



**SEDGWICK COUNTY, KANSAS
DIVISION OF FINANCE DEPARTMENT**

Purchasing Department

100 N. Broadway, Suite 610 ~ Wichita, KS 67202

Phone: 316 660-7255 Fax: 316 660-1839

[https://www.sedgwickcounty.org/finance/purchasing/
requests-for-bid-and-proposal/](https://www.sedgwickcounty.org/finance/purchasing/requests-for-bid-and-proposal/)

REQUEST FOR PROPOSAL

RFP #23-0028

**SEDGWICK COUNTY TRANSPORTATION COMPREHENSIVE OPERATIONS & TECHNOLOGY
ANALYSIS AND IMPLEMENTATION PLAN**

April 28, 2023

Sedgwick County, Kansas (hereinafter referred to as “county”) is seeking a firm or firms to provide a Transportation Comprehensive Operations & Technology Analysis and Implementation Plan. If your firm is interested in submitting a response, please do so in accordance with the instructions contained within the attached Request for Proposal. Responses are due no later than 1:45 pm CDT, June 6, 2023.

All contact concerning this solicitation shall be made through the Purchasing Department. Proposers shall not contact county employees, department heads, using agencies, evaluation committee members or elected officials with questions or any other concerns about the solicitation. Questions, clarifications and concerns shall be submitted to the Purchasing Department in writing. Failure to comply with these guidelines may disqualify the Proposer’s response.

Sincerely,

**Theresa Rhodes
Purchasing Agent**

TR/ks

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I. About this Document

This document is a Request for Proposal. It differs from a Request for Bid or Quotation in that the county is seeking a solution, as described on the cover page and in the following Background Information section, not a bid or quotation meeting firm specifications for the lowest price. As such, the lowest price proposed will not guarantee an award recommendation. As defined in Charter Resolution No. 68, Competitive Sealed Proposals will be evaluated based upon criteria formulated around the most important features of the product(s) and/or service(s), of which quality, testing, references, service, availability or capability, may be overriding factors, and price may not be determinative in the issuance of a contract or award. The proposal evaluation criteria should be viewed as standards that measure how well a vendor's approach meets the desired requirements and needs of the county. Criteria that will be used and considered in evaluation for award are set forth in this document. The county will thoroughly review all proposals received. The county will also utilize its best judgment when determining whether to schedule a pre-proposal conference, before proposals are accepted, or meetings with vendors, after receipt of all proposals. A Purchase Order/Contract will be awarded to a qualified vendor submitting the best proposal. **Sedgwick County reserves the right to select, and subsequently recommend for award, the proposed service(s) and/or product(s) which best meets its required needs, quality levels and budget constraints.**

The nature of this work is for a public entity and will require the expenditure of public funds and/or use of public facilities, therefore the successful proposer will understand that portions (potentially all) of their proposal may become public record at any time after receipt of proposals. Proposal responses, purchase orders and final contracts are subject to public disclosure after award. All confidential or proprietary information should be clearly denoted in proposal responses and responders should understand this information will be considered prior to release, however no guarantee is made that information will be withheld from public view.

II. Background

Sedgwick County, located in south-central Kansas, is one of the most populous of Kansas' 105 counties with a population estimated at more than 514,000 persons. It is the sixteenth largest in area, with 1,008 square miles, and reportedly has the second highest per capita wealth among Kansas' counties. Organizationally, the county is a Commission/Manager entity, employs nearly 2,500 persons, and hosts or provides a full range of municipal services, e.g. – public safety, public works, criminal justice, recreation, entertainment, cultural, human/social, and education.

III. Project Objectives

Sedgwick County, Kansas (hereinafter referred to as "county") is seeking a firm or firms to provide a Transportation Comprehensive Operations & Technology Analysis and Implementation Plan. The following objectives have been identified for this contract:

1. Acquire a Transportation Comprehensive Operations & Technology Analysis and Implementation Plan meeting the parameters, conditions and mandatory requirements presented in the document.
2. Establish contract pricing with the vendor that has the best proven "track-record" in performance, service and customer satisfaction.
3. Acquire a Transportation Comprehensive Operations & Technology Analysis and Implementation Plan with the most advantageous overall cost to the county.

