

DBE PROGRAM MANUAL

KDOT

(Kansas Department of Transportation)

OFFICE OF CIVIL RIGHTS



November 2012

PURPOSE AND DISCLAIMER

This document has been published to serve as a guide for the Kansas Statewide Certification Program (KSCP) which applies to disadvantaged businesses. It does not replace or supersede state and federal regulations. The regulations are the primary authority.

Lack of knowledge or lack of understanding of the content of the federal and state regulations will not be considered an excuse for violation of the law. Intentional violators of the DBE Program regulations may be prosecuted. Intentional or non-intended failure to follow the regulations may result in termination of the contract.

Note: Out-of-state businesses **must be** certified in their home state prior to applying for Kansas Certification.

Kansas Department of Transportation

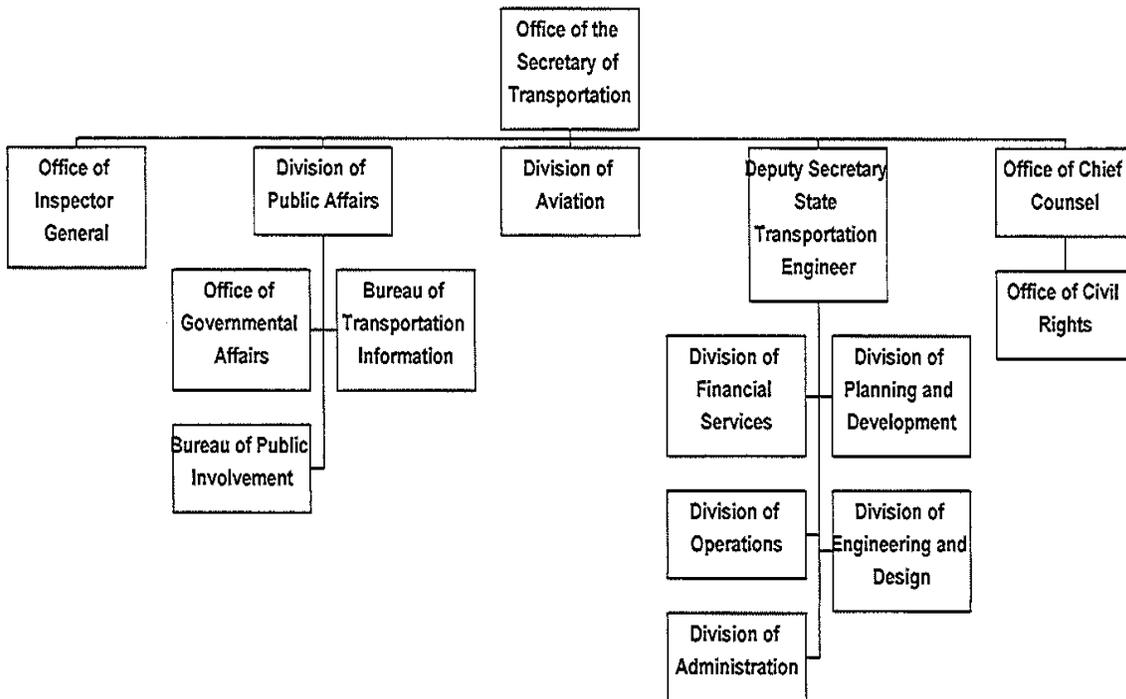


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I. DBE PROGRAM ADMINISTRATION

DBE PROGRAM POLICY STATEMENT (26.1, 26.23)

The Kansas Department of Transportation (KDOT) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with 49 Code of Federal Regulations (CFR) Part 26. KDOT has received federal financial assistance from the U.S. Department of Transportation (USDOT) and as a condition of receiving this assistance, KDOT has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy and commitment of KDOT that disadvantaged businesses as defined in 49 CFR Part 26 shall have a level playing field to participate in the performance of contracts financed in whole or in part with federal funds.

Through the use of KDOT DBE certification procedures, KDOT will ensure that only fully eligible firms are permitted to participate in the narrowly tailored DBE Program. KDOT will remove barriers to the participation of these eligible firms. KDOT will assist in the development of eligible firms to make them competitive both within and outside of the DBE Program.

The Secretary of Transportation for KDOT maintains overall responsibility for the administration of the DBE Program. In order to carry out these responsibilities the Secretary has designated a DBE liaison officer in the Office of Civil Rights. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred with USDOT funds.

KDOT shall submit to the Federal Highway Administration (FHWA) and Federal Transit Authority (FTA) its overall goal for the participation of DBE firms. This goal shall be for three years and shall be analyzed by KDOT near the end of each fiscal year.

This Policy will be circulated throughout KDOT, published in the Kansas Register and made known to certified DBEs, DBE organizations, non-minority businesses, community and contractor organizations.



Michael S. King,
Secretary of Transportation

Date: 11-30-12

NONDISCRIMINATION (26.7)

KDOT and its contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of federal aid contracts or in DBE program administration. The KDOT will advise each contractor, through state contract specifications, that failure to carry out these requirements shall constitute a breach of contract and may result in termination of the contract or such remedy as KDOT deems appropriate. KDOT will require all employees and agents to adhere to the provisions of 49 CFR Part 26.

KDOT, in administering its DBE Program, will not directly or through contract, use criteria or methods to defeat or impair the accomplishment of the objectives of the DBE Program with respect to persons of a particular race, color, national origin or sex. In addition, other federal laws state KDOT and its contractors shall not discriminate on the basis of age, religion, disability, income or veteran status.

RECORDS AND REPORTS (26.11)

KDOT will continue to provide data about the DBE Program as directed by the operating administrations of the U.S. Department of Transportation (USDOT).

KDOT will create and maintain a bidders list of all firms working as subcontractors or bidding as contractors on federal aid projects. For each firm the following information will be maintained and updated annually:

1. Firm Name
2. Firm Address
3. Firm DBE or non-DBE status
4. Age of Firm
5. Annual gross receipts of the firms
6. Firm identifying number
7. Types of work performed by the firm

Uniform Report of DBE Commitments/Awards and Payments. Semi-annually, the Office of Civil Rights prepares this report which contains information about DBE commitments and DBE actual payments for the reporting period. FHWA activity is reported on-line through DOORS (DBE Office Online Reporting Systems) and FTA activity is reported on-line through TEAM (Transportation Electronic Award Management System). See Appendix Q

KDOT Transportation Planning also prepares an ARRA Quarterly DBE report of DBE Commitments/Awards and Payments for FTA projects which contain ARRA funding. See Appendix R.

STATUS AND UPDATES (26.21)

KDOT will continue its DBE Program until all federal financial assistance funds have been expended. KDOT will provide updates to USDOT whenever it makes significant changes in the DBE Program. DBE Program updates are the responsibility of the DBE liaison officer in the Office of Civil Rights.

QUOTAS (26.43)

KDOT does not use quotas in any way in any portion of the administration or the implementation of its DBE Program.

FEDERAL FINANCIAL ASSISTANCE ASSURANCE (26.13)

KDOT has signed the following assurance applicable to all federal aid contracts. This same assurance will be included in all agreements with sub recipients. This assurance is included in all contracts and binding on all contractors and subcontractors. See Appendix N.

KDOT shall not discriminate on the basis of race, color, religion, national origin, age, disability, low income, veteran status or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. KDOT shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. KDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporation by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

PROGRAM IMPLEMENTATION AND STAFF (26.25)

Officer Appointment: The Secretary of Transportation for KDOT maintains overall responsibility for the DBE Program administration. The Secretary has appointed Doria Watson as DBE liaison officer for KDOT. Ms. Watson is KDOT's Civil Rights Administrator in the Office of Civil Rights. The Civil Rights Administrator position reports directly to the KDOT Chief Counsel. She, in turn, reports to the Secretary of Transportation. The DBE liaison officer has direct access to the Secretary of Transportation for DBE matters of special concern to KDOT. Ms. Watson can be reached at 785-296-7940 or doria@ksdot.org.

Officer Duties: The DBE liaison officer carries out the program objectives of the policy statement and develops, manages and implements the DBE program. The duties include supervision of four Program Consultants who have daily contact with DBE firms, DBE applicants, contractors and KDOT field staff. The liaison officer works with Assistant Bureau Chiefs of Construction and Maintenance to set DBE goals on federal aid construction projects monthly and coordinates public input to set overall DBE goals for KDOT. The liaison officer monitors the goals to see they are met at the time of bid, met at the contract award stage and fulfilled during project construction. Through the Program Consultants and KDOT field staff she monitors DBE performance for commercially useful function and other requirements as set forth in 49 CFR Part 26. The liaison officer also oversees all support services provided to certified DBEs by KDOT or its consultant and reviews special provisions periodically to ensure they conform to the DBE Program and to KDOT's internal procedures. An attorney from the Office of Chief Counsel assists the staff. KDOT's field engineering personnel will contact the DBE liaison officer when problems occur in the field and will perform daily project monitoring. See Appendix B for further services provided.

DBE Contract Goal Team: The team consists of the DBE liaison officer, program consultant(s) and Assistant Bureau Chief in Construction and Maintenance. Together, monthly, they look at each federal aid contract to be let, select those contracts for assigned DBE goals and those contracts for race and gender neutral DBE participation.

Application Review Team: This team is a permanent standing panel which consists of the DBE Program Consultant, the DBE liaison officer, and the DBE specialist attorney from the Office of Chief Counsel. The DBE Program Consultant conducts all the necessary certification activities and presents a recommendation to the DBE liaison officer who reviews the file to see if all procedures were followed and makes a recommendation. The file then goes to the DBE specialist attorney for review. Prior to any denial, the review team will meet to discuss the decision.

DBE Review Committee: This committee reviews appeals of applicant firms who have been denied or DBE firms who had DBE eligibility removed by KDOT. Jerry Younger, Deputy Secretary of Engineering & State Transportation Engineer, who does not vote, chairs the committee. The current voting members are Sue Darling, Assistant Bureau Chief of Construction and Maintenance, Ron McMurray, Bureau of Fiscal Services and Mark Ummel, Office of Inspector General.

Field Construction Staff: This staff is responsible for implementing the prompt pay provision, monitoring DBE performance for Commercially Useful Function (CUF), and advising the DBE Program Consultants when a DBE firm will be working on the job.

KDOT field construction staff will immediately contact the Office of Civil Rights when a problem or issue arises concerning DBE performance, payment, irregularity or any work-related issues.

USE OF DBE OWNED FINANCIAL INSTITUTIONS (26.27)

The KDOT will investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged persons in Kansas and make reasonable efforts to use these institutions, within state law.

The KDOT will encourage prime contractors to use the services of institutions owned and controlled by socially and economically disadvantaged persons. This requirement is part of each federal aid contract in Special Provision 7-18-80-latest revision. (See Appendix K) Further information may be obtained from the DBE liaison officer at 785-296-7940.

There are two banks in Kansas known to be owned and controlled by socially and economically disadvantaged persons. Liberty Bank and Trust Company (African-American) located in Kansas City, Kansas, telephone number (913)321-7200. The second is CBW Bank (African-American/Native-American) located in Weir, Kansas, telephone number (620)396-8221. This list will be updated periodically by the DBE liaison officer.

PROMPT PAYMENT OF SUBCONTRACTOR

The KDOT requires all prime contractors to pay each subcontractor and first tier supplier for satisfactory performance of its contract no later than ten calendar days from the date the contractor received payment from KDOT. Non-bonded subcontractors with satisfactory work on a pay estimate must submit proof of payment of all material bills and wages to the prime contractor before payment of retainage by the prime contractor. (Satisfactorily completed work is that which is paid for on a KDOT pay estimate). The 2007 Standard Specification Book, Section 109 is included in Appendix L. The Prompt Pay Provision is monitored and enforced by KDOT construction engineers/managers. The required Form 1010 is in Appendix M.

DBE DIRECTORY (26.31)

The KDOT publishes a daily directory on the internet identifying certified DBEs willing to perform as subcontractors on KDOT's federal aid projects. All DBE firms listed in the directory are certified as meeting the requirements as outlined in 49 CFR Part 26. The directory contains the DBE firm name, address, phone, fax, owner name, NAICS codes and work types. Copies are available on KDOT's website at www.ksdot.org/divAdmin/DBEConstruction/dbedir.aspx. The DBE Directory is the responsibility of the DBE liaison officer.

DBE OVERCONCENTRATION IN SPECIALTY WORK (26.33)

At this time, overconcentration is not a problem in Kansas, nor has it been in the past. It will be reconsidered in the future if warranted. Any interested party who has a concern should submit relevant facts in writing to the KDOT DBE liaison officer.

MENTOR-PROTÉGÉ PROGRAM (26.35)

(Reserved for future use.)

MONITORING AND ENFORCEMENT (26.37)

The KDOT will notify the Federal Highway Administration (FHWA) of any false or fraudulent conduct concerning the DBE Program. Prosecution and debarment for fraud are the responsibility of the USDOT Inspector General and the US Attorney for Kansas.

Non-compliance with the DBE Program by a participant will be handled under the provisions of Special Provision 07-18-80's latest revision in Appendix K. Monitoring and enforcement are joint efforts of the Civil Rights staff and Field Construction staff.

FOSTERING SMALL BUSINESS PARTICIPATION (26.39)

Contracts: KDOT unbundles construction contracts which makes them more accessible to DBEs and other small businesses who are interested in bidding as prime contractor. Examples of work broken out as separate projects:

1. Seeding. Typically when seeding on larger projects meets or exceeds seventeen (17) acres then the seeding will be let as a separate contract.
2. Lighting. A lighting only project is recommended due to road safety audits and traffic studies or for upgrading existing interchange lighting.

3. Pavement Marking. Typically let separately when no other work scheduled on roadway for three or more years or when a specialized product is needed to increase durability for highly traveled roadways.

KDOT is considering unbundling of professional services contracts. However, no decision has been made to modify professional services contracts.

In addition, KDOT regularly lets many small projects, under \$500,000, both federally and state funded, which are ideal for small construction companies. Many of these are bridge and/or road repairs, chip or conventional seal and other small specialty projects such as traffic signals and high tension barrier cable. Federal projects which provide little or no opportunity for subcontracting opportunities rarely have a DBE goal. These small projects provide excellent race and gender neutral opportunities for small construction companies to successfully bid as prime contractors. It is estimated that up to 50% of small FHWA funded projects are awarded to small businesses.

Contractors interested in bidding and working on KDOT projects regularly submit information regarding their business size based on their annual gross receipts. This information is maintained in the Office of Civil Rights and Division of Operations.

Throughout the year, the Office of Civil Rights staff participates in community functions and meetings involving small businesses who are interested in doing KDOT and other state and federal related work. The Office of Civil Rights regularly receives invitations from the Kansas Department of Commerce and local chambers of commerce. KDOT is also involved in economic development activities sponsored by city and other local communities and state representatives.

Representatives from KDOT also serve on the committee that proposes to create a Kansas Small, Minority and Women-Owned Business Development Program. A House Bill was submitted in January 2012 to the Kansas House Committee of Commerce and Economic Development and a Senate Bill was submitted in January 2012 to the Kansas Senate Committee on Commerce.

