



**Kansas Department of Transportation
Comprehensive Transportation Planning Unit**

**KDOT Procurement Guidance
for Consolidated Planning Grant (CPG)
Funded Consultant Services and Goods**

Updated January 2022

List of Changes

January 2022

- Updated the Table of Contents
- General grammar and spelling revisions, sentence revisions, in text page reference updates
- Page 2, Addition to the narrative of procurement thresholds and DBE goal setting
- Page 4, Clarification of when a DBE must be certified in KS has been included in the guidance. This is not new change, but the guidance document is updated to match email guidance previously distributed.
- Page 7, Consultant Services Procurement table, update to mid-level procurements has been made to clarify when a procurement in this threshold must be sent into KDOT for DBE goal review. Addition of consequences for not following expectations
- Page 11-12, Additional clarification has been included for what to do if a DBE firm drops from or is removed from participation on a project.
- Pages 12-16, There has been rearrangement of MPO and MPO Liaison responsibilities but no substantive language changes.
- Appendix H, Inclusion of the updated 2022 KDOT Travel Policy
- Appendix L, Inclusion of the updated DBE Payment Information Form
- Appendix M, Inclusion of the updated DBE Payment Information Form (Example)

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KDOT Procurement Guidance for Consolidated Planning Grant (CPG) Funded Consultant Services and Goods

Updated November 2021

Purpose

This guidance is intended to assist in the procurement of goods and consultant services in relation to CPG (PL/5303) funded planning projects in accordance with all applicable federal and state rules and regulations.

Procurement of Goods and Consultant Services in General

Outlined in what follows are KDOT's procurement standards and processes for the solicitation of goods and consultant services that are utilizing the above referenced federal aid planning funds. It is important to note before moving forward, that in most cases, the Metropolitan Planning Organization (MPO) or their local fiscal agent's procurement standards are generally more stringent than KDOT's. If this is the case, then the MPO should follow the set of standards that are the most stringent. Generally, this applies to small, simple purchases. KDOT will review the procurement standards of the MPO to ensure consistency with state and federal rules prior to the start of the procurement process. **Please submit your agency's procurement policy to your MPO Liaison prior to the start of any procurement process for review.** If the procurement procedures change, it is the responsibility of the MPO to provide KDOT the new policy for review. Projects requiring a formal procurement must follow KDOT's Procurement Procedures found on pages 3-5. Prior to the procurement of any consultant services or goods related to a project, the CPG funded project must be included in an approved UPWP.

It is important to note that the expected cost of the good or consultant service will determine what type of procurement process will be required and the proper procedures to follow. For projects requiring consultant services the appropriateness of a DBE goal will play a factor in the type of procurement process that will be required. Generally, the procurement of goods does not require or undergo DBE goal setting. A table outlining KDOT's expectations for the procurement of goods can be found on page 6. A table outlining KDOT's expectations for the procurement of consultant services can be found on page 7.

Procurement Procedure for Goods

Bids shall be obtained following the chart on page 6 which sets baseline requirements and expectations. The MPO Liaison will review the MPO's Procurement Process to ensure that it meets these expectations. If for any reason, the MPO or Fiscal Agent's process does not meet these expectations, KDOT Procurement Standards for CMAQ/STP/TA/CPG Funded Planning, Education and Outreach, and Non-Infrastructure Projects shall be followed. For projects with a total project cost of > \$25,000, a Formal Procurement Process with the competitive solicitation of bids overseen by KDOT will be required.

Consultant Services Procurement Procedures

The procurement table on page 7 outlines the baseline requirements for procurements for consultant services for three levels of planning, education and outreach, and non infrastructure projects. Additionally, the MPO Liaison will review the MPO's procurement process to ensure that it meets these baseline expectations for the simple and mid-level procurements. If for any reason, the MPO or Fiscal Agent's process does not meet these baseline requirements, KDOT's standards shall be followed to

ensure proper procurement of consultant services. For projects with a total project cost of > \$25,000, a Formal Procurement Process with the competitive solicitation of bids overseen by KDOT will be required.

Procurement Thresholds and DBE Goal Setting: Consultant Services

Simple Procurements for projects with a total project costs of > \$5,000: The setting of DBE goals will not apply for services procured under this threshold; however, the MPO is strongly encouraged to include contacts with DBE firms in any solicitation efforts that are made.

Mid-level Procurements for projects with a total project cost of > \$5,000 but < \$25,000: The MPO shall evaluate the subcontracting opportunities in their project/scope of work. If subcontracting opportunities exist, the MPO shall send the scope of work to the MPO Liaison for further review. KDOT's CPG Formal Procurement Process may be required depending on the appropriateness of a DBE goal. KDOT's Office of Civil Rights Compliance will review the scope of work for appropriateness of a DBE goal. If no goal is found to be needed, procurements in this range may carry on as previously planned. If a DBE goal is warranted for a project in this threshold, it shall proceed as a formal procurement with KDOT oversight.

Should KDOT become aware of a scope of work in this procurement range that had subcontracting opportunities and the scope of work was not run through a consultation process with KDOT, then the MPO will be required to have all remaining procurements for the year and/or subsequent year (dependent upon time of occurrence) as formal procurements. This increased oversight will allow for any needed corrective actions to occur.

Example of potential DBE participating activities Include (not meant to be an all-inclusive list of activities): marketing, public participation, planning, traffic engineering, traffic counting, printing services, surveying (opinion), and multi modal planning.

For projects with a total project cost of > \$25,000, the Formal Procurement Process will be required. These following procedures are applicable regardless of the placement of a DBE goal on the project.

Notes on Request for Proposals/Qualifications

The MPO will develop a Request for Proposal (RFP) or a Request for Qualifications (RFQ) for the project or activity that includes, but is not limited to, the goals, objectives, and general scope of desired consultant services. The RFP/RFQ must identify all evaluation factors and their relative importance as per 49 CFR §18.36. If a DBE goal has been placed on the project, the RFP/RFQs must include a statement encouraging the use of Disadvantaged Business Enterprise (DBE) firms and explicitly state the DBE participation goal. If no goal has been set, the MPO is encouraged to include a statement promoting the utilization of DBE firms. For additional details regarding the DBE program as it pertains to this procurement process, please see KDOT's DBE Program Guidance for CPG Funded Planning Projects beginning on page 8 of this package and KDOT's DBE Program Manual located at: <http://www.ksdot.org/Assets/wwwksdotorg/bureaus/divAdmin/Documents/DBEPROGRAMMANUAL.pdf>)

Steps in the Formal Procurement Process

Reference	49 CFR §18.36
Procurement Process	<p>Step 1: Notice to Proceed with RFP/RFQ</p> <ul style="list-style-type: none"> • The MPO will submit to the MPO Liaison a <i>Notice to Proceed with RFP/RFQ</i> at least 10 business days before the RFP/RFQ is expected to be issued along with a draft of the RFP/RFQ and all appropriate attachments. • Upon KDOT’s review of the <i>Notice to Proceed with RFP/RFQ</i>, the draft RFP/RFQ will be forwarded to KDOT’s Office of Civil Rights Compliance for review and placement of a DBE participation goal as appropriate. Please note that the MPO may be called upon for consultation and to provide additional information as to specific activities within the RFP/RFQ that could be broken out as potential DBE consulting opportunities. • Within 10 business days, the MPO Liaison will return the <i>Notice to Proceed with RFP/RFQ</i> to the MPO approving or requesting changes be made to the RFP/RFQ if necessary. The <i>Notice to Proceed with RFP/RFQ</i> will indicate the percentage of the total project cost to be placed as the DBE goal. • If changes are requested to be made, the MPO Liaison must receive these revisions before the MPO moves forward with the procurement process. The MPO will receive the approved <i>Notice to Proceed with RFP/RFQ</i> once all requested changes and issues are resolved. Upon receipt of the approved <i>Notice</i> the MPO may issue the RFP/RFQ. • The RFP/RFQ must be advertised for a minimum of 14 days. Once proposals are received, the MPO may conduct any short-listing that needs to occur and then proceed to Step 2 of this process. <p>Step 2: Notice to Proceed with Interviews</p> <ul style="list-style-type: none"> • At least 10 business days before consultant interviews are to be held, the MPO will submit to the MPO Liaison the <i>Notice to Proceed with Interviews</i> form. This <i>Notice</i> includes a list of all firms submitting proposals and indicates if the DBE goal is proposed to be met or that good faith documentation has been submitted. A copy of DBE Provision 07-19-80-R12 for each firm submitting a proposal must be included with this <i>Notice</i>. These forms will be reviewed by the MPO Liaison and serve to document the proposed meeting of the DBE goal. If issues arise, the KDOT will work with the MPO to address those issues before the <i>Notice to Proceed with Interviews</i> is issued. If the DBE goal is not proposed to be met by a bidding consultant firm, good faith effort documentation must be provided and will be reviewed and approved as appropriate by KDOT. Please see KDOT’s DBE Program Guidance for Consolidated Planning Grant (CPG) Funded Planning Projects beginning on page 8 for more information on good faith effort documentation. • If interviews are not deemed necessary as part of the selection process, for example, because of a single bid received or a result of the evaluation process, then this decision must be consistent with local agency procedures. The MPO shall submit to the MPO Liaison the <i>Notice to Proceed with Interviews</i> and indicate via a checkbox on the form that no interviews were necessary. In the provided space on the form, briefly outline

the procurement process and evaluation process with the rationale for why no interviews are being held. This *Notice to Proceed with Interviews* must be accompanied by copies of the DBE Provision 07-19-80-R12 for all submitting firms for KDOT's review and approval. Upon full approval, the MPO Liaison will issue the *Notice* to MPO verifying the eligibility of the DBE firm to perform work as a DBE in Kansas and the acceptability of the DBE goal proposal. Receipt of this *Notice* would signify the MPO's ability to proceed with the next step in the procurement process. A PDF copy of the email(s) and the DBE Provision 07-19-80-R12 for all submitting firms must be retained in the project file.

