



REQUEST FOR PROPOSALS

Regional Bikeway Plan

Federal #: STP – 3301(461)

**Requested by
Mid-America Regional Council**

August 21, 2013

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A. PURPOSE AND INTRODUCTION

The Mid-America Regional Council (MARC) is an association of city and county governments and the metropolitan planning organization (MPO) serving the eight-county Kansas City metropolitan area. MARC is organized as a public not-for-profit organization.

MARC, is seeking proposals from qualified firms to develop a Regional Bikeway Plan serving the eight-county MPO planning area including (the Missouri counties of Cass, Clay, Jackson, and Platte and the Kansas counties of Johnson, Leavenworth, Miami and Wyandotte).

MARC has allocated \$120,000 resources for this planning effort in the Unified Planning Work Program for Fiscal Year 2013 found under Item E.3 Regional Bikeway Transportation Plan beginning on page 63. Federal funds will be used for this planning project, therefore pursuant to 49 CFR 18.36 (d)(3), MARC will employ procurement by competitive proposals for these services. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

B. BACKGROUND

The Kansas City region and MARC have a long history of regional bicycle planning activities stretching back over two decades. In 1991, MetroGreen® a regional greenway trail vision plan was developed by the Prairie Gateway Chapter of the American Society of Landscape Architects. MetroGreen® is an interconnected system of public and private natural areas, greenways and trails linking communities throughout the Kansas City metropolitan area. The 1,144-mile greenway plan covers Leavenworth, Johnson and Wyandotte counties in Kansas and Cass, Clay, Jackson and Platte counties in Missouri. The MetroGreen® plan gained considerable support following its formal presentation to the community. The current plan does not include Miami County but as a part of this planning effort will.

MARC worked with local communities and the public to prepare the region's first bicycle transportation plans in 1996. Johnson County, Kan., served as project leader for the Kansas study, and MARC coordinated the Missouri planning effort. At the time these two plans were developed, most local communities in Greater Kansas City had not prepared a bicycle transportation plan or identified bicycle facilities as part of transportation, parks or land-use plans. Since that time, many area communities have developed bikeway plans independently or as integrated components of transportation, parks or land-use plans.

The region's early long-range plans aggregated information from local plans on common policy statements and mapped existing and proposed on-road and off-road bicycle facilities. The first regional bikeway plan based on local plans was adopted by the MARC Board of Directors in 1997. With each update, communities have been contacted to collect new and revised local bikeway planning information.

MARC updated the MetroGreen® plan in 2002. As part of the planning process a resident's survey for the seven-county area found that more than 80 percent of respondents were either very supportive (57 percent) or somewhat supportive (27 percent) of using the 1,000-mile MetroGreen® system for projects such as walking and biking trails, creating transportation linkages between neighborhoods, and habitats for animals.

In 2005, MARC initiated work to update the long-range transportation plan bicycle facility plan and surveyed area cities and counties to obtain information on new, planned, and constructed bicycle facilities. In 2005, approximately 403 miles of existing facilities were documented in the region. By 2009, a similar inventory of local bikeway systems revealed 702 miles of existing facilities in the region. The bikeway

network grew by nearly 300 miles, or 57% increase in five years. More recently, MARC released the Greater Kansas City Trails and Bikeway map. The previous version of the map had a total of 702 miles of trails and bikeways. The new map shows 1,273 miles of trails and bikeways, including:

- 45 miles of bike lanes.
- 83 miles of mountain bike trails.
- 175 miles of walking and hiking trails.
- 188 miles of bike routes.
- 225 miles of “share the road” bikeways.
- 555 miles of paved trails.

But for all the accomplishments of the past 20 plus years, many challenges and opportunities still lie ahead. The MARC MPO area has grown to take in new communities. Today the unincorporated areas of Platte, Leavenworth, Clay, Cass and Miami counties are part of the MPO area. Regional planning is challenging due to the fact that communities are at different stages of network planning and development. There are wide varieties of rural, suburban and urban settings to plan and design. Social, demographic, economic and environmental changes are requiring active transportation options that will serve the communities of tomorrow. A balanced system of on-road bikeway and off-road trails are needed at a regional scale that connects local bikeway systems.

