Request for Proposals

Multimodal Integration Plan

Agency Overview

The Flint Hills Metropolitan Planning Organization (FHMPO) was designated as the Metropolitan Planning Organization (MPO) for the Manhattan, Kansas Urbanized Area in February of 2013. The FHMPO serves a much larger area than just the City of Manhattan; consisting of four cities (the City of Manhattan, the City of Junction City, the City of Ogden, and the City of Grandview Plaza), portions of three counties (Riley County, Pottawatomie County, and Geary County), and the southern portion of the Fort Riley Military Base.

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

Background Information

The FHMPO is soliciting proposals from qualified consultants to assist the Flint Hills region in creating a more fully integrated multimodal transportation system. The outcome of this process will likely result in three main components:

- Route Realignment Study for the Manhattan fixed-route transit system,
- Regional Bicycle and Pedestrian Master Plan (from Wamego to Junction City), and
- Multimodal Integration Plan, which would identify opportunities to integrate multiple modes of transportation.

While the region has completed transit studies and bike/ped plans in the past, the two have always been completed independently of each other. Each of the modes (vehicle, transit, bicycle and pedestrian) have traditionally been mapped and created as separate layers. For example, Manhattan has a Bike Map and FHATA has a map of the various transit routes, but nowhere is there a map showing both the bicycle and transit networks and where these two systems intersect. To develop the MIP, each “layer” of transportation will be overlaid with one another to develop and design an integrated network of transportation modes. This approach would allow us to create any combination of maps to allow users to transition seamlessly from their car, to the bus, and end their journey on foot. The development of a physical map is not intended as the end result, but rather using the methodology described above to develop a fully integrated transportation network.
Component One: Manhattan Fixed-Route Realignment Study

In 2010, the City of Manhattan commissioned a “Transit Plan Update” to an original study completed in 2001. Since 2010, Flint Hills Area Transportation Agency (FHATA) has seen a 753% growth in ridership (48,853 riders in 2010 compared to 367,698 in 2014). This increase in ridership doesn’t include three additional services (listed below), which are expected to increase the demand even further. This level of growth was not envisioned in the 2010 update.

1) The Wamego Regional Shuttle: Implemented in January 2015, which runs between Manhattan and Wamego 12 hours a day;
2) College of Architecture Planning and Design’s (APDesign) Swing Space (APDWest) Shuttle: Starting August of 2015, running 18 hours a day from K-State’s main campus to APDesign’s swing space located ten miles away, adjacent to the Manhattan Regional Airport; and
3) Junction City Fixed-Route System: Planned to begin operating in early 2016, the three new routes will provide fixed-route services in Junction City, Grandview Plaza, and greater Geary County.

Additional FHATA information for the Manhattan service:

- In 2011, FHATA implemented the Jardine Route on the K-State campus; this service operates seven days a week and currently averages over 15,000 rides per month.
- The Park and Ride Route began operating two years ago and has changed each year in response to ongoing construction on campus; this route is anticipated to change again beginning in May 2016.
- Neither the Jardine Route or the Park and Ride was envisioned in the 2010 update, neither has been integrated into or aligned with the city wide fixed routes.

![Current and Previous Years Comparison of FHATA Bus Ridership](chart.png)
If the percentage increase in ridership during the first half of 2015 continues through the second half of the year, the Flint Hills region could see over 467,000 riders in 2015. That would be 956% growth in ridership since 2010, when the last transit plan was completed. This growth is anticipated to continue in line with the growth of the Manhattan urbanized area.

Kansas State University, the largest trip generator and largest provider of local match funding for transit in the region, is working to implement the goals it established in the 2025 Campus Master Plan and North Campus Master Plan, which includes the development of new buildings on surface parking lots, limiting vehicular traffic through main campus to buses and service vehicles only; and increasing the development along the northern part of campus along Kimball Avenue. As K-State continues to implement its master plan, the role for transit will only continue to be more prevalent. The North Campus Master Plan includes a component which examines the role that transit can play to mitigate traffic and parking issues currently facing and anticipated to face the University and surrounding community. These considerations were not included in the 2010 Transit Plan Update. To that end, it must also be noted that the construction of the National Bio and Agro Defense Facility (NBAF) (currently underway), adjacent to campus, was also not envisioned during the 2010 transit plan update and makes the review of the transit system as a whole even more critical.

The exponential increase in transit ridership since the 2010 study, the implementation (or planned implementation) of three additional transit services, and the changes on and around K-State’s campus, not only reinforces the need for a transit realignment study, but for taking a broader, more multimodal approach to addressing transportation issues, as identified in the Multimodal Integration Plan.

K-State Pedestrian Zone per the K-State Master Plan
While the FHMPO’s Flint Hills Transportation Plan does recommend a modest expansion of transit services, which would increase access to the underserved areas of the region and additionally increase services hours, it is imperative that prior to implementing these recommendations, a comprehensive review of the current system is first completed to maximize resources and establish new efficiency and performance goals based upon MAP-21.

As a note, there is currently a study underway in Junction City to both examine the feasibility of a fixed route service as well as to plan for the implementation of a fixed-route transit system, which is why the realignment study is only in the Manhattan Urbanized Area. The MIP will take into consideration the regional connections that have been recently implemented (i.e. Junction City fixed routes and the Wamego Regional Route) to ensure they fit seamlessly into the Manhattan fixed-route system.

A key component to achieving the long-term success of transit in this region is education. Developing tools which helps to create a culture in which transit is common place, in which the community has easy and effective access to educational and training tools and effective marketing of the system is an important part of this route realignment study.

As the 3rd fastest growing metropolitan area in the country, it is vital the current transit system be reevaluated to appropriately plan for the future; while also coordinating with the other modes of transportation. The route realignment study will provide the City of Manhattan with a foundation on which to build an expanding transit system, make regional connections, and improve the multimodal connectivity.