- The MPO Liaison will return the *Notice to Proceed with Interviews* to the MPO within **10 business days** upon receipt. Upon return receipt of an approved *Notice to Proceed with Interviews* the MPO will be able to proceed with the interview/consultant selection process with the scope and contract negotiations starting with the selected firm.
- All firms proposing to do work on the project as a DBE must be certified as a DBE with the State of Kansas when the proposal is submitted to the MPO. The MPO Liaison will confirm eligibility of the bidding consultant or sub-consultant as a DBE during review and approval of the *Notice to Proceed with Interviews*.

Step 3: Notice to Award

- Once interviews are held and/or a firm is selected, the MPO will submit to KDOT the *Notice to Award*, a draft scope of work, budget and fee sheets, and a draft contract, along with all other required attachments for review and approval at least **5 business days prior** to awarding the contract to the consultant.
- As a part of the *Notice to Award*, it will be the responsibility of the MPO to verify that the Prime Consultant proposed to be awarded the contract holds an active System for Award Management (SAM) registration status. The MPO shall look up, through the records portal, the SAM expiration date of the Prime Consultant firm and attach a PDF copy of the SAM Registration report to the *Notice to Award*. The MPO Liaison will review this report in conjunction with their review of the draft scope of work, budget, and contracts. The Prime Consultant must have an active SAM registration status for the *Notice to Award* to be issued and for the contract to be fully executed. An example of the PDF Active SAM Registration Document can be found in Appendix I.
- Please note that it is very important that consultant firms renew their SAM Registration annually to maintain an active status. Failure to maintain an active status during the project may prevent or delay reimbursements to the MPO. For additional details regarding SAM Registration, please see: <https://www.sam.gov>.
- KDOT will return the *Notice to Award* **within 5 business days** to the MPO either approving the award or recommending further changes to the draft scope of work and contract. If changes are requested to be made, KDOT must review these revisions before the MPO will be sent an approved *Notice to Award* the project.
- Once the MPO receives the approved *Notice to Award*, they may formally award the project and proceed with full execution of the scope of work, budget, and contracts.
- The MPO shall provide KDOT a copy of the finalized scope of work and contract, along with all required attachments **within 10 business days after** the contract is signed. This will include a copy of the contract between the Prime and each sub-consultant and must be submitted within 10 days after those contracts are signed.

Notes:	<ul style="list-style-type: none">• This procurement process does not preclude KDOT’s involvement and participation in the evaluation and interview processes. Likewise, it is not a requirement that KDOT be involved unless otherwise specified.• The MPO Liaison will make every effort to adhere to the timeframes above unless extenuating circumstances develop.• Copies of the Notices and other needed documents are in the Appendices and can be sent as separated documents as requested.• Please see the Step-by-Step List located on page 17 for additional information as to what items need to be included in Requests for Proposals, Returned Proposals, Scope of Work and Contracts, and Requests for Reimbursements.• If a DBE goal is placed on the project, please refer to the KDOT’s DBE Program Guidance for Consolidated Planning Grant (CPG) Funded Planning Projects beginning on page 8 for further related information.• The determination of the acceptability of sole sourcing a service or a good rests with KDOT and FHWA/FTA.• Electronic copies of all supplemental agreements/contract must be submitted to the MPO Liaison on a timely basis.
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KDOT Procurement Standards for CMAQ/STP/TA/CPG Funded Planning, Education and Outreach, and Non-Infrastructure Projects

Revised 11/21

Purchase of Goods (Total Project Cost)	Type of Bid	Notes
Simple Procurements < \$5,000	MPOs are encouraged to solicit goods with estimated costs of less than or equal to \$5,000 by obtaining comparative pricing via telephone, fax, letter, or email bids.	<ul style="list-style-type: none"> • For the procurement of goods under this \$5,000 threshold the MPO is encouraged to solicit bids from an appropriate number of bidders. • KDOT considers it best practice to keep on file documentation in support of any solicitation efforts made and retain this information so that it be may made available to KDOT and/or USDOT upon request for review. Documentation includes, but is not limited to, bid tabs, telephone bid sheets, email or fax quotations. • Formal advertising is not required by KDOT. • It is recommended that general bid specifications for the good to be purchased be developed for the purposes of any solicitation efforts made.
Mid-level Procurements > \$5,000 but ≤ \$25,000	The solicitation of goods with estimated costs of greater than or equal to \$5,000 but less than or equal to \$25,000 shall be made by obtaining comparative pricing via letter, fax, or email bids. A minimum of three written bids are required to be obtained.	<ul style="list-style-type: none"> • For the procurement of goods within this range there must be efforts made to solicit bids from an appropriate number of bidders and a public posting of the bid item must be made. A minimum 3 day public posting of this solicitation is required and shall be publicized in a manner that reaches many potential bidders. Bids should be received via sealed bid, fax, email, or similar written format. • Specifications for the bid item shall be detailed in the public posting. • Documentation of the solicitation efforts and public posting must be on file and made available to KDOT/USDOT upon request. • The lowest bid meeting the MPOs specifications should be selected, and if not, justifications for doing otherwise must be documented in the file.
Formal Procurements of ≥ \$25,000	Formal competitive solicitation of bids for goods with a total estimated cost greater than or equal to \$25,000 is mandatory	<ul style="list-style-type: none"> • The MPO may follow the procurement procedures of their own agency or fiscal agent provided they are at least as stringent as the State. Alternatively, the MPO may defer the KDOT Procurement Procedures if no such local procedures exist. • The MPO is encouraged to consult with KDOT in advance in order to ensure competitive solicitation and advertising. • Advertising for a minimum of 14 days is required. • For purchases at or above this threshold the MPO must contact the MPO Liaison to determine if any additional oversight to the project is required. • The lowest bid meeting the MPOs specifications should be selected, and if not, justifications for doing otherwise must be documented in the file.

1. Please note that if the the procurement procedures of the MPO or the MPOs's fiscal agent are more strict than these standards, then the most stringent of the standards will apply. KDOT must approve the procurement procedures of the MPO prior to initiation of the bidding process.
2. The type of bid required is also dependent on the nature of the good(s) to be purchased. Purchases that are estimated to be just at or near a particular threshold may require a higher type of bidding process. Alternatively, flexibility exists to conduct a bidding process at a lower level depending upon the nature of the good(s) to be purchased. KDOT strongly encourages discussing the type of bid required with the MPO Liaison well in advance of the procurement process.
3. The goods to be purchased must be eligible and included in the approved scope of the project. The MPO Liaison must be aware of the purchase of such goods through approval of project scope and reimbursement is subject to review for eligibility and allowability.
4. DBE goals typically are not placed on the purchase of goods.
5. The determination of the acceptability of sole sourcing rests with KDOT and FHWA/FTA.

