

**REQUIRED CONTRACT PROVISIONS
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009
REPORTING REQUIREMENTS FOR RECOVERY ACT CONTRACTS**

This Project is funded partially or wholly by funds appropriated to the state of Kansas under the American Recovery and Reinvestment Act of 2009 (ARRA or Recovery Act). The Recovery Act requires Recipients of Recovery Act funds to collect and compile information for submission to the Federal Highway Administration (FHWA) and United States Congress. Recipients include the Kansas Department of Transportation (KDOT); local public authorities (LPA's) such as Cities, Counties, and Metropolitan Planning Organizations; and other transit agencies. Recipients are required to complete monthly reports containing employment information for the Project and include a provision in their contracts for contractors, subcontractors, and lower-tier subcontractors to complete monthly reports containing employment information for the Project. Recipients must meet these reporting requirements to obtain Recovery Funds.

I. DEFINITIONS. For purposes of this Required Contract Provision only:

a. The term Contractor includes:

(1) An LPA, transit agency, or other recipient of funds appropriated under the Recovery Act (Contractor Recipient).

(2) An entity contracting with the Secretary of Transportation (Secretary) or Contractor Recipient to complete a construction contract (Construction Contractor). The term construction contract means an agreement to perform physical construction of a project using Recovery Act funds.

(3) An entity contracting with the Secretary or a Contractor Recipient to complete a consulting contract (Contractor Consultant). The term consulting contract means:

(a) An agreement to perform Design Services using Recovery Act funds. Design Services include preliminary engineering and technical services or designer construction services such as drawing reviews and plan revisions during construction.

(b) An agreement to perform Inspection Services using Recovery Act funds. Inspection Services include engineering and administrative supervision of a construction contract.

(c) An agreement to perform Inspection Services for a construction contract that uses Recovery Act funds, even though the Inspection Services are not being paid from Recovery Act funds.

b. The term subcontractor includes:

(1) An entity contracting with a Construction Contractor to perform part of the physical work. The term subcontractor does not include entities that supply materials needed to fulfill the construction contract.

(2) An entity contracting with a Contractor Consultant to perform part of the Design Services or Inspection Services.

c. The term lower-tier subcontractor includes:

(1) An entity contracting with a subcontractor to perform part of the physical work. The term lower-tier subcontractor does not include entities that supply materials needed to fulfill the subcontract agreement.

(2) An entity contracting with a subcontractor to perform part of the Design Services or Inspection Services.

II. MONTHLY EMPLOYMENT REPORT. DOT Form 1589 (in lieu of Form FHWA-1589)(Sample Attached)

a. Entities obligated to file DOT Form 1589.

(1) The Construction Contractor shall complete a "MONTHLY EMPLOYMENT REPORT", DOT Form 1589, beginning with the Notice to Proceed date and ending with the Notice of Acceptance of Contract.

(2) The Contractor Consultant shall complete a "MONTHLY EMPLOYMENT REPORT", DOT Form 1589, beginning with the Notice to Proceed date and ending with the date the Contractor Consultant completes all Services the consulting contract requires.

(3) The Contractor Recipient shall complete a “MONTHLY EMPLOYMENT REPORT”, DOT Form 1589. The Contractor Recipient shall begin reporting on the Notice to Proceed date for the construction contract or the Notice to Proceed date for the consulting contract, whichever occurs first. The Contractor Recipient shall end reporting on the Notice of Acceptance of Contract for the construction contract or on the date the Contractor Consultant completes all Services for the consulting contract, whichever occurs last.

b. All Contractors shall complete the “MONTHLY EMPLOYMENT REPORT”, DOT Form 1589, electronically on KDOT’s website by accessing the Economic Stimulus link at www.ksdot.org or using the link at www.ksdot.org/EconomicRecovery.asp and then the Recovery Act Reporting link.