The DBE Support Services contractor periodically presents workshops and seminars on topics such as the letting process, KDOT Specifications, reading plans, estimating and bidding, business planning, managing risk, marketing plans, website development, business reinvestment, reduction of tax liability etc. The DBE Support Services is tasked with continued development of the Consortium with Small Business Development Center, area lending and financial institutions to improve firms' loan approval rates. Include SBA, Rural Development and other groups designed to provide financial assistance to small business. The primary beneficiaries of DBE Support Services are Heavy/Highway DBEs however, to encourage networking and business development; other small business contractors and prime contractors are regularly invited.

SMALL BUSINESS ELEMENT

KDOT will continue development of its Small Business Element program. This program will focus on the small business concerns.

Definition: A small business concern (SBE) as defined pursuant to section 3 of the Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts (over the firm's previous three fiscal years) in

excess of \$22.41 million as specified in 49 CFR 26.65(b). The U.S. Department of Transportation Secretary adjusts this amount for inflation from time to time.

Outreach: KDOT will work with the Department of Commerce and Kansas Chambers of Commerce to develop a listing of business owners in the State of Kansas. KDOT will systematically notify these owners, via mail, informing them of the KDOT small business opportunities available to them. Interested owners will be asked to provide necessary information and documentation to confirm program eligibility.

Projected timeline: September 1, 2012 – March 31, 2013

September 2012	1. Develop mailing lists of all Kansas business.
September 2012	2. Outreach to: Kansas Contractors Association, Black Contractors Association of Kansas, Kansas African American Affairs Commission, Kansas Hispanic American Affairs Commission and Kansas Office of Native American Affairs to identify any concerns or recommendations for the program.
October and November 2012	3. Develop small business program that will: <ol style="list-style-type: none"> a. Create SBE application form – including document requirements. b. Identify types of projects for SBE utilization. c. Establish a process for determining if the identified projects will neutrally encourage SBE utilization or if specific SBE goals will be required. d. Internally develop system to insure the Small Business Element language is included in the identified projects. e. Establish reporting system to track success of program.
December 3, 2012	4. Mailing to all Kansas business.
Begin January 2013	5. Certify eligible Small Business Enterprises (SBE). Certified SBEs will be added to online SBE Directory.
2013 Construction Season	6. Begin SBE utilization on selected KDOT projects.
March 2013	7. Develop process for periodic verification of SBE eligibility.

DEFINITIONS (26.5)

Affiliates- firms are affiliated when directly or indirectly:

1. One firm has the power to control another firm, or
2. A third party has the power to control the firms, or
3. There is an identity of interest between two firms, or
4. There is shared ownership, management or contracts.

Disadvantaged Business Enterprise- A for-profit small business, at least 51% owned and controlled by certified socially and economically disadvantaged person(s).

Good Faith Efforts- Efforts to achieve a DBE goal or DBE participation, which by their scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the requirement.

Personal Net Worth (PNW) - The net value of the assets of an individual after applicable liabilities are deducted. The individual's equity in their primary residence and the individual's ownership in the applicant firm are not included in the assets. PNW includes only individual's share of community property or marital property.

Race and Gender Conscious Measure- A measure that targets Certified DBE businesses by setting a goal for DBE utilization.

Race and Gender Neutral Measure- A measure that assists all small businesses to be involved in construction projects.

Small Business Concern- A small business concern as defined pursuant to section 3 of the Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR 26.65(b). The U.S. Department of Transportation Secretary adjusts this amount for inflation from time to time.

NONCOMPLIANCE COMPLAINTS (26.103)

Any person who believes that KDOT or any KDOT sub-recipient has failed to comply with the obligations of 49 CFR Part 26, may file a written complaint with the Federal Highway Administration Office of Civil Rights in Washington, D.C. (see page 22). The written complaint must be filed within 180 days after the occurrence of the alleged violation or the date on which the person learned of an ongoing violation. The person may also request an extension of time to file beyond the 180 days by stating a reason in the interest of justice for so doing.

II. GOALS, GOOD FAITH AND COUNTING (26.45)

GOAL OBJECTIVE

KDOT will set a FHWA overall DBE participation goal for a three year period. The purpose is to provide a level playing field for all contractors. KDOT's goal for participation will be based on the relative availability of certified DBE firms who are ready, willing and able to perform. The intent is to have a level of DBE participation equal to that which would occur without the effects of past or present discrimination. There is no quota for DBE utilization and as always KDOT will give serious consideration to documented good faith efforts. KDOT will set a separate FTA overall DBE goal every 3 years.

AMOUNT OF GOAL

The overall goal will be determined each three year period based on the federal participation and historical data. It will be reviewed annually to determine if any adjustments are necessary. Any interim adjustments will require approval by FHWA. The methodology will remain stable until circumstances indicate the necessity of change. Please contact the DBE liaison officer for further information.

DETERMINING DBE GOAL

KDOT will collect data on the basis of the previous federal fiscal years to be used to set the DBE goal for the following three year federal fiscal period. The data will include all bidders, amounts bid, all subcontractors, subcontract items and amounts, and all certified DBEs.

The goal will factor in both availability and capacity of DBE firms. Availability will be determined by the number of certified DBEs categorized by race and sex who are ready, willing and able to participate. Capacity will be determined by factoring gross receipts, bonding limit, current workload and the number and nature of the contracts for the previous goal setting period.

GOAL IMPLEMENTATION

KDOT will set the goals as a percentage of each modal funding for the coming three year period. The goal will be submitted to the appropriate modal agency, FTA or FHWA, by August 1 of submittal year. KDOT will also submit a narrative of the goal setting process including participants, the evidence utilized and the adjustments made. The narrative will state what percentage is expected to be met by race and gender neutral means and what percentage will be met by race and gender conscious means.

To ensure public participation, KDOT will consult with women, minority and contractor associations and other interested and knowledgeable parties. KDOT will publish its proposed overall goals in general circulation, minority-focused and trade association publications. The notice for each goal setting year will be published by August 15 to allow 30 days for evidence inspection and 45 days for public comment prior to implementation.

RACE AND GENDER NEUTRAL MEANS

KDOT will strive to meet the maximum feasible portion of the overall DBE goal by race and gender neutral means. Race and gender neutral participation involves affirmative action to assist and include all small business contractors and subcontractors. The amount of participation will be monitored by KDOT throughout the year.

Contracts: Where feasible KDOT will unbundle large contracts to make them accessible to small businesses. KDOT will encourage prime contractors to subcontract portions of work normally done by their own forces, when a subcontractor submits a lower quote than the prime contractor cost estimate, through the DBE Special Provision. Appendix K

GOALS FOR TRANSIT VEHICLE MANUFACTURERS (26.49)

The KDOT requires that each transit vehicle manufacturer who quotes bids or proposes procurement in Kansas must certify to KDOT that it has complied with this section.

Each transit vehicle manufacturer (TVM) must establish an annual overall DBE percentage goal using 49 CFR Part 26.45 as a guideline. Each TVM may also establish contract specific DBE goals with Federal Transit Authority (FTA) concurrence. Each TVM must provide certification to KDOT that FTA has concurred in the TVM's overall and/or contract goal. Before accepting bids, KDOT confirms with FTA that the TVM has an approved DBE program and has submitted all required documentation.

CONTRACT GOALS (26.51)

KDOT will use contract goals to supplement race and gender neutral means to ensure diverse and inclusive participation by all contractors and subcontractors. Contract goals will be established on selected contracts throughout the year. In the event race and gender conscious means have exceeded the overall annual goal for KDOT at a given point during the year, then the use of contract goals will be suspended. When contract goals are utilized it will be on federal aid contracts with sufficient subcontracting opportunities in areas of work and locales with available DBE firms. The contract goal will be at a dollar value which has been calculated as a percent of the total federal aid contract.

GOOD FAITH EFFORTS (26.53)

On federal aid contracts with DBE contract goals, the responsive low bidder must provide evidence that DBE participation meets or exceeds the assigned goal. If this is not the case, the low bidder must document that it took all necessary and reasonable steps to achieve the DBE goal. Please refer to Appendix C for detailed good faith efforts.

Bid requirements: Award of federal aid contracts with DBE goals will require:

1. FORM 7-19-80-R12: See Appendix O.
2. A copy of the DBE quote with the statement “I will perform this work as scheduled” and the DBE owner signature.

Good Faith Process: When the apparent low bidder does not meet the DBE goal through DBE commitments, the bidder has 48 hours after the bid letting to provide KDOT with good faith documentation. For bid lettings held on Wednesday afternoon, documents must be received by KDOT by Friday close of business. The decision as to whether or not the good faith effort is acceptable will be made jointly by staff from the Office of Civil Rights and the Bureau of Construction and Maintenance. If the decision is made to reject the good faith effort, the bidder has the right to request administrative reconsideration within five days of notification.

If the bidder requests administrative reconsideration, the bidder can choose to submit a written narrative supporting its good faith effort submittal or to appear in person. The reconsideration official will be the Director of Operations who was not involved in the initial decision. The bidder will receive a written decision citing the reason for the acceptance or rejection. The reconsideration process is administratively final and has no further administrative appeal steps within KDOT or the USDOT.

Termination of DBE Firms: A prime contractor cannot terminate a DBE firm without good cause. Examples of “good cause”:

1. DBE fails or refuses to execute a written contract;
2. DBE fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards;
3. DBE fails or refuses to meet the prime contractor’s reasonable, nondiscriminatory bond requirements;
4. DBE becomes bankrupt, insolvent or exhibits credit unworthiness;
5. DBE is ineligible to work on public works projects because of suspension and debarment proceedings;
6. KDOT has determined that the listed DBE subcontractor is not a responsible contractor;
7. DBE voluntarily withdraws from the project and provides KDOT written notice of its withdrawal;
8. DBE is ineligible to receive DBE credit for the type of work required;

9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

Before sending written request to KDOT to terminate and/or substitute a DBE subcontractor, the prime must give notice in writing to the DBE sub, with a copy to KDOT of the prime's intent to request to terminate and/or substitute. The DBE must be given five days to respond. If required in a particular case as a matter of public necessity (e.g., safety), a response period may be shorter than five days. KDOT Office of Civil Rights must provide written consent prior to the termination of the DBE.

When a termination is approved by KDOT or a DBE withdraws in writing, the contractor must make a good faith effort to find another DBE. When requested by KDOT, the contractor has 48 hours to provide KDOT with written good faith documentation. The same process and appeal rights prevail as above.

COUNTING DBE PARTICIPATION (26.55)

DBE credit will be counted only for work performed by the DBE firm. DBE goals cannot be tied even when projects are State or Contractor tied. See Appendix S.

DBE Manufacturer- Count 100 percent of the value paid for materials furnished which becomes a permanent part of the project. A manufacturer is a firm that owns and operates the facilities to produce a product required by the contract and purchased by the contractor. A manufacturer creates or alters a product.

DBE Supplier- Count 60 percent of the value paid for materials furnished which becomes a permanent part of the project. A supplier buys goods, sells goods to the general public and maintains an inventory at an owned or leased warehouse or store as its principal business. A supplier of bulk items must own and operate distribution equipment for the bulk item and need not warehouse the items. Bulk items include steel, rock, sand and asphalt.

DBE Broker- Count 100 percent of the fee or commission received by the DBE broker for the materials purchased and resold to the contractor which becomes a permanent part of the project. A broker does not manufacture or supply on a regular basis. A broker arranges or expedites transactions but does not necessarily warehouse or transport.

DBE Trucker- Count 100 percent of the amount paid to the DBE trucking company when the trucking company follows these guidelines:

1. Use trucks owned by the certified DBE trucking company using drivers it employs;
2. Use trucks leased from another DBE firm, including an owner/operator who is certified as a DBE;
3. Use trucks leased from a non-DBE firm as long as transportation services provided by the non-DBE lease does not exceed the value of the transportation services provided by DBE-owned trucks on the contract. Prior written permission should be requested from the Bureau of Construction and Maintenance.

The guidelines are listed in order of preference of utilization. KDOT written permission is required before #3 is allowed. The DBE owner must be in charge of all trucks utilized, have exclusive use of and control over the trucks. The DBE will be considered a broker only, if there are no DBE trucks or employees and the DBE does not exercise full control. A broker arranges or expedites transactions only. 100% of the broker fee or commission received by the DBE broker can be counted towards the goal. Only the broker fee is eligible to count toward the goal, no materials or labor related to the work.

The DBE must provide a list of trucks and truck drivers to be utilized for the duration of the project and updated throughout the duration of the project. The list will include the VIN, truck and tag numbers and/or other vehicle identification. The prime contractor for the project will maintain this information.

The prime contractor will submit to the KDOT field office a spread sheet or list which contains all trucks hauling on the project and the dates and tons hauled which count toward DBE goal. This will be submitted monthly.

Note: To count towards DBE goal credit, DBE trucking must be monitored by KDOT field personnel and hauled to a dedicated project stock pile. If the trucking activity cannot be monitored, it will not count toward the DBE goal.

When a separate, dedicated aggregate stockpile is designated at a commercial batch plant for a specific KDOT project, the prime contractor must submit a written request to the KDOT field office if the prime contractor is requesting permission to count the DBE trucking for this stockpile to count for DBE goal credit. To ensure fulfillment of the project goal, the prime should make this request as soon as possible when considering project bid. The KDOT field office should make a consistent effort to provide monitoring of DBE participation at commercial plants per this request.

DBE Contractor- Count 100 percent of the amount paid to a DBE contractor for labor and materials provided to perform a defined and clearly measurable portion of the contract. The work must be performed by the DBE's own employees and the DBE must order and pay for all supplies and materials utilized in construction.

KDOT will track DBE Payments by requiring DBEs to send in a monthly payment affidavit for each subcontract. KDOT maintains a database to track awards and attainments.

COMMERCIALLY USEFUL FUNCTION

One of the key requirements of the DBE Program is that a **commercially useful function** be performed. This is defined as: "Being responsible for execution of a contract or a distinct element of the work by actually performing, managing and supervising the work involved."

This requirement is monitored by KDOT field personnel who are assigned to the project and by staff from the Office of Civil Rights. KDOT personnel look at who supervises the employees, who pays the employees, and who owns the equipment used by the DBE. Contractors, DBEs and all employees are required to fully cooperate with KDOT personnel conducting field audits. See Appendix H.

Failure of a DBE to perform a commercially useful function will result in that work not being counted toward the prime contractor's DBE goal. In certain cases it could result in KDOT not paying the prime contractor for the work, or it could lead to removal of eligibility of the DBE. In cases of deliberate fraud, it could lead to criminal or civil prosecution of both the prime contractor and the DBE firm.

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

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

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

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

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

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

TRACKING DBE PARTICIPATION

Each month, every DBE firm working on a contract must verify to KDOT the work performed and the amount of payment received. KDOT Form 1008 must be completed for each month and received by the Office of Civil Rights by the 5th of the following month. This allows KDOT to keep a monthly account of payments to DBEs, and calculate overall goal attainment. If the completed Form 1008 is not submitted in a timely manner, it will be considered a failure to cooperate on the part of the DBE and the DBE firm may be subject to removal from the DBE directory. KDOT will supplement DBE payment reviews at the end of contracts with interim audits to ensure that DBE commitments are being met.

Race and gender neutral DBE participation is when: there is a federal aid contract with a DBE prime contractor, DBE subcontracts exceed contract goals and DBE subcontractors are utilized on federal aid projects that have no contract goal. Prime contracts will be tracked through the bid letting process and subcontracts will be tracked by the Office of Civil Rights staff who receives a copy of each subcontract or approval form on all KDOT contracts. DBE suppliers must be tracked the same way as subcontractors to achieve DBE credit for participation.