Component Two: Regional Bicycle and Pedestrian Master Plan

The second focus of the MIP will be the development of a regional bicycle and pedestrian master plan. The Manhattan Area (including Riley County and Blue Township) adopted an update to the Manhattan Area Transportation Strategy (MATS) earlier this year. The MATS serves as the transportation chapter of the Comprehensive Plan. The MATS recommends updating the existing City of Manhattan Bicycle Master Plan (originally adopted in 1998) and the creation of a pedestrian master plan. Currently, the City of Manhattan Bicycle Master Plan does not extend outside of the City limits, nor cover the entire MPO area. It should be noted that the City of Manhattan has a 5-year strategic plan for bicycle and pedestrian infrastructure. The City also has a Bicycle and Pedestrian Coordinator that can help during plan development. The bike/ped plan created as part of the MIP would serve as the update to the City of Manhattan Bicycle Master Plan and expand the network to include the Counties.

The MIP bicycle and pedestrian master plan would also provide Junction City with a more comprehensive approach from which to build the bicycle and pedestrian chapter in their next comprehensive plan update. Like the Manhattan Area, Junction City recently completed an update to their Comprehensive Plan. The Junction City Comprehensive Plan includes a map of proposed trails and bike boulevards, but it is limited in the discussion regarding other alternative options (bike lanes, preferred bike routes, multiuse paths, etc). The MIP would expand on the work completed during both the Comprehensive Plan update and the FHMPO’s Flint Hills Transportation Plan to provide a more in depth look at bicycle and pedestrian opportunities and recommendations. Junction City, like Manhattan, also did not focus on regional connections to areas in Geary County or Fort Riley. The MIP would analyze
all three counties in the MPO boundary to identify regional connections and opportunities, which has not been previously done.

The geography of the Flint Hills MPO region is somewhat limiting in the opportunities to make bicycle and pedestrian connections between Manhattan and Junction City. The downtowns between the two cities are nearly 20 miles apart and separated by a 4-lane divided, grade-separated, state highway (carrying 20,000 plus vehicles a day); the Fort Riley Military Installation (which restricts access for security purposes); and the Kansas River. The MIP would evaluate all options to provide a safe and efficient connection between the two cities, while also taking in to account connections to Fort Riley from both the east and west.

Another regional connection to be included is along East Highway 24 in Pottawatomie County. US-24 carries upwards of 24,000 vehicles a day between Wamego and Manhattan (just under half of those trips being generated by Blue Township). Blue Township is the fastest growing residential area in and around Manhattan; with significant growth expected to continue over the next several decades. Currently, there are no pedestrian or bicycle accommodations along this roadway, leaving bicyclists and pedestrians (including those pushing strollers) to use the shoulder of the highway to access Linear Trail and Manhattan. As part of the MIP, a connection from Wamego to Manhattan (approximately 10 miles) will be evaluated, along with providing access from Blue Township to Linear Trail, which then allows for a connection into Manhattan (which was overwhelming heard during our FHTP open houses).
Component Three: Multimodal Integration Opportunities

By developing the fixed-route realignment study (including a transit educational component) and bicycle/pedestrian master plan concurrently, there is a greater opportunity to identify potential “mini multimodal hubs”. These hubs will improve the convenience of transitioning from one mode to another. To develop this portion of the plan, several concepts being discussed and implemented regionally should be evaluated for inclusion within the Multimodal Integration Plan. Concepts might include a long-term a bike share program, park and ride locations, suggestions on working towards a regional Complete Streets like policy, and the role of technology (i.e. ITS, apps, real-time transit, etc.). Given the diverse demographic conditions of our region, it is acknowledged that different approaches will need to be utilized for Junction City and Manhattan.

A grass-roots approach has been used to start a bike share program in Manhattan, called Green Apple Bikes (GAB). The MIP would allow for the identification of additional bike share station locations both
near- and long-term. Currently, GAB is a free system without any locking technology available on the
bikes. The MIP should consider the longevity of this approach and make appropriate recommendations
on continuing to build this system.

Another example of where the MIP can play a role in the identification of multimodal trips is the
consideration of future parking lots or garages. The City of Manhattan recently completed a parking
analysis study. There is consideration of building a parking garage in Aggieville, to elevate parking
constraints. This would be extremely expensive and only continue to encourage vehicle usage on
roadways that are already experiencing capacity issues and in areas where there are high volumes of
pedestrians and bicyclists. By identifying under-utilized parking lots/garages in other areas of town, and
establishing the proper transit, bicycle and/or pedestrian connectivity, new parking lots/garages may be
able to be avoided. While the above example is more Manhattan specific, the same concept can be
applied to Junction City in regards to large employers or regional commuting.

To elaborate on the technology component of this plan; the region is developing its first Intelligent
Transportation Systems (ITS) Architecture, which will include the role ITS can play in providing for a safe
and efficient multimodal transportation system. One of the near-term items to be implemented is a
real-time transit information system, so transit users can access information like the location of their bus
and its estimated time of arrival. This would then be integrated into a longer-term project, the
implementation of a parking management system. The parking management system would be first
implemented on and around K-State’s campus (due to K-State’s interest and the ability to cost-share)
and then slowly expand into other areas of the region. For example, as K-State continues to redevelop
surface parking lots into buildings, parking will be pushed to the periphery of campus; requiring the
need to use multiple modes of transportation to travel from these lots to campus. The parking facilities,
whether surface lots or garages, would become multimodal hubs serving vehicles, transit users, and
bicyclists. The idea is to have a system that would provide users with several pieces of information at
each of the locations that would include the number of parking spots remaining, availability of bike-
share bicycles at that location and information on the estimated time of arrival of the next transit bus.

This final component of the MIP brings together all modes of transportation to uncover opportunities to
encourage the use of multiple modes of transportation by making it more convenient to transition from
one mode to another, with the help of proper planning and technology. While there are examples
provided within this section, we are eager to learn of other concepts to improve the multimodal nature
of our transportation system that might be worth exploring as part of this project.