C. STUDY AREA

The study area includes the four Missouri counties of Cass, Clay, Jackson, and Platte and the four Kansas counties of Johnson, Leavenworth, Miami and Wyandotte covering approximately 3,849 square miles. Over 1,895,000 persons live within the study area. There are 109 cities within the eight county areas.

D. PROJECT STEERING COMMITTEE

MARC will directly manage the project and work with our funding partners to jointly monitor and guide the planning effort throughout its duration. The Project Steering Committee will at a minimum consist of the following stakeholders:

Project Management Team:

- MARC - Lead
- Missouri Department of Transportation (MoDOT)
- Kansas Department of Transportation (MoDOT)
- Cass County, Missouri
- Clay County, Missouri
- Jackson County, Missouri
- Platte County, Missouri
- Leavenworth County, Kansas
- Johnson County, Kansas
- Miami County, Kansas
- Wyandotte County, Kanas

E. SCOPE OF SERVICES

Services of a qualified planning consultant or consultant team are required to conduct the project. A firm with experience in planning and designing bikeway networks is strongly desired.

The consultant will propose a specific detailed work scope and a deliverables list which is to address at a minimum the following areas, as well as any other activities necessary to fulfill the project intent and a supportive public engagement strategy throughout. The selected consultant will meet with MARC to finalize administrative procedures and project controls.

Task 1 –Evaluate Bikeway and Trails Plans, Programs and Policies:

MARC has begun a comprehensive survey to document local government bikeway plans, programs and policies across the eight-county Metropolitan Planning Organization (MPO) area. The consultant will review this information with MARC and determine if additional information is necessary and requires further data collection. The consultant will identify and evaluate regional bikeway plans (from other metro areas) that may serve as best practices for regional bikeway planning. The outcomes of this task will be an up-to-date comprehensive local bikeway facility and policy inventory and the identification of relevant regional bikeway planning best practices to serve as a model for the Kansas City region. The consultant will ensure that the Regional Bikeway Plan shall culminate in recommended strategies and processes that exemplify regional bikeway planning best practices for use by MARC and local governments to implement regional bikeways and trails.

Deliverables:

- Up-to-date inventory and summary of local bikeway plans and policies in the study area
- Regional Bikeway Plan best practices identified from other metro areas
- Regional Bikeway Planning strategies

Task 2 –Bikeway Network Analysis and Development:

The consultant will use a systematic approach to analyze the region’s current and future bikeway network to address issues related to network gaps, trip purpose, connectivity to major destinations, physical barriers and safety. MARC has an extensive library of GIS datasets in ArcGIS format that will be provided to the consultant to carry out this task.

- Identify gaps between existing and planned bikeways within jurisdictions and with neighboring communities (MARC will provide all known existing, planned and proposed bikeways and trails in the MPO planning area).
- Determine the extent to which the existing and planned bikeway and trails network meets the needs of utilitarian and recreation trip purposes.
- Determine the extent to which the existing and planning bikeway and trails network provides connections between activity centers.
- Identify, analyze and rate regional physical barriers such as rivers and roadways based on a systematic approach that will serve as a guide to help maximize regional transportation funds and states’ and local governments’ investments.
- Identify locations throughout the existing, planned, and proposed bikeways and trails network for MARC to collect bicycle/pedestrian counts.

- Review and analyze relevant bike safety data to identify crash “hotspots” and develop strategies that eliminate bike safety “hotspots”.
- Develop strategies that support overall bike safety. Develop a data-driven method to identify leading causes of bicycle fatalities and serious injuries related to contributing circumstances and crash types. Based on this process key safety countermeasures should be recommended. Strategies may focus on design countermeasures, education and enforcement activities that improve bicycle safety. (MARC will provide crash data in Access and ArcGIS format for analysis).