KDOT Procurement Standards for CMAQ/STP/TA/CPG Funded Planning, Education and Outreach, and Non-Infrastructure Projects

Revised 11/21

Consultant Services (Total Project Cost)	Type of Bid	Notes
<p>Simple Procurements of \leq \$5,000</p>	<p>MPOs are encouraged to solicit consultant services with estimated costs of less than or equal to \$5,000 by obtaining comparative pricing via telephone, fax, letter, or email bids.</p>	<ul style="list-style-type: none"> • Procurement of services under this \$5,000 threshold are not required to go through KDOT's CMAQ/STP/TA/CPG Procurement Process, but the task or activity must be eligible and programmed as part of an approved scope of the project prior to the start of any solicitation efforts. • Formal advertising is not required. • It is recommended that a general scope of the work activity be developed for the purposes of any solicitation efforts made. • KDOT considers it a best practice to keep on file documentation in support of any solicitation efforts made and so that this information may be made available to KDOT and/or USDOT upon request for review. Documentation includes, but is not limited to, bid tabs, telephone bid sheets, email or fax quotations. • The setting of DBE goals will not apply for services procured under this threshold; however, the MPO is strongly encouraged to include contacts with DBE firms in any solicitation efforts that are made.
<p>Mid-level Procurements \geq \$5,000 but \leq \$25,000</p>	<p>The solicitation of consultant services with estimated costs of greater than or equal to \$5,000 but less than or equal to \$25,000 shall be made by obtaining written project proposals. KDOT's CMAQ/STP/TA Procurement Process may be required depending on the appropriateness of a DBE goal.</p>	<ul style="list-style-type: none"> • The minimum expectation for the procurement of consultant services is detailed to the left. The MPO shall actively solicit written proposals for consultant services within this range. Depending on the scope and nature of the work activity, however, the procurement of consultant services within this range may require a formal bidding and procurement process for the purposes of reviewing for and the establishment of a DBE goal. The MPO is expected to contact KDOT prior to the initiation of the solicitation process in order to determine the appropriate procurement method and process. This is largely dependent upon the potential DBE consulting opportunities expected in the work activity. • The MPO is expected to advertise the work activity for a minimum of 14 days through appropriate means and actively solicit potential firms. The MPO must advertise a scope of the work activity along with the evaluation criteria that will be used to select the firm. • Documentation of the solicitation efforts are required and must be kept on file so that they may be made available to KDOT and/or USDOT upon request for review. Acceptable forms of documentation include, but are not limited to, submitted project proposals, procurement summaries, evidence of advertisement efforts, and all associated letters, emails or faxes. Documentation must include an evaluation of the proposals based on a set of evaluation criteria and justification for the selection of the consultant based upon qualifications. • The setting of DBE goals may or may not apply for services procured within this range as previously stated. If no goal is formally set for the work activity, the MPO is strongly encouraged to include contacts with DBE firms in their solicitation efforts. • The MPO shall evaluate the subcontracting opportunities in their project/scope of work. If subcontracting opportunities exist, the MPO shall send the scope of work into the MPO Liaison for a formal DBE Goal Review and the project proceeds through the formal procurement process. Please see additional details on Page 2.
<p>Formal Procurements of \geq \$25,000</p>	<p>KDOT's CMAQ/STP/TA Procurement Process is required, formal competitive bidding process, and advertising is mandatory</p>	<ul style="list-style-type: none"> • Procurement of services greater than the \$25,000 threshold must go through the KDOT CMAQ/STP/TA Procurement Process and DBE Goal Setting process found on pages 3-5 of this manual. • Documentation of the solicitation process is required and must be kept on file so that it may be made available to KDOT and/or USDOT upon request for review. • The MPO is required to advertise the work activity for a minimum of 14 days through appropriate means and actively solicit potential firms. The MPO must advertise a scope of the work activity along with the evaluation criteria that will be used to select the firm. • All other additional requirements as to the procurement of consultant services as prescribed by state and federal rules and regulations apply.

1. Please note that if the procurement procedures of the MPO or the MPO's fiscal agent are more strict than these standards, then the most stringent of the standards will apply. If the MPO's procedures require formal bidding, then the KDOT CMAQ/STP/TA/CPG Procurement Process shall be followed.
2. KDOT reserves the right to require a formal procurement process when the scope and nature of the work could present subcontracting opportunities upon which DBE goals may be placed.
3. Work that is estimated to be just at or near a particular threshold may require a higher type of bidding process. Alternatively, flexibility exists to conduct a bidding process at a lower level depending on the scope and nature of the work to be performed. KDOT strongly encourages discussing the type of bid required with MPO Liaison in advance of the expected procurement process.
4. Under any solicitation efforts, the MPO must demonstrate diversity in the firms from whom they are soliciting bids. Diversity includes both the active solicitation of DBE and non-DBE firms as well as the active solicitation of a variety of different firms amongst all procurement processes conducted by the MPO.
5. The project or activity for which consultant services are being procured must be eligible and included in an approved scope of the project. The MPO Liaison must be aware of the purchase of such services through approval of the project and reimbursement is subject to review for eligibility and allowability.
6. The determination of the acceptability of sole sourcing rests with KDOT and FHWA/FTA.

KDOT DBE Program Guidance for Consolidated Planning Grant (CPG) Funded Planning Projects

Purpose

This guidance is provided to MPOs to aid in implementing Disadvantaged Business Enterprises (DBE) Program requirements into federally funded Planning projects. This is intended to supplement the KDOT DBE Program Manual as developed and administered by KDOT's Office of Civil Rights Compliance. For all other items not specifically addressed in this Guidance, please refer to the KDOT Office of Civil Rights Compliance DBE Program Manual located at:

<http://www.ksdot.org/Assets/wwwksdotorg/bureaus/divAdmin/Documents/DBEPROGRAMMANUAL.pdf>.

Background

The Disadvantaged Business Enterprise (DBE) statutory provision found in 49 CFR Part 26 was enacted by Congress in 1983 to ensure that disadvantaged business enterprises can compete fairly for federally funded transportation related projects. KDOT receives federal financial assistance from the U.S. Department of Transportation (USDOT) and, as a condition of receiving this federal assistance, has signed an assurance that the agency will comply with 49 CFR Part 26. Subsequently, KDOT has established a DBE Program for the agency. It is the policy and commitment of KDOT that disadvantaged businesses, as defined in 49 CFR Part 26, shall have a level playing field in which to participate in the performance of contracts financed in whole or in part with federal funds.

Being that these are projects funded under the above referenced federal funding programs, in whole or in part, they are subject to the requirements of DBE regulations and are included under the administrative requirements of KDOT's DBE Program. These projects play a role in both the setting of KDOT's agency wide DBE goals and the subsequent work to attain these goals. For this reason, MPOs are required to submit RFPs issued for consultant services to the MPO Liaison, per cost threshold requirements, so that they may be reviewed by the Office of Civil Rights Compliance (OCRC) for possible DBE subcontracting opportunities and placement of a DBE goal as appropriate. This occurs as part of a bid and formal procurement process outlined earlier in this document. The MPO and prospective bidding firms are expected to put forth a good faith effort, as defined by 49 CFR Part 26, to achieve the DBE goal for participation in KDOT's DBE goals. The following guidance will assist the MPOs in implementing planning projects and complying with KDOT's DBE program.

Federal Financial Assistance Assurance

KDOT has signed the following assurance applicable to all federal aid contracts. An assurance will be included in all agreements with sub recipients of federal funds. Please see Appendix E for Special Attachment No. 1. Further, this assurance shall be included in all contracts entered by the MPO and/or any consultants and sub-consultants and is binding on all parties.

KDOT's Assurance

KDOT shall not discriminate based on race, color, religion, national origin, age, disability, low income, veteran status or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. KDOT shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. KDOT's DBE program, as required by 49 CFR Part 26 and as approved by

USDOT, is incorporation by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

DBE Contract Goals

KDOT will use contract goals to supplement race and gender-neutral means to ensure diverse and inclusive participation by all consultant and sub-consultant firms. Requests for RFP/RFQs will be reviewed as part of the procurement process outlined on pages 3-5 for appropriateness of a DBE Goal. A goal will be placed on the projects as determined by DBE liaison officer in KDOT's Office of Civil Rights Compliance (OCRC) in consultation with the MPO Liaison. The contract goal will be set as a percentage of the total overall project cost. Together, this team looks at the CPG funded RFP/RFQ to be issued and assigns a DBE goal to the proposal for race and gender conscious DBE participation as appropriate. The RFP/RFQ will be reviewed for all work activities where there would be enough consulting and sub consulting opportunities for DBE participation and whether there are Kansas certified DBE firms available to perform the work. The MPO may be called upon for consultation and to provide additional information as to specific activities within the RFP/RFQ that could be broken out as DBE consulting opportunities. Please note that, in the event race and gender conscious means have exceeded the overall annual goal for KDOT at a given point during the year, then the use of contract goals may be suspended.