INFORMATION COLLECTION

KDOT created a database of DBE and non-DBE firms that quote on federal aid contracts. This database is a portion of the goal setting process. The information on DBE firms is obtained during the certification process and the annual updates. The information on successful non-DBE prime and subcontractors is obtained through a required survey updated annually at the time of the firm's EEO renewal.

III. DBE CERTIFICATION STANDARDS (SUBPART D)

BURDEN OF PROOF (26.61)

Each applicant firm seeking certification has the burden of demonstrating to KDOT, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.

Applicants who are members of a presumed group do not have to prove social disadvantage but must explain how they have been socially disadvantaged and sign a sworn affidavit attesting to this. The disadvantage may pertain to education, employment, business or access to capital or credit, based on race, sex, color or national origin. Applicants who are not members of a presumed group have the burden of proving to KDOT by a preponderance of evidence that they are socially and economically disadvantaged.

ELIGIBILITY STANDARDS

Group Membership (26.63): Each qualifying owner applicant who is not readily identifiable as a presumed group member must demonstrate by a preponderance of the evidence that he or she is a member of a presumed group. The applicant must be regarded as a group member by both group members and the general community. The group membership and recognition must be of long standing and not just for a short time before the application.

Business Size (26.65): An applicant firm including all affiliates must meet Small Business Administration (SBA) size standards of 13 CFR Part 121 appropriate to the type of work the firm seeks to perform. In any federal fiscal year, if the firm and all affiliates have average annual gross receipts over the firm's previous three fiscal years, in excess of \$22,410,000 the firm is not eligible to be a DBE.

Social Disadvantage (26.67): Every applicant who is readily identifiable as a presumed group member must submit a signed, notarized affidavit. The affidavit affirms how the person has been disadvantaged or discriminated against due to their race, sex, color, or national origin. The disadvantage should pertain to access to education, capital, employment or business opportunities. Applicants who are not presumed group members must provide proof of disadvantage or discrimination.

Economic Disadvantage (26.67): Each qualifying owner applicant must have personal net worth (PNW) of less than \$1.32 million, excluding the equity value of one primary personal residence and the equity value of their ownership in the applicant company. The PNW statement (Appendix E) must have a signed notarized affidavit swearing to the truth of the figures submitted. Retirement plans are included in PNW, minus any applicable penalty. Federal income tax returns are required as verification. When there is a specific reason, KDOT may require a PNW statement for an applicant's spouse and/or other principles in the firm.

Ownership (26.69): To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals. The ownership **must** be real, substantial and continuing. The contribution of capital or expertise to acquire ownership must be real and substantial.

Examples of unqualified contributions are:

1. A promise to contribute or an unsecured note payable to the firm or another owner,
2. A gift,
3. Unrenounced joint assets, or
4. Transfers from non-disadvantaged individuals.

Examples of qualified contributions are:

1. A legal settlement, with court documents,
2. Inheritance after a death,
3. Legally transferred assets from a spouse, with court documents, or
4. Personally held assets.

Control (26.71): The socially and economically disadvantaged owners must possess the power to control daily operations and long-term company destiny. The owner must hold the highest office, must control the board of directors or be the controlling partner. The disadvantaged owner must have technical competence and experience in the field of operations as well as managerial expertise. Office management, bookkeeping, or clerical expertise is not sufficient to demonstrate control. The owner cannot have other employment or businesses that conflict or require attention during normal business hours. For businesses where other family members are owners or employees, the disadvantaged owner must demonstrate clear control. A franchise is eligible so long as there is no affiliation, restrictions on operations or common management with the franchise distributor.

Independence (26.71): An independent business does not rely on another firm for personnel, facilities, equipment, capital or other resources. The firm cannot be dependent on a former non-disadvantaged owner. The firm cannot have exclusive or primary dealings with another firm or dealings outside normal industry practice.

Cooperation (26.73): Mutual cooperation is stressed in 49 CFR Part 26 and is essential to do business with KDOT. Every applicant and certified DBE firm shall cooperate fully with all KDOT requests for information. Failure to do so in a timely manner is ground for denial of certification or removal of eligibility.

Confidentiality (26.67): Business information will not be released to anyone without written consent of the owner of the DBE firm. All personal financial information is confidential and not subject to state and local open records law. During appeals, USDOT will have access to all confidential data.

IV. DBE CERTIFICATION PROCEDURES

UNIFIED CERTIFICATION PROGRAM (26.81)

In 1994, the Governor of Kansas signed Executive Order 94-169 creating a Unified Certification Program within Kansas. This UCP is called Kansas Statewide Certification Program (KSCP). It is a joint effort with the Kansas Department of Commerce (KDOC), Office of Minority and Women Business Enterprises and the Kansas Department of Transportation, Office of Civil Rights. The UCP publishes two DBE directories, one for firms that perform highway construction and one for firms that work outside highway construction. The KDOT and KDOC worked with all concerned entities in Kansas to include them in the Kansas UCP by March 4, 2002.

KDOT PROCEDURES

Objectives: KDOT's commitment is to create a level playing field for bona fide DBE firms and DBE majority controlled joint venture firms. These are small businesses owned and controlled by one or more socially and economically disadvantaged persons.

Definitions: A socially disadvantaged person is one who is a U.S. citizen or legal resident, has been subject to discrimination in education or business, has documented such discrimination and who is:

1. Black American,
2. Hispanic American,
3. Native American,
4. Asian-Pacific American,
5. Subcontinent-Asian American,
6. Woman, or
7. Other determined to be disadvantaged

These are the presumed groups of social disadvantage. An economically disadvantaged person is one who is a member of one of the above presumed groups and who has a personal net worth of less than \$1.32 million excluding the equity value of one primary personal residence and the equity value of the ownership in the applicant firm.

An eligible firm is an existing small business at least 51% owned and controlled by one or more socially and economically disadvantaged persons.

Confidentiality: KDOT will safeguard from disclosure to third parties all confidential personal and business information. All DBE firm and applicant files are stored in locked metal cabinets and not available for public access.

Application: An applicant must complete the federal application and enclose all required documents on the checklist. All incoming applications are checked for completeness and compliance with business size and ownership. Complete applications will receive a decision letter within 90 days. See Appendix D.

Document review: Each complete application is assigned to a DBE Program Consultant for an in-depth review. The DBE Program Consultant will evaluate the operational and managerial control through corporation, partnership, and leasing documents, review the financial statements, personal and business tax returns, verify proof of ownership, résumé experience and the firm's work experience.

On-site interview: An interview is scheduled with the owner(s) at the firm's office. The DBE Program Consultant uses KDOT's on-site review questionnaire and supplements it with areas of concern specific to the firm.

Job-site review: If the firm has any type of job in progress, the DBE Program Consultant will visit the job-site, interview employees, look at equipment and speak with other contractors or inspectors at the job site.

Evaluation: At the completion of the review, the DBE Program Consultant will evaluate all information and conduct any final verification. This initial recommendation is the first step in

the team process. The file then goes to the Civil Rights Administrator. If there are any questions or uncertain issues, or a denial or removal of eligibility – the Civil Rights Administrator meets with the DBE assigned attorney to discuss. If necessary for clarification, an additional meeting is held with the Civil Rights Administrator, DBE assigned attorney and the Program Consultant who gathered and evaluated the initial information. If additional information is needed, the file may be returned to the DBE Program Consultant for further work. The applicant will be notified by mail of the final results of the process.

Certification: When a firm is certified, they will be notified in writing, added to the DBE directory and mail list and be given an opportunity to request specific support services to meet their needs. Every three years, the firm will complete the triennial process to continue in the DBE program.

Annual affidavit: Each year every certified DBE firm must submit a signed, sworn notarized statement that the firm remains disadvantaged by meeting the size standard and has no changes in ownership or control that would affect eligibility. The statement must be accompanied by the qualifying owner's personal tax return, personal financial statement, the company tax return and the company financial statement. Failure to do so by the assigned date will result in removal of eligibility for failure to cooperate. KDOT will notify each certified DBE firm in writing 45 days prior to the date the annual affidavit is due or the date the renewal is due. A failure to respond by the assigned date is deemed a failure to cooperate and may result in removal from the DBE directory.

Notice of Change: Every certified DBE firm must notify KDOT by written affidavit of any change in size, ownership, or control that would affect disadvantaged status, or any change of address, telephone or fax number or e-mail address within 30 days of such change.

DENIALS (26.86)

When the application review team recommends denial of a new applicant, the applicant firm is notified in writing, sent certified mail. The letter explains the reason for denial and specifically references the evidence to support each reason for denial.

A denied firm may not reapply for a period of 6 months from the date of the denial letter. The firm may appeal in writing to the U.S. Department of Transportation. See page 22.

In the event of a denial or decertification of an SBA certified firm, SBA will be notified by KDOT. The National Denial Board will also be notified of the denial or decertification.

REMOVAL OF ELIGIBILITY (26.87)

Complaints: KDOT will accept written complaints from any person alleging that a currently certified DBE firm is ineligible and stating specific reasons for ineligibility. Anonymous or general complaints will not be accepted. KDOT will thoroughly investigate the complaint and if reasonable cause is found, will notify the DBE in writing.

KDOT Initiated: When KDOT has reason to believe a certified DBE firm is ineligible, the DBE will be notified of the finding in writing. The letter will state the reason and cite the evidence.

USDOT Initiated: The USDOT may notify KDOT if reasonable cause is found that would cause a certified DBE firm to be ineligible. KDOT must immediately initiate removal procedures.

Hearing: When a DBE firm receives written notice of intent to remove eligibility, the firm has 30 days to request an informal hearing to refute the allegations. KDOT must prove by a preponderance of evidence that the firm is ineligible. KDOT will provide a stenographer to record the hearing and prepare a transcript. The decision-maker for the appeal hearing will be the Topeka Federal Highway Administration designee.

Decision: The decision to remove eligibility will be based on circumstances that have changed since certification, evidence that was not available to KDOT at certification, evidence that was concealed or misrepresented, a change in certification standards or a documentation of erroneous facts.

Notice of Decision: Following the decision, KDOT will notify the DBE firm in writing of the decision and any consequences. The firm remains an eligible DBE throughout the investigation and hearing process. The removal of eligibility becomes effective on the date of the decision letter.

Effects: The prime contractor will receive DBE credit for all DBE work that is currently under contract. If there was a bid commitment but no written subcontract was executed, the prime contractor must make a good faith effort to find another DBE firm for the committed amount.

USDOT APPEALS

Who May Appeal: Any applicant who has been denied certification by KDOT or a previously certified firm whose eligibility was removed by KDOT may appeal. Anyone who filed a complaint about a DBE firm and KDOT did not remove eligibility, may file a complaint if they believe KDOT's finding to be in error.

Where to Appeal: Send appeals to:
Department of Transportation
Director of Civil Rights
1200 New Jersey Ave., S.E.
Washington D.C. 20590

When to Appeal: The complete appeal must be filed within 90 days of the decision letter date.

What is in the Appeal: The appeal must contain a narrative as to why the KDOT decision was in error and documents to show or prove the error. If you are an applicant who was denied or a DBE whose eligibility was removed, you must disclose in the appeal all other denials or rejections within one year of the date of the appeal. Failure to do so is considered a failure to cooperate.

Recipient Responsibility: KDOT will provide to USDOT the administrative record and hearing transcript within 20 days of receipt of the request from USDOT.

Decisions from the USDOT are administratively final and there can be no further appeals or applications. DBE applicants who have been denied certification and USDOT concurred the denial, cannot re-apply for certification for specified time period.

REVIEW OF ELIGIBILITY

All currently certified DBE firms have been put into a three-year review cycle and every firm will complete an application, have an on-site visit and review of eligibility to 49 CFR Part 26 Standards. Each year each certified DBE firm will submit an affidavit of eligibility.

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*These provisions are periodically updated. The latest revision can be found at www.ksdot.org/burConsMain/Specprov or by contacting the Bureau of Construction & Maintenance at (785) 296-3576.

(APPENDIX A)

ELIGIBILITY PROCEDURES

A. **OBJECTIVES:** KDOT's commitment is to create a level playing field for bona fide DBEs seeking participation as contractors and suppliers on KDOT contracts. The success of KDOT's DBE Program rests with its commitment to limit program participation to only bona fide DBEs.

Note: The purpose of this Appendix is to provide information as to the internal procedures utilized by the DBE Program Consultants for DBE eligibility determination.

The Program Consultant's responsibilities are to analyze the facts based on the data in the notarized certification application, the related financial, legal and other documents; and the results of the interview with the DBE applicant concerning the independence of the firm's ownership, operational control and managerial control.

B. **APPLICATION REVIEW PROCEDURES:** The primary objective of the review is to obtain information concerning the applicant's ownership and control of the company. Care should be exercised to maintain objectivity and not draw conclusions during the file review. After receiving the application packet, the information contained therein must be reviewed. The checklist provided should be used for the first review of the file. Notes should be taken while reading the file a second time, with particular attention given to names appearing in the documents, since the same names may appear in different documents. Same names in different documents may indicate a relationship that affects the DBE applicant's control over the company. Conflicting information provides questions for the on-site review since inconsistent data must be clarified. Comparing changes in financial position may provide an insight into problem areas dealing with managerial control.

Creating a flow chart is helpful when there are organizational changes and/or where the firm is connected with other firms by means of interlocking directors and/or officers. A telephone directory may be useful. Looking up phone numbers of other firms mentioned in the documentation sometimes leads to the same phone number and/or the same address as that given by the applicant. This situation must be researched and evaluated to determine any connection that may exist between the firms with the same address and phone number.

Tracing dates through the documentation is also a good review technique. Conflicting dates and conflicting information must be resolved during the interview. It is important to keep a record of all phone calls, made and received, concerning the application. KDOT may request that additional documents be sent within ten working days. If the documents are not received by the target date, the firm may be denied or removed for failure to submit the requested documents.

The DBE Program Consultant should consider the following:

1. The firm must be a small business as defined by the Small Business Act and relevant regulations. For general contractors the limit is average annual gross receipts over \$22,410,000 over the prior three fiscal years. For engineering firms the limit is \$7 million and for specialty contractors the limit is \$14 million.

2. The majority (51% or greater) owner(s) must be socially disadvantaged. This means:
 - a. Black American
 - b. Hispanic American
 - c. Native American
 - d. Asian-Pacific American
 - e. Subcontinent-Asian American
 - f. Woman
 - g. Other certified as disadvantaged

3. The majority (51% or greater) owner(s) must be economically disadvantaged. This means a personal net worth of less than \$1.32 million, excluding equity in one primary personal residence and the value of the DBE firm ownership.

4. **Control:** Pay attention to an applicant firm whose ownership or control has recently changed. True control of the firm by the disadvantaged owner is critical to the certification process. Business entity control is divided into two segments:
 - a. **Operational Control:** The disadvantaged owner must be actively involved in all aspects of the business. The individual must show that basic decisions pertaining to the daily operation are made independently. The individuals seeking certification must demonstrate experience and technical competence in the field in which certification is sought.
 - b. **Managerial Control:** The disadvantaged owner must have demonstrated ability to make independent and unilateral business decisions to guide the future and destiny of the business.