IV. Submittals

Carefully review this Request for Proposal. It provides specific technical information necessary to aid participating firms in formulating a thorough response. Should you elect to participate, please email the entire document with supplementary materials to:

Purchasing@sedgwick.gov

SUBMITTALS are due **NO LATER THAN 1:45 pm CDT, TUESDAY, June 6, 2023**. If there is any difficulty submitting a response electronically, please contact the Purchasing Technicians at purchasing@sedgwick.gov for assistance. Late or incomplete responses will not be accepted and will not receive consideration for final award. If you choose to send a hard copy of your proposal, Sedgwick County will not accept submissions that arrive late due to the fault of the U.S. Postal Service, United Parcel Service, DHL, FedEx, or any other delivery/courier service.

Proposal responses will be acknowledged and read into record at Bid Opening, which will occur at 2:00 pm CDT on the due date. No information other than the respondent's name will be disclosed at Bid Opening. We will continue to have Bid Openings for the items listed currently. If you would like to listen in as these proposals are read into the record, please dial our Meet Me line @ (316) 660-7271 at 2:00 pm.

V. [Scope of Work](#)

Consultant Project Tasks

1. Ridership & Demographic Analysis

- a. Identify how riders currently use the system and report ridership findings through graphics, charts, graphs, maps, etc.
 - i. Identification methods to at least include a survey of current riders.
- b. Gather demographic, ridership data, and customer satisfaction data on current riders and report findings.
- c. Review and identify current transit service area, services offered, and hours of operation through graphics, charts, graphs, maps, etc.

2. Latent & Future Demand Estimation

- a. Determine the potential for transit ridership within Sedgwick County (SGCO). Areas only marginally served by Sedgwick County Transportation (SCT) should be emphasized in the analysis.
 - i. Use demographic census data and any available data for the cities (excluding Wichita) within SGCO and the unincorporated area of SGCO for latent/future demand.
- b. Identify key destinations of current riders and identify potential/desired destinations for current and potential riders.
- c. Compile and analyze data and incorporate the results in the service recommendations.

3. Service & System Performance Analysis

- a. Conduct an analysis of trip activity.
 - i. Includes SCT vehicles and contracted vendors.
- b. Evaluate current rates and current scheduling process, report findings, and identify any areas for improvement.
- c. Evaluate current stock of fleet vehicles to determine if there are enough vehicles (and of the correct type) to meet the current and future transit service needs/demands, report findings, and identify any areas for improvement.
- d. Evaluate productivity, schedule adherence, and running time data and report findings.
 - i. Determine and recommend a new scheduling software system, if deemed necessary.
- e. Evaluate current communication process between drivers and dispatchers, report findings, and identify any areas for improvement.
- f. Evaluate how vendors are incorporated into the report findings and identify any areas for improvement.
- g. Identify and report findings on any deficiencies in service and system performance operations and current technology used.

4. Coordination & Collaboration

- a. Participate in the coordination discussions led by Wichita Area Metropolitan Planning Organization (WAMPO's) consultant for the [Regional Transit Implementation Plan](#) (tentative project start: July 2023).
 - i. This plan will involve conversations with the public transit providers in Harvey, Sedgwick and Butler counties (Sedgwick County Transportation, Haysville Hustle, Derby Dash, Wichita Transit, Butler County Transportation and Harvey County Transportation).
- b. Participate in the coordination discussions led by and collaborate with the United Community Transit Coalition (UCTC).
- c. Provide recommendations to SCT regarding potential collaboration efforts and agreements with other transit providers to improve regional transportation.
 - i. Coordination between SCT and Reno County Area Transit (RCAT) provides Reno County passengers in Mt. Hope transportation to and from Wichita. More of this collaborative partnering is desirable.
- d. Identify any gaps and duplication of transit services with other regional transit providers and report findings.
- e. Identify existing vendor partnerships and recommend potential future partnerships that help increase SCT operations, efficiency and customer service.
 - i. Including ridesharing opportunities.

5. Recommendation & Implementation Plan

- a. Based on the analyses, findings, and coordination efforts of Tasks 1-4, develop system and services recommendations for implementation.
 - i. Consideration should be given to service recommendations in response to inadequate levels of service in minority and low-income neighborhoods.
 - ii. Each recommendation shall include operational requirements, as well as an estimate of costs associated with full implementation.
- b. Identify and recommend technologies that would improve any identified deficiencies and/or better meet the needs of SCT customers and staff.
 - i. Provide a report detailing the options and cost estimates for upgrading or replacing the current software and communication technologies and the necessary steps to make the upgrades.
- c. If a deficiency in fleet stock is determined in Task 3, recommend the quantity and type of vehicles needed.
- d. Identify ways and include best practices for improving the transit experience, shortening travel time, promoting/advertising transit services, better meeting the needs of the community, etc.
- e. Recommendations and implementations (including partnership opportunities and fleet vehicles) shall be categorized as follows:
 - i. Short-Term [one (1) to three (3) years]
 - ii. Mid-Term [three (3) to five (5) years]
 - iii. Long-Term [five (5) to ten (10) years]

*** Information to include in the RFP:**

- Timeline: Study and Recommendations need to be completed by December 31, 2023.
- This is a grant funded project. Available funds for this project are between \$100,000.00 - \$115,000.00.
- The consultant may propose addition/optional tasks (with estimated additional cost) to be incorporated as part of the scope of work.