Scope of Services
The FHMO is soliciting proposals from qualified consultants to assist the Flint Hills region in creating a
more fully integrated multimodal transportation system. The outcome of this process will likely result in
three main components;

- Route Realignment Study for the Manhattan fixed-route transit system with transit educational
  component,
- Regional Bicycle and Pedestrian Master Plan (from Wamego to Junction City), and
- Multimodal Integration Plan, which would identify opportunities to integrate multiple modes
  of transportation.
**Manhattan Fixed-Route Realignment Study**

- A realignment and integration study of current Manhattan fixed route transit services and additional new services proposed in the FHMP
- Establishes growth metrics to aid in anticipated continued growth of transit over the next five years in Manhattan, including Kansas State University and the region generally
- New efficiency goals and performance measures based upon MAP-21 guidelines
- A transit education component which includes travel training and marketing tools

**Regional Bicycle and Pedestrian Master Plan**

- Bicycle and Pedestrian Master Plan focusing on regional connections from Wamego to Junction City
- Review of Bicycle and Pedestrian Plans in Junction City and Manhattan to aide in regional connections
- Guidance/Policy regarding appropriate bicycle accommodations for different types of roadways and intersections
- List of project recommendations including timeline, and estimated project cost
- Review of existing efficiency goals and performance measures based upon MAP-21 guidelines

**Multimodal Integration Plan**

- Opportunities to expand and coordinate the multimodal system (i.e. park and ride facilities, multimodal hubs, etc)
- Examine opportunities for ITS to help implement a more coordinated multimodal transportation system
- Further analysis of Manhattan’s Green Apple Bikes program and long-term plan

**Project Management**

The proposal should include a proposal that:

- Includes a schedule that meets the identified timeframe
- Includes significant involvement of the FHIMPO staff, City of Manhattan Bicycle/Pedestrian Coordinator, local municipalities/agencies, transit providers, and other necessary local, and state and federal agencies

**Public Involvement**

The FHIMPO and other regional partners will be the main agency carrying out the public involvement activities. The consultant should provide a suggested public involvement process and schedule that would sync with the consultants proposed program. Any innovative or best practices for obtaining cost-effective public input or disseminating information should be included in the proposal.

**Document Production**

In coordination with FHIMPO staff, the consultant will prepare:

- The document in Microsoft Office 2013 programs to allow easy editing of the documents (Word, Excel, Access, Publisher, and PowerPoint);
- The entire MIP document, including writing all sections of the Plan and researching all plans related to transportation within the region;
• A technical report documenting working procedures and information, analysis, decisions, and project results, with associated text, graphics, tables, maps, and figures. One (1) hard copy and one (1) DVD are required;
• Five (5) color maps of both the transit routes and bicycle and pedestrian master plan shall be provided on 34 x 22 inch sheets and a reproducible electronic format;
• Twenty (20) DVDs (with labels) containing the executive summary, the entire plan, and all appendices, including maps;
• Ten (10) final copies (in color) of the MIP in D-ring binders, with appropriately labeled dividers; and
• All final products to be presented in Microsoft Office 2013 and Adobe PDF program electronic format as listed above.

Proposal Content

The following information should be included in the proposal:

• A detailed list of tasks and subtasks to be completed, including a description of how they will be completed;
• A timeline for completion of the requested services;
• Documentation of ability to accomplish the requirements of the contract responsibilities within the desired timeframe;
• List of the proposed principal who will be responsible for the work, proposed project manager, and project team members with resumes;
• A list of any sub-consultants, the tasks they will be assigned, the percent of work to be performed by each, a cost estimate for the work and the staff that will be assigned;
• A list of client references for similar projects that the project team has worked with in the past;
• A list of projects with similar size, scope, type, and complexity that the proposed project team has successfully completed in the past;
• Required Disadvantaged Business Enterprise (DBE) Firms participation documentation;
• A cost structure for services, including:
  o actual cost, including a breakdown by specific task and subtask;
  o man hours, itemized to include category (project manager, modeler, etc.), estimated hours, rate per hour, and total costs;
  o supplies and materials;
  o travel;
  o overhead; and
  o sub-consultant(s), if necessary. (Please note that the same detailed information for cost and price information must be shown for sub-consultants.)
• Review the following attachments. Complete and submit the underlined attachments with the proposal:

□ RFP Attachment 1 (CERTIFICATION OF POTENTIAL CONTRACTOR REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS)

□ RFP Attachment 2 (CERTIFICATION OF RESTRICTIONS ON LOBBYING)

□ RFP Attachment 3 (DBE CERTIFICATION)

□ RFP Attachment 4 (DBE CONTRACT GOAL)
Use of Disadvantaged Business Enterprise (DBE) Firms

The FHMPO is required to follow the KDOT Disadvantaged Business Enterprise review process for all procurement processes, as per the KDOT MPO Disadvantaged Business Enterprise Program Guidance effective June 2011. The KDOT Office of Civil Rights and Bureau of Transportation Planning have reviewed this RFP and established a $25,000 DBE goal for this project. Submitting consultants must review all RFP Attachments and submit the necessary completed attachments with their proposal.

Project Schedule

The MIP must be completed by December 2017.

Additional Information

Total Project Cost

The total project cost should not exceed $250,000. At least $100,000 must be allocated towards transit related components of the project.