On KDOT Let Projects: The Contractor shall select the box for KDOT Let Projects. The Construction Contractor, Contractor Consultant, or Contractor Recipient shall enter its Contractor number (the unique number KDOT has assigned to each entity that transacts business with KDOT—not the Contractor’s FEIN number). After the Contractor enters its Contractor number, the website will generate a list of projects/contracts for that Contractor number and allow the Contractor to:

- (1) select the REPORT, DOT Form 1589, for desired project/contract,
- (2) fill in the required information on the REPORT for that project/contract,
- (3) save the REPORT each time data is entered, and
- (4) submit the REPORT for that project/contract upon completion of the REPORT.

On Non-KDOT Let Projects: The Contractor shall select the box for Projects Not Let by KDOT. The Construction Contractor, Contractor Consultant, or Contractor Recipient shall enter its Contractor number (the unique number KDOT has assigned to each entity that transacts business with KDOT—not the Contractor’s FEIN number). If the Construction Contractor or Contractor Consultant does not have a Contractor number with KDOT, obtain a number by contacting the KDOT Director of Operations Office at 785-296-2235. In addition to entering its Contractor number, the Contractor will have to enter the Contract Number between KDOT and the Entity letting the Project. The Entity letting the Project should have furnished this information to the Contractor. After the Contractor has entered its Contractor number and the Contract Number between KDOT and the Letting Entity, the website allows the Contractor to:

- (1) fill in the required information on the REPORT for that project/contract,
- (2) save the REPORT each time data is entered, and
- (3) submit the REPORT for that project/contract upon completion of the REPORT.

The website will not permit the Contractor to submit the REPORT until all fields have been completed.

c. Construction Contractors and Contractor Consultants shall require each subcontractor and lower-tier subcontractor to complete and submit to that Contractor a “MONTHLY EMPLOYMENT REPORT”, DOT Form 1589 or Like Report, so these Contractors can include that information in the their on-line electronic REPORT as required by **Subsection II.b.**

(1) A copy of DOT Form 1589 is available to subcontractors and lower-tier subcontractors in Microsoft Excel format on KDOT’s internet. Go to www.ksdot.org, select Doing Business With Us, then Letting Information, then DOT Form 1589.

(2) In lieu of DOT Form 1589, Construction Contractors and Contractor Consultants may develop a Like Report for subcontractors and lower-tier subcontractors to furnish the required information to the Contractors. However, such Like Report shall contain the same information required on DOT Form 1589.

(3) Upon completion, subcontractors and lower-tier subcontractors shall furnish the DOT Form 1589 or Like Report to the Construction Contractor or Contractor Consultant, whichever is appropriate. Contractors, subcontractors, and lower-tier subcontractors shall retain copies of the DOT Form 1589 or Like Report for subsequent review and auditing. These Reports should not be sent to the Secretary or Contractor Recipient unless and until specifically requested. As already stated, the Secretary will receive the Contractor’s electronic DOT Form 1589 on-line through the Economic Stimulus link.

d. Completing DOT Form 1589

(1) Enter the Month and Year being reported in Box 1.

(2) The Contracting Agency is the owner of the Project. Even if KDOT lets and administers the Project as the Contractor Recipient’s agent, the Contractor Recipient is the Contracting Agency and will be the entity identified in Box 2 of DOT Form 1589. If the Contractor Recipient is completing the DOT Form 1589 for its direct, on the

project employees as required, the Contractor Recipient will be the Contracting Agency as well as the Contractor identified in Box 7 of DOT Form 1589.

(3) All Contractors (including Contractor Recipients) shall obtain a D-U-N-S number (Dun & Bradstreet Number). Contractors may acquire the D-U-N-S number using the following link: http://www.dnb.com/us/duns_update/. Subcontractors do not have to obtain a D-U-N-S number.

(4) Only Construction Contractors report Disadvantaged Business Enterprise (DBE) information on DOT Form 1589. For the DBE Total Payments to Date, report the total, accumulated payments made to all Kansas-certified DBE's, even if the Project had a self-determined goal or no DBE goal.