Deliverables:

- Network gaps analysis
- Regional physical barrier analysis
- Bike/Pedestrian count stations map
- Bike safety “hotspots” analysis
- Bike safety strategies guide

Task 3 – Develop Regional Bikeway and Trail Network:

The consultant will utilize the information from tasks 1 and 2 and engagement from task 5 to work with MARC’s committee/stakeholders to identify a regional bikeway and trail network. The regional bikeway and trail network will be guided by criteria that distinguish between local and regional facilities. Building on current facilities and local plans a regional bikeway plan identification process will be developed to guide the identification of high-priority bikeway and trail network investments for both on-road and off-road bikeways. The consultant will be asked to assist MARC in identifying regional corridors to connect with outlying counties where additional local planning may be necessary.

Deliverable:

- Regional Bikeway Network Map
- Update of the MetroGreen system
- Bikeway project priority selection process
- Identification of high-priority regional bikeway and trail investments

Task 4 Develop supportive tools and resources:

The consultant will develop a toolkit that provides resources that are beneficial to local agencies in developing and maintaining local bikeway plans and constructing facilities. The toolkit will include best practices about:

- Funding;
- Planning;
- Facility design; (pedestrian considerations will be addressed through a complete streets approach and bike/ped shared facilities)
- Construction and operation cost;
- Maintenance polices; and
- Effective promotion and marketing.

The toolkit will incorporate strategies identified in Tasks 1 through 3 and support the goals and objectives of *Transportation Outlook 2040*.

Deliverable

- Regional Bikeway Plan toolkit

Task 5 Stakeholder Engagement:

Successful implementation of regional Bikeway Plan strategies requires strong local government and state transportation department commitment. To foster commitment MARC and the Consultant will work together to ensure local government stakeholder engagement throughout the process. The Consultant will develop stakeholder engagement strategies and processes to facilitate local government collaboration. The stakeholder engagement process will follow the MARC Public Participation Plan and be incorporated in Tasks 1-4. The Plan will document the stakeholder engagement process.

Deliverables

- Presentation material
- Documented Stakeholder Engagement Process

F. STUDY SCHEDULE

MARC seeks to complete this work by October 1, 2014. In crafting a proposal, consultants (or teams) should reflect an estimated schedule based on these considerations and in conjunction with team capabilities and capacities.

G. PROPOSAL SUBMITTAL REQUIREMENTS

To be eligible for consideration *one electronic* and **11** copies (maximum of 20 pages, one-sided, or 10 pages double-side, excluding attachments) of the response to the RFP must be received by MARC no later than **2 PM CST, Monday, September 9th, 2013**. Late submittals will not be considered and will be returned to submitter unopened. The envelope package should be marked “**Regional Bikeway Plan.**”

Attn. **Aaron Bartlett, Senior Transportation Planner**

Mid – America Regional Council

600 Broadway, Suite 200

Kansas City, MO 64105 – 1554

Questions should be directed to Aaron Bartlett at abartlett@marc.org or 816/474-4240

1. **SCOPE OF WORK:** Proposals should include a recommended Scope of Work consistent with elements outlined in Section E and with an emphasis on a preferred and/or recommended approach. Innovative approaches for completion of the Scope of Work are encouraged.
 - a. Overview and rationale of project approach.
 - b. The name and address of the contracting firm, together with the name, telephone and fax number, and e-mail address of the primary contact person for purposes of this proposal
 - c. A listing of all proposed subcontractors, if any.
 - d. A conceptual project schedule.
 - e. See Attachments.
2. **CONTRACT PRICE:** Proposals should indicate the cost of services to be provided. Also required is a schedule by task of person-hours, equipment, and services.

3. **QUALIFICATIONS:** Proposals should indicate general and specific qualifications of the proposer in planning, design, project implementation, disciplines appropriate to this project, and specifically convey the role of the proposer in each case cited. An emphasis and priority in evaluation will be placed on firms with qualifications and experience that have resulted in successful bikeway plan development as described in Section E. A brief narrative (three pages maximum) may also be included regarding the firm's capabilities to carry out this work.

