

REQUEST FOR PROPOSALS

Technical Support for the Kansas City Regional Transportation Resiliency Plan:

Requested by



January 26, 2024 (Posted)

REQUEST FOR PROPOSALS

Kansas City Regional Transportation Resilience Plan

Mid-America Regional Council (MARC) is seeking qualified consultants to develop a process that will inform the development of a transportation system-focused vulnerability and resiliency framework for the Kansas City region. MARC anticipates that the framework will be used to reduce risks and vulnerabilities and increase the resiliency of the regional transportation system. The [Regional Climate Action Plan](#) includes a high-level risk and vulnerability assessment, recognizing three chief hazards expected to be exacerbated by climate change: flooding, drought, and excessive heat. This plan will build upon previous analyses in the transportation context by considering the climate's effect on surface transportation and freight facilities. The plan will consider the role of the transportation sector in generating greenhouse gases. The enduring effectiveness of these systems should be reflected in any recommendations.

MARC Point of Contact

All inquiries relating to this RFP should be directed to the individual shown below. For telephone inquiries, call (816) 701-8348. E-mail inquiries may be directed to rumberger@marc.org. All inquiries shall be submitted on or before **5:00 PM on February 2nd**.

Ryan Umberger

Transportation Planner II
Mid America Regional Council
600 Broadway Suite 200
Kansas City, MO 64105

Background

MARC is striving to make our community more resilient by identifying, evaluating, and implementing resiliency actions to reduce vulnerabilities in the regional multi-modal transportation system. Community resilience requires planning and emergency preparedness to mitigate the shocks and stresses brought on by climate change.

The [Federal Highway Administration's \(FHWA\) Climate Change and Extreme Weather Vulnerability Assessment Framework](#) will serve as the backbone for the plan. Proposals should demonstrate compatibility and consistency with existing plans, including [Connected KC 2050](#), [KC Regional Trails and Bikeway Map](#), [Kansas](#) and [Missouri](#) Regional Hazard Mitigation Plans and the [KC Regional Pedestrian Policy Plan](#).

Purpose

MARC is seeking an experienced consultant to develop a transportation resiliency framework for the Kansas City region. This request for proposals is intended to scope the development of a complete vulnerability assessment and resiliency framework which is tailored to be sensitive to the local context. Scoping will precede a later phase where the framework is developed in the form of a regional transportation vulnerability and resiliency plan.

The purpose of the plan is to create a set of analytical tools, criteria, and decision-making supports to substantially increase the ability of the community and the multimodal transportation system to withstand, recover and bounce forward from disruptive events such as flooding, drought, and extreme heat. The framework will protect long-term investments by federal, state, and local government in transportation infrastructure. The framework also will identify how existing transportation infrastructure contributes to regional risks and vulnerabilities, such as urban heat islands and flooding, and develop appropriate mitigation strategies.

Development of a transportation resiliency framework will identify, synthesize, and provide an implementation plan for “resiliency actions” with the greatest impact in terms of increasing sustainability, resilience, minimizing risk, reducing damage, enhancing existing rules, regulations, and programs in a cost effective, and efficient manner. Final recommendations should be innovative in the treatment of resiliency and adaptation strategies. Reducing transportation emissions, building resilient infrastructure, and ensuring climate justice is critical to the development of a system capable of withstanding the shocks of a changing climate.

Scope of Services

The selected consultant will complete the following tasks:

Task 1: Project Management and Coordination

Task 2: Engage the Public

Task 3: Provide a scope of work for a complete vulnerability assessment and resiliency framework

Task 1: Project Management and Coordination

The consultant will be responsible for developing and implementing a project schedule that includes milestones, deliverables, coordination activities, etc. The consultant should plan to participate in planning and coordination meetings with MARC on a regular basis throughout the project. Further, a cross-disciplinary team is necessary to effectively address the range of issues included in the assessment.

Scope:

- Develop a project schedule including milestones, critical path items, and community meetings.
- Attend project meetings or conference calls.

- Identify stakeholders who have expertise and knowledge to contribute to a vulnerability assessment (i.e. asset managers, district-level staff/maintenance personnel, emergency responders, engineers, GIS specialists, government/university climate science researchers, municipal staff, transportation planners, transportation systems management and operation staff, state and federal agency representatives)

Deliverables:

- Project schedule
- List of partners and champions within stakeholder groups
- Meeting agendas and minutes (key decisions, action items)

Task 2: Engage the Public

The consultant will engage the public throughout the region in order to get feedback on defined objectives.

Scope:

Consultant will develop and implement community engagement and communications strategy to understand community and agency perspectives, priorities, and approaches. The strategy may include a variety of in-person or virtual strategies.