Oversight in the Procurement Process

The procurement and contract approval process, as outlined on pages 3-5, details the expectations that bidding consultants are to fully document their proposals to meet the established DBE Goal. Each proposal submitted to the MPO by bidding consultants must document the proposed meeting of the DBE contract goal by way of the submission of Required Contract Provisions 07-19-80-R12 (MPO). It is at this point, when proposals are submitted to the MPO, that the proposed DBE firm must be certified as a DBE in Kansas to perform work. The MPO Liaison will review this Required Contract Provision to ensure that the DBE goal is proposed to be met as well as ensuring that the DBE firm is certified in Kansas. If the DBE goal is not proposed to be met in their project, then the bidding consultant must submit appropriate documentation with their proposal that a good faith effort to meet the goal has been made. The good faith effort documentation, as this guidance will further explain, must be approved by KDOT. All documentation towards the proposed meeting of the goal or good faith effort shall be submitted by the MPO to the MPO Liaison in their *Notice to Proceed with Interviews* for review and approval.

Request for Proposals/Qualifications

Request for Proposals (RFPs) and Request for Qualifications (RFQs) must identify all evaluation factors and their relative importance per 49 CFR §18.36. If a DBE goal has been placed on the project, the RFPs/RFQs must explicitly state the Disadvantaged Business Enterprise (DBE) participation goal amount and include a statement encouraging the use of DBE firms. KDOT recommends that, if no goal has been set, the MPO include a statement in the RFP/RFQ encouraging the utilization of DBE firms.

Good Faith Effort Process

A good faith effort is defined as: efforts to achieve a DBE goal or DBE participation, which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the requirement.

On federal aid contracts with DBE participation goals, all bidding consultants submitting a proposal must provide evidence that DBE participation will meet or exceed the assigned goal. If this is not the case, the bidding consultants must document that they took all necessary and reasonable steps to achieve the DBE goal. This documentation shall be included with the proposal as submitted to the MPO by the Prime bidding consultant. Review of good faith efforts will first be made by MPO staff and then sent to KDOT for further review. The MPO shall submit this information to KDOT for review by way of the *Notice to Proceed with Interviews*. A determination of acceptance of the good faith effort documentation will be made with the return of the approved *Notice to Proceed with Interviews* to the MPO.

Please refer to Required Provision 07-18-80-R26 (Appendix G) and the KDOT Office of Civil Rights Compliance's DBE Program located at <http://www.ksdot.org/Assets/wwwksdotorg/bureaus/divAdmin/Documents/DBEPROGRAMMANUAL.pdf> for details on what constitutes good faith effort documentation. KDOT will be open to alternate forms of good faith documentation provided it is consistent with the good faith documentation requirements of the local jurisdiction or host agency. *Please note that it would be beneficial for the MPO to consult with the MPO Liaison early in the process to determine the suitability of these alternate forms of documentation.*

The MPO shall submit a *Notice to Proceed with Interviews* form to the MPO Liaison as part of the procurement process. Required Provision 07-19-80-R12 (Appendix D) and a copy of any necessary documentation of good faith efforts shall be attached to this *Notice*. The MPO Liaison, in conjunction with the Office of Civil Rights Compliance, shall review the documentation to ensure that the bidding consultant is appropriately meeting the goal through their expected DBE commitments or, alternately, that they have provided enough good faith effort documentation.

The decision as to whether the good faith effort documentation is acceptable will be made jointly between a team of staff from the Office of Civil Rights Compliance, the MPO Liaison, and staff from the Comprehensive Transportation Planning Unit. Confirmation of acceptance of the good faith effort documentation will be given through approval of the *Notice to Proceed with Interviews* as issued to the MPO. If the decision is made to reject the good faith effort documentation, the prime bidding consultant has the right to request administrative reconsideration within 10 (ten) days of notification to the MPO. If the bidding consultant requests administrative reconsideration, the bidder can choose to submit, through the MPO, a written narrative supporting its good faith effort submittal or to appear in person. The reconsideration official will be the Director of Planning and Development and or designee who was not involved in the initial decision. The MPO and bidding consultant will receive a written decision citing acceptance or the reason for the rejection. The reconsideration process is administratively final and has no further administrative appeal steps within KDOT or the USDOT.

Prompt Pay Requirements

The MPO is required to reimburse any Prime Consultant engaged by contract no later than thirty (30) calendar days from receipt of any properly completed and undisputed invoice of a Prime Consultant. The MPO may not wait until it receives payment from KDOT to pay its Prime Consultant(s) because programs supported by federal funding are reimbursable to the MPO by KDOT only after the MPO has made payment to its Prime Consultants. Requests by the MPO to KDOT for reimbursement may be made no more frequently than once a month and for at least \$1,000.00, and such requests shall include supporting documentation evidencing payment by the MPO for any Prime Consultant invoice claimed for reimbursement as well as supporting documentation furnished to the MPO by the Prime Consultant(s) (if any), as described below in "Prompt Payment by Prime Consultants." If the MPO does

not or cannot furnish supporting documentation to demonstrate that it has promptly paid each properly completed and undisputed invoice submitted by the Prime Consultant (if any) and that the Prime Consultant has, in turn, promptly paid its sub-consultants (if any), then KDOT may withhold reimbursement to the MPO until satisfactory evidence or supporting documentation is furnished to KDOT.

Prompt Payment Clauses

The MPO shall be required, in its contract with any Prime Consultant, to include the following or equivalent clauses obligating the Prime Consultant to make prompt payments to each DBE and non-DBE sub-consultant or subcontractor, and to provide supporting documentation of prompt payments by properly completing and submitting the “Prompt Payment Form Certificate of Sub-consultant Work and Payment Form” found in Appendix K. A Prompt Payment form must be submitted for each billing verifying that prompt payments are being made to each DBE and non-DBE sub-consultant and to document the amounts paid.

The following clause shall be included in contract between MPO and Prime Consultant:

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

The following clause shall be included in contracts between the Prime Consultant and Sub-consultants or Sub-contractor (if any):

Within ten (10) calendar days of [Prime Consultant’s] receipt of payment from [MPO] for satisfactory performance of its contract obligations, [Prime Consultant] shall pay [insert name of Sub-consultant or Sub-contractor] for satisfactory performance of its subcontract obligations.

Contract Terminations or Loss of DBE Firm for Any Reason

The MPO shall not terminate a contract with a named DBE consultant or sub-consultant without the prior written consent of KDOT. The MPO must first contact the MPO Liaison to discuss the need for this contract termination and decisions will be made on a case-by-case basis. When a termination is approved by KDOT or a DBE withdraws in writing, the Prime Consultant must make a good faith effort to find a replacement DBE. The MPO has 5 working days to provide KDOT with written good faith effort documentation if no such replacement is found. The same process and appeal rights prevail as above.

If the case presents itself that the DBE firm ceases to be in business during the performance of contract work or loses the ability to conduct work, the same good faith effort process to find a replacement will take place. Please consult you MPO Liaison as soon as possible.

DBE Directory

KDOT publishes a daily directory on the internet identifying certified DBEs willing to perform as subcontractors on KDOT's federal aid projects. (Note that DBEs can and do serve as Prime Consultants.) All DBE firms listed in the directory are certified as meeting the requirements as outlined in 49 CFR Part 26. The directory contains the DBE firm name, address, phone, fax, owner name, work categories and work area. A searchable database is available on KDOT's website <http://kdotapp.ksdot.org/dbecontractorlist>. The DBE Directory is the responsibility of the DBE liaison officer in the Office of Civil Rights Compliance.

Monitoring and Enforcement

The KDOT will notify the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) of any false or fraudulent conduct concerning the DBE Program. Prosecution and debarment for fraud are the responsibility of the USDOT Inspector General and the US Attorney for Kansas. Non-compliance with the DBE Program by a participant will be handled under the provisions of Required Provision 07-18-80-R26's latest revision. Monitoring and enforcement are joint efforts of the KDOT OCRC staff and the MPO Liaison.

KDOT will be utilizing the following measures to monitor and enforce compliance with the DBE program:

- The MPO Liaison will complete a Commercially Useful Function (CUF) review in coordination with the MPO (Appendix P) of the DBE functions during the work project or activity, review of the progress of work done by the Prime and DBE as part of reimbursement requests submitted to KDOT by the MPO and prompt payment reviews.
- The MPO will be expected to coordinate their respective monitoring efforts to ensure enough work is being done by the DBE firm as indicated in the scope of work and contracts coordinate the collection of required documentation and contracts and ensure overall compliance with the DBE program.

Non-Compliance Complaints

For any non-compliance complaints or issues that arise, KDOT will defer to the non-compliance process as outlined in the KDOT DBE Program Manual as administered by the Office of Civil Rights Compliance. KDOT's DBE Program Manual can be found here:

<https://www.ksdot.org/Assets/wwwksdotorg/bureaus/divAdmin/Documents/DBEPROGRAMMANUAL.pdf>,

What are the DBE-related Responsibilities of the MPO in the Procurement Process?