Proposals shall also include:

- a. A listing and summary of similar projects undertaken within the last five (5) year, by proposing firm and/or its subcontractors, showing contract amounts, description of work performed, client contact persons, phone numbers, and e-mail addresses;
 - b. Resumes of key professional staff who will be assigned to this project;
 - c. Description of the existing and anticipated workload of individuals assigned to this project during the period of this study. Any reassignment of designated key staff shall not occur without mutual consultation and the consent of MARC.
 - d. References
4. **DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS AND PARTICIPATION:** MARC encourages all qualified businesses to submit letters of interest as prime contractors, subcontractors or joint ventures. Women and/or minority owned business are encouraged to submit proposals. DBE (Disadvantage Business Enterprise) firms must be certified by the Kansas and/or Missouri Departments of Transportation in order to be counted as participation toward any established DBE Goal.

DBE PROPOSERS SHOULD SUBMIT, WITH THEIR PROPOSALS, INTENT TO PERFORM as a Disadvantage Business Enterprise (DBE), Attachment A, for each proposed DBE contractor, subcontractor, or joint venture. Certification of DBEs will be made in accordance with MARC's Disadvantage Business Enterprise Program.

MARC's has a set DBE goal of 16%. Proposers are strongly encouraged to meet this DBE goal through this project. If proposers are unable to meet DBE Goal requirements they must provide evidence of "good faith effort."

H. SELECTION PROCEDURE

If necessary, a short list, of not more than five (5) and no less than two (2), proposers and/or proposer teams will be selected by September 23rd, 2013 by MARC, after MARC and the study's selection committee analyzes all proposal information. Short-list proposers should be available for interviews and/or presentations prior to the selection of a Consultant. The final selection of a Consultant is contingent upon approval by MARC's Board of Directors. MARC reserves the right to negotiate a contract, including a scope of work, and contract price, with any proposers or other qualified party.

This Request for Proposal does not commit MARC to award a contract, to pay any cost incurred in preparation of a response to this Request, or to procure or contract for services or supplies. MARC reserves the right to accept or reject any and all responses received as a result of this Request, or cancel this Request in part or in its entirety if it is in the best interests of MARC to do so. Proposers shall not offer any gratuities, favors, or anything of monetary value to any officer, employee, agent, or director of MARC for the purpose of influencing favorable disposition toward either their proposal or any other proposal submitted as a result

of the Request for Proposal.

MARC reserves the right to amend, consolidate, expand, cancel, delete, or request additional consulting services for one or more of the project’s Scope of Work activities if MARC deemed that such activity is advantageous to MARC and the successful completion of the project. MARC reserves the right to suggest to any or all proposers to the Request for Proposal that such proposers form into teams of consulting firms or organizations deemed to be advantageous to MARC in performing the Scope of Work. MARC will suggest such formation when such relationships appear to offer combinations of expertise or abilities not otherwise available. Proposers have the right to refuse to enter into any suggested relationships.

All Proposals submitted hereunder become the exclusive property of MARC.

I. PROPOSAL EVALUATION CRITERIA

The proposals submitted by each Contractor, Firm, or Contractor Team, will be evaluated according to the following factors, in order of priority:

Weights		
52%	Understanding and Approach	Understanding the nature of the project and clarity of approach
9 pts	Bikeway Plans, Policies and Programs	Understanding of model approaches to regional bikeway planning, policy and program development
9 pts	Bikeway Network Analysis and Development	Understanding of approaches to planning and implementing regional bikeway networks
4 pts	System Users	Understanding the differences in mobility needs and how to plan systems that are responsive
5 pts	Natural and Built Infrastructure Barriers	Understanding of regional approaches to barrier identification, assessment and prioritization
3 pts	Bike/ped Counts Programs	Understanding of model programs and specific methodologies to identifying bike/ped count stations
5 pts	Bicycle Safety Analysis	Understanding of data-driven methods to identify, and prioritize crash types and/or contributing factors involving bicyclist and the proven countermeasures to improve safety.
9 pts	Regional Bikeway Plan toolkit	Approach to the development of a toolkit that provides resources beneficial to local agencies in developing and maintaining local bikeway plans and constructing facilities
8 pts	Stakeholder Engagement	Proposed approach and experience with stakeholder engagement
15%	Contract Price	
15 pts	Cost	Extent to which cost of services to be provided meets proposed scope of work and project resources.
13%	Technical Competence	Specialized experience
5 pts	Overall Competence of Proposed team	Experience of the lead contractor and subcontractor(s) related to planning, design, and development of bikeway networks/plans
4 pts	Management Competence	Experience of the Project Manager