Deliverables:

- Community engagement and communications strategy
- Implementation of engagement actions (e.g. focus groups, surveys, community/committee discussions, etc.)
- Development and curation of online content to support project activities.
- Summary of findings to support recommended scoping strategies and methods.

Task 3: Provide a scope of work for a complete vulnerability assessment and resiliency framework

Based on the results of the public input, consultant will develop a scope of work for a complete vulnerability assessment and resiliency framework. The scope should examine how climate stressors (increased annual precipitation, drought, extreme heat, etc.) may directly or indirectly affect important transportation assets. The scope should begin the groundwork of identifying relevant assets which will be the focus of the assessment. Assets can include infrastructure such as roads, freight, rails, and bridges, but they can also include support facilities, vehicles, intelligent transportation systems, and ecosystem-related infrastructure.

Scope:

- Evaluate relevant resiliency scopes and methods from federal agencies and other national precedent studies.

- Develop locally-preferred approach, informed by community engagement efforts.
- Characterize relevant assets to examine which may be the focus of the assessment. Transportation infrastructure such as roads, freight, rails, and bridges will be a focus, but assets can also include support facilities, vehicles, intelligent transportation systems, and ecosystem-related infrastructure.
- Propose a project concept and scope that could be used to structure a [PROTECT grant](#) application. Eligible uses include highway, transit, and certain port projects that include resilience planning, strengthening and protecting evacuation routes, enabling communities to address vulnerabilities and increasing the resilience of surface transportation infrastructure from the impacts of sea level rise, flooding, wildfires, extreme weather events, and other natural disasters.

Deliverables:

- Report outlining recommended scope and methodology, based on community input and review of national frameworks and precedents.
- An example or concept for a project that would be eligible for PROTECT grant funding.

Selection Criteria

MARC will use the following criteria to evaluate the proposal:

Criteria	Weight
Project understanding and approach	35%
Qualification and experience of firm	30%
Examples of past performance	20%
Completeness of proposal	15%

Project understanding and approach: The proposal demonstrates an understanding of the requested services and includes a proposed approach to the project, including key activities, milestones, timelines, and deliverables. It should also refine and confirm deliverables, as outlined in the scope of work section of this proposal. Also, identify potential risks that may affect cost, schedule, or project success as well as proposed consultant activities to mitigate the identified risk.

Qualification and experience of firm: The proposal conveys the specialized experience and technical competence of the consultant and assigned staff relative to this project. Experience of the project manager, the prime contractor(s), and any subcontractor(s) are clearly identified and the amount time of key staff will dedicate to the project is clearly provided. The proposal demonstrates an expertise in resiliency planning that reconciles the interconnected nature between transportation and climate change. The consultant should also show prior experience in public

engagement, timeliness on similar projects, and familiarity with local jurisdictions in the MARC region.

Examples of past performance: The proposal demonstrates the consultant’s relevant experience and technical capabilities in transportation planning necessary to successfully execute the work set forth in this RFP.

Completeness of proposal: The proposal shows an understanding of project objectives. Includes the consultant’s proposed methodology, desired results, and expected outcomes. Demonstrates innovative ideas and an efficient approach that accomplishes objectives set forth in this RFP.

Consultant Selection/Project Schedule

The maximum budget for this project is \$150,000. A selection panel will be comprised of MARC staff, local government, and MARC committee representatives. The consultant selection process will be overseen by a committee representing partner communities and stakeholders and will be subject to MARC procurement processes. The following is an outline of the proposed project schedule. The schedule may be modified while refining the contract scope of work after the consultant selection process has been completed.

Activities	Schedule
Issue Request for Proposals	Jan. 26, 2024 at 8am CT
RFP Questions Due (sent to MARC Point of Contact)	Feb. 2, 2024 by 5pm CT
Q&A Posted	Feb. 7, 2024 by 5pm CT
Submissions Due	Feb. 9, 2024 by 5pm CT
Short List Announced (optional)	Feb. 14, 2024 at 5 pm CT
Interviews (optional)	Feb. 15 th & 16 th , 2024
Recommendation to Award (pending MARC Board Approval)	Feb 27, 2024 at 5 pm CT
Contract Execution/ Notice to proceed	Mar. 2024

Commence Work: MARC will review, and score submitted proposals and select those that best meet the selection criteria set forth in this RFP. The final selection of a Contractor shall occur by **February 27, 2024**, contingent upon subsequent approval by MARC’s Board of Directors. MARC reserves the right to negotiate a contract, including the scope of work, and contract price, with any proposers or other qualified party.