- The MPO will follow the processes and procedures as outlined in this guidance and the KDOT Office of Civil Rights Compliance DBE Program Manual.
- The MPO will ensure that all assurances, special attachments, and appropriate contract language is included in all RFPs and Prime and sub-consultant contracts.
- The MPO will ensure that the DBE goal is proposed to be met or coordinate the good faith effort paperwork and submit to KDOT with the *Notice to Proceed with Interviews*.

- The MPO shall have the ability to monitor and track sub-consultant (DBE and Non-DBE) participation in all contractual items.
- The MPO will complete all tracking, reporting, and billing documentation and submit to KDOT in a timely manner. Failure to submit the necessary information may delay the timely processing of requests for reimbursement.
- If there are questions about the scope and activities of the project, the MPO should work with KDOT staff to determine if appropriate sub-contracting opportunities exist that could be broken out of the work product for potential work by DBE sub-consultants.

What are the DBE-related Responsibilities of the MPO Liaison in the Procurement Process?

- The MPO Liaison will review all RFPs and contracts to ensure proper assurances, special attachments, and appropriate contract language is included in the Prime Consultant contract and all sub-consultants throughout the procurement process.
- The MPO Liaison will ensure that copies of all the final scopes of work and contracts with Prime and DBE sub-consultants are received and input into the semiannual DBE reporting tracker.
- The MPO Liaison will review and approve the *Notice to Proceed with Interviews* and DBE related documentation as effectively and efficiently as possible.
- The MPO Liaison will strive to adhere to the outlined procurement approval timelines unless there are extenuating circumstances that arise.

Disadvantaged Business Enterprise (DBE) Goal Reporting and Prompt Payment Tracking and Reconciliation

During the procurement process for a CPG funded project, the RFP is reviewed by the KDOT Office of Civil Rights Compliance to determine the appropriateness of a Disadvantaged Business Enterprise (DBE) goal being set on the project. The goal, a percentage, is set based upon expected work activities and availability of DBE firms to conduct the work. When there is a Prime Consultant, and/or a sub-consultant are working on a federally funded project, both the MPO and the MPO Liaison shall have responsibilities regarding tracking and reporting prompt payments to the as well as monitoring progress towards attainment of the DBE goal. The responsibilities of both parties over the course of the project are outlined below.

MPO Responsibilities:

- The MPO shall submit electronic copies of the fully executed Prime Consultant and sub-consultant contracts to the MPO Liaison within 10 days after signature.
- The MPO shall monitor and track DBE and non-DBE consultant participation in all contractual items as outlined in the scope of work and contract.

- The MPO shall ensure that payments are made to the Prime Consultant within 30 days and, in turn, that any sub-consultants are promptly reimbursed by the Prime Consultant per KDOT Prompt Payment requirements. (Please see Appendix K).
- Through payment monitoring, the MPO will be able to determine if the DBE and non-DBE firms are on track towards being paid the amount that is included in the contract and if those payments are being made in a prompt and timely manner. This is done via review of invoices, the DBE Payment Information Form, and the Prompt Payment Forms.
- During the project, if the MPO becomes aware of any significant changes that would affect the full payment of contractual amounts to the DBE, the MPO must contact the MPO Liaison to discuss the change and potential remedies. At the end of the project, if, for some unanticipated reason, the DBE firm has been paid significantly less than the contractual amount, the MPO must provide written justification to the MPO Liaison explaining what happened. Consistent monitoring efforts to avoid this scenario should be made during the course of the project to avoid this scenario, however.
- The MPO will complete and submit all tracking and reporting documentation (i.e., Prompt Payment Forms and DBE Payment Information Form) to the MPO Liaison in conjunction with quarterly requests for reimbursement. Please note that if there were no payments to sub-consultants (DBE or non-DBE) during a reporting period, a DBE Payment Information Form should be submitted indicating as such. Failure to submit the necessary documentation may delay the processing of the request for reimbursement.
- The MPO must ensure that the Final DBE Payment Affidavit is submitted to the MPO Liaison.

MPO Liaison Responsibilities:

- After the contracts with the Prime Consultant and sub-consultants have been fully executed and the MPO has submitted them, the MPO Liaison shall input the information that is shown below into the Semi Annual MPO DBE Tracking Report. This information completes the Awarded Contracts portion of a report required by the KDOT Office of Civil Rights Compliance.

Project	Contract Awarded?	Contract Date	Prime Consultant	Contract Amount	DBE Goal Set?	DBE Firm(s)	DBE Amount	Goal Set Date
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- The MPO Liaison will track the receipt of Prompt Payment Forms, track timeliness of payment dates according to the KDOT Prompt Payment Requirements and amounts paid to all consultants. The MPO Liaison will reconcile those payments to the amount expected per the contracts. Prompt payment tracking is generally located as part of the Pay Request Tracking sheet. An example of this tracking can be found in Appendix O.
- Through payment monitoring, the MPO Liaison will be able to determine if the DBE and non-DBE firms are on track towards being paid the amount that is included in the contract and if those payments are being made in a timely manner. During the project, if the MPO becomes aware of any significant changes that would affect the full payment of contractual amounts, the MPO must contact the MPO Liaison to discuss the change and rationale. After the conclusion of work

on the project, if the DBE firm has been paid less than the contractual amount, the Prime Consultant and MPO will provide an explanation for the difference on the Final DBE Payment Affidavit.

- Tracking of prompt payments and payment amounts will be done through the submission of the KDOT Prompt Payment Form, DBE Final Payment Affidavit and the DBE Payment Information Form submitted to KDOT in requests for reimbursement by the MPO. Tracking of progress towards meeting the DBE goal should be a continuous process during the project. A tracking element such as what is shown in Appendix O should be used by the MPO Liaison.
- Upon project completion, the MPO Liaison will verify and reconcile the total amount of reimbursements made and work performed by the Prime Consultant and DBE firm using the DBE Payment Information Form that is submitted with the final request for reimbursement as well as the final KDOT Prompt Payment Form.
- The MPO Liaison will ensure the receipt of all tracking, reporting, and billing documentation from the MPO for KDOT staff to meet the agencies reporting requirements.
- The MPO Liaison will immediately contact the Office of Civil Rights Compliance in the event a problem or issue arises concerning DBE performance, payment, irregularity, or any work-related issues. The MPO Liaison shall submit a copy of the DBE Payment Information Form to the Division Title VI Coordinator each quarter. After receiving all the required reporting, the Division Title VI Coordinator will complete the Semi Annual MPO DBE Tracking Report to assist KDOT's Office of Civil Rights Compliance staff in meeting their reporting responsibilities. Copies of all Prompt Payment Forms, DBE Payment Information Forms and the Final DBE Payment Affidavit will be retained for inclusion in the project file.
- The MPO Liaison will complete a Modified Commercially Useful Function (CUF) form in coordination with the MPO once during the study/project to verify and monitor the work of the DBE firm. This CUF Form shall be included in the project file This form shall be completed when the project is 1/3 to 1/2 of the way completed and can be completed in coordination with the MPO as needed.
- With submission of the final request for reimbursement, the MPO Liaison must have all Prompt Payment Forms and DBE Payment Information Forms documenting the amounts paid to the DBE and non-DBE sub-consultants. A Final DBE Payment Affidavit must also be submitted to the MPO from the Prime Consultant and, in turn, submitted to KDOT in the billing package. The MPO Liaison will reconcile the total amount of reimbursements made to the Prime Consultant and all sub-consultant firms per final invoice amounts.

Additional Resources

For more information on KDOT's DBE Program or Title VI in general, please see:

- KDOT Office of Civil Rights Compliance- <http://www.ksdot.org/offChiefCoun/CivilRights/Index.asp>
- FHWA DBE Program- <https://www.fhwa.dot.gov/civilrights/programs/dbess.cfm>
- Title 49 Part 26- http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

Step by Step List: What KDOT specific items need to be included in the Procurement and Reimbursement Process?

Note: Each Local Project Sponsor may also have required documents from their fiscal agent that are required. They should include those in addition to the KDOT specific items.