Payments

The selected consultant will submit invoices for work completed to the FHMPO. Upon the FHMPO review and approval of the invoice, the FHMPO’s fiscal agent (the Flint Hills Regional Council) will make payments to the consultant after required services have been completed to the satisfaction of the FHMPO on a monthly basis. Invoices shall include the following:

- Summary of services provided/work completed during invoice period;
- Number of hours per task/sub-task;
- Percentage of work completed to date;
- Dollar amount expended to date and amount remaining to be spent;
- Itemized receipts for all expenditures that are not personnel costs; and
- Other required documentation outlined in the agreement.
**Federal Funds**

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

**Disclaimer**

The FHMPO reserves the right to reject all proposals. Receipt of the RFP by a consultant or submission of a proposal by a consultant confers no rights upon the consultant nor obligates the FHMPO in any manner. The FHMPO reserves the right to make an award based on the greatest benefit to the FHMPO and not necessarily the lowest cost. If the FHMPO and the first choice consultant fail to reach a contract, the FHMPO may elect to negotiate a contract with the Selection Committee’s second choice consultant. The FHMPO will not be liable for any costs incurred by consultants in the preparation and delivery of their responses to the RFP, nor for any subsequent discussions and/or product demonstrations. The FHMPO will not be liable for any costs incurred by consultants while becoming familiar with the particulars stated in this RFP. All proposals, including supporting documentation, shall become the property of the FHMPO.

**Contract**

The services will be procured through a contract between the FHMPO and the selected consultant. The estimated date for entering into the contract is March 2016. The contract is to span until late 2017, if needed. Further details and scoping will be worked out during contract negotiation.

**Request for Proposal Information**

**Proposal Evaluation and Selection Process**

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

**Evaluation Criteria**

The proposal submitted by each consultant or consultant team will be evaluated using a score sheet during the shortlisting and interview phases. The following criteria will be used:

- Experience of project team with similar projects and scopes (max 5 pts.)
- Project approach (including timing of project) (max 15 pts)
- Proposed Scope of Work in meeting the needs identified (max 5 pts)
- Project Cost (max 5 pts)
- Interview/Presentation (during interview phase) (max 10 pts)
- DBE Participation (consultants using a DBE will be given an additional 5 points)
**Tentative Schedule**

Note: The following schedule is tentative and is subject to change.

- RFP Released: Monday, January 4, 2016
- Proposal Deadline: Friday, February 5, 2016
- Shortlisting: February 15, 2016
- Consultant Interviews: Tuesday, March 1, 2016
- Consultant Contract Approval: Late March 2016
- Project Start Date: Mid-April 2016

**Proposal Submission Deadline and Format**

One (1) electronic copy of the proposal should be emailed to Stephanie Watts, at the email address below, no later than 4:00 pm, Friday, February 5, 2016. One (1) hard copy of the proposal should be postmarked no later than February 5, 2016 and mailed to the address below:

Stephanie Watts, AICP  
Senior Transportation Manager  
Flint Hills Metropolitan Planning Organization  
PO Box 514  
Ogden, KS 66517  
Stephanie@FlintHillsRegion.org  
www.FlintHillsMPO.org

**Questions**

Questions regarding the RFP should be submitted in writing or by electronic mail. Questions and answers will be included as amendments to the RFP if deemed relevant and/or important. Questions should be addressed to Stephanie Watts at the address above.
CERTIFICATION OF POTENTIAL CONTRACTOR REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

Page 1 of 2

The Potential CONSULTANT __________________________ certifies to the best of its knowledge and belief, that it and its principals;

1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or the State of Kansas;

2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property:

3) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) above; and

4) Have not within a three-year period preceding this Proposal had one or more public transactions (Federal, State or Local) terminated for cause of default.

Where the potential CONSULTANT is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
THE POTENTIAL CONSULTANT CERTIFIES OR AFFIRMS THE
TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE
STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND
UNDERSTAND THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET
SEQ. ARE APPLICABLE THERETO.

_________________________________
(Signature of Authorized Official)

_________________________________
(Title)

The undersigned chief legal counsel for ______________________ (the potential
contractor) hereby certifies that the ______________________ has authority under
State and Local law to comply with the subject assurance and that the
certification above has been legally made.

_________________________________
(Signature of Applicant’s Attorney)

_________________________________
(Date)
CERTIFICATION OF RESTRICTIONS ON LOBBYING
Page 1 of 2

I, _____________________________________, hereby certify that I am
(Name of CONSULTANT’S Authorized Official)

authorized to execute this certification, and to the best of my knowledge after due
diligent inquiry, on behalf of ___________________________________
(Name of CONSULTANT)

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

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

(3) The undersigned shall require that the language of this certification be included in the
award documents for all subawards at all tiers (including subcontracts, subgrants, and
contracts under grants, loans, and cooperative agreements) and that all subrecipients
shall certify accordingly. This certification is a material representation of fact upon which
reliance was placed when this transaction was made or entered into. Submission of this
certification is a prerequisite for making or entering into this transaction imposed by
Section 1352, title 31, U.S. Code. Any person who fails to file the required certification
shall be subject to a civil penalty of not less than $10,000 and not more than $100,000
for each such failure.

Executed this ________ day of ___________________, 20____.

By: ________________________ _________________________  
(Signature of CONSULTANT’S authorized official)

__________________ _______________________________  
(Name and Title of CONSULTANT’S Authorized Official)
DBE CERTIFICATION

I, ____________________________, hereby certify to the best of my knowledge on behalf of ____________________________ that:

__________________________________________________________ has complied with the requirements of 49 CFR 23.67, Participation by Disadvantaged Business Enterprises in DOT Programs, and that its goals have not been disapproved by the Department of Energy Administration.

Executed this ________ day of ________________, 20____.

By: ____________________________

(Signature of CONSULTANT’S authorized official)

__________________________________________________________

(Name and Title of CONSULTANT’S Authorized Official)
REQUIRED CONTRACT PROVISION
DBE CONTRACT GOAL

The total dollar goal to be subcontracted to KDOT-Certified DBE firms on this contract is $25,000.

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 dollar value of the work to be subcontracted to the DBE.