Submittal Requirements

Responses to this request must be received by **5:00 p.m. CT on February 9, 2024**. One electronic copy in PDF format (15 MB max) of the proposal should be sent via email to Ryan Umberger at rumberger@marc.org. To be eligible for consideration the application may not exceed 10 (ten) single sided pages to the following specifications: Calibri, 12pt font, single-spaced, résumés and references are not included in the 10-page maximum. It is the submitter’s responsibility to ensure successful receipt of the submission. The proposal should include the following sections:

Cover Sheet

A single page cover sheet shall list the name of the consultant team or individual with names, email addresses and phone numbers of individuals who may be contacted to answer questions. Also, the cover sheet shall state who prepared the submittal and how that person(s) can be reached, including phone number and email address.

Introductory Statement and Qualifications

A statement of qualifications about the proposer's area(s) of expertise, length of time in business, number of employees and offices. Highlight what you see as the unique opportunities, challenges, and priorities of this project and how your team will address them.

Project Approach

Describe your team's approach to the project's scope of work. Include information on methods, meetings, deliverables, and other project related information for the tasks. Include any project approaches or ideas not included in the Scope of Services that you would apply to this project to enhance the quality of your services. The consultant is encouraged to offer additional insights and may propose modifications to the scope of work.

Resumes and References

Describe the expertise and qualifications of key personnel who would be assigned to assist MARC. Please include resumes for those who will be working on the project. For key personnel, list the experience and percentage of time each will be able to dedicate to this project. Limit resumes to one page per person.

Relevant Experience

Highlight relevant previous work and public engagement tasks which exhibit the team's ability to conduct a regional transportation resiliency plan for Kansas City. Please limit summaries of prior work to 2-3 paragraphs each, with no more than three examples. Identify at least three references for per project. Include the client, contact person, mailing address, email address, and telephone number for each reference. References from previous clients should involve projects completed within the last five years.

Award of contract

This Request for Proposals does not commit MARC to award a contract or pay any costs incurred in association with this RFP preparation and/or response. MARC reserves the right to accept or reject any proposal received as a result of this request, or to cancel any or all sections of this RFP, if it is considered to be in the best interest of MARC. MARC reserves the right to negotiate with proposers related to project cost, or for technical or other revisions that may result from these negotiations. A decision to contract with any proposer will be made by the MARC Board of Directors, following a staff recommendation.

Disadvantage Business Enterprise (DBE) Participation

MARC's DBE policy requires that qualified DBEs be afforded an equitable opportunity to participate in contracts. This project has a DBE goal of 22%. Proposers are strongly encouraged to involve DBEs in subcontracting or joint ventures and help us reach that goal. This project is funded through KDOT, which requires DBEs to be **certified in Kansas** at the time of proposal submission.

Debarment

Each proposer will be required to certify by signing the "Certification Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusion" Attachment B. Additionally the vendor must be registered in the U.S. Government System Sam.gov <https://sam.gov/content/home>. "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.

Open Records Act and Proprietary Information

The Mid-America Regional Council (MARC) is a public organization and is subject to the Missouri Open Records Act (Chapter 610, RSMo). All records obtained or retained by MARC are considered public records and are open to the public or media upon request unless those records are specifically protected from disclosure by law or exempted under the Missouri Sunshine Law. All contents of a response to a Request for Bids, Qualifications, Proposals or information issued by MARC are considered public records and subject to public release following decisions by MARC regarding the bid request. If a proposer has information that it considers proprietary, a bidder shall identify documents or portions of documents it considers to contain descriptions of scientific and technological innovations in which it has a proprietary interest, or other information that is protected from public disclosure by law, which is contained in a Proposal. After either a contract is executed pursuant to the Request for Bids, RFQ or RFP, or all submittals are rejected, if a request is made to inspect information submitted and if documents are identified as "Proprietary Information" as provided above under Missouri Sunshine Law, MARC will notify the proposer of the request for access, and it shall be the burden of the proposer to establish that those documents are exempt from disclosure under the law."

List of Attachments

Attachment A: Complete the CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

Attachment B: Complete the CERTIFICATION REGARDING LOBBYING

Attachment C: Special Attachment No. 1 from KDOT indicates nondiscrimination clauses pertaining to the vendor on this contract.

Attachment D: Complete KDOT'S TRAVEL POLICY

Attachment E: Complete KDOT'S DBE CONTRACT GOAL

Attachment F: Complete KDOT'S FEDERAL AID CONTRACTS UTILIZATION OF DISADVANTAGED BUSINESSES

Attachment A

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.

Date

Signed – Authorized Representative

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 B

CERTIFICATION REGARDING LOBBYING

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

- 1 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.
- 2 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.
- 3 The undersign 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.

(Name of Entity)

(Name and Title of Authorized Official)

(Signature of above Official)

(Date)

Attachment C

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 D

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	Per Meal		Lodging	Max
	(max.)	Allowance		before tax	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 subconsultant). 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

Attachment E

Project No. _____

07-19-80-R12 (MPO)

Contract No. _____

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

Attachment F

07-18-80-R26

Sheet 1 of 7

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