If a DBE Goal is Placed on Project	If NO DBE Goal is Placed on Project	
		When RFP is Issued:
X		Include a clear statement in the RFP indicating the DBE goal for this project and directions to complete the necessary provisions and attachments
X		Include directions regarding the documentation of a good faith effort in the event that the bidding consultant will not be proposing to meet the DBE goal set for the project
X		Attach Provision 07-19-80-R12 (MPO) and Provision 07-18-80-R26 which can be found in Appendices D and G
	X	Include a clear statement encouraging the use of DBE consultant firms for the project
X	X	Attach Special Attachment No. 1-Title VI Assurance (Appendix E)
X	X	Attach KDOT's Travel Policy (Appendix H)
X	X	Ensure that the RFP identifies all evaluation factors and their relative importance per 49 CFR 18.36
X	X	Submit Notice to Proceed with RFQ/RFP (Appendix A) with a draft copy of the RFP to KDOT for review.
		In Returned Proposals:
X		DBE Provision 07-19-80-R12 (MPO) (Appendix A) must be returned as part of each prime bidding consultant's proposal. Submit with Notice to Proceed with Interviews.
X		Attach appropriate good faith effort documentation to the Notice to Proceed with Interviews (Appendix B) in the event the prime bidding consultant does not propose to meet the DBE participation goal
X	X	Submit the Notice to Proceed with Interviews to KDOT for review.
X	X	If interviews are not being held, please submit information as explained in Step 2 of the Procurement Process found on page 6.
		In the scope of work and contracts:
X		Attach Final DBE Provision 07-19-80-R12 (MPO) (Appendix A) with final agreed upon contract amounts to the Prime Consultant agreement
X		Attach DBE Provision 07-18-80-R26 (Appendix G) to Prime Consultant agreement
X	X	Include prompt payment clause found on Page 11 in both the contract between the local project sponsor and Prime consultant and Prime consultant and each sub consultant
X	X	Attach KDOT Travel Policy (Appendix H) to Prime Consultant Agreement
X	X	Attach Special Attachment No. 1-Title VI Assurance (Appendix E) to Prime Consultant contract
X	X	Attach Form DA-146a-Contractual Provisions Attachment (Appendix F) to the Prime Consultant agreement
X	X	All contracts with sub consultants MUST also include Special Attachment No. 1-Title VI Assurance
X	X	Attach a PDF copy of the SAM Registration to the Notice to Award for the selected Prime Consultant. Example found in Appendix I.
X	X	Submit the Notice to Award to KDOT (Appendix C) with the draft contract to KDOT for review
		In requests for reimbursement:
X	X	DBE Payment information Form (Appendix L) with breakouts of amounts to the prime and each subcontractor. This will be used to track payments made to any DBE consultants throughout the duration of the project and verify final total payment amounts
X	X	KDOT's Prompt Payment Form and Certificate of Subcontractor Work and Payment (Appendix K) shall be included in order to ensure that prompt payments are being made by the local project sponsor to the Prime consultant and to DBE sub-consultants. All must be submitted before final acceptance of the project is given. KDOT Project Manager will be tracking submission of this form and reconciling amounts and reporting final DBE amounts to Office of Civil Rights Compliance.
X	X	All invoices and progress reports and any other necessary supporting billing documentation per the Requests for Reimbursement Checklist in Appendix J)
X		Submit a completed Final DBE Payment Affidavit to the KDOT Project Manager following the final reimbursement.

Step 1 of 3: Notice to Proceed with RFP/RFQ

TO:

FROM:

DATE:

Project Name:

The following are attached:

RFP RFQ

KDOT Use Only

Approved *Changes Needed* DBE Goal: %

Comments:

Signature: Date:

Step 2 of 3: Notice to Proceed with Interviews

TO:

FROM:

DATE: [CLICK TO SELECT DATE](#)

Project Name:

Names of Firms Selected for Interview (Check Box if the Firm Proposes to Meet the DBE Goal):

- | | |
|----------------------|--------------------------|
| <input type="text"/> | <input type="checkbox"/> |
| <input type="text"/> | <input type="checkbox"/> |
| <input type="text"/> | <input type="checkbox"/> |
| <input type="text"/> | <input type="checkbox"/> |
| <input type="text"/> | <input type="checkbox"/> |
-

KDOT Use Only

Approved *Changes Needed*

Comments:

Signature:

Date:

In the space provided below, please include all firms/consultants whom submitted proposals on the project. Please check the box located to the right of the firm's name if the DBE goal is proposed to be met in the proposal.

	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>

Please attach DBE provision 07-19-80-R12 for each of the firms listed above. In the event the DBE goal is not proposed to be met, the good faith effort process shall commence and required documentation shall be provided.

If Interviews Will Not be Held

Please briefly outline the procurement process and evaluation process conducted. This outline should include a rationale for why no interviews being held. Please note that local procurement policies shall be followed in regard to interviews. Please attach an additional page if needed.

Step 3 of 3: Notice to Award

TO:

FROM:

DATE: CLICK TO SELECT DATE

Project Name:

Name of Selected Firm(s):

Please attach a Draft Scope of Work, Budget and Fee Sheets, and Contract and a copy of the Prime Consultant's SAM Registration with Expiration Date printed from www.sam.gov.

Note: A finalized Scope of Work, Budget and Fee Sheets, and Contract with required attachments must be sent to KDOT within **10** days after the contract is signed. A copy of the contract between the Prime and each sub-consultant must be submitted within **10** days after those contracts are signed.

KDOT Use Only

Active SAM Registration Provided

Approved

Changes Needed

Comments:

Signature:

Date:

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/>

KANSAS DEPARTMENT OF TRANSPORTATION

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

PREAMBLE

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

CLARIFICATION

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

ASSURANCE APPENDIX A

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

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

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

ASSURANCE APPENDIX E

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

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

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

CONTRACTUAL PROVISIONS ATTACHMENT

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

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

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

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

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

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

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

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

A. ASSURANCE.

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

B. DEFINITIONS.

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

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

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

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

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

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

II. DBE CONTRACT GOALS.

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

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

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

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

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

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

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

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

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

III. MEETING DBE CONTRACT GOAL CRITERIA.

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

A. REQUIRED DBE PARTICIPATION INFORMATION.

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

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

B. GOOD FAITH DETERMINATION.

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

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

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

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

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

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

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

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

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

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

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

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

C. COUNTING DBE PARTICIPATION TOWARD DBE CONTRACT GOALS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. BUSINESS INTEGRITY

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

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

F. TWO PARTY CHECKS.

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

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

IV. SANCTIONS.

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

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

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

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

Appendix H

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

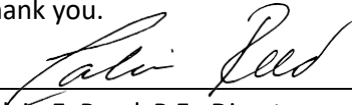
No out-of-state hotel bills will be reimbursed without advanced written approval (for prime and/or sub-consultant). An amount above these daily rates or un-approved out-of-state stays will not be reimbursed.

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



TRANSPORTATION, KANSAS DEPARTMENT OF

DUNS Unique Entity ID 126298996	SAM Unique Entity ID S7VNQD6633Q6	CAGE / NCAGE 47TH8
Purpose of Registration Federal Assistance Awards Only	Registration Status Active	Expiration Date Jan 15, 2022
Physical Address 700 SW Harrison ST FL 7 Topeka, Kansas 66603-3929 United States	Mailing Address 700 SW Harrison ST, 7TH FL Topeka, Kansas 66603-3929 United States	

Business Information

Doing Business as (blank)	Division Name (blank)	Division Number (blank)
Congressional District Kansas 02	State / Country of Incorporation (blank) / (blank)	URL (blank)

Registration Dates

Activation Date Jan 19, 2021	Submission Date Jan 15, 2021	Initial Registration Date Nov 17, 2005
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Entity Dates

Entity Start Date Jul 1, 1975	Fiscal Year End Close Date Jun 30
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Immediate Owner

CAGE (blank)	Legal Business Name (blank)
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Highest Level Owner

CAGE (blank)	Legal Business Name (blank)
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Executive Compensation

Registrants in the System for Award Management (SAM) respond to the Executive Compensation questions in accordance with Section 6202 of P.L. 110-252, amending the Federal Funding Accountability and Transparency Act (P.L. 109-282). This information is not displayed in SAM. It is sent to USAspending.gov for display in association with an eligible award. Maintaining an active registration in SAM demonstrates the registrant responded to the questions.

Proceedings Questions

Registrants in the System for Award Management (SAM) respond to proceedings questions in accordance with FAR 52.209-7, FAR 52.209-9, or 2.C.F.R. 200 Appendix XII. Their responses are not displayed in SAM. They are sent to FAPIIS.gov for display as applicable. Maintaining an active registration in SAM demonstrates the registrant responded to the proceedings questions.

SAM Search Authorization

I authorize my entity's non-sensitive information to be displayed in SAM public search results:

Yes

Entity Types

Business Types

Entity Structure U.S. Government Entity	Entity Type US State Government	Organization Factors (blank)
Profit Structure (blank)		

Socio-Economic Types

Check the registrant's Reps & Certs, if present, under FAR 52.212-3 or FAR 52.219-1 to determine if the entity is an SBA-certified HUBZone small business concern. Additional small business information may be found in the SBA's Dynamic Small Business Search if the entity completed the SBA supplemental pages during registration.