5. **Financial Data:** All financial items must be systematically reviewed and analyzed to determine control of the business.
 - a. **Company Financial Statement:** A careful review of the financial statements is required to determine possible intercompany transactions or loans/or loans payable which dilute the applicant's effectiveness in controlling the business.
 - 1) The Balance sheet shows:
 - a) Equipment account
 - b) Accounts payable
 - c) Notes payable
 - d) Capital stock account
 - e) Notes and loans receivable from officers or stockholders
 - f) Notes and loans payable to officers and stockholders
 - g) Equipment loans
 - h) Accrued expenses
 - 2) Footnotes to the statements are especially important to review
 - 3) Statement of changes in financial position
 - 4) The Income Statement shows:
 - a) Payments to subcontractors
 - b) Rent expense
 - c) Lease expense
 - d) Salaries

b. Licenses To Do Business: These are needed as proof that the applicant can legally do business. Look at:

- 1) Type of licenses.
- 2) Dates that licenses expire
- 3) Who holds the license?

c. Prior Two Years Federal Tax Returns: These documents are used to compare information reported on the financial statements. Information that should be compared is:

- 1) Salaries paid to officers.
- 2) Names of officers and amount of stock ownership.
- 3) Dividends paid.

d. Résumé of Applicant: Résumés indicate the applicant's experience in a particular field of work. They can indicate the applicant's technical competence based on experience in the industry and the degree of operational and managerial control exercised by the principals. When reviewing, look for:

- 1) Previous employers, common to two or more principals of the company.
- 2) Present occupation.
- 3) Previous employers who subcontract work to or from the applicant's company.

e. Third-Party Agreements: Rent and lease agreements are reviewed to determine if the applicant's control of the company is limited and affected by a third party. Items of importance are:

- 1) What is the purpose of the agreement?
- 2) Who are the parties to the agreement?
- 3) What are the terms of the agreement?
- 4) Who benefits by the terms of the agreement?
- 5) Does the agreement contain any language or conditions that restrict the applicant's power to control the destiny of the company?
- 6) Who signed the agreement?

f. Joint Venture Agreements: Joint Venture Agreements must be carefully reviewed to determine:

- 1) Whether the applicant is an integral part of the joint venture,
- 2) Whether the applicant has definitive operational and managerial duties, and
- 3) Whether the responsibilities are commensurate with salaries and division of profits.

g. Partnership Agreements: These agreements explain the terms and conditions of the partnership, how they will function, profit sharing and buy out rights. The information to review is:

- 1) Duties and responsibilities of each partner.
- 2) Dollar investment of each partner.
- 3) Division of profits and losses.
- 4) Language that restricts the applicant's right to operationally and managerially control the partnership.
- 5) Rights on the dissolution of the partnership.

6. **Corporation Documents:** These apply only to incorporated firms.
- a. **Articles of Incorporation:** These documents confirm that the business is incorporated. Information that should be noted is:
- 1) The names of the incorporators.
 - 2) Date of incorporation.
 - 3) State of incorporation.
 - 4) Type of business the corporation is authorized to engage in.
 - 5) Information about company voting and non-voting stock.
- b. **Corporate By-Laws:** The corporate by-laws explain how the corporation shall function. Important information contained therein is:
- 1) The number of directors, duties and responsibilities of the board of directors.
 - 2) Duties and responsibilities of the officers.
 - 3) Information concerning the voting stock of the company.
 - 4) Voting rights of the shareholders.
 - 5) Information about company meetings.
 - 6) Possible restrictive language affecting shareholders voting rights.
- c. **Stock/Ownership Options:** This document explains the options that shareholders have concerning the repurchase of their stock. This information is sometimes included in the by-laws. Option agreements, if exercised, can dilute ownership and control. Any language which dilutes the applicant's right to control the corporation should be noted.
- d. **Stockholder Agreement:** This document explains the terms under which subscriptions and outstanding stock are sold to shareholders, the corporation, or others. Stock/ownership options are also included in this agreement. This agreement should be carefully reviewed for any conditions that dilute the applicant's right to control the corporation.
- e. **Copies of Stock Certificates:** These documents are reviewed to verify ownership of the company. These documents show:
- 1) Number of stock certificates issued.
 - 2) Amount of shares each certificate represents.
 - 3) Date of issuance.
 - 4) To whom the stock certificate is issued.
 - 5) Stock restrictions placed on stock ownership.
- f. **Copy of Stock Transfer Ledger:** This document is requested to verify ownership of the company by comparing the stock transfer ledger with copies of the stock certificates received. Items to review on this document are:
- 1) Same as "1)" through "5)" in e. above.
 - 2) Monetary consideration given for the stock.
7. **Proof of Ownership:** The disadvantaged ownership must be from sources directly traceable to that person. If money is contributed, a cancelled check would be considered proof. If equipment is contributed, proof of purchase by the applicant must be provided.

8. **Valuing a Company to Determine Purchase Price:** To determine the value of an existing business for DBE purposes, KDOT will use the valuation method of the Income Statement. Take the gross receipts per year for the past three years, total them and divide by three to get the recent average annual earnings. Take the average earnings and multiply by a factor of three to five. For a small company (less than \$1 million), few assets and a client list, use the factor of three. For a company with more assets and a value over \$1 million, use a factor of five. The multiplication result would be the value of the company for purchase or sales valuation. For example, a lawn service had gross earnings of \$100,000, \$110,000 and \$120,000 for the past three years. The main assets are the clients it services. The average gross is \$110,000 and the factor is three. The company's valuation would be $\$110,000 \times 3 = \$330,000$. This is the price KDOT will use to determine how much a purchaser should pay to buy the company or sell a company. It will be used to determine if an applicant made a real and substantial personal contribution to purchase an existing business effective June 1, 1998. This method is used and sanctioned by the US Small Business Development Centers.
9. **Affiliated Firms:** If one or more firms are associated with a DBE applicant, consider the following:
 - a. Common ownership
 - b. Common management
 - c. Shared facilities
 - d. Shared employees
 - e. Shared equipment
 - f. Shared services
 - g. Average gross receipts may not exceed \$22,410,000 per year for all affiliates together.

C. **INTERVIEW PROCEDURES:** The interview is the consultant's opportunity to determine factors which are not written or to note discrepancies between the application and what actually occurs in the firm.

1. **Arranging the On-Site Review:** After reviewing the file and preparing a list of special questions to be asked of the principal(s) involved with the business entity, an on-site review is scheduled. The review date and time should be set by telephone and followed up with a confirmation letter or email. The interview should be held at the applicant's office. Directions to the applicant's office should be obtained by telephone.
2. **Conducting the On-Site Review:** During the on-site review, information can be obtained by observing the applicant's office. Photographs of a firm's principal owner and offices should be taken during the on-site review. The interview must be conducted in a professional manner. Begin the interview by introductions and state the reason for being there. Before proceeding with the questions, explain the DBE Program, with particular attention focused on the role of KDOT's certification review process. Advise the applicant that interviews may be tape-recorded. If the applicant(s) has no questions at this point, the interview may start.

Questions should be directed to and answered by the applicant(s). Should the applicant(s) get off the subject, the interview should be brought back to the matter at hand. Sometimes the applicant's response will bring additional questions.

The DBE Program Consultant must take careful, precise, and concise notes during the review.

Be aware of the five W's: "Who, What, When, Where, and Why?"

- a. Who is responsible for the hiring and firing key employees?
 - b. Interlocking directors and its possible affect on control.
 - c. Management and technical assistance agreements.
 - d. Equipment ownership and leasing agreements.
 - e. Loan and financial negotiations.
 - f. Job selection, bidding and estimating.
 - g. Day-to-day decision that affect the destiny of the corporation.
 - h. Same lawyer or CPA as non-minority person involved.
 - i. Establishing company policy, benefits and employee raises.
 - j. Who negotiates with bonding company?
 - k. Who has signatory authority for all checks and documents?
 - l. Who negotiates contracts?
 - m. Management decisions based on review of financial statements.
 - n. Day-to-day operational decisions.
3. **On-Site Report:** The content of the on-site report is very important. The report must be complete and accurate for other certification personnel to read prior to making a determination as to program eligibility. If any information or documentation presented at the interview leads to other interviews or other correspondence, it must be documented by making attachments to the on-site report. These attachments should show the date of the interview. When all necessary and requested information has been received, the DBE Program Consultant may proceed with the on-site report.

D. JOB SITE MONITORING: Field monitoring of a job site consists of preliminary research, observations, interviews and document reviews. These are tools used by Program Consultants to determine a firm's operational independence, project participation, and the extent of the disadvantaged owner's managerial/operational control.

1. **Type of Monitoring:** Field activities are divided into "routine monitoring" and "targeted monitoring."
 - a. Routine monitoring involves reviews of randomly selected projects to determine DBE compliance with federal regulations. Projects are visited while the DBE portion of the work is in progress.
 - b. Targeted monitoring involves in-depth investigation and is initiated when KDOT has been made aware of a potential violation of 49 CFR Part 26. This type of monitoring is initiated by:
 - 1) Third-party complaint.
 - 2) Construction division concern.
 - 3) Request from the Civil Rights Administrator.
 - 4) Request from the FHWA.
2. **Preparation Stage:** The DBE Program Consultant must review the firm's certification file prior to any field activity, directing particular attention to:
 - a. **Equipment List:** A review of the equipment list will assist in answering lease/rental/ownership questions of equipment observed on active projects.

- b. **Certified Work Classifications:** A review of this document will assist in determining which firms/projects should be closely monitored. Firms working out of their work classification should be closely monitored to ensure compliance.
 - c. **Résumé of Owner(s), Superintendent(s) and Foreman:** These documents indicate technical/managerial competence based on experience in the industry and the degree of operation/managerial control. Résumés will give the consultant a briefing on personnel likely to be encountered on active projects.
 - d. **Field Review Reports on File (Form 239):** A review of previous reports will give the consultant DBE performance information on other completed projects.
3. **Field Office Document Review/Interview Stage:** The DBE Program Consultant should contact the project engineer, identify himself/herself and give a brief overview about the purpose of the call or visit. The project engineer should be advised that the DBE Program Consultant will be reviewing project documents and visiting the job-site to determine DBE compliance.
- a. **Project Engineer:** The consultant should ask the project engineer about the DBE's control of their work items, e.g.:
 - 1) Have you ever discussed project matters with the DBE owner?
 - 2) Who is the person controlling the DBE activities?
 - 3) Does the DBE appear to have control over the work item?
 - 4) Who is KDOT's technician overseeing the DBE work items?
 - b. **Monitored Documents:** Review the following at field office:
 - 1) **Contracts, Purchase Orders and Trucker Agreements:** These documents will assist the consultant in knowing the amounts and specific item(s) of work which the DBE is responsible for performing. The contract and all subcontracts should be reviewed to determine which contractor is responsible for what work. Pay particular attention to the "item" page(s) of Form 259. These pages will give an itemized description of the type of work, the quantity of work, and the unit price. Direct attention at "shared items." These are the work items that are being performed by two or more contractors (e.g. a project has 10,000 linear feet of curb, the DBE contracted for 7,000 feet, and the prime is doing 3,000). Attention should also be directed to unit prices. A lower unit price appearing on the DBE's contract could reflect partial item responsibility (e.g. equipment rental could be picked up by the prime).
 - 2) **Davis Bacon Certifications (Certified Payroll):** These documents reflect wages paid for labor on federal aid projects. Every contractor/subcontractor is required to submit to KDOT a weekly-certified payroll. The DBE Program Consultant can cross-reference personnel appearing on all available project payrolls to determine the extent of DBE independence.
 - 3) **Material Invoices:** These documents, when available, reflect an itemized list of goods shipped or services rendered showing an account of the cost. Material invoices can assist in determining the extent of the DBE participation and independence.
 - 4) **Inspector Daily Reports:** These documents completed by the inspector reflect a daily detailed account of contract performance. The DBE Program Consultant can review these reports, perform a cross-reference analysis with other documents, such as contracts and certified payroll, and draw the appropriate conclusions.

- 5) **Wage Rate Interviews:** These documents, completed by the project personnel, are based on interviews with project employees and reflect wages paid and duties performed. Wage rate reports can assist in determining which firm is paying the employee.
4. **Field Review/Interview Stage:** The field review stage should be initiated by observing project activity prior to making contact with contractors. This observation period should be used to become familiar with “who is doing what” on the job-site. Comply with all departmental safety requirements during this stage. The interview should be initiated with the DBE foreman or superintendent and directing questions only to that person. The interview should be limited to 15 minutes and should occur during a slow work period. The Field Monitoring Review Report should be completed at this time.
5. **Trucking Rules:** See Appendix P

(APPENDIX B)

SUPPORTIVE SERVICES

Annually KDOT will provide supportive services to all certified DBEs. These services include, but are not limited to:

1. Provide a toll free telephone number for DBE firms to call KDOT for assistance.
2. Publish and mail a list of each project to be let the following month with the project number, location, item quantities and the DBE goal (if applicable).
3. Provide in person or by mail proposals for all projects requested by each certified DBE firm.
4. When requested, provide technical assistance and answers by KDOT staff to questions about projects to be bid.
5. Monthly, KDOT lets proposed construction projects. Contractors who bid as prime contractors will include information in their proposal about any DBEs they have made a DBE Commitment to for that project. Letters will be mailed to all DBE firms who receive a DBE commitment from the “apparent low-bidder” on each project. If the information is accurate, the DBE must confirm these commitments in writing prior to contract award.
6. Verify that each and every DBE subcontract request meets or exceeds the amount committed at the time of bid.
7. Provide requested technical assistance during the construction phase of a project.
8. Provide requested technical assistance to help DBE firms secure bonding and financing.
9. Provide workshops and seminars in locations throughout the state on plan reading, estimating, cost accounting, business plans, insurance, financing, equipment and other requested topics.
10. Provide referrals to USDOT bond and loan programs, all SBA programs and services and local resources.
11. Provide information and technical assistance, including alternate dispute resolution, to DBE owners who are having a problem with a prime contractor or with KDOT.
12. Provide a list of prime bidders on upcoming KDOT projects.

(APPENDIX C)

GOOD FAITH EFFORTS

The following is a list of the types of actions KDOT will consider as part of a bidder's good faith effort to obtain DBE participation. Each effort is not mandatory and other steps beyond these may be utilized. The intent of the steps is to achieve DBE participation, not to create meaningless documents.

1. 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.
2. The bidder selected portions of work for which KDOT has capable, certified DBEs to perform. This may include breaking out work items or subcontracting items the prime contractor normally performs.
3. The bidder used good business judgment in rejecting a DBE quote, considering both prices and capabilities. If a DBE quote represents a reasonable price for performing the work, the Contractor 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.
4. 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. If a DBE expresses an interest in the contract or a desire to quote and fails to submit a quote, follow up the initial contact, whether the contract was solicited or unsolicited. Receiving substantial unsolicited quotes may not be considered actively and aggressively pursuing DBE participation.
5. The bidder assisted interested DBEs in obtaining equipment, supplies, or materials for the project being bid.
6. The combinations of DBEs the bidder considered in trying to meet the goal. It is acceptable to use a portion of several DBE bids.
7. The bidder assisted interested DBEs in obtaining bonding, credit, or insurance on the project being bid.

KDOT will consider the performance of other bidders as one factor when determining good faith efforts. For example, if all other bidders met the goal, perhaps the bidder who did not meet the goal did not take sufficient reasonable efforts to do so.

KDOT will look at the documentation submitted to verify timely contacts with DBEs by phone, mail, fax or personal contact. KDOT will analyze all subcontractor quotes received and whether or not rejected DBE quotes were unreasonable or excessive. KDOT will examine documents and narratives in regard to efforts made to secure bonding, insurance or credit lines for DBE firms.

