b>Milestone</b>	<b>Date</b>
RFP Released	November 28, 2022
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MARC Board Authorization	February 28, 2023
Execute Contract	March 1 – 10, 2023
Notice to Proceed	Within two weeks after receipt of signed contract

Review will be conducted by a committee made up of representatives from Mid-America Regional Council and representatives selected by City of Mission, Kan. Interviews will take place with short-listed firms.

**H. PROPOSAL EVALUATION CRITERIA**

The proposals submitted by each Contractor, Firm, or Contractor Team, will be evaluated by the selection committee according to the following criteria:

- Experience and availability of key personnel [15%];
- Experience on similar projects [10%];
- Approach to community engagement [25%];
- Project understanding [20%];
- Project approach and solutions to critical issues [20%];
- Ability to accomplish project within desired timeframe [10%].

**I. PRE-PROPOSAL MEETING AND QUESTION SUBMITTAL**

MARC will host a pre-proposal meeting for all interested consultant teams to ask questions and gain clarity around any elements or requirements of this RFP.

When: Wednesday, December 7, 2022, 10 am CST  
Where: Mid America Regional Council, Board Room  
600 Broadway, Ste. 200  
Kansas City, Mo. 64105

[Planning Sustainable Places Pre-Bid Workshop – Event Registration](#)

All questions/requests for clarifications must be submitted in writing to MARC by **December 14, 2022 at noon CST.**

Please submit questions in writing to **Beth Dawson** at [bdawson@marc.org](mailto:bdawson@marc.org) .

MARC will post all questions, answers and clarifications to <https://www.marc.org/about-marc/funding-and-rfps> .

## **J. CONTRACT AWARD**

From the firms expressing interest, a committee will review the submittals and rank the firms. Short listed firms will be notified to schedule an interview.

The remaining firms will be notified by letter after the agreement is approved by the Board.

Awarding of the final contract is subject to the acceptance of the grant by the MARC Board and a signed funding agreement between City of Mission, Kan., and MARC.

## **K. PROJECT BUDGET**

The award of this contract will be based on a **qualifications-based selection process** that may include in-person interviews followed by the successful negotiation of costs and fees. The selected firm should be prepared to provide cost and fee information within two days of their notification of selection for negotiation. If the City cannot come to an agreement with the first-choice firm on costs and fees then the City may choose to terminate those negotiations and begin negotiations with the second firm on the scoring list or terminate all negotiations and issue another RFP for these services at a later date. The budget maximum is \$100,000.

## **L. PERIOD OF PERFORMANCE: End date of September 1, 2023.**

Both the project budget and the period of performance are subject to change based on the availability of funds or other unforeseen events or activities.

**ATTACHMENT A**  
**SUMMARY OF ATTACHMENTS**

1. Complete the AFFIRMATIVE ACTION CHECKLIST Attachment B.
2. Complete the CERTIFICATION REGARDING LOBBYING Attachment C.
3. Complete the CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION Attachment D.
4. Government Special Provisions: Attachment E
  - a. KDOT Special Attachment
  - b. Contractual Provisions
  - c. DBE Provisions
  - d. Travel and Meal Policy

## **ATTACHMENT B**

### **AFFIRMATIVE ACTION CHECKLIST**

Federal regulations require that any firm of 50 or more employees soliciting an assisted federally funded contract must have an affirmative action program. If applicable, please provide a brief response to the following items that would typically be covered in any such program. You may provide a copy of your program and reference appropriate pages.

1. Date plan was adopted
2. Name of Affirmative Action Officer
3. Statement of commitment to affirmative action by the chief executive officer
4. Designation of an affirmative action officer, of assignment of specific responsibilities and to whom the officer reports.
5. Outreach recruitment
6. Job analysis and restructuring to meet affirmative action goals
7. Validation and revision of examinations, educational requirements, and any other screening requirements.
8. Upgrading and training programs
9. Internal complaint procedure
10. Initiating and insuring supervisory compliance with affirmative action program
11. Survey and analysis of entire staff by department and job classification and progress report system
12. Recruitment and promotion plans (including goals and time tables)

## ATTACHMENT C

### CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This Certification is required by the regulation implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98 Section 98.510, Participants' responsibilities. The Regulations are published as Part II of the June 1985, Federal Register (pages 33, 036-33, 043)

**Read instructions for Certification below prior to completing this certification.**

1. The prospective proposer certifies, by submission of this proposal that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any Federal department or agency.
2. Where the prospective proposer is unable to certify to any of the statements in this certification, such prospective proposer shall attach an explanation to this proposal.

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Date      Signed – Authorized Representative

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Title of Authorized Representative

Instructions for Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion:

1. By signing and submitting this agreement, the proposer is providing the certification as set below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

## ATTACHMENT D

### CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersign, to any person influencing or attempting to influence an officer or employee of a federal agency, Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

. If any funds other than Federal appropriated funds have been paid or will be paid to any person for attempting to influence an officer or employee of any federal agency, Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal or Federally assisted contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

. The undersigned shall require that the language of this certification be included in the award documents of all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 32, US Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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(Name of Entity)

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(Name and Title of Authorized Official)

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(Signature of above Official)

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(Date)

**ATTACHMENT E**

Special Attachment No. 1  
Page 1 of 2

**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)

Attachment E-b

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 \_\_\_\_\_%.

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/>

Rev. 03/16

**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 ( $\$20,000.00 \times .25$ ; 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

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, 2022 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	\$96.00	\$144.00
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. 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 IRS rate of \$0.560/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.



Calvin E. Reed, P.E., Director

Division of Engineering and Design

Kansas Department of Transportation

1/05/2022

Date

C: Pam Anderson, Chief, Bureau of Fiscal Services