VI. Sedgwick County's Responsibilities

- Provide information, as legally allowed, in possession of the county, which relates to the county's requirements or which is relevant to this project.
- Designate a person to act as the County Contract Manager with respect to the work to be performed under this contract.
- County reserves the right to make inspections at various points of the project. Contractor agrees to openly participate in said inspections and provide information to the county on the progress, expected completion date and any unforeseen or unexpected complications in the project.

VII. Proposal Terms

A. Questions and Contact Information

Any questions regarding this document must be submitted via email to Theresa Rhodes at Theresa.Rhodes@sedgwick.gov by 5:00 pm CDT, May 15, 2023. Any questions of a substantive nature will be answered in written form as an addendum and posted on the purchasing website at <https://www.sedgwickcounty.org/finance/purchasing/requests-for-bid-and-proposal/> under the Documents column associated with this RFP number by 5:00 pm CDT, May 22, 2023. Firms are responsible for checking the website and acknowledging any addenda on their proposal response form.

B. Minimum Firm Qualifications

This section lists the criteria to be considered in evaluating the ability of firms interested in providing the service(s) and/or product(s) specified in this Request for Proposal. Firms must meet or exceed these qualifications to be considered for award. Any exceptions to the requirements listed should be clearly detailed in proposer's response. Proposers shall:

1. Have a minimum of five (5) years' experience in providing services similar to those specified in this RFP.
2. Have an understanding of industry standards and best practices.
3. Have experience in managing projects of comparable size and complexity to that being proposed.
4. Have knowledge of and comply with all currently applicable, and as they become enacted during the contract term, federal, state and local laws, statutes, ordinances, rules and regulations. All laws of the State of Kansas, whether substantive or procedural, shall apply to the contract, and all statutory, charter, and ordinance provisions that are applicable to public contracts in the county shall be followed with respect to the contract.
5. Municipal and county government experience is desired, however, the county will make the final determination based on responses received and the evaluation process.
6. Have the capacity to acquire all bonds, escrows or insurances as outlined in the terms of this RFP.
7. Provide project supervision (as required) and quality control procedures.
8. Have appropriate material, equipment and labor to perform specified services.
9. Park only in designated areas and display parking permit (if provided).
10. Wear company uniform or ID badge for identification purposes.

C. Evaluation Criteria

The selection process will be based on the responses to this RFP. County staff will judge each response as determined by the scoring criteria below. Purchasing staff are not a part of the evaluation committee.

Component	Points
a. Experience Performing Transit Studies	75
b. References	20
c. Cost	5
Total Points	100

Assume the following cost proposals (**examples only**)

- A. \$50,000.00
- B. \$38,000.00
- C. \$49,000.00

Company B with a total price of \$38,000.00 is the low offer. Take the low offer and divide each of the other offers into the low offer to calculate a percentage. This percentage is then multiplied by the number of points available for the cost. In this case, 10 points are allocated to cost.

- A. \$38,000.00 divided by \$50,000.00 =.76 .76*10 7.6 points
- B. \$38,000.00 divided by \$38,000.00 =1.00 1.00*10 10 points
- C. \$38,000.00 divided by \$49,000.00= .77 .77*10 7.7 points

Any final negotiations for services, terms and conditions will be based, in part, on the firm’s method of providing the service and the fee schedule achieved through discussions and agreement with the county’s review committee. The county is under no obligation to accept the lowest priced proposal and reserves the right to further negotiate services and costs that are proposed. The county also reserves the sole right to recommend for award the proposal and plan that it deems to be in its best interest.

The county reserves the right to reject all proposals. All proposals, including supporting documentation shall become the property of Sedgwick County. All costs incurred in the preparation of this proposal shall be the responsibility of the firm making the proposals. Sedgwick County reserves the right to select, and subsequently recommend for award, the proposed service which best meets its required needs, quality levels and budget constraints.