Government Types

U.S. State Government

Financial Information

Accepts Credit Card Payments
Yes

Debt Subject To Offset
No

EFT Indicator
0000

CAGE Code
47TH8

Points of Contact

Electronic Business

♀
Ami Fulghum

**Kansas Department Of Transportation
Bureau Of Fiscal Services
Topeka, Kansas 66603
United States**

Government Business

♀
Pam Anderson

**Kansas Department Of Transportation
Bureau Of Fiscal Services
Topeka, Kansas 66603
United States**

Service Classifications

NAICS Codes

Primary	NAICS Codes	NAICS Title
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Disaster Response

This entity does not appear in the disaster response registry.

Checklist for Requests for Reimbursement to KDOT Consolidated Planning Grant (CPG) Funded Consultant Services and Goods

This checklist is intended to serve as an aide to MPOs in preparing requests for reimbursement to KDOT for CPG Funded consultant services and goods. The MPO should submit requests for reimbursements for CPG funded consultant services and goods according to the MPOs currently established reimbursement schedule. KDOT will process the request for reimbursement upon receipt of complete and proper documentation.

Consultant Services

Consultant Services funded by CPG funds must be included in the MPO's quarterly or monthly request for reimbursement.

Consultant services funded by KDOT's Competitive CPG funds **MUST** be submitted in a separate request for reimbursement on a quarterly or monthly schedule.

Details for what to include in the Request for Reimbursement are below and may also be found in the MPO Manual.

- Cover letter specifying 100% amount of the costs, amount of request for reimbursement, and project number
- Match documentation as appropriate (varies depending on match source)
- Quarterly Progress Reports according to tasks in the UPWP (Regular CPG Only)
- Revenues vs. Expenditures table (Regular CPG Only)
- Summary of payroll expenses/timesheets for MPO staff and consultants in their invoices to the MPO
- Consultant invoices and progress reports (please ensure that all direct cost receipts are included and itemized as well as providing documentation for mileage charges as appropriate)
- Brief list or narrative summary progress report of milestones and work performed must be submitted as part of the consultant and sub-consultant's invoices
- Completed Certificate of Subcontractor Work and Payment (KDOT Prompt Payment Form) form submitted by the consultant
- DBE Payment Information Form and Final DBE Payment Affidavit Form as appropriate
- Additional documentation as needed or requested by KDOT (receipts, invoices, etc.)

Goods

Typically the expenses related to the purchase of goods using regular CPG funds are included in the quarterly or monthly requests for reimbursement. Goods purchased using KDOT's Competitive CPG funds MUST be submitted separately from regular CPG fund requests for reimbursement. Please retain all procurement related documentation.

Requests for reimbursement for goods purchased with CPG Funds must include:

- Cover letter specifying 100% amount of the costs, amount of request for reimbursement, and project number
- Match documentation as appropriate (varies depending on match source)
- All invoices and receipts associated with the purchase

Kansas Department of Transportation

Prompt Payment Form

Certificate of Sub consultant Work and Payment

To be completed by the Prime Consultant and submitted to the

Local Project Sponsor/MPO in the subsequent invoice

_____ (Local Project Sponsor/MPO)

_____ (KDOT Project Number)

I certify that _____ received payment from the _____
 (Prime Consultant) (Local Project Sponsor/MPO)

on _____ for Invoice Number _____ and within 10 calendar days after
 (date check received)

this date, paid the subconsultants named below for the satisfactory work completed on or before the invoice "paid to date" in compliance with the Prompt Pay Provisions included in the project contract.

Subconsultant	Invoice Date	Date Paid	Amount Paid
			\$
			\$
			\$
			\$
			\$
			\$

 (Date)

 (Signature of Prime Consultant Representative)

 (Title)

(Completed forms are to be included in the prime consultant invoice to the local project sponsor/MPO and submitted to KDOT in requests for reimbursement. Supporting documentation must be included in requests for reimbursement or otherwise attached.)

This form is to be completed and submitted by the MPO/Project Sponsor.

Kansas Department of Transportation DBE Payment Information

For each UPWP/Consultant Activity, please include ALL Prime and Sub Consultant payment information.

MPO/Project Sponsor: _____

Information for the Quarter/Month: _____

UPWP/ Consultant Activity	Name of Prime Consultant or Sub Consultant	Amount of Consultant/Sub Consultant Contract	Status of Consultant Contract (active/closed)	Paid this Quarter/Month	Cumulative Consultant Payments	Certified DBE?
		\$		\$	\$	<input type="checkbox"/>
		\$		\$	\$	<input type="checkbox"/>
		\$		\$	\$	<input type="checkbox"/>
		\$		\$	\$	<input type="checkbox"/>
		\$		\$	\$	<input type="checkbox"/>
		\$		\$	\$	<input type="checkbox"/>
		\$		\$	\$	<input type="checkbox"/>
		\$		\$	\$	<input type="checkbox"/>
		\$		\$	\$	<input type="checkbox"/>
		\$		\$	\$	<input type="checkbox"/>

Submitted by: _____ Date: _____
 Title / position: _____

*As a reminder, a DBE may not sub-consult out their work and have the amount count towards the DBE Participation Goal.
 Payment amounts must be adjusted accordingly.

**Please remember to submit Prompt Payment Forms.

DBE Payment Information Form Instructions

Current as of 6/11/21

- If there is no consultant activity in any given month/quarter, please note that on the form in some way, i.e. “Not Applicable” or “No Activity”.
- If a project seeking consultant services did not go through a formal procurement process, often those under \$25,000 do not, they still must be reported on the DBE Payment Information Form for the duration of the project. *(Internal: These simple procurements should be added to the top section of the Semi-Annual DBE Report and noted as such type of procurement.)*
- List the Prime Consultant first for each activity then each Sub Consultant even if there were no payments to one or more of the firms during the reporting period. Continue to keep each contracted firm listed on every form for the duration of the project.
- Consultant firms are to be reported on this form regardless of DBE certification status, DBE or non-DBE.
- For each activity, the amounts listed for the individual consultant firms (see boxes 1-4) should sum to the total amount of the Prime Consultant’s contract. However, Box 1 should be the specific amount attributable to the Prime’s individual portion of the overall contract only and not the total of the entire project contract.
- For the “Status of the Consultant Contract” column, closed means the MPO has accepted the final deliverable, paid the contract in full, and closed the contract on the MPO end. No further payments will occur. Once the activity has been reported as closed for one reporting period it can be omitted from the subsequent quarter/month forms.
- The “Paid this “Quarter/Month” means the amount the MPO has paid the Prime Consultant during that quarter’s timeframe. This may also be per month depending on agreed upon billing timing with MPO’s Liaison. The key is that the reporting timeframes remain consistent.
- The “Cumulative Consultant Payment” is the cumulative amount paid to the Prime Consultant or Sub Consultant over the course of the entire activity including if the project crosses multiple years. This is not the per year amount.
- Routine reconciliations between the reported amounts from the “Cumulative Consultant Payments” column on submitted forms and KDOT’s DBE Report are performed by KDOT staff to ensure accuracy. Further it will be reconciled after the DBE Payment Information Form notifies KDOT that the project is closed. This ensures the reported amounts from the form and our DBE Report balance before final submission to FHWA/FTA.
- Do not reformat or adjust this form.

This form is to be completed and submitted by the MPO/Project Sponsor.

Kansas Department of Transportation DBE Payment Information

For each UPWP/Consultant Activity, please include ALL Prime and Sub Consultant payment information.

MPO/Project Sponsor: Kansas MPO

Information for the Quarter/Month: 3rd Quarter 2021

UPWP/ Consultant Activity	Name of Prime Consultant or Sub Consultant	Amount of Consultant/Sub Consultant Contract	Status of Consultant Contract (active/closed)	Paid this Quarter/Month	Cumulative Consultant Payments	Certified DBE?
LRTP Update	MPO Consultants	1 \$79,679.73	Active	\$25,678.33	\$44,734.76	<input type="checkbox"/>
LRTP Update	Consultants ABC	2 \$37,890.09	Active	\$17,889.11	\$22,368.65	<input checked="" type="checkbox"/>
LRTP Update	MPO Engineering	3 \$25,678.00	Active	\$5,623.98	\$11,258.98	<input checked="" type="checkbox"/>
LRTP Update	MPO and Associates	4 \$11,887.33	Active	\$4,325.77	\$6,452.78	<input checked="" type="checkbox"/>
Travel Demand Model	HM and Associates	\$60,000	Active	\$45,732.00	\$54,336.88	<input type="checkbox"/>
Complete Streets Manual	Consultant ABC	\$30,000	Closed	\$5,756.00	\$29,987.13	<input checked="" type="checkbox"/>
On Call Legal Services	On Call Lawyers & Sons	\$7,000	Active	\$1,476.00	\$3,539.00	<input type="checkbox"/>
		\$		\$	\$	<input type="checkbox"/>
		\$		\$	\$	<input type="checkbox"/>
		\$		\$	\$	<input type="checkbox"/>

Submitted by: MPO Date: 9/13/21

Title / position: Transportation Planner

*As a reminder, a DBE may not sub-consult out their work and have the amount count towards the DBE Participation Goal.
Payment amounts must be adjusted accordingly.