Each item on the above list is not mandatory nor is it exclusive or exhaustive. The strongest good faith efforts will be personal and individualized. **A mass mailing/fax alone is not an acceptable good faith effort.**

(APPENDIX D)

KANSAS STATEWIDE CERTIFICATION PROGRAM

DISADVANTAGED BUSINESS ENTERPRISE APPLICATION

Return completed application and all required documents to:

Office of Civil Rights
Kansas Department of Transportation
700 SW Harrison Street, 3 West
Topeka, KS 66603



Dwight D. Eisenhower State Office Building
700 S.W. Harrison Street
Topeka, KS 66603-3745

Mike King, Secretary
Doria Watson, Chief
Pat George, Dept. of Commerce Secretary

Phone: 785-296-7940
Fax: 785-296-0723
Hearing Impaired - 711
publicinfo@ksdot.org
<http://www.ksdot.org>

Sam Brownback, Governor

Kansas Statewide Certification Program

Thank you for your interest in being certified as a disadvantaged business with the State of Kansas. The Kansas Statewide Certification Program (KSCP) is a joint effort between the Department of Transportation, Office of Civil Rights, and the Department of Commerce, Office of Minority and Women Business Development.

To be eligible as a Disadvantaged Business Enterprise (DBE) an applicant must meet the following criteria:

1. The disadvantaged owner must be a citizen of the United States or have been lawfully admitted as a permanent U.S. resident.
2. The firm must meet USDOT size standards, be independent, be viable and be for profit.
3. The business must be at least 51 % owned and controlled by a socially and economically disadvantaged person. Economic disadvantage is a personal net worth under \$1,320,000 excluding equity in the applicant business and the disadvantaged owner's primary residence.

For the KSCP to properly evaluate the above factors, the firm must provide a financial statement for the six most recent months of business activity and a federal tax return for the company reflecting the current ownership.

The completed application must be signed, notarized, and returned with the required supporting documentation. It is important that the applicant answer each question fully or designate "N/A" for questions that are not applicable. If required information is not provided, a written explanation must be included.

Once required documentation has been submitted and reviewed, the applicant will be contacted concerning an on-site verification meeting.

If the applicant business is located out of state, a copy of the home state certification is also required with the application. We will secure a copy of the home state certification on-site report from the appropriate home state certifying agency.

The applicant will be notified via letter of the certification acceptance or denial. If accepted, the certification is valid for three years with annual updates required. Businesses that are certified will be listed in a directory of DBEs. Please be advised that certification under this program does not guarantee that you will receive additional business or contracts.

MAIL COMPLETED APPLICATION AND REQUIRED DOCUMENTS TO EITHER OFFICE LISTED:

Doria Watson
Kansas Department of Transportation
Office of Civil Rights
700 SW Harrison Street, 3rd Floor
Topeka, KS 66603-3754
(785) 296-7940

Rhonda Harris
Kansas Department of Commerce
Office of Minority & Women Business Development
1000 SW Jackson, Suite 100
Topeka, KS 66612-1354
(785) 296-5298

**INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM UNIFORM CERTIFICATION APPLICATION**

NOTE: If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE, indicate in the appropriate box the name of the certifying agency that has previously certified your firm, and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the most recent date of that review and the state UCP that conducted the review.

NOTE: If your firm is currently certified under the SBA's 8(a) and/or SDB programs, you may not have to complete this application. You should contact your state UCP to find out about a streamlined application process for firms that are already certified under the 8(a) and SDB programs.

B. Prior/Other Applications and Privileges

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or an SBA 8(a) or SDB program, or whether any have ever been denied certification, decertified, debarred, suspended, or had bidding privileges denied or restricted by any state or local agency or Federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency, and explain fully the nature of the action in the space provided.

Section 2: GENERAL INFORMATION

A. Contact Information

- (1) State the name and title of the person who will serve as your firm's primary contact under this application.
- (2) State the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) State the primary phone number of your firm.
- (4) State a secondary phone number, if any.
- (5) State your firm's fax number, if any.
- (6) State your firm's or your contact person's email address.
- (7) State your firm's website address, if any.
- (8) State the street address of your firm (i.e., the physical location of its offices – not a post office box address).
- (9) State the mailing address of your firm, if it is different from your firm's street address.

B. Business Profile

- (1) In the box provided, briefly describe the primary business and professional activities in which your firm engages.
- (2) State the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
- (3) State the date on which your firm was officially established, as stated in your firm's Articles of Incorporation or charter.

- (4) State the date on which you and/or each other owner took ownership of the firm.

- (5) Check the appropriate box that describes the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.

- (6) Check the appropriate box that indicates whether your firm is "for profit."

NOTE: If you checked "No," then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.

- (7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation or charter. If you checked "Other," briefly explain in the space provided.

- (8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.

- (9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and part-time basis.

- (10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns.

C. Relationships with Other Businesses

- (1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, or any office staff with any other business, organization, or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.

- (2) Check the appropriate box that indicates whether at present, or at any time in the past:

- (a) Your firm has been a subsidiary of any other firm;
- (b) Your firm consisted of a partnership in which one or more of the partners are other firms;
- (c) Your firm has owned any percentage of any other firm; and
- (d) Your firm has had any subsidiaries of its own.

- (3) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.

- (4) If you answered "Yes" to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.

D. Immediate Family Member Businesses

Check the appropriate box that indicates whether any of your immediate family members own or manage another company. An "immediate family member" is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered "Yes," provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business, and whether they own or manage the company.

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each additional owner):

A. Background Information

- (1) Give the name of the owner.
- (2) State his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) State his/her home (street) address.
- (5) Check the appropriate box that indicates this owner's gender.
- (6) Check the appropriate box that indicates this owner's ethnicity (check all that apply). If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen.
- (8) If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program's other qualifying requirements.

B. Ownership Interest

- (1) State the number of years during which this owner has been an owner of your firm.
- (2) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment.
- (3) State the percentage of total ownership control of your firm that this owner possesses.
- (4) State the familial relationship of this owner to each other owner of your firm.
- (5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.

- (6) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's function or title held in that business.

- (7) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business and this owner's function or title held in that business. Briefly describe the nature of the business relationship in the space provided.

C. Disadvantaged Status

NOTE: You only need to complete this section for each owner that is applying for DBE qualification (i.e., for each owner who is claiming to be "socially and economically disadvantaged" and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program)

- (1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner's PNW.
- (2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered "Yes," briefly explain the nature, history, purpose, and current value of the trust(s).

Section 4: CONTROL

A. Identify your firm's Officers and Board of Directors:

- (1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer of your firm.
- (2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
- (3) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

B. Identify your firm's management personnel (by name, title, ethnicity, and gender) who control your firm in the following areas:

- (1) Making financial decisions on your firm's behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
 - (2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
 - (3) Negotiating and contract execution, including participation in any of your firm's negotiations and executing contracts on your firm's behalf;
 - (4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
 - (5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
 - (6) Office management;
 - (7) Marketing and sales;
 - (8) Purchasing of major equipment;
 - (9) Signing company checks (for any purpose); and
 - (10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
 - (11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
 - (12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person, and the nature of his/her business relationship with that other firm.
- C. Indicate your firm's inventory in the following categories:**
- (1) **Equipment**
State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.
 - (2) **Vehicles**
State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.
 - (3) **Office Space**
State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease.
 - (4) **Storage Space**
State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.
- D. Does your firm rely on any other firm for management functions or employee payroll?**
Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," briefly explain the nature of that reliance and the extent to which the other firm carries out such functions.
- E. Financial Information**
- (1) Banking Information
 - (a) State the name of your firm's bank.
 - (b) State the main phone number of your firm's bank branch.
 - (c) State the address of your firm's bank branch.
 - (2) Bonding Information
 - (a) State your firm's Binder Number.
 - (b) State the name of your firm's bond agent and/or broker.
 - (c) State your agent's/broker's phone number.
 - (d) State your agent's/broker's address.
 - (e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.
- F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other than the listed owner:**
State the name and address of each source, the name of the person securing the loan, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.
- G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years:**
Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.
- H. List current licenses/permits held by any owner or employee of your firm.**
List the name of each person in your firm who holds a professional license or permit, the type of license or permit, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.
- I. List the three largest contracts completed by your firm in the past three years, if any.**
List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.
- J. List the three largest active jobs on which your firm is currently working.**
For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.
- AFFIDAVIT & SIGNATURE**
Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 C.F.R. PART 26**

UNIFORM CERTIFICATION APPLICATION

ROADMAP FOR APPLICANTS

① Should I apply?

- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$17.42 million in gross annual receipts?
- Is your firm organized as a for-profit business?

⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

② Is there an easier way to apply?

If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form.

NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.

③ Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.

④ Where can I find more information?

- U.S. DOT – <http://osdbuweb.dot.gov/business/dbe/index.html> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- SBA – <http://www.ntis.gov/naics> (provides a listing of NAICS codes) and <http://www.sba.gov/size/indextableofsize.html> (provides a listing of NAICS codes)
- 49 CFR Part 26 (the rules and regulations governing the DBE program)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-free Workplace (grants), take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

Section 1: CERTIFICATION INFORMATION**A. Prior/Other Certifications**

Is your firm currently certified for any of the following programs? (If Yes, check appropriate box(es))	<input type="checkbox"/> DBE	Name of certifying agency:
		Has your firm's state UCP conducted an on-site visit?
		<input type="checkbox"/> Yes, on ___ / ___ / ___ State: <input type="checkbox"/> No
	<input type="checkbox"/> 8(a)	⊗ STOP! If you checked either the 8(a) or SDB box, you <u>may not</u> have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.
<input type="checkbox"/> SDB		

B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity? <input type="checkbox"/> Yes, on ___ / ___ / ___ <input type="checkbox"/> No If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:

Section 2: GENERAL INFORMATION**A. Contact Information**

(1) Contact person and Title:		(2) Legal name of firm:			
(3) Phone #:	(4) Other Phone #:	(5) Fax #:			
(6) E-mail:		(7) Website (if have one):			
(8) Street address of firm (No P.O. Box):	City:	County/Parish:	State:	Zip:	
(9) Mailing address of firm (if different):	City:	County/Parish:	State:	Zip:	

B. Business Profile

(1) Describe the primary activities of your firm:		(2) Federal Tax ID (if any):
(3) This firm was established on ___ / ___ / ___		(4) I/We have owned this firm since: ___ / ___ / ___
(5) Method of acquisition (check all that apply): <input type="checkbox"/> Started new business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Inherited business <input type="checkbox"/> Secured concession <input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Other (explain)		
(6) Is your firm "for profit"? <input type="checkbox"/> Yes <input type="checkbox"/> No		⊗ STOP! If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.

(7) Type of firm (check all that apply): <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Limited Liability Corporation <input type="checkbox"/> Joint Venture <input type="checkbox"/> Other, Describe:		
(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain:		
(9) Number of employees: Full-time	Part-time	Total
(10) Specify the gross receipts of the firm for the last 3 years:		Total receipts \$
Year _____	Year _____	Total receipts \$ _____
Year _____	Year _____	Total receipts \$ _____

C. Relationships with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Other Firm's name: _____ Explain nature of shared facilities:				
(2) At present, or at any time in the past, has your firm:	(a) been a subsidiary of any other firm? <input type="checkbox"/> Yes <input type="checkbox"/> No			
	(b) consisted of a partnership in which one or more of the partners are other firms? <input type="checkbox"/> Yes <input type="checkbox"/> No			
	(c) owned any percentage of any other firm? <input type="checkbox"/> Yes <input type="checkbox"/> No			
	(d) had any subsidiaries? <input type="checkbox"/> Yes <input type="checkbox"/> No			
(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? <input type="checkbox"/> Yes <input type="checkbox"/> No				
(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each (attach extra sheets, if needed):				
	<table border="0" style="width: 100%;"> <tr> <td style="width: 33%;"><u>Name</u></td> <td style="width: 33%;"><u>Address</u></td> <td style="width: 33%;"><u>Type of Business</u></td> </tr> </table>	<u>Name</u>	<u>Address</u>	<u>Type of Business</u>
<u>Name</u>	<u>Address</u>	<u>Type of Business</u>		
1.				
2.				
3.				

D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, then list (attach extra sheets, if needed):				
	<u>Name</u>	<u>Relationship</u>	<u>Company</u>	<u>Type of Business</u>
1.				<u>Own or Manage?</u>
2.				

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (If more than one owner, attach separate sheets for each additional owner):

A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address (street and number):		City: State: Zip:
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(6) Ethnic group membership (Check all that apply):	
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Black	<input type="checkbox"/> Hispanic <input type="checkbox"/> Native American
(8) Lawfully Admitted Permanent Resident: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Asian Pacific	<input type="checkbox"/> Subcontinent Asian
	<input type="checkbox"/> Other (specify) _____	

B. Ownership Interest

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm:	Type	Dollar Value
(3) Percentage owned:		Cash	\$
(4) Familial relationship to other owners:		Real Estate	\$
		Equipment	\$
		Other	\$
(5) Shares of Stock:	<u>Number</u>	<u>Percentage</u>	<u>Class</u>
	<u>Date acquired</u>	<u>Method Acquired</u>	
(6) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If Yes, identify: Name of Business: _____ Function/Title: _____			
(7) Does this owner own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If Yes, identify: Name of Business: _____ Function/Title: _____			
Nature of Business Relationship: _____			

C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged)

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? (Use and attach the Personal Net Worth calculator form at the end of this application; attach additional sheets if more than one owner is applying)
(2) Has any trust been created for the benefit of this disadvantaged owner(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain (attach additional sheets if needed):

Section 4: CONTROL

A. Identify your firm's Officers & Board of Directors *(If additional space is required, attach a separate sheet):*

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				
	(e)				

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? Yes No
 If Yes, identify for each: Person: _____ Title: _____
 Business: _____ Function: _____

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? Yes No
 If Yes, identify for each: Firm Name: _____ Person: _____
 Nature of Business Relationship: _____

B. Identify your firm's management personnel who control your firm in the following areas *(If more than two persons, attach a separate sheet):*

	Name	Title	Ethnicity	Gender
(1) Financial Decisions <i>(responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)</i>	a.			
	b.			
(2) Estimating and bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/firing of management personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			
(6) Office management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			
(8) Purchasing of major equipment	a.			
	b.			
(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			

(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? Yes No

If Yes, identify for each: Person: _____ Title: _____
Business: _____ Function: _____

(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)?

Yes No

If Yes, identify for each: Firm Name: _____ Person: _____

Nature of Business Relationship:

C. Indicate your firm's inventory in the following categories (attach additional sheets if needed):

(1) Equipment

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(2) Vehicles

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(3) Office Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

(4) Storage Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

D. Does your firm rely on any other firm for management functions or employee payroll? Yes No

If Yes, explain:

E. Financial Information

(1) Banking Information:

(a) Name of bank: _____ (b) Phone No: () _____
(c) Address of bank: _____ City: _____ State: _____ Zip: _____

(2) **Bonding Information:** If you have bonding capacity, identify: (a) Binder No: _____
 (b) Name of agent/broker _____ (c) Phone No: () _____
 (d) Address of agent/broker: _____ City: _____ State: _____ Zip: _____
 (e) Bonding limit: Aggregate limit \$ _____ Project limit \$ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:

Name of Source	Address of Source	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.					
2.					
3.					