(5) For the Number of Employees, report the number of direct, on-the-project employees. This includes employees on the job site, in the field office, in the home office, and in alternative locations who charge time to the project rather than overhead and thus are considered actively engaged in the project. If a Contractor or Subcontractor has no employees to report for that reporting month, enter a "0" in the "Employees" column.

(6) For the Number of Hours, include regular and overtime hours for all direct, on-the-project employees. If a Contractor or Subcontractor has no employees and thus no hours to report for that reporting month, enter a "0" in the "Hours" column.

(7) For the Payroll information, include the direct labor paid for the number of hours reported for the number of direct, on-the-project employees reported. Do not include fringe benefits or overhead for these employees. If a Contractor or Subcontractor has no employees and thus no payroll to report for that reporting month, enter a "0" in the "Payroll" column.

(8) For Subcontractors, enter the names of all subcontractors who will be working on the Project.

- On KDOT-let Projects and for Construction Contractors, the subcontractors' names are populated into the DOT Form 1589 based on the Request for Approval of Subcontractor Form 259. Contractor Consultants will have to manually enter the names of all their subcontractors. It is critical that Construction Contractors submit all Form 259's needed for the Project on or before the Notice to Proceed and that Contractor Consultants enter the names of all their subcontractors on or before the Notice to Proceed even if those subcontractors will not be performing work at the beginning of the Project.
- On non-KDOT Let Projects, the first time the Construction Contractors and Contractor Consultants access the DOT Form 1589, the Contractor shall manually enter the names of all subcontractors who will be working on the Project. It is critical that the Contractor identify all subcontractors who will be working on the Project even if those subcontractors will not be performing work at the beginning of the Project.

(9) Further guidance may be found at www.fhwa.dot.gov/economicrecovery/index.htm.

e. Submitting DOT Form 1589.

All Contractors shall submit the completed on-line "MONTHLY EMPLOYMENT REPORT", DOT Form 1589, on or before the 5th day of the month following the month being reported.

Examples: DOT Form 1589 for the month of June, 2009 shall be completed and submitted on or before July 5, 2009. DOT Form 1589 for the month of July, 2009 shall be completed and submitted on or before August 5, 2009.

The Contractors may compile the information at the end of the last payroll period in the month being reported rather than in the middle of a payroll period. However, be sure to include in the next "MONTHLY EMPLOYMENT REPORT" any days that were not reported in the previous calendar month.

Example: if the last payroll period for June ended June 27, 2009 and the last payroll period for July ended July 25, 2009, DOT Form 1589 for the month of July, 2009 would include employees, hours, and payroll for the days of June 28-30 and July 1-25. The Contractor shall then complete and submit the July 2009 DOT Form 1589 on or before August 5, 2009.

Construction Contractors and Contractor Consultants shall require subcontractors and lower-tier subcontractors to submit their "MONTHLY EMPLOYMENT REPORT" (DOT Form 1589 or Like Report) within the amount of time the Construction Contractor or Contractor Consultant believes is necessary to enable that Contractor to input the data on-line and submit the Report by the 5th day of the Month. A subcontractor's or lower-tier subcontractor's failure to timely furnish to the Contractor a "MONTHLY EMPLOYMENT REPORT" does not excuse the Contractor's obligation to complete and submit the "MONTHLY EMPLOYMENT REPORT", DOT Form 1589, on-line on or before the 5th day of the Month.

III. SANCTIONS

a. For Construction Contractors: If the Construction Contractor fails to complete and submit the on-line “MONTHLY EMPLOYMENT REPORT”, DOT Form 1589, on or before the 5th day of the month following the month being reported as required in subsection II.e above, the Secretary or other Contractor Recipient may impose one or more of the following sanctions:

(1) Withhold payment of progress payments until the Construction Contractor complies with the reporting requirements of this Required Contract Provision.

(2) Declare the Construction Contractor a non-responsible Contractor under **subsection 102.18** of the Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction (2007 Edition) (Standard Specifications), thereby precluding award of a contract to the Contractor.