4 pts	Team Competence	Experience of others assigned individuals
10%	Project Management	Scheduling of staff and hours of commitment
5 pts	PM % of effort	% of effort of the project management staff
5 pts	DBE % of effort	% of effort of the DBE services
10%	References/Work Experience	Reference reflecting previous work experience of the project team and satisfactory accomplishment of contract responsibilities
5 pts	Quality of final work	Quality of final work and deliverables
5 pts	Meet schedules and deadlines	Ability to meet work schedule on time

J. ON-SITE PRESENTATIONS

The project selection team may require oral presentation of those firms identified on the proposer's short list. Presentations will be held at MARC or a site designated by MARC.

K. CONTRACT AWARD

MARC will notify the selected candidate by telephone, e-mail and in writing. Following verbal notification, MARC will negotiate a standard professional service agreement with the selected candidate. The selected candidate's proposal will be incorporated by reference in the contract. Additionally, MARC will notify, in writing, the candidates who are not selected.

L. PROTEST PROCEDURES

In the course of this solicitation for proposals and the selection process, a proposer (bidder or offer or whose direct economic interest would be affected by the award of the contract) may file a protest when in the proposer's opinion, actions were taken by MARC staff and /or the selection committee which could unfairly affect the outcome of the selection procedure. All protest should be in writing and directed to Mr. Mell Henderson, Director of Transportation, Mid – America Regional Council, 600 Broadway, *Suite 200* Kansas City, MO 64105. Protest should be made immediately upon occurrence of the incident in question but no later than three (3) days after the proposer receives notification of the outcome of the selection procedure. The protest should clearly state the grounds for such a protest.

Upon receipt of the protest, MARC's Director of Transportation will review the actual procedures followed during the selection process and the documentation available. If it is determined the action(s) unfairly changed the outcome of the process, notifications with the selected proposer will cease until the matter is resolved.

M. PROCUREMENT SCHEDULE

The following is a tentative schedule for the Contractor selection process:

REGIONAL BIKEWAY PLAN PROCUREMENT SCHEDULE	
Activities	Schedule
RFP issued	Wednesday, August 21 st , 2013
Proposals Due	Monday, September 9 th , 2013 (2:00 p.m. CST)
Short List Announced	Week of September 9 th , 2013
Interviews	Week of September 16 th , 2013
Selection	Friday, September 23 rd , 2013 - Tentative
Contract Execution/ Notice to proceed	TBD after contract negotiation
Project Completion	TBD after contract negotiation

ATTACHMENT A - INTENT TO PERFORM AS A DISADVANTAGE BUSINESS ENTERPRISE (DBE)

Project Title and Description:

The undersigned intends to perform work in connection with the above project as (check one):

Prime Contractor Subcontractor
 Joint Venture Other (please specify) _____

If applicable name of prime contractor or joint venture partner:

The DBE status of the undersigned is confirmed by a DBE Certification from one or all of the following (please provide copy of current Certification Certificate):

- MRCC (Missouri Regional Certification Committee)
- KDOT
- MoDOT
- City of Kansas City Missouri
- Kansas City Area Transportation Agency (KCATA)
- Other (please specify) _____
(MARC may require additional certification documentation)

The undersigned is prepared to perform the following described work in connection with the above project (attach additional sheet in needed),

Date

Name of DBE Firm

By: _____
Signature of DBE Firm's Authorized Representative

(Please Print Names of Authorized Representative)