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (attach additional sheets if needed):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.					
2.					
3.					

H. List current licenses/permits held by any owner and/or employee of your firm (e.g., contractor, engineer, architect, etc.)(attach additional sheets if needed):

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			
3.			

I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.					
2.					
3.					

AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name printed), swear or affirm under penalty of law that I am _____ (title) of applicant firm _____ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its place(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE). In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (circle all that apply):

Female Black American Hispanic American
 Native American Asian- Pacific American
 Subcontinent Asian American
 Other (specify) _____

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed \$750,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Executed on _____ (Date)

Signature _____
(DBE Applicant)

NOTARY CERTIFICATE

DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.

All Applicants

- Work experience resumes (include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- Personal Financial Statement (form available with this application)
- Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- Your firm's tax returns (gross receipts) and all related schedules for the past three years
- Documented proof of contributions used to acquire ownership for each owner (*e.g., both sides of cancelled checks*)
- Your firm's signed loan agreements, security agreements, and bonding forms
- Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- List of equipment leased and signed lease agreements
- List of construction equipment and/or vehicles owned and titles/proof of ownership
- Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- Year-end balance sheets and income statements for the past three years (*or life of firm, if less than three years*); a new business must provide a current balance sheet
- All relevant licenses, license renewal forms, permits, and haul authority forms
- DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- Bank authorization and signatory cards
- Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- Trust agreements held by any owner claiming disadvantaged status, if any

Partnership or Joint Venture

- Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- Official Articles of Incorporation (*signed by the state official*)
- Both sides of all corporate stock certificates and your firm's stock transfer ledger
- Shareholders' Agreement
- Minutes of all stockholders and board of directors meetings
- Corporate by-laws and any amendments
- Corporate bank resolution and bank signature cards
- Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Trucking Company

- Documented proof of ownership of the company
- Insurance agreements for each truck owned or operated by your firm
- Title(s) and registration certificate(s) for each truck owned or operated by your firm
- List of U.S. DOT numbers for each truck owned or operated by your firm

Regular Dealer

- Proof of warehouse ownership or lease
- List of product lines carried
- List of distribution equipment owned and/or leased

NOTE: The specific state UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required.

Additional Documentation required for Applicants
to the Kansas Statewide Certification Program

- Current company business plan
- Copy of birth certificate, and driver's license, passport, or SA 1 to prove documented permanent residency
- Brochure and business card of firm
- Name, address, and phone number of two client references
- Forms 1099 sent and received for the past three years
- W-2 forms for the past two years for all owners, supervisors, and key employees
- Other documents may be necessary

(APPENDIX E)

PERSONAL NET WORTH

Effective July 16, 2003, changes to the Disadvantaged Business Enterprise (DBE) regulations mandate the use of the Small Business Administration's (SBA) Personal Financial Statement.

DBE program regulations, 49 CFR, Part 26.67 (2)(i) addresses the Personal Net Worth (PNW) requirements as follows:

(2)(i) You must require each individual owner of a firm applying to participate as a DBE whose ownership and control are relied upon for DBE certification to submit a signed, notarized statement of personal net worth, with appropriate supporting documentation. **(emphasis added)**

Therefore, for purposes of the DBE Program, PNW forms are to be provided for the socially and economically disadvantaged owners of the business. Non-disadvantaged owners are not required to provide a PNW form.



PERSONAL FINANCIAL STATEMENT

U.S. SMALL BUSINESS ADMINISTRATION

As of _____, _____

Complete this form for: (1) each proprietor, or (2) each limited partner who owns 20% or more interest and each general partner, or (3) each stockholder owning 20% or more of voting stock, or (4) any person or entity providing a guaranty on the loan.

Name	Business Phone
Residence Address	Residence Phone
City, State, & Zip Code	
Business Name of Applicant/Borrower	

ASSETS		(Omit Cents)	LIABILITIES		(Omit Cents)
Cash on hand & in Banks	\$	_____	Accounts Payable	\$	_____
Savings Accounts	\$	_____	Notes Payable to Banks and Others	\$	_____
IRA or Other Retirement Account	\$	_____	(Describe in Section 2)		
Accounts & Notes Receivable	\$	_____	Installment Account (Auto)	\$	_____
Life Insurance-Cash Surrender Value Only	\$	_____	Mo. Payments \$ _____		
(Complete Section 8)			Installment Account (Other)	\$	_____
Stocks and Bonds	\$	_____	Mo. Payments \$ _____		
(Describe in Section 3)			Loan on Life Insurance	\$	_____
Real Estate	\$	_____	Mortgages on Real Estate	\$	_____
(Describe in Section 4)			(Describe in Section 4)		
Automobile-Present Value	\$	_____	Unpaid Taxes	\$	_____
Other Personal Property	\$	_____	(Describe in Section 6)		
(Describe in Section 5)			Other Liabilities	\$	_____
Other Assets	\$	_____	(Describe in Section 7)		
(Describe in Section 5)			Total Liabilities	\$	_____
Total	\$	_____	Net Worth	\$	_____
			Total	\$	_____

Section 1. Source of Income			Contingent Liabilities		
Salary	\$	_____	As Endorser or Co-Maker	\$	_____
Net Investment Income	\$	_____	Legal Claims & Judgments	\$	_____
Real Estate Income	\$	_____	Provision for Federal Income Tax	\$	_____
Other Income (Describe below)*	\$	_____	Other Special Debt	\$	_____

Description of Other Income in Section 1.

*Alimony or child support payments need not be disclosed in "Other Income" unless it is desired to have such payments counted toward total income.

Section 2. Notes Payable to Banks and Others. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

Name and Address of Noteholder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly, etc.)	How Secured or Endorsed Type of Collateral

Section 3. Stocks and Bonds. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed).

Number of Shares	Name of Securities	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 4. Real Estate Owned. (List each parcel separately. Use attachment if necessary. Each attachment must be identified as a part of this statement and signed.)

	Property A	Property B	Property C
Type of Property			
Address			
Date Purchased			
Original Cost			
Present Market Value			
Name & Address of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			
Amount of Payment per Month/Year			
Status of Mortgage			

Section 5. Other Personal Property and Other Assets. (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment and if delinquent, describe delinquency)

Section 6. Unpaid Taxes. (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.)

Section 7. Other Liabilities. (Describe in detail.)

Section 8. Life Insurance Held. (Give face amount and cash surrender value of policies - name of insurance company and beneficiaries)

I authorize SBA/Lender to make inquiries as necessary to verify the accuracy of the statements made and to determine my creditworthiness. I certify the above and the statements contained in the attachments are true and accurate as of the stated date(s). These statements are made for the purpose of either obtaining a loan or guaranteeing a loan. I understand FALSE statements may result in forfeiture of benefits and possible prosecution by the U.S. Attorney General (Reference 18 U.S.C. 1001).

Signature: _____ Date: _____ Social Security Number: _____

Signature: _____ Date: _____ Social Security Number: _____

PLEASE NOTE: The estimated average burden hours for the completion of this form is 1.5 hours per response. If you have questions or comments concerning this estimate or any other aspect of this information, please contact Chief, Administrative Branch, U.S. Small Business Administration, Washington, D.C. 20416, and Clearance Officer, Paper Reduction Project (3245-0188), Office of Management and Budget, Washington, D.C. 20503. **PLEASE DO NOT SEND FORMS TO OMB.**

(APPENDIX F)

**KANSAS STATEWIDE CERTIFICATION PROGRAM
ANNUAL AFFIDAVIT OF DBE ELIGIBILITY**

Name of Firm: _____

Street Address: _____

Mail Address: _____

City: _____ State: _____ Zip Code: _____

Business Telephone: _____ Business Fax: _____

E-mail: _____ Cell Phone: _____

* Attach a copy of the firm's complete federal tax return and the firm's financial statement for the past year.

* Attach a copy of the qualifying owners' current personal financial statement.

* Attach a copy of the owner's complete federal tax return.

- There have been no changes in ownership or control in the past year.
- The gross receipts for the firm remain within the SBA size standard.
- The personal net worth of the qualifying owner is less than \$1.32 million.

I swear the three statements above are true and correct. I agree to permit the audit and examination of books, records and files of myself and the firm. I understand any material misrepresentation is grounds for perjury and subsequent sanctions or prosecution.

Print Name of Owner

Title

Signature

State of _____

County of _____

On this _____ day of _____ before me appeared _____
to be personally known, who being duly sworn did execute the foregoing affidavit.

Notary Public

SEAL

(APPENDIX G)

**STATE OF KANSAS
DBE ON-SITE VERIFICATION REVIEW**

GENERAL INFORMATION

Date review conducted: _____ By: _____

Location of Review: _____

Name of Firm: _____

Primary Business Activity: _____

PARTICIPANTS AT THE REVIEW (name and title)

Sole Proprietor _____ Partnership _____ Corporation _____ LLC _____

Manufacturer _____ Supplier _____ Contractor _____ Broker _____

FACILITIES

Description: _____

Is this the only location? _____

If not, list other addresses: _____

Describe the process in which the location was obtained: _____

Are facilities owned or leased? _____ How long? _____

From Whom? _____

Amount of lease or mortgage payments. (Note evidence seen): _____

Whose name are utilities in? (Note evidence seen): _____

If facility is shared, state with whom and relationship: _____

PERSONNEL

Does any member of your firm also work for any other company? If so:

NAME	COMPANY	POSITION	HRS. A WEEK
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

How many full time employees are with this firm in all locations?

Administrative: _____

Sales: _____

Manufacturing: _____

Supervisory: _____

Construction: _____

Other: _____

How many part-time employees are with this firm? _____

How many hours per day does the applicant owner devote to the firm? _____

Describe the duties and responsibilities of the applicant owner: _____

How many hours per day do other principals devote to the business? _____

Describe the duties and responsibilities of other principals of the firm: _____

Who is the office manager? _____

What are the duties of the office manager? _____

Who hires office personnel? _____ Supervisory personnel? _____

Field personnel? _____

When was the last time an employee was hired? _____

By whom? _____

Who fires employees? _____

When was the last time an employee was fired? _____

By whom? _____

How many supervisors does the company employ? _____

Explain their duties and responsibilities: _____

Who sets salaries for key personnel? _____

Who sets salaries for other personnel? _____

Does the firm have benefits? _____ Yes _____ No

Who determines benefits? _____

What are the benefits? _____

Who is eligible for the benefits? _____

FINANCIAL Note: (See evidence of all documents)

Who prepares financial statements: _____

What are they used for? _____

Who prepares tax returns? _____

Who has the authority to sign loans? _____

Describe how your bonding source was obtained, who is the agent, what company was utilized, and what is your limit. (If applicable, please attach copy)

Review of documents:

Cancelled Checks: Jan.____ Feb.____ Mar.____ Apr.____ May____
 Jun.____ Jul.____ Aug.____ Sept.____ Oct.____
 Nov.____ Dec.____

List signatures seen on checks: _____

List amount paid to owners and principals: _____

Review complete files of several contracts: _____

Invoices: Review (Copy) Material Invoices: _____

Does the company carry life insurance policies on any of the corporate officers? If so, how much? _____

Who signs correspondence? (Note number of letters reviewed and signature)

MATERIALS

What type of material is needed for the type of work performed? _____

Are materials stored on premises? _____ If not, where? _____

What materials were viewed? _____

Who orders materials? _____

Who are major suppliers? _____

View purchase orders and checks for purchases: _____

OTHER

Is the firm listed in the telephone book: _____ Yellow Pages? _____

Is there a sign with the firm's name in the front of office? _____

Does the firm have a web page? _____ Address: _____

OPERATIONS

Explain and describe the day to day operations of the firm: _____

Explain and describe your firm's bidding and estimating process: _____

Who selects projects to bid on and how is selection made? _____

Who does the estimating? _____

Who prepares bid? _____

Who verifies the paperwork before submitting the bid? _____

Who signs contracts? _____

Who is authorized to sign contracts? _____

How do you learn of jobs? _____

How do you get your bid to contractors? _____

Has your firm or any principal of your firm ever failed to complete any contract awarded to you?

Explain how the firm obtains and performs its contracts and describe how you obtain:

- a. Financing: _____
- b. Equipment: _____
- c. Materials: _____
- d. Personnel: _____

Explain the method used to monitor job costs: _____

Explain and describe the company marketing process: _____

What contracts is the firm in the process of performing? _____

Describe the procedures used to resolve performance problems: _____

Who negotiates disputed billings? _____

Have you ever subcontracted any of your firms work? _____

To whom: _____

Why? _____

Dollar Value: _____

1. List major contracts the firm completed: (location, type of work, awarding authority, and amount)? _____

2. Describe any arrangements or agreements your firm has with other firms that provide assistance in manpower, equipment, use of office, storage or warehouse space, financial, or bonding? _____

Does your firm offer assistance to other firms (manpower, equipment, or space)? _____

Describe this relationship: _____

Who do you consider your competitors? _____

EQUIPMENT

What company insures equipment? _____

Coverage: _____

Does the firm have accounts established with equipment rental firms? _____

Who? _____

Has the firm rented equipment from contractors before? _____ From whom? _____

List names: _____

Who authorizes equipment purchases? _____

Copies of purchase agreements, rental agreements, loan agreements: _____

Who signed for the company? _____

Where is the equipment located? _____

What equipment was seen on premises? _____

Did it have the firm's logo? _____

Office equipment company owns or leases: _____

Desk____ Typewriter____ Copier____ Calculator____

Computer____ Files____ Fax____ Other____

MANUFACTURER

A manufacturer produces a product, changes a product, or combines and repackages a product. A manufacturer has the facility and employees to do this work and store the final product prior to shipping. A manufacturer counts 100% toward a DBE goal.

Describe the factory or warehouse: _____

Describe the manufacturing process: _____

Describe the storage facilities: _____

SUPPLIER

A supplier owns, operates or maintains a store or warehouse where materials are purchased, kept in stock and regularly open to and sold to the public. This must be the principal business of the firm with appropriate signage and advertising. Sufficient materials must be in stock to meet the needs of the average customer.

A supplier of bulk items (asphalt, cement, petroleum, steel must own or lease and operate distribution equipment. The supplier must own or lease the tanker, flat bed or whatever is needed to deliver the bulk item to the jobsite. Any leases must be long-term, not contract related. Material purchased from a supplier counts 60% toward a DBE goal.

Describe the warehouse/storage facilities: _____

If applicable, describe the delivery vehicles: _____

How much stock is on hand? _____

CONTRACTOR

A contractor performs as a prime or a subcontractor, performing work with their own employees and using their own equipment under their own supervision. The entire cost of supplies, materials and labor counts 100% toward a DBE goal.

Describe equipment required to perform designated work type: _____

Are there sufficient employees? _____

BROKER

A broker is a person or firm who arranges or expedites a transaction. A broker is a reseller, a packager or a manufacturer's representative. A broker may or may not take ownership of the material. The fee charged for the transaction counts toward a DBE goal, provided the fee is customary and reasonable and not excessive. None of the material costs can count toward the DBE goal.

CONSULTANT

Provides a service to another firm or business. The service can be technical, managerial, professional or consultant. A reasonable fee for the service can count 100% toward a DBE goal.