(3) Deny the Construction Contractor’s approval as a subcontractor on other projects under Standard Specifications **subsection 105.9**.

(4) Assess damages of \$200.00 per day for every calendar day, or part thereof, that the “MONTHLY EMPLOYMENT REPORT” has not been submitted after the 5th day of the month as required.

(5) Declare the Construction Contractor in breach of contract under Standard Specifications **subsection 108.9**. However, rather than the 10-day cure time allowed under Standard Specifications **subsection 108.9**, the Construction Contractor shall have 2 calendar days to cure the default by providing the “MONTHLY EMPLOYMENT REPORT”. If the default is not cured within this 2 calendar days, the Secretary may terminate the Construction Contractor from the Project and exercise the Secretary’s remedies under Standard Specifications **subsection 108.9** or the Secretary may allow the Construction Contractor to remain on the Project. Under either alternative, the Secretary may compile or hire a third party to compile and furnish the required information at the Contractor’s and Surety’s expense.

(6) Exercise termination or other remedy available in the construction contract between the Construction Contractor and Contractor Recipient.

(7) Take other action that FHWA authorizes for non-compliance with this Required Contract Provision.

b. For Contractor Consultants: If the Contractor Consultant fails to complete and submit the on-line “MONTHLY EMPLOYMENT REPORT”, DOT Form 1589, on or before the 5th day of the month following the month being reported as required in subsection II.e above, the Secretary or other Contractor Recipient may impose one or more of the following sanctions:

(1) Withhold payment of progress payments until the Contractor Consultant complies with the reporting requirements of this Required Contract Provision.

(2) Refrain from negotiating with the Contractor Consultant on other Engineering Agreements until the Contractor Consultant complies with the reporting requirements of this Required Contract Provision.

(3) Deny the Contractor Consultant’s approval as a subcontractor on other projects.

(4) Assess damages of \$200.00 per day for every calendar day, or part thereof, that the “MONTHLY EMPLOYMENT REPORT” has not been submitted after the 5th of the month as required.

(5) Declare the Contractor Consultant in breach of contract. However, rather than utilizing procedures outlined in the KDOT’s Consultant Standard of Care Policy, the Contractor Consultant shall have 2 calendar days to cure the default by providing the “MONTHLY EMPLOYMENT REPORT”. If the default is not cured within this 2 calendar days, the Secretary may terminate the Contractor Consultant from the Project or the Secretary may allow the Contractor Consultant to remain on the Project. Under either alternative, the Secretary may compile or hire a third party to compile and furnish the required information at the Contractor Consultant’s expense.

(6) Exercise termination or other remedy available in the consulting contract between the Contractor Consultant and Contractor Recipient.

(7) Take other action that FHWA authorizes for non-compliance with this Required Contract Provision.

c. For Contractor Recipients. If a Contractor Recipient fails to complete and submit the on-line “MONTHLY EMPLOYMENT REPORT”, DOT Form 1589, on or before the 5th day of the month following the month being reported as required in subsection II.e above, the Secretary may impose one or more of the following sanctions:

(1) Refrain from entering into other agreements with the Contractor Recipient for other projects until the Contractor Consultant complies with the reporting requirements of this Required Contract Provision.

(2) Assess damages of \$200.00 per day for every calendar day, or part thereof, that the “MONTHLY EMPLOYMENT REPORT” has not been submitted after the 5th of the month as required.

(3) Declare the Contractor Recipient in breach of contract and compile or hire a third party to compile and furnish the required information at the Contractor Recipient's expense.

(4) Require the Contractor Recipient to reimburse the Secretary for Recovery Act funds lost because of the Recipient's failure to comply with this Required Contract Provision.

(5) Take other action that FHWA authorizes for non-compliance with this Required Contract Provision.

d. The Secretary is responsible to the FHWA for administering this provision even if the Contractor Recipient lets the project. Thus, the Contractor Recipient shall obtain the Secretary's permission before imposing one or more of the sanctions identified in **subsection III.a or III.b.**

08-04-09 C&M (CB)