**Please remember to submit Prompt Payment Forms

Kansas Department of Transportation Final DBE Payment Affidavit

Instructions

This form is required for every KDOT CMAQ/STP/TA/CPG funded Planning, Education and Outreach, and Non-Infrastructure project where a DBE firm(s) is conducting work. This form is to certify that all payments to the DBE sub consultant have been made. It is to be completed by the Prime Consultant and submitted to the Local Project Sponsor after they make the Final Payment to the DBE firm. The Local Project Sponsor shall submit this affidavit to the KDOT Program Manager in a timely manner. If a DBE goal was established on the project, under the DBE contract amount, use the amount found in the contract between the Prime Consultant and sub-consultant(s). Please list each DBE Firm separately. Under the DBE Amount Earned, list the total amount paid to the DBE(s), including under runs and overruns and additional work that may have occurred. The statements made on each form are subject to verification by KDOT or FHWA personnel.

Project Title: _____

State Project No: _____ - _____ - _____ County: _____

Contract No: _____ Federal Project No: _____

Prime Consultant: _____

DBE FIRM NAME	SCOPE ITEMS PERFORMED	DBE CONTRACT AMOUNT	DBE AMOUNT EARNED

If the total DBE Amount Earned is less than the DBE Contract Amount, please provide a brief justification for the difference in amounts.

Signature of Prime Consultant: _____ Date: _____

Wizard of Oz, Kansas-Bikeway and Trail Plan						
Example Of Prompt Payment Tracking for KDOT Project Manager						
FFY 2017 CMAQ Funds						
Contract # 0123456						
CMAQ Amount Available (80%)	\$50,000			CMAQ Balance Remaining:	\$0.00	
Local Match (20%)	\$12,500			Local Share Remaining:	\$0.00	
Total Project Cost	\$62,500					
<i>Minimum Local Match Required</i>	<i>\$12,500</i>			Contractual Amount:	\$62,500.00	
Payment #	Date	Payment Period	Federal Share	Local Cash Match	Total Claims	Verified Voucher
1	2/15/2017	Jan 17	\$2,400.00	\$600.00	\$3,000.00	X
2	3/12/2017	Feb 17	\$4,000.00	\$1,000.00	\$5,000.00	X
3	4/17/2017	Mar 17	\$10,400.00	\$2,600.00	\$13,000.00	X
4	5/10/2017	Apr 2017	\$4,400.00	\$1,100.00	\$5,500.00	X
5	6/13/2017	May 2017	\$4,800.00	\$1,200.00	\$6,000.00	X
6	7/28/2017	June 2017	\$12,000.00	\$3,000.00	\$15,000.00	X
7	8/22/2017	July 2017	\$12,000.00	\$3,000.00	\$15,000.00	X
		Totals	\$50,000.00	\$12,500.00	\$62,500.00	

DBE Goal Set by KDOT:	\$10,000.00	Firm(s)	Contract Amount
DBE Contractual Amount:	\$11,000.00	Prime Consultant	\$51,500.00
Payment Amount Reported:	\$11,000.00	*DBE Sub-Consultant	\$11,000.00
DBE Amount Remaining:	\$0.00		

Payment #	Date	Payment Period	Payment Amount to DBE Sub-Consultant	Prompt Payment Form Verified*	Payment to Prime Consultant
1	2/15/2017	Jan 17	\$1,000.00	X	\$3,000.00
2	3/12/2017	Feb 17	\$1,000.00	X	\$4,000.00
3	4/17/2017	Mar 17	\$3,000.00	X	\$7,500.00
4	5/10/2017	Apr 2017	\$1,000.00	X	\$4,500.00
5	6/13/2017	May 2017	\$3,000.00	X	\$10,000.00
6	7/28/2017	June 2017	\$2,000.00	X	\$7,000.00
7	8/22/2017	July 2017	\$0.00	X	\$15,500.00
		Totals	\$11,000.00		\$51,500.00

*Copies of the Prompt Payment form and DBE Payment Info Form should be submitted to Contract Compliance for their tracking purposes.

Distribution: Bureau of Transportation Planning
Office of Contract Compliance

**KANSAS DEPARTMENT OF TRANSPORTATION
COMMERCIALLY USEFUL FUNCTION (CUF) FORM**

**(CPG Funded and CMAQ/STP/TA Funded Planning, Education, and Outreach
Non-Infrastructure Projects with a DBE Goal)**

**TO BE COMPLETED BY the KDOT PROJECT MANAGER WHEN THE DBE'S
PORTION OF WORK IS 1/3 TO 1/2 COMPLETED. ATTACH ONE COPY OF AN INVOICE FROM THE PRIME
CONSULTANT AND DBE SUBCONSULTANTS**

1. Local Project Sponsor/MPO:

2. Project Name & Description:

3. Prime Consultant: _____

4. Subconsultant(s): _____

5. DBE Work Start Date: _____

6. DBE Estimated Date of Completion: _____

7. Primary DBE Consultant Contact (Name and Title):

8. Is Primary DBE Consultant Contact on DBE's Payroll? Yes _____ No _____

9. Is Primary DBE Consultant Contact on another Payroll? Yes _____ No _____

10. To whom does the Primary DBE Consultant Contact directly report?

11. Is any of DBE firm's staff on another Payroll? Yes _____ No _____

12. Is the DBE Owner directly working on the project? Yes _____ No _____

What % _____ ?

13. Does the DBE appear to control own work? Yes _____ No _____

14. Is the DBE firm subcontracting any of their work to a subsequent firm? Yes _____
No _____

If yes, answer the following: Firm's Name: _____

Amount of work: \$ _____

15. Does it appear that the DBE firm is performing their own work? Yes _____ No _____

16. Does it appear that the DBE is managing their portion of the project and using their own company employees? Yes _____ No _____

17. Does it appear that the qualities of the DBE's performance, scheduling and project management are meeting industry standards? Yes _____ No _____

Comments: _____

Reviewed by: _____

Title: _____

Date of Review: _____

cc: File

Local Project Sponsor/MPO

Background Information

COMMERCIALLY USEFUL FUNCTION

One of the key requirements of the DBE Program is that a commercially useful function be performed. This is defined as: "Being responsible for execution of a contract or a distinct element of the work by actually performing, managing and supervising the work involved." This requirement is monitored by KDOT field personnel who are assigned to the project and by staff from the Office of Contract compliance. KDOT personnel look at who supervises the employees, who pays the employees, and who owns the equipment used by the DBE. Contractors, DBEs and all employees are required to fully cooperate with KDOT personnel conducting field audits. Failure of a DBE to perform a commercially useful function will result in that work not being counted toward the prime contractor's DBE goal. In certain cases it could result in KDOT not paying the prime contractor for the work, or it could lead to removal of eligibility of the DBE. In cases of deliberate fraud, it could lead to criminal or civil prosecution of both the prime contractor and the DBE firm.

Situations that could cause problems are shared employees, supervision of the DBE employees by another contractor, use of the prime contractor's equipment, use of other non-owned equipment by the DBE without a lease, materials for the DBE ordered or paid for by the prime contractor, or an item of work being done jointly by the DBE and another contractor.

Management: The DBE must manage the work that has been contracted. Management includes scheduling daily operations, ordering equipment and materials, preparing and submitting certified payrolls, and hiring and firing employees. All work must be performed with the DBE's own workforce. The DBE owner must supervise daily operations either personally or with a full time, skilled and knowledgeable superintendent. The superintendent must be under the DBE's direct supervision. The DBE owner must make all operational and managerial decisions of the firm.

Materials: The DBE shall negotiate the cost, arrange delivery and pay for the materials and supplies for the job. KDOT staff will review invoices to see they are billed and paid by the DBE. The DBE must determine the quantity of the material and be responsible for the quality of the material. Two-party checks for payment may be made to the DBE and supplier only with written approval by KDOT Office of Contract Compliance in advance. No credit toward the DBE goal will be given to the cost of materials or supplies paid directly by the prime contractor for the DBE.

Employees: To be considered independent businesses, DBEs should keep a regular workforce. DBEs should not "share" employees with non-DBE contractors, especially the prime contractor.

Upon completion of field audits, firms will be notified in writing if any violations are found.

1. Minor violations of federal/state regulations will result in continued scrutiny of the firm.
2. Serious, multiple, or repeat violations will result in removal of the DBE firm from the DBE directory for a period of time and a monetary penalty for the prime contractor.
3. Willful intent to subvert federal regulations will result in a referral for prosecution and debarment.