IDENTIFICATION OF DBE PARTICIPATION

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<tr>
<th>Name of KDOT-Certified DBE Subcontractor</th>
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Total KDOT-Certified DBE $ ____________________________

(Prime Bidding Consultant Name and Address)

If $ Value of Work is zero, please attached 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://www.ksdot.org/divAdmin/DBEConstruction/dbedir.aspx
DRUG-FREE WORKPLACE  
(GRANTEES OTHER THAN INDIVIDUALS)  
Page 1 of 2

As required by the Drug-Free Workplace Act of 1988

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

   (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

   (b) Establishing an on-going drug-free awareness program to inform employees about:
       (1) The dangers of drug abuse in the workplace;
       (2) The grantee's policy of maintaining a drug-free workplace;
       (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
       (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

   (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

   (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will
       (1) Abide by the terms of the statement; and
       (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

   (e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Notice shall include the identification number(s) of each affected grant;

   (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted
       (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ___ if there are workplaces on file that are not identified here.
NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following “Nondiscrimination Clauses”.

CLARIFICATION

Where the term “Consultant” appears in the following “Nondiscrimination Clauses”, the term “Consultant” is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the Consultant, or the Consultant’s assignees and successors in interest (hereinafter referred to as the “Consultant”), agrees as follows:

1) Compliance with regulations: The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the “Regulations”). The Regulations are herein incorporated by reference and made a part of this contract.

2) Nondiscrimination: The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3) Solicitations for Subcontractors, including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant’s obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.
4) Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant’s books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.

5) Employment: The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.

6) Sanctions for Noncompliance: In the event of the Consultant’s noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,

(a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or

(b) cancellation, termination or suspension of the contract, in whole or in part.

7) Disadvantaged Business Obligation

(a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.

(b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.

(c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant 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 recipient deems appropriate.

8) Executive Order 12898

(a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.

9) Incorporation of Provisions: The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.
REQUIRED CONTRACT PROVISION

FEDERAL AID CONTRACTS
UTILIZATION OF DISADVANTAGED BUSINESSES

I. INTRODUCTION.

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

A. ASSURANCE.

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

B. DEFINITIONS.

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

(1) Disadvantaged Business Enterprise (DBE) means a small business concern which is independently owned and controlled by one or more socially and economically disadvantaged individuals and which KDOT has certified as a DBE.

(2) Small business concern means a small business as defined by Section 3 of the Small Business Act and relevant regulations except that a small business concern shall not include any firms or affiliated firms owned and controlled by the same socially and economically disadvantaged individual or individuals whose value has average, annual gross receipts in excess of $22,410,000 over the previous three fiscal years.

(3) Owned and controlled means a business:

(a) Which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals, and

(b) Whose management and daily business operations are controlled by one or more such individuals.

(4) Socially disadvantaged individual means a person who is a citizen or lawful permanent resident of the United States, has suffered social disadvantage in education, employment, or business, and who is a(an):

(a) Black American (a person having origins in any of the black racial groups of Africa);

(b) Hispanic American (includes a person of Mexican, Puerto Rican, Cuban, Central or South American, or any Spanish or Portuguese culture or origin, regardless of race);

(c) Native American (includes a person who is American Indian, Eskimo, Aleut or Native Hawaiian);

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

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

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

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

II. DBE CONTRACT GOALS.

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

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

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

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

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

F. When projects are State or Contractor tied, KDOT will construe DBE participation as if the tied projects are one project. To check DBE participation on tied projects the following method will be used:
   (1) Add the DBE goal dollar amount for the individual tied projects. This becomes the required minimum dollar amount to be subcontracted to DBEs.

   (2) If the total dollar amount actually subcontracted to DBEs on the tied contracts is equal to or greater than the minimum dollar amounts as computed above, it will be determined that the DBE goals have been met.
(3) If a State of Kansas funded project is tied to a federal aid funded project, the DBE contract goals can only be met by DBE subcontractors on the Federal Aid Project.

III. MEETING DBE CONTRACT GOAL CRITERIA.

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

A. REQUIRED DBE PARTICIPATION INFORMATION.

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

(1) The names of KDOT certified DBE firms that will participate in the Contract (if none, so indicate);

(2) A description of the work each named DBE firm will perform (if none, so indicate);

(3) The actual dollar amount anticipated to be paid to each named DBE firm (if zero dollars, so indicate); except

(4) If the named DBE firm is a supplier, enter 60% of the actual dollar amount anticipated to be paid (if zero dollars, so indicate);

(5) The actual dollar amount (not to exceed 10 percent of DBE subcontract) to be paid ahead of work as DBE mobilization.

(6) For federal aid contracts with a zero DBE goal, list all subcontractors to be utilized, including DBE firms, if any.

B. GOOD FAITH DETERMINATION.

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

(1) Good Faith Information Submittal. If the low bidder's required DBE information indicates that the DBE contract goals will be met, the contract will proceed toward award and the low bidder need not submit any further DBE information. Good faith documentation must be submitted within two working days of the bid opening. Example: if bids are opened on Wednesday at 2 p.m., the good faith documentation must be at KDOT Office of Civil Rights before 5 p.m. on Friday.

(2) KDOT Review. KDOT will review all information submitted to determine if the low bidder has met the DBE contract goals and, if not, whether the low bidder made sufficient good faith efforts to meet such goals. The determination of good faith efforts is made on a case-by-case basis and depends on the particular circumstances of the procurement. The issue KDOT will consider is whether the bidder took those steps, a reasonable bidder would have taken to actively and aggressively obtain DBE participation sufficient to meet the goal. A KDOT determination that the low bidder's information failed to show sufficient good faith shall be just cause for rejection of the bid. If the low bid is rejected, the above procedure will be applied to the next lowest bidder, and other bidders if necessary, until a bidder is found that meets the DBE contract goals or establishes that good faith efforts were made to meet the goal. KDOT reserves the right to reject all bids and re-advertise the Contract.