D. [Request for Proposal Timeline](#)

The following dates are provided for information purposes and are subject to change without notice. Contact the Purchasing Department at (316) 660-7255 to confirm any and all dates.

Distribution of Request for Proposal to interested parties	Friday, April 28, 2023
Questions and clarifications submitted via email by 5:00 pm CDT	Monday, May 15, 2023
Addendum Issued by 5:00 pm CDT	Monday, May 22, 2023
Proposal due before 1:45 pm CDT	Tuesday, June 6, 2023
Evaluation Period	June 7, 2023 – June 22, 2023
Board of Bids and Contracts Recommendation	Thursday, June 29, 2023
Board of County Commission Award	Wednesday, July 5, 2023

E. [Contract Period and Payment Terms](#)

A contractual period will begin following Board of County Commissioners (BoCC) approval of the successful firm(s) and continue thru December 31, 2023.

County may cancel its obligations herein upon thirty-day (30) prior written notice to the other party. It is understood that funding may cease or be reduced at any time, and in the event that adequate funds are not available to meet the obligations hereunder, either party reserves the right to terminate this agreement upon thirty (30) days prior written notice to the other. Payment will be remitted following receipt of monthly detailed invoice.

Payment and Invoice Provisions

<https://www.sedgwickcounty.org/media/55477/payment-and-invoice-provisions.pdf>

F. **Insurance Requirements**

Liability insurance coverage indicated below must be considered as primary and not as excess insurance. If required, contractor’s professional liability/errors and omissions insurance shall (i) have a policy retroactive date prior to the date any professional services are provided for this project, and (ii) be maintained for a minimum of three (3) years past completion of the project. Contractor shall furnish a certificate evidencing such coverage, with county listed as an additional insured including both ongoing and completed operations, except for professional liability, workers’ compensation and employer’s liability. **Certificate shall be provided prior to award of contract.** Certificate shall remain in force during the duration of the project/services and will not be canceled, reduced, modified, limited, or restricted until thirty (30) days after county receives written notice of such change. All insurance must be with an insurance company with a minimum BEST rating of A-VIII and licensed to do business in the State of Kansas (**must be acknowledged on the bid/proposal response form**).

NOTE: If any insurance is subject to a deductible or self-insured retention, written disclosure must be included in your proposal response and also be noted on the certificate of insurance.

It is the responsibility of contractor to require that any and all approved subcontractors meet the minimum insurance requirements.

Workers’ Compensation:	
Applicable coverage per State Statutes	
Employer’s Liability Insurance:	\$500,000.00
Commercial General Liability Insurance (on form CG 00 01 04 13 or its equivalent):	
Each Occurrence	\$1,000,000.00
General Aggregate, per project	\$2,000,000.00
Personal Injury	\$1,000,000.00
Products and Completed Operations Aggregate	\$2,000,000.00
Automobile Liability:	
Combined single limit	\$500,000.00
Umbrella Liability:	
Following form for both the general liability and automobile	
<input checked="" type="checkbox"/> Required / <input type="checkbox"/> Not Required	
Each Claim	\$1,000,000.00
Aggregate	\$1,000,000.00
Professional Liability/ Errors & Omissions Insurance:	
<input checked="" type="checkbox"/> Required / <input type="checkbox"/> Not Required	
Each Claim	\$1,000,000.00
Aggregate	\$1,000,000.00
Pollution Liability Insurance:	
<input type="checkbox"/> Required / <input checked="" type="checkbox"/> Not Required	
Each Claim	\$1,000,000.00
Aggregate	\$1,000,000.00

Special Risks or Circumstances:

Entity reserves the right to modify, by written contract, these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

IF CONTRACTOR IS PROVIDING CONSTRUCTION SERVICES:

In addition to the above coverages, contractor shall also provide the following:

Builder’s Risk Insurance:	In the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied and installed by others, comprising the total value for the entire Project on a replacement cost basis without optional deductibles. Entity, contractor, and all Subcontractors shall be included as named insured’s.
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G. Indemnification

To the fullest extent of the law, the provider, its subcontractor, agents, servants, officers or employees shall indemnify and hold harmless Sedgwick County, including, but not limited to, its elected and appointed officials, officers, employees and agents, from any and all claims brought by any person or entity whatsoever, arising from any act, error, or omission of the provider during the provider’s performance of the agreement or any other agreements of the provider entered into by reason thereof. The provider shall indemnify and defend Sedgwick County, including, but not limited to, its elected and appointed officials, officers, employees and agents, with respect to any claim arising, or alleged to have arisen from negligence, and/or willful, wanton or reckless acts or omissions of the provider, its subcontractor, agents, servants, officers, or employees and any and all losses or liabilities resulting from any such claims, including, but not limited to, damage awards, costs and reasonable attorney’s fees. This indemnification shall not be affected by any other portions of the agreement relating to insurance requirements. The provider agrees that it will procure and keep in force at all times at its own expense insurance in accordance with these specifications.