KDOT Special Terms and Conditions

07-18-80-R26
Sheet 1 of 7

REQUIRED CONTRACT PROVISION

FEDERAL AID CONTRACTS UTILIZATION OF DISADVANTAGED BUSINESSES

I. INTRODUCTION.

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

A. ASSURANCE.

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

B. DEFINITIONS.

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

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

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

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

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

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

II. DBE CONTRACT GOALS.

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

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

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

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

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

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

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

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

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

III. MEETING DBE CONTRACT GOAL CRITERIA.

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

A. REQUIRED DBE PARTICIPATION INFORMATION.

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

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

B. GOOD FAITH DETERMINATION.

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

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

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

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

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

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

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

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

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

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

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

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

C. COUNTING DBE PARTICIPATION TOWARD DBE CONTRACT GOALS.

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

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

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

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

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

(4) If a non-DBE contractor and DBE contractor form a joint venture and bid as a prime contractor, the joint venture contractor shall fully meet the DBE contract goals specified in the project special provision. The joint venture contractor may count toward its DBE contract goals the total dollar value of the work actually performed by the DBE participant in the joint venture.

Example: A non-DBE contractor forms a joint venture with a DBE contractor and the joint venture bids the project as a prime contractor. The DBE contract goal is \$10,000.00. The DBE participant in the joint venture performs \$50,000 of the work with its own forces. The joint venture has met the \$10,000 goal. Example: A non-DBE contractor forms a joint venture with a DBE contractor and the joint venture bids the project as a prime contractor. The DBE contract goal is \$100,000.00. The DBE participant in the joint venture performs \$80,000 of the work with its own forces. The joint venture must obtain the remaining \$20,000 in goal through use of another certified DBE firm, or show good faith efforts if the joint venture fails to meet the \$100,000 goal.

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

(a) A manufacturer is a firm that operates a facility that produces goods from raw material on the premises.

(b) A regular dealer is a firm that owns, operates, or maintains a store, or warehouse where materials are stocked and regularly sold to the public. A regular dealer of bulk items (sand, gravel, etc.) need not stock the product if it owns or long-term leases distribution equipment. The supply of structural steel, steel assemblies and petroleum products do not count toward any KDOT DBE goal. A dealer must be responsible for material quality control and must deliver with its own or long term leased equipment to count toward the DBE goal.

(6) A contractor may count toward its DBE goals the following expenditures to DBE firms that are not manufacturers or regular dealers:

(a) The commission charged for providing a bona fide service in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of the contract, provided the commission is reasonable and customary.

(b) The commissions charged for bonds or insurance provided by a DBE broker for the specific performance of the contract, provided the fee is reasonable and customary. A letter must be submitted detailing the amount, but does not count as a subcontracted percentage.

(7) A contractor may count toward its DBE goals the amount paid to a DBE trucker for transportation or delivery services.

(a) A DBE trucker who picks up a product at point A and delivers the product to the contractor at point B provides a delivery service. The full amount paid for this service counts toward the DBE goal.

(b) Some DBE truckers are also a regular dealer (supplier) of a bulk item. In this case, the amount paid for the material delivered will count as 60 percent toward the DBE goal. The DBE trucker is responsible for the quality of the material.

(c) For DBE truckers or suppliers to be credited toward DBE contract goals, the contractor must submit a letter to KDOT detailing all information formerly found on Form 259, prior to the start of the trucking or supply of material and requesting DBE subcontract credit.

D. 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

KANSAS DEPARTMENT OF TRANSPORTATION

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

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 relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Parts 21, 23 and 27, hereinafter referred to as the Regulations), which 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 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 natural 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 contractor 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 contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-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 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 this Order.
- 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.

Project No. _____
 Contract No. _____

07-19-80-R12 (MPO)
 Sheet 1 of 1

**REQUIRED CONTRACT PROVISION
 DBE CONTRACT GOAL**

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

IDENTIFICATION OF DBE PARTICIPATION

Name of KDOT-Certified DBE Subcontractor	Type of Work	\$ Value of work
		\$
		\$
		\$
		\$
		\$
		\$

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>