(3) Establishing Good Faith Efforts. To demonstrate good faith efforts to meet DBE contract goals, submit to KDOT documentation on the factors listed as (a) through (g). KDOT has assigned a percentage to each factor that shows the relative importance of each factor to KDOT and to the other
factors. These percentages are a guide only; the circumstances of a particular procurement may justify different percentages or consideration of factors not mentioned. In evaluating the reasonableness of the low bidder's efforts, KDOT may consider whether other bidders met the goal or failed to meet the goal. In evaluating the reasonableness of the low bidder’s efforts, KDOT will consider all documentation submitted; yet, documentation created during the bidding process is more credible than documentation created after the letting.

(a) The bidder negotiated in good faith with interested DBEs. It is the bidder’s responsibility to consider the available pool of certified DBEs when determining subcontract or supply needs. It is the bidder’s responsibility to furnish DBEs with information about plans or specifications to facilitate the bid. Include names of DBEs considered, information given to the DBE, if any, and an explanation of why agreements could not be reached for DBEs to perform the work. (25%)
(b) The bidder selected portions of work for which KDOT has capable, certified DBE's to perform. This may include breaking out work items or subcontracting items the prime contractor normally performs. (20%)
(c) The bidder used good business judgment in rejecting a DBE quote, considering both price and capabilities. If a DBE quote represents a reasonable price for performing the work, the bidder should use that quote even though the DBE quote is higher than a non-DBE quote. However, bidders do not have to use excessive or unreasonable quotes. Before determining that a DBE quote is excessive, the bidder should inquire as to the reason for the disparity between the DBE and non-DBE quotes. The bidder should also evaluate what impact, if any, using a higher DBE price would have on the bidder’s overall project bid. A higher DBE price may not be excessive or unreasonable if the price differential is a very small part of the project bid. (20%)
(d) The bidder solicited capable, certified DBEs through pre-bid meetings, advertising, telephone, mail, facsimile, e-mail, or a combination of the foregoing. The solicitation must have occurred within sufficient time to allow a DBE to respond. Follow up all initial contacts, whether the contact was solicited or unsolicited. If a DBE expresses an interest in the contract or a desire to quote and fails to submit a quote, follow up that contact, whether the contact was solicited or unsolicited. Receiving substantial unsolicited quotes may not be considered actively and aggressively pursuing DBE participation. (10%)
(e) The bidder assisted interested DBEs in obtaining equipment, supplies, or materials for the project being bid. (10%)
(f) The combinations of DBEs the bidder considered in trying to meet the goal. It is acceptable to use a portion of several DBE bids. (10%)
(g) The bidder assisted interested DBEs in obtaining bonding, credit, or insurance on the project being bid. (5%)

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

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

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

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

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

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

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

(4) If a non-DBE contractor and DBE contractor form a joint venture and bid as a prime contractor, the joint venture contractor shall fully meet the DBE contract goals specified in the project special provision. The joint venture contractor may count toward its DBE contract goals the total dollar value of the work actually performed by the DBE participant in the joint venture. *Example: A non-DBE contractor forms a joint venture with a DBE contractor and the joint venture bids the project as a prime contractor. The DBE contract goal is $10,000.00. The joint venture has met the $10,000 goal. Example: A non-DBE contractor forms a joint venture with a DBE contractor and the joint venture bids the project as a prime contractor. The DBE contract goal is $100,000.00. The DBE participant in the joint venture performs $80,000 of the work with its own forces. The joint venture must obtain the remaining $20,000 in goal through use of another certified DBE firm, or show good faith efforts if the joint venture fails to meet the $100,000 goal.*

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

   (a) A manufacturer is a firm that operates a facility that produces goods from raw material on the premises.
   (b) A regular dealer is a firm that owns, operates, or maintains a store, or warehouse where materials are stocked and regularly sold to the public. A regular dealer of bulk items (sand, gravel, etc.) need not stock the product if it owns or long-term leases distribution equipment. The supply of structural steel, steel assemblies and petroleum products do not count toward any KDOT DBE goal. A dealer must be responsible for material quality control and must deliver with its own or long term leased equipment to count toward the DBE goal.
(6) A contractor may count toward its DBE goals the following expenditures to DBE firms that are not manufacturers or regular dealers:
   (a) The commission charged for providing a bona fide service in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of the contract, provided the commission is reasonable and customary.  
   (b) The commissions charged for bonds or insurance provided by a DBE broker for the specific performance of the contract, provided the fee is reasonable and customary. A letter must be submitted detailing the amount, but does not count as a subcontracted percentage.

(7) A contractor may count toward its DBE goals the amount paid to a DBE trucker for transportation or delivery services.
   (a) A DBE trucker who picks up a product at point A and delivers the product to the contractor at point B provides a delivery service. The full amount paid for this service counts toward the DBE goal.
   (b) Some DBE truckers are also a regular dealer (supplier) of a bulk item. In this case, the amount paid for the material delivered will count as 60 percent toward the DBE goal. The DBE trucker is responsible for the quality of the material.
   (c) For DBE truckers or suppliers to be credited toward DBE contract goals, the contractor must submit a letter to KDOT detailing all information formerly found on Form 259, prior to the start of the trucking or supply of material and requesting DBE subcontract credit.

D. COMMERCIALLY USEFUL FUNCTION.

The prime contractor is responsible for ensuring that DBE firms under subcontract to meet a DBE goal perform a commercially useful function (CUF). Failure to fulfill this obligation is a breach of contract and KDOT may invoke the sanctions listed in Section IV (Sanctions). The three criteria for a CUF are:
   (1) The DBE firm shall manage the work through personal direct supervision by the DBE owner or a skilled, knowledgeable, full-time superintendent. Management includes scheduling work, ordering equipment and materials, hiring and firing employees, and submitting all required forms and reports. The DBE is not in compliance with this provision if the DBE subcontracts out part or all of the work to another entity.