H. Confidential Matters and Data Ownership

The successful proposer agrees all data, records and information, which the proposer, its agents and employees, which is the subject of this proposal, obtain access, remains at all times exclusively the property of Sedgwick County. The successful proposer agrees all such data, records, plans and information constitutes at all times proprietary information of Sedgwick County. The successful proposer agrees that it will not disclose, provide, or make available any of such proprietary information in any form to any person or entity. In addition, the successful proposer agrees it will not use any names or addresses contained in such data, records, plans and information for the purpose of selling or offering for sale any property or service to any person or entity who resides at any address in such data. In addition, the successful proposer agrees it will not sell, give or otherwise make available to any person or entity any names or addresses contained in or derived from such data, records and information for the purpose of allowing such person to sell or offer for sale any property or service to any person or entity named in such data. Successful proposer agrees it will take all reasonable steps and the same protective precautions to protect Sedgwick County's proprietary information from disclosure to third parties as with successful proposer's own proprietary and confidential information. Proposer agrees that all data, regardless of form that is generated as a result of this Request for Proposal is the property of Sedgwick County.

I. Proposal Conditions

<https://www.sedgwickcounty.org/media/31338/proposal-terms-conditions.pdf>

General Contract Provisions

<https://www.sedgwickcounty.org/media/31337/general-contractual-provisions.pdf>

Mandatory Contract Provisions

<https://www.sedgwickcounty.org/media/31336/mandatory-contractual-provisions.pdf>

Independent Contractor

<https://www.sedgwickcounty.org/media/54780/independent-contractor-addendum.pdf>

Sample Contract

<https://www.sedgwickcounty.org/media/39236/sample-contract.pdf>

Federal Certifications Addendum Sedgwick County

<https://www.sedgwickcounty.org/media/59719/federal-certifications-addendum-updated-for-changes-to-ug-11-12-2020-no-signature-line.pdf>

Suspension and Debarment

<https://www.sedgwickcounty.org/finance/purchasing/suspension-and-debarment/>

VIII. Required Response Content

All proposal submissions shall include the following:

1. Firm profile: the name of the firm, address, telephone number(s), contact person, year the firm was established, and the names of the principals of the firm.
2. The firm's relevant experience, notably experience working with government agencies.
3. At minimum, three (3) professional references, besides Sedgwick County, with email addresses, telephone numbers, and contact persons where work has been completed within the last three (3) years.
4. A disclosure of any personal or financial interest in any properties in the project area, or any real or potential conflicts of interest with members of the Sedgwick County Board of County Commissioners or county staff.
5. A description of the type of assistance that will be sought from county staff, including assistance required from the county to lessen the costs of this project.
6. Proof of insurance meeting minimum insurance requirements as designated herein.
7. Those responses that do not include all required forms/items may be deemed non-responsive.

IX. Response Form

REQUEST FOR PROPOSAL
RFP #23-0028

SEDGWICK COUNTY TRANSPORTATION COMPREHENSIVE OPERATIONS & TECHNOLOGY
ANALYSIS AND IMPLEMENTATION PLAN

The undersigned, on behalf of the proposer, certifies that: (1) this offer is made without previous understanding, agreement or connection with any person, firm, or corporation submitting a proposal on the same project; (2) is in all respects fair and without collusion or fraud; (3) the person whose signature appears below is legally empowered to bind the firm in whose name the proposer is entered; (4) they have read the complete Request for Proposal and understands all provisions; (5) if accepted by the county, this proposal is guaranteed as written and amended and will be implemented as stated; and (6) mistakes in writing of the submitted proposal will be their responsibility.