MANAGEMENT

How are company decisions made? _____

How are disagreements with employees resolved? _____

If more than one owner, how are disagreements between owners resolved? _____

List percentage of ownership for each principal and his/her responsibilities:

Owner	Percentage	Responsibility
_____	_____	_____
_____	_____	_____
_____	_____	_____

Describe the start-up process of the business, including any financial and/or resource contributions: _____

What is your prior work experience and how does it help in this company? _____

Why do you want to be a certified DBE Firm? _____

STAFF OBSERVATIONS:

Other employees interviewed: _____ Yes _____ No

KDOT Staff: _____ Date

KDOC&H Staff: _____ Date

(APPENDIX H)

Distribution: Office of Civil Rights
Bureau of Construction & Maintenance

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

This form is to be completed by construction engineers, project engineers, other KDOT staff, or LPA's. Attach one copy each of payrolls for prime contractor and DBE subcontractor for one week. Please direct questions to Civil Rights at (785) 296-7940.

- 1. Project Number: _____
- 2. Prime Contractor: _____
- 3. Subcontractor: _____
- 4. Project Engineer: _____ 5. County: _____
- 6. DBE Start Date: _____ 7. DBE Estimated Date of Completion _____
- 8. DBE Foreman Name: _____
- 9. Is Foreman on DBE Payroll? Yes _____ No _____
- 10. Is Foreman on another Payroll? Yes _____ No _____
- 11. To whom does Foreman directly report? _____
- 12. Is any of DBE crew on another Payroll? Yes _____ No _____
- 13. Has the DBE owner been on the job? Yes _____ No _____ What % _____
- 14. Does the DBE appear to control own work? Yes _____ No _____
- 15. List DBE's equipment:

- 17. What name is on their equipment? _____
- 18. Is equipment leased? If so, from whom & how long? _____
- 20. Is the DBE subcontracting any of their work out? Yes _____ No _____
If yes, answer the following: Firm's Name: _____
Amount of work: \$ _____
- 21. Who are materials purchased from? _____

Indicate work as listed on D.O.T. Form 259

BID ITEM NUMBER	APPROXIMATE % Complete	ITEM DESCRIPTION (Note partial items)	DOLLAR AMOUNT

TO BE COMPLETED FOR DBE TRUCKERS

1. The number of hours contracted or quantities to be hauled on this project? _____
2. How many fully operational units will be used on this project? _____
Tractors/Trailers: _____ Dump trucks: _____
3. How many fully operational units will be yours? _____
Tractors/Trailers: _____ Dump trucks: _____
4. How many other units will be yours? _____
Tractors/Trailers: _____ Dump trucks: _____

TO BE COMPLETED BY PROJECT ENGINEER WHEN THE DBE'S PORTION OF WORK IS 1/3 TO 1/2 COMPLETED

1. Does it appear that the DBE firm is performing their own work? Yes_____ No_____
2. Does it appear that the DBE is managing their portion of the project and using their own company employees? Yes_____ No_____
3. Does it appear that the DBE is providing the equipment for their items of work?
Yes_____ No_____
4. Does it appear that the qualities of the DBE's performance, scheduling and project management are meeting industry standards? Yes_____ No_____

Comments: _____

Reviewed by: _____

Title: _____

Date of Review: _____

D.O.T. FORM NO. 1014

(APPENDIX J)

Kansas Department of Transportation DBE Payment Affidavit

Distribution;
Office of Civil Rights- 1 Copy
Bureau of Construction and Maintenance- 1 Copy

State Project No.: _____ County: _____

Federal Project No.: _____ Contract No.: _____

Prime Contractor: _____

DBE FIRM NAME	LINE ITEM PERFORMED	DBE BID AMOUNT	DBE AMOUNT EARNED

The undersigned swears under penalty of perjury that the above statements are true and correct. The undersigned agrees to provide Kansas Department of Transportation with the actual checks to verify payment, when requested.

Contractor's Authorized Representative or Owner

Subscribed and sworn before me this _____ day of _____, 20 ____

Notary Public: _____ Commission Expires: _____

Instructions

This form is required on every KDOT project. The form is to be completed by the prime contractor and submitted to the KDOT construction office. The construction office will submit one copy to the Bureau of Construction and Maintenance with the final estimate. A second copy is to be submitted separately to the Office of Civil Rights.

- List each DBE firm separately.
- If a DBE goal was established on the project, under DBE bid amount use the amount written on form 7-19-80-R7 at the time of bid.
- If no DBE goal was established on the project, under DBE bid amount use "none".
- Under DBE amount earned list the total amount actually paid to the DBE, including underruns and overruns and additional work.
- Each form must be notarized.
- The statements made on each form are subject to verification by KDOT or FHWA personnel.

**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 \$1,320,000 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/divadmin/civilrights/>. 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 non-responsive.

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. 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) DBE Trucker – Count 100% of the amount paid to the DBE trucking company when the trucking company follows these guidelines:

1. Use trucks owned by the certified DBE trucking company using drivers it employs;
2. Use trucks leased from another DBE firm, including an owner/operator who is certified as a DBE;
3. Use trucks leased from a non-DBE firm as long as transportation services provided by the non-DBE lease does not exceed the value of the transportation services provided by DBE-owned trucks on the contract. Prior written permission required.

The guidelines are listed in order of preference of utilization. KDOT written permission from the Office of Civil Rights is required before #3 is allowed. The DBE owner must be in charge of all trucks utilized, have exclusive use of and control over the trucks. The DBE will be considered a broker only, if there are no DBE trucks or employees and the DBE does not exercise full control. A broker arranges or expedites transactions only. 100% of the broker fee or commission received by the DBE broker can be counted toward the goal. Only the broker fee is eligible to count toward goal, no materials or labor related to the work.

The DBE must provide a list of trucks and truck drivers to be utilized for the duration of the project and updated throughout the duration of the project. The list will include the VIN, truck and tag numbers and/or other vehicle identification. The prime contractor for the project will maintain this information.

The prime contractor will submit to the KDOT field office, a spread sheet or list which contains all trucks hauling on the project and the dates and tons hauled which count toward DBE goal. This will be submitted monthly.

Note: To count towards DBE goal credit, DBE trucking must be monitored by KDOT field personnel and hauled to a dedicated project stock pile. If the trucking activity cannot be monitored, it will not count toward DBE goal.

When a separate, dedicated aggregate stockpile is designated at a commercial batch plant for a specific KDOT project, the prime contractor must submit a written request to the KDOT field office if the prime contractor is requesting permission to count the DBE trucking for this stockpile to count for DBE goal credit. To ensure fulfillment of the project goal, the prime should make this request as soon as possible when considering project bid. The KDOT field office should make a consistent effort to provide monitoring of DBE participation at commercial plants per this request.

D. COMMERCIALLY USEFUL FUNCTION.

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

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

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

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

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

- (c) Exception for specialized equipment: The DBE may lease short term specialized equipment such as a crane from another contractor or third party if this equipment is necessary for the DBE to perform its work and the equipment is of such a nature that it is not economically feasible or practical for the DBE to lease the equipment long term. The contractor shall bill the DBE for this equipment and the DBE shall pay the contractor for the equipment. The DBE is not in compliance with this provision if the contractor deducts from the DBE's pay estimate specialized equipment costs rather than submitting an invoice to and receiving payment from the DBE.
- (3) The DBE shall negotiate the cost of, arrange delivery of, and pay for materials, supplies, labor, and equipment. Invoices shall be billed to the DBE and paid by the DBE.
- (4) KDOT will not count towards goal or give DBE contract goal credit for the following:
- (a) Monies the prime contractor pays directly for supplies, materials, labor or equipment on the DBE's behalf except for two-party checks approved under Section III.E below.
 - (b) Costs deducted from a DBE's pay estimate for supplies, materials, labor or equipment the prime contractor or its affiliate provided.
 - (c) Costs incurred for equipment the DBE leases from the contractor on the project if the DBE is using the equipment for that project only and the equipment is not part of a long term lease agreement.
 - (d) Costs associated with a portion of a bid item that the Agency is unable to measure clearly.
 - (e) Costs incurred for work subcontracted outside normal industry practices, just to meet a goal.

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

E. BUSINESS INTEGRITY

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

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

F. TWO PARTY CHECKS.

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

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

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

IV. SANCTIONS.

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

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

V. USE OF MINORITY OWNED FINANCIAL INSTITUTIONS (49 CFR 26.27).

KDOT encourages prime contractors to use the services of institutions owned and controlled by socially and economically disadvantaged persons. All eligible institutions are certified by KDOT and are listed on the internet at <http://www.ksdot.org/divadmin/civilrights/>.

6-15-11 OCR (DW)
Dec-11 Letting

**KANSAS DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION TO THE
STANDARD SPECIFICATIONS, EDITION 2007**

**SECTION 109
MEASUREMENT AND PAYMENT**

Page 100-71, subsection 109.1e.(3). Add the following to the end of the third bullet ("Check scales..."): The difference in the 2 scales must not exceed 0.25%. If the difference exceeds 0.25%, recertify the scales according to subsection 152.2.

Page 100-74, delete subsection 109.3d.(1) and replace with the following:

(1) Before beginning the force account work, provide equipment rates. If equipment is rented, provide documented rental rates. If equipment is owned, provide documented company ownership rates. These rates shall be agreed upon in writing for the number of hours the authorized equipment operates.

No rates shall be higher than the monthly rate set forth in the Rental Rate Blue Book for Construction Equipment (Blue Book). The Blue Book rate is calculated by dividing the monthly rate for the equipment by 176 and adjusting that rate by Blue Book age and regional adjustment factors before adding in the Blue Book estimated hourly operating cost. The hourly operating cost includes costs for repairs, fuel, and lubricants used or consumed in the force account work.

Page 100-74, delete subsection 109.3e. and replace with the following:

e. Limitation on Compensation. The Secretary will not pay superintendents, the use of small tools, or other costs for which no specific allowance is provided in this subsection 109.3.

Page 100-75, subsection 109.4. Delete subsection 109.4a. and replace with the following:

a. Request payment for properly stored nonperishable materials when the value of the stored material is a minimum of \$2,500.00 for each individual item of material, unless otherwise approved by the Engineer. Only include the actual material and shipment costs in the request. Do not include any testing fees, stockpiling costs, sales tax, etc.

- When requesting payment for stored materials, verify the quantity of materials stored and the value of the material. Identify the contract line item numbers (bid items) representing the stored materials and the quantities of stored materials assigned to each designated contract line item number. Provide required certification for all stored materials according to the Contract Documents;
- As the materials are incorporated into the work, the Engineer will measure actual quantities and adjust the stored materials payment by the actual quantities incorporated. Upon receiving each payment voucher (progress payment), verify the accuracy of the stored materials paid for to date and advise the Engineer of any discrepancy; and
- After receiving payment for the stored materials, pay subcontractors and suppliers according to subsection 109.6.

Page 100-75, delete subsection 109.4b. and replace with the following:

b. The Engineer will pay stored materials for nonperishable material the Contractor manufactures using its own forces. Before payment, the Contractor and Engineer shall agree upon and verify the delivery amount and storage location. The Engineer may pay for materials stored properly at a fabricator's or manufacturer's facility if the material is specifically identified for a KDOT project.

Page 100-76, delete subsection 109.6b. and replace with the following:

b. Progress Payments.

(1) Prior to the first progress payment, submit to the Engineer bid item price sheets for 1st tier subcontractors and a copy of material purchase orders for 1st tier material suppliers. This information is needed for the Engineer to verify proper payment.

(2) Within 10 calendar days after receiving payment from the Secretary for approved, subcontract work, pay subcontractors for their work.

(3) Within 15 calendar days after receiving payment from the Secretary, submit to the Engineer a "Certificate for Subcontract Work and Payment", KDOT Form No. 1010, containing the following representations:

"I certify that the Contractor received payment from the Secretary on (date) and, within 10 calendar days after this date, paid the subcontractors named below for the work those subcontractors completed on or before the payment voucher's "Paid To Date"." [Signed by Contractor's representative].

Note: More than 1 subcontractor may be shown on KDOT Form No. 1010.

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INSTRUCTIONS FOR KDOT FORM 1010

REQUIREMENTS FOR KDOT FORM 1010

Each prime contractor should make a master Form 1010 for each KDOT contract listing the name of each subcontractor and each applicable supplier.

After the receipt of funds for each KDOT estimate payment, the prime contractor shall pay each subcontractor/supplier who has work items on the estimate within 10 days. The prime contractor shall strike through the names of subcontractors/suppliers to whom no payment was due for that estimate.

The signed, dated Form 1010 must be received at the KDOT construction office within 15 days of the date the prime contractor received payment from KDOT.

CLARIFICATIONS FOR KDOT FORM 1010

List only first tier subcontractors on Form 1010.

List only suppliers who provide an item/material to the prime contractor that is a bid item and not a component of a bid item.

Example: Bid item is for pipe. The prime contractor installs the pipe. The pipe supplier should be listed on Form 1010. If a subcontractor installs the pipe, the pipe supplier is not listed on Form 1010.

Example: Bid item is for cast-in-place manhole built by the prime contractor. The manhole has multiple components and no supplier is listed on Form 1010.

It is important that all first tier material suppliers be listed, as the submittal of this form is the basis for not requiring paid invoices for stored materials.

For any material or supplied item that is paid on a monthly billed account and has not yet been billed or paid, write that date it is to be paid next to the name on the Form 1010.

As always, every prime contractor is responsible for ensuring that all lower tier subcontractors and suppliers are paid by their respective contractors within 10 days of when that subcontractor received payment. KDOT does not want any Form 1010 from a lower tier subcontractors and suppliers but a prime contractor may choose to use Form 1010 as a way of ensuring that all entities involved in the project have been paid.

REQUIRED CONTRACT PROVISION
SPECIFIC EQUAL EMPLOYMENT
OPPORTUNITY CONTRACTUAL REQUIREMENT

I. General:

Equal employment opportunity requirements to NOT discriminate and to take affirmative action to assure equal employment opportunity shall apply to all Contractors, subcontractors and suppliers who have a contract, subcontract or purchase order that equals or exceeds \$10,000.

A. Federal Aid Projects

The specific affirmative action requirements for these contracts are imposed pursuant to 41 CFR Part 60-1, 60-250, 60-741, 23 CFR Parts 633 and 230, FHWA Form 1273 and the Americans With Disabilities Act of 1990.

B. State Funded Projects

The specific affirmative action requirement for these contracts are imposed pursuant to the Kansas Act Against Discrimination, K.S.A. 44-1001 et seq. as amended and the rules and regulations promulgated thereunder.

The Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.); 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 to not discriminate against any person because of race religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (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 bind upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements set forth herein 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 Kansas Department of Transportation (KDOT) or the Kansas Department of Administration; (f) if it is determined that the Contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the KDOT or the Kansas Department of Administration. The provisions of this paragraph, with the exception of those relating to the ADA, are not applicable to a Contractor who employs fewer than four employees during the term of such contract or whose contracts with KDOT cumulatively total \$5,000 or less during the fiscal year.

2. Equal Employment Opportunity (EEO) Policy:

A. The Contractor will accept as a minimum operating policy the following statement:

"It is the policy of this company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, age, sex, color, disability, national origin, or veteran status. Such action shall include: employment, upgrade, demotion, transfer, recruitment, recruitment advertising, layoff, termination, wages, benefits, and selection for training including preapprenticeship, apprenticeship and on the job training."

All other EEO requirements will need to be incorporated by each Contractor into their policy.

B. Annually the Contractor will send to the KDOT Office of Civil Rights (OCR) one copy of the company's EEO policy signed and dated by the company's Policy Officer. The EEO Policy must be approved by the KDOT before the award of a contract, subcontract or purchase order over \$10,000. Contractors are encouraged to submit their policies for approval before bidding projects so as not to delay contract or subcontract award. Firms with more than 50 employees must also submit an Affirmative Action (AA) plan.