   (2) The DBE shall own all equipment, long term lease all equipment, or own some equipment and long term lease the remaining equipment except for specialized equipment as noted below.
      (a) If the DBE leases equipment, the DBE shall have a written lease that gives the DBE full control of the equipment during the lease period. The DBE shall use its own workers to operate leased equipment.
      (b) A DBE may enter into long term leases with companies operating as prime contractors. The DBE is not in compliance with this provision if the DBE leases equipment from the prime contractor on the project for that project only.
      (c) Exception for specialized equipment: The DBE may lease short term specialized equipment such as a crane from another contractor or third party if this equipment is necessary for the DBE to perform its work and the equipment is of such a nature that it is not economically feasible or practical for the DBE to lease the equipment long term. The contractor shall bill the DBE for this equipment and the DBE shall pay the contractor for the equipment. The DBE is not in compliance with this provision if the contractor deducts from the DBE’s pay estimate specialized equipment costs rather than submitting an invoice to and receiving payment from the DBE.

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

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

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

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

(1) Violating any applicable law, regulation, or obligation relating to the performance of obligations incurred pursuant to an agreement with a recipient under a KDOT financial assistance program or,

(2) Making, or procuring to be made, any false statement or using deceit to influence in any way any action of KDOT.

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

(1) The DBE owner shall make the request for a two party check to the Office of Civil Rights and shall explain the benefit to the DBE firm.

(2) The prime contractor shall send the check to the DBE owner who will endorse and forward the check to the supplier. This should be done within the 10 day prompt pay timeframe.

(3) The amount of the check should not exceed the amount of material paid by KDOT on the latest estimate. For example if the estimate was taken on 7/23, pay the material bill through 7/23 not through 7/31.

(4) Two party checks shall be issued only long enough to establish credit for the DBE firm.

(5) KDOT will not count towards goal or give DBE contract goal credit for two party checks that have not been pre-approved by KDOT.

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

(1) Withhold payment of progress payments until the contractor or DBE contractor complies with the payment requirements of this Special Provision.
(2) Remove the non-complying DBE from the DBE directory until the DBE shows the company is meeting the requirements necessary to perform a CUF, including payment of all bills.

(3) Deny goal credit as previously stated for failure to replace a non-performing DBE with another DBE (unless good faith effort was made), failure to meet the requirements necessary to perform a CUF, or failure to follow two party check procedures.

(4) Assess and deduct as liquidated damages the monetary difference between the DBE goal amount and the amount actually paid to the DBEs for which KDOT has allowed DBE goal credit.

(5) Reject the bidder’s bid if the bidder failed to meet the DBE goal and failed to show good faith effort to meet the goal.

(6) Refer the matter to the Office of the Attorney General, the US Department of Justice, or both for follow-up action.

(7) Enforce all other remedies KDOT has under other contract provisions such as contract termination, contractor suspension, contractor debarment, and sanctions for failing to pay promptly.

01-26-09 OCR (DW/CDB)
Jul-09 Letting
Appendix A to Part 26—Guidance Concerning Good Faith Efforts

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

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

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

IV. The following is a list of types of actions which you should consider as
part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

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

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

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

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

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

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

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

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

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

V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or
exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.
Kansas Department of Transportation

Prompt Payment Form

Certificate of Subconsultant Work and Payment

To be completed and submitted to Local Project Sponsor within 15 days of each payment by Local Project Sponsor.

____________________________              _____________________________
(Local Project Sponsor)            (KDOT Project Number)

I certify that _________________________ received payment from the __________________________
(Prime Consultant)            (Local Project Sponsor)
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.

<table>
<thead>
<tr>
<th>Subconsultant</th>
<th>Invoice Date</th>
<th>Date Paid</th>
<th>Amount Paid</th>
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____________________________                          ___________________________________
(Date)              (Signature of Prime Consultant Representative)

_____________________________________
(Title)

(Completed forms are to be included in the prime consultant invoice to the local project sponsor and submitted
to KDOT in requests for reimbursement. Supporting documentation must be included in requests for
reimbursement or otherwise attached.)
DATE: December 1, 2015
TO: KDOT Bureaus, Offices, Divisions and Districts
FROM: Rhonda J. Seitz, Chief
Bureau of Fiscal Services
RE: FY 2016 Travel Rate Changes effective January 1, 2016
Instructional Memorandum No. 16-06

The State of Kansas travel reimbursement rates will change effective January 1, 2016. The changes will impact Out-of-State travel requests that are prepared now for travel occurring after January 1, 2016.

In January, the State will follow federal subsistence rates that are based on travel locations. If there is not a specific rate for a location, it will be reimbursed at a standard rate. Rates across the United States are referred to as CONUS rates (contiguous United States) and are updated in April and October each year.

The standard CONUS rates currently are:

- Meals $51 per day, which equates to $12.75 per quarter
- Lodging $89 before tax

For Kansas, there are separate rates for Wichita and Kansas City/Overland Park as follows:

<table>
<thead>
<tr>
<th>Location</th>
<th>Meals</th>
<th>Lodging</th>
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</thead>
<tbody>
<tr>
<td>Wichita</td>
<td>$59 which is $14.75 per quarter</td>
<td>$95 before tax</td>
</tr>
<tr>
<td>Kansas City/Overland Park</td>
<td>$64 which is $16 per quarter</td>
<td>$112 before tax</td>
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</table>

Return to Quarterly Meal Allowance
In January, the daily meal reimbursement will be equally divided into a quarter allowance. Employees will receive the allowance for the quarter they depart in and the quarter they return in.

Deductions for Meals provided
If meals are included within registration, hotel rate, or supplied without cost by another party, the daily meal allowance is reduced by the percentages listed below:

- Breakfast 15%
- Lunch 35%
- Dinner 50%

The Per Diem Rate attachment lists CONUS rates and meal deduction amounts by location.
Same Day Meal Allowance
In limited circumstances, one meal is allowed when the work day, including travel time but not meal time, is extended three hours or more. The KDOT Senior Manager will determine the appropriate meal to allow if any. The meal allowed is reimbursed at the same amount as the meal deductions above. For example, if the Senior Manager approved a lunch in the Standard area, the employee would be reimbursed $17.85.