NAME _____

DBA/SAME _____

CONTACT _____

ADDRESS _____ CITY/STATE _____ ZIP _____

PHONE _____ FAX _____ HOURS _____

STATE OF INCORPORATION or ORGANIZATION _____

COMPANY WEBSITE ADDRESS _____ EMAIL _____

NUMBER OF LOCATIONS _____ NUMBER OF PERSONS EMPLOYED _____

TYPE OF ORGANIZATION: Public Corporation _____ Private Corporation _____ Sole Proprietorship _____

Partnership _____ Other (Describe): _____

BUSINESS MODEL: Small Business _____ Manufacturer _____ Distributor _____ Retail _____

Dealer _____ Other (Describe): _____

Not a Minority-Owned Business: _____ Minority-Owned Business: _____ (Specify Below)

_____ African American (05) _____ Asian Pacific (10) _____ Subcontinent Asian (15) _____ Hispanic (20)

_____ Native American (25) _____ Other (30) - Please specify _____

Not a Woman-Owned Business: _____ Woman-Owned Business: _____ (Specify Below)

_____ Not Minority -Woman Owned (50) _____ African American-Woman Owned (55) _____ Asian Pacific-Woman Owned (60)

_____ Subcontinent Asian-Woman Owned (65) _____ Hispanic Woman Owned (70) _____ Native American-Woman Owned (75)

_____ Other – Woman Owned (80) – Please specify _____

ARE YOU REGISTERED TO DO BUSINESS IN THE STATE OF KS: _____ Yes _____ No

UEI (UNIQUE ENTITY IDENTIFIER) NO. _____

INSURANCE REGISTERED IN THE STATE OF KS WITH MINIMUM BEST RATING OF A-VIII: _____ Yes _____ No

ACKNOWLEDGE RECEIPT OF ADDENDA: All addendum(s) are posted to our RFB/RFP web page and it is the vendor's responsibility to check and confirm all addendum(s) related to this document by going to www.sedgwickcounty.org/finance/purchasing.asp .

NO. _____, DATED _____ ; NO. _____, DATED _____ ; NO. _____, DATED _____

In submitting a proposal, vendor acknowledges all requirements, terms, conditions, and sections of this document. Proposal submission format should be by order in which sections are listed throughout the document. All minimum and general requirements should be specifically addressed and detailed in proposer's response. **Exceptions to any part of this document should be clearly delineated and detailed.**

Signature _____ Title _____

Print Name _____ Dated _____

Attachment 1

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

PREAMBLE

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

CLARIFICATION

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

ASSURANCE APPENDIX A

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

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

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

ASSURANCE APPENDIX E

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

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

Attachment 4

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

CONTRACTUAL PROVISIONS ATTACHMENT

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

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

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

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

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

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

Attachment 5

KDOT POLICY FOR
CONSULTANT CONTRACT REIMBURSEMENT
FOR
HOTEL AND PER DIEM

Attention Contract Partners:

The following policy for hotels and per diem rates will be effective January 1, 2023, for contracts with consultants and sub-consultants statewide.

	Daily Meals (max.)	Per Meal Allowance		Lodging before tax	Max Lodging Addl 50%*
Standard rate for all Kansas locations except Wichita & KC/OP	\$59.00	Breakfast \$8.85 Lunch \$20.65 Dinner \$29.50		\$98.00	\$147.00
Wichita (includes Sedgwick County)	\$64.00	Breakfast \$9.60 Lunch \$22.40 Dinner \$32.00		\$103.00	\$154.50
KC/Overland Park (includes Johnson, Wyandotte, & Leavenworth counties)	\$64.00	Breakfast \$9.60 Lunch \$22.40 Dinner \$32.00		\$123.00	\$184.50

*Prior approval required

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

Per diem will be allowed only with overnight travel. Per diem reimbursement/invoicing must be submitted with hotel receipt. If the hotel provides breakfast, breakfast per diem reimbursement will not be allowed except for extenuating circumstances. Extenuating circumstance justification must be provided in writing at time of invoice. Submit company's policy prior to starting work. A summary must be provided with billings recapping costs per day per individual. Please notify your sub-consultants of these rates.

Mileage will be limited to the State of Kansas approved rate of \$0.585/mile unless the company has audited vehicle usage rates for their company vehicles. Receipts are required for: Airport parking (limited to \$14/day); Tolls, Rental vehicles (economy class only), and Equipment Rentals. Equipment, vehicles, reproduction/printing, CADD, GPS, etc., charged as direct expense must have an audited rate to be used. Direct equipment expenses without an audited rate and "snacks" for meetings will not be allowed.

Reimbursement rates may change as State and/or Federal policies change.

Thank you.



Scott King, P.E., Interim Director
Division of Engineering and Design
Kansas Department of Transportation

01/11/2023

Date

C: Pam Anderson, Chief, Bureau of Fiscal Services