Lodging Limitations
The lodging limit continues to be applied to the lodging rate before taxes.

There may be occasional instances when lodging cannot be obtained for the allowed rates. In those cases, the daily lodging limits may be exceeded by an additional 50%, with proper agency approval.

Approval to exceed the established out-of-state rates by an additional 50% or to pay for actual conference lodging will continue to be approved as part of the out-of-state request process.

Approval to exceed the established in-state rates by an additional 50% may be approved with the KDOT Senior Manager’s signature on the travel voucher.

Border City Designation
KDOT will not require the completion of an Out-of-State Travel Request (Form 408) for travel to locations previously considered border cities, i.e., Kansas City, MO, St. Joseph, MO, Lincoln, NE, Omaha, NE, etc.

No reimbursement for Hotel Tips
There will be no reimbursement for tips left for maid service, bellhops, etc.

Coding Changes—Transactions reimbursed directly to employees will use the following set of account codes, regardless of where the travel occurred:

Private Vehicle Miles  525510
Car Rental  525520
State Car Expense  525530
Air Rail and Bus Fare  525570
Meals and Lodging  525580
Non-Subsistence including tolls,
  parking for private vehicles and rental cars  525590
Existing travel codes (5251xx for in-state, and 5252xx for out-of-state) will be used on transactions that are not paid directly to employees (i.e., direct bill lodging, airfare, etc.). Since the SMART coding on budget reports will no longer reflect the location of travel, reports on travel destinations will be available if needed.

Out-of-state travel requests for trips occurring in January, 2016 can be made on the Out-of-State Travel Request (Form 408 Revised) found in Forms Warehouse. This form links to the CONUS rate schedules. The Travel Payment Voucher (Form 409) will also be updated in Forms Warehouse in January.

Additional training for Headquarters staff who prepare travel vouchers will be held on December 7, 2015. Conference call training will be held for District administrative staff.

If you have questions, please contact LeAnn Oblander, Amber Hausler, or Brandyn Schwartz at 785-296-3545.

Att.
1. **Resolution of Disputes and Breaches.** Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the FHMPO. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Provider mails or otherwise furnishes a written appeal to the FHRC Administrative Manager. In connection with any such appeal, the Provider shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the FHRC Administrative Manager shall be binding upon the Provider and the Provider shall abide by the decision.

   Performance During Dispute - Unless otherwise directed by the FHMPO, Provider shall continue performance under this Agreement while matters in dispute are being resolved.

2. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement, nor do the Parties herein authorize anyone not a Party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement. The FHMPO and Provider acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the FHMPO, Provider, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. The Provider agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

3. **Federal Changes.** Provider shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Flint Hills Regional Transit Administration (FHRTA) and FTA, as they may be amended or promulgated from time to time during the term of this contract. The failure of the Provider to so comply shall constitute a material breach of this contract.

4. **Incorporation of Federal Transit Administration (FTA) Terms.** The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Provider shall not perform any act, fail to perform any act, or refuse to comply with any FHRTA requests which would cause FHRTA to be in violation of the FTA terms and conditions.
Protest Procedures

In the event that a Proposer desires to protest the RFP specifications or an award, the following procedures must be followed.

General

Any protest must be submitted in writing. A fax is allowable as long as a formal written document with original signatures is also submitted. The outside of the transmittal envelope must be clearly marked “PROTEST”. All protests shall clearly state the name of the protester, the solicitation, proposal or contract title and number. The protest must be fully supported by technical data or other pertinent information that will delineate why the protest is being lodged. Protests filed after the deadline shall be dismissed.

The FHMPO objective is to resolve all formal protests as soon as practical. Nothing in this procedure should be construed as requiring a formal protest if a vendor wishes to clarify or discuss standards or procedures relating to the procurement process.

Submission for Protest of Procurement

Any protest of the procurement must be submitted in writing to the FHMPO Senior Transportation Manager and received by the FHMPO no later than five (5) business days before the scheduled closing date for receipt of proposals. This includes protests based upon:

- Restrictive or exclusionary specifications,
- Challenges to the proposal specifications,
- Evaluation Procedures,
- Terms and conditions of the solicitation package.

Submission for Protest of Award

Any protest of the award must be submitted in writing to the Senior Transportation Manager and received by the FHMPO no later than five (5) business days after receipt of notice of the award. All protest responses and appeals shall be handled as described below.

Response

After consultation with the Policy Board and Selection Committee as appropriate, the Senior Transportation Manager shall respond to the protest within five (5) business days from the receipt date of the written protest.

FTA Notification

Upon receipt of a protest, the Senior Transportation Manager shall notify FTA of the protest.
Options

The Senior Transportation Manager has the option to:

- Extend the time provided for each step of the protest procedure,
- Postpone the proposal opening,
- Extend the date of notice of award, or
- Postpone the award of contract if deemed appropriate for protest resolution.

All active parties will be notified in writing if an option is elected.

Appeal of Determination

If the Senior Transportation Manager’s response is not satisfactory, the protester may appeal in writing to the FHRC Administrative Manager within five (5) business days from the date of receipt of the Senior Transportation Manager’s response. The FHRC Administrative Manager will respond in writing within ten (10) business days from the date of receipt of appeal.

Decision

The decision rendered by the FHRC Administrative Manager shall be the final decision of the FHMPO and the FHMPO will take no further action on the protest.

FTA Review of Protest

- Federal Transit Administration’s (FTA) protest procedures are found in FTA Circular 4220.1F.
- The FTA regional office must receive an appeal within five (5) working days of the receipt of the decision of the FHMPO by the protester.
- A protester must exhaust all administrative remedies with the FHMPO before pursuing a protest with FTA.
- Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.