C. To comply with requirements of TEA 21, all Contractors and subcontractors must annually provide information on the firm's age, gross receipts, and work type. This information will be due on the same date as the EEO policy, and is required before a Contractor can perform work.

3. Contents of EEO Policy/AA Plan:

A. The minimum operating statement listed in 2.A and additions designated by the company to comply with all relevant laws.

B. The designation of the EEO Officer responsible and capable of effectively administering and promoting an active EEO program and the designation of the full authority to do so.

C. The company's recruitment policy with specific actions to be taken for the coming year, relevant to the current work force.

D. Certification that the Contractor does not maintain or permit any segregation of its facilities and that no employee will be denied access to any facility based on sex or disability.

E. The company's training and promotion policy to upgrade the skills of minorities and women.

F. The Company's personnel actions in regard to job site inspection, wages, benefits, transfers, demotions, layoffs, terminations, promotions, new hires and upgrades, and the company's complaint procedure.

4. Dissemination of EEO Policy /AA Plan:

A. All members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the Contractor's EEO policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To confirm that the above agreement will be met, the following actions will be taken and documented as a minimum:

(1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the Contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(2) All new supervisory or personnel employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the Contractor's equal employment opportunity obligations within thirty days following reporting for duty with the Contractor.

(3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the Contractor's procedures for locating and hiring minority group employees.

B. In order to make the Contractor's EEO policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the Contractor will take the following actions:

(1) Notices and posters setting forth the Contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(2) The Contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by meetings, employee handbooks, and other appropriate means. Meetings should be conducted periodically and documented to confirm new employees are included.

5. Unions:

If the Contractor relies in whole or in part upon unions as a source of employees, the Contractor will use best efforts to obtain the cooperation of such unions to increase opportunities for minorities and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the Contractor either directly or through a Contractor's association acting as agent will include the procedures set forth below:

A. The Contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

B. The Contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, age, sex, disability, national origin, or veteran status.

C. The Contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the Contractor, the Contractor shall so certify to the KDOT and shall set forth what efforts have been made to obtain such information.

D. In the event the union is unable to provide the Contractor with a reasonable flow of minority and female referrals within the time limit set forth in the collective bargaining agreement, the Contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, age, sex, disability, national origin, or veteran status; making full efforts to obtain qualified and/or qualifiable minority group members and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the Contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees). In the event the union referral practice prevents the Contractor from meeting the obligations pursuant to Executive Order 11246, as amended, for federal or federal-aid construction projects, and these special provisions, such Contractor shall immediately notify the KDOT.

6. Subcontracting:

The Contractor, when seeking to subcontract a portion of the work on this project, is required to take affirmative action to consider DBEs as potential subcontractors. In the event assistance is needed to locate or obtain a list of potential DBEs, the KDOT's Plans and Proposals Section and the OCR may be contacted.

"Disadvantaged Business Enterprises" are businesses which have been certified as disadvantaged by the OCR and are listed in the current DBE directory which is also available at www.ksdot.org.

The Contractor will certify on DOT Form 260 that all EEO provisions applicable to this contract are included in all subcontracts.

The Contractor will exert concerted efforts to train and develop DBEs by providing direct assistance in such areas as preparing quotations, understanding highway construction plans and standard specifications applicable to the portion(s) of the work to be subcontracted, and familiarizing DBEs with business practices and other actions which will facilitate their development into viable highway construction Contractors.

By making systematic written and verbal contact with DBEs likely to have an interest in highway construction work, the Contractor will make every effort to solicit DBE subcontractor quotes. Additionally, the Contractor will not restrict DBEs in the furnishing of subcontractor quotes to any other bidder/Contractor who may be preparing bid proposals for submission on this Contract.

In order to afford DBEs an opportunity to participate as subcontractors on portions of the work to be subcontracted, it is required that itemized quantities and particular incidentals to such work be furnished to DBEs in order to solicit quotes for prospective subcontractors. Bid solicitation should be directed only to those Contractors whose specialties and skills encompass those bid quantities for which bids are being solicited.

The Contractor will affirmatively solicit the interest, capabilities, and prices of DBEs and document results of such solicitation in detail. The Contractor fully understands that requests for Approval of Subcontractor (DOT Form 259) submitted to the KDOT for approval may be denied if such affirmative action cannot be demonstrated when requested. When requested to establish evidence of affirmative action being taken, the prime Contractor shall provide:

A. Copies of letters and requests for bids sent to potential DBEs and of certified mail receipts.

B. Copies of letters and bid quotes received from DBEs. Copy of the letter and bid quote received from the subcontractor for whom the Request for Approval is submitted, if the subcontractor is not a DBE.

7. Required Notices and Posters:

A. Required on State Funded and Federal-Aid Projects:

1. Unemployment Insurance Notice K-CNS 405
2. Workers Compensation Law K-WC 40
3. Kansas Equal Opportunity
4. Child Labor K-ESLR 100

B. Required on Federal-Aid Projects Only:

1. Contractor's EEO Policy and Contact Number for EEO Officer
2. Wage Rate Information FHWA 1495 and 1495A
3. Wage and Hour Posters WH 1321 and WH 1088
4. Fraud Notice FHWA 1022
5. Equal Opportunity Poster
6. Job Safety and Health Poster OSHA 3165 and 3167
7. Contract Wage Rates
8. Family Medical Leave Act WH 1420
9. Polygraph WH 1462
10. Government Contracts WH 1313

8. Noncompliance with EEO/AA Requirements:

A. KDOT will not award a contract, approve a subcontract or sign a purchase order until the required EEO/AA policy has been submitted to and approved by the KDOT Civil Rights Administrator in the OCR.

B. If discrimination, harassment or a hostile work environment exists on any project, the KDOT will take every action needed to confirm the problem is corrected in a timely manner. KDOT will also monitor the project to determine if retaliation is taken against any employee who files a complaint.

C. Contract Compliance reviews are conducted by OCR on selected federal aid contracts. A Contractor can expect to be reviewed once every three years or more often if any deficiencies had been previously found. During a Compliance Review all areas listed previously in items 2-7 will be verified for compliance. *The compliance review is the Contractor's ONLY opportunity to provide documentation of ALL efforts undertaken to meet or exceed all EEO/AA requirements of the contract. It is IMPORTANT that all relevant documentation be provided at this time. During any subsequent appeal process new documentation not previously submitted to the OCR will NOT be considered in the appeal.* A deficiency occurs when the Contractor fails to comply with a requirement and/or fails to document every good faith effort to comply. A Voluntary Corrective Action Plan (VCAP) is required to correct certain deficiencies that do not directly affect a protected group or result in discrimination. A follow up review is conducted to confirm that the VCAP was enacted and determine if it is effective.

D. When a Contractor's action or inaction adversely affects a protected group member (discrimination) or when a Contractor has failed to provide written documentation of every good faith effort to provide equal opportunity and to take affirmative action, these procedures will follow:

(1) For the first documented occurrence of such a deficiency the OCR will discuss the deficiency with the Contractor's representative during the compliance meeting or at an exit conference held shortly after the compliance meeting. Within 15 days a written notice of a show cause hearing is sent to the Contractor. The show cause hearing is an informal hearing providing the Contractor's opportunity to submit a Corrective Action Plan (CAP) for the immediate correction of the noted deficiency and to eliminate any future reoccurrence. The hearing is chaired by the Chief of the Bureau of Construction and Maintenance

and attended by a staff of OCR and an FHWA representative. KDOT (the Chief of the Bureau of Construction and Maintenance and the Civil Rights Administrator) must approve and the FHWA representative must concur that the CAP will achieve compliance before it is accepted.

(2) For the second documented occurrence of the same deficiency within 3 years the OCR will discuss the deficiency with the Contractor's representative during the compliance meeting or at an exit conference held shortly after the compliance meeting. Within 15 days the KDOT Compliance Review Committee consisting of the Chief of the Bureau of Construction and Maintenance, the Director of Operations and the District Engineer will review the Contractor's documentations and the findings of the OCR and either concur or disagree with those findings. Upon concurrence by the Compliance Review Committee a notification of monetary assessment will be sent to the Contractor with a copy to KDOT's Prequalification Committee and the field office, and the assessment will begin on the date of the letter. As noted above, *the Contractor's opportunity to document every good faith effort is during the compliance review.* The applicable monetary assessments are listed in Table 1. The assessment will be collected for a minimum of five days or so long as the Contractor remains in non compliance.

(3) For the third documented occurrence of the same deficiency within 3 years of the second deficiency the OCR will discuss the deficiency with the Contractor's representative during the compliance meeting or at an exit conference held shortly after the compliance meeting. Within 15 days the KDOT Compliance Review Committee consisting of the Chief of the Bureau of Construction and Maintenance, the Director of Operations and the District Engineer will review the Contractor's documentations and the findings of the staff of OCR and either concur or disagree with those findings. Upon concurrence the Compliance Review Committee sets a debarment period of up to six months and notification is sent to the Contractor, KDOT's Prequalification Committee and other interested agencies. During the debarment period the Contractor will not be eligible to request KDOT plans, submit a bid as prime or subcontractor or otherwise acquire new work on KDOT projects. Any work currently in progress can be completed.

(4) For the fourth documented occurrence of the same deficiency within 3 years of the third deficiency the OCR will discuss the deficiency with the Contractor's representative during the compliance meeting or at an exit conference held shortly after the compliance meeting. Within 15 days the KDOT Compliance Review Committee consisting of the Chief of the Bureau of Construction and Maintenance, the Director of Operations and the District Engineer will review the Contractor's documentations and the findings of the OCR and either concur or disagree with those findings. Upon concurrence the Compliance Review Committee sets a debarment period of one year and notification is sent to the Contractor, KDOT's Prequalification Committee and other interested agencies. During the debarment period the Contractor will not be eligible to request KDOT plans, submit a bid as prime or subcontractor or otherwise acquire new work on KDOT projects. Any work currently in progress can be completed.

(5) The Contractor may request an appeal to the KDOT Compliance Appeal Board (CAB) within five days of the receipt of the notice of assessment or debarment (2, 3 or 4 above). The request is made to the Deputy Secretary for Engineering & State Transportation Engineer (Deputy Secretary) who chairs the CAB. The two other members include one member named by the Deputy Secretary and one member named by the Contractor within 5 days of the appeal request. A date and time will be set by the Deputy Secretary for hearing the appeal and will notify the Contractor, FHWA, KDOT's Civil Rights Administrator and the CAB members. The CAB reviews the documents previously submitted by the Contractor and the previous decision of the Compliance Review Committee. The Contractor presents verbal or written statements to the CAB as to why they disagree with the finding of noncompliance. *The CAB cannot consider any new documentation at this time because its purpose is to concur or disagree with the findings previously made.* The Deputy Secretary will advise the Secretary of Transportation of the decision of the CAB and the final administrative decision will be issued by the Secretary and made known to all concerned parties. During the appeal process the Contractor is not relieved from taking corrective action to eliminate noted deficiencies and the sanction imposed remains in place pending the decision.

TABLE 1		
SCHEDULE OF DAILY MONETARY ASSESSMENTS		
Original Contract Amount Range		Amount of Assessment to be Deducted for Each Day of Non-Compliance
\$0.00	\$100,000.00	\$200.00
\$100,000.01	\$500,000.00	\$400.00
\$500,000.01	\$1,000,000.00	\$800.00
\$1,000,000.01	\$2,500,000.00	\$1,000.00
\$2,500,000.01	\$5,000,000.00	\$1,500.00
\$5,000,000.01	\$10,000,000.00	\$2,000.00
\$10,000,000.01	\$25,000,000.00	\$2,500.00
Over \$25,000,000.01		\$3,000.00

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CONTRACTOR ASSURANCE

Special Attachment No. 1
Sheet 1 of 4

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 State. 252), §504 of the Rehabilitation Act of 1973 (87 State. 3555) and the Americans with Disabilities Act of 1990 (42 USD 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 insure 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 nine “Nondiscrimination Clauses”.

CLARIFICATION

Where the term “consultant” appears in the following seven “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:

(Revised 07-29-1999)

- (1) Compliance with Regulations: The consultant will comply with the Regulations of the Regulations 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 or 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 and the Transportation of the State of Kansas will be permitted access to the consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information, the consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- (5) Employment: The consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- (6) Sanctions for Noncompliance: In the event of the consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the

(Revised 07-29-1999)

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 Businesses are defined in the Regulations, shall have a level playing field to compete fairly for contracts financed in whole or in part with Federal funds under this contract.
- (b) All necessary and reasonable steps shall be taken 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 CFR 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 and use such information in complying with this Order.

- (9) Incorporation of Provisions: The consultant will include the provisions of paragraph (1) through (8) in every subcontract, including procurements of materials and lease of 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.

(Revised 07-29-1999)

(APPENDIX P)

DBE Trucking Monitoring by KDOT Field:

You must have a record of DBEs who will be on the project- this can be found in the contract.

Special guidelines for DBE trucking companies:

- During the Pre-construction meeting, if the Prime Contractor intends to utilize DBE trucking companies for the DBE goal, the Prime Contractor will be submitting a list of vehicles and drivers that each DBE trucking company intends to use for that project.
- If the DBE will be leasing other trucks from a non-DBE company, confirm they have written permission from the Office of Civil Rights (OCR).
- If DBE will be using non-DBE owner/operator trucks, confirm they have written permission from the OCR.
- If DBE will be using non-DBE trucking, verify material(s) does not exceed 1-1 ratio of the DBE truck(s).

When DBE truckers are working on projects:

- Spot check that vehicles and drivers hauling on the project are on the previously submitted list of trucks for that project. Monitor DBE job tickets to verify tonnage. Make notation in project diary. Suggested frequency: On first day that DBE begins work on project, check at least two or three different vehicles. If the same DBE trucking company remains on project for extended amount of time, check a minimum of 2 or 3 vehicles every other week.
- If you find any vehicles or drivers not on the list, immediately notify field office, prime contractor and the Office of Civil Rights.

Commercial plant monitoring:

- A written request from the prime will be received.
- Review and approve if request is manageable.
- Forward copy of request with recommendation to OCR for concurrence. OCR will send letter to prime.
- Perform random checks at commercial plant. Suggested frequency is a minimum of 2 times per week.
- Items to review:
 - * Hauling
 - * Stockpiling
 - * Batching
- Record observations in project diary.

Final check:

- Verify that tonnage hauled by DBE trucker was adequate to fulfill contract quantities. Utilize the Materials Report Final. Follow standard procedure.
- **Wage Rate Interviews-** same guidelines as all other contractors working on project.
- **Certified Payrolls-** if trucking will be counted toward DBE goal, all DBE trucking firms will submit certified payrolls. Depending on nature of hauling, DBE may be submitting two

different types of payrolls; one for work that falls under Davis Bacon wages and one for work that is being paid by the load/ton.

Final Checklist:

- ✓ Check Vehicles and Drivers
- ✓ Record in Project Diaries
- ✓ Wage Rate Interviews
- ✓ Commercial Plant Verifications
- ✓ Notify OCR of Problems
- ✓ Certified Payrolls

Counting DBE Participation

DBE Trucker – Count 100 percent in the amount paid to the DBE trucking company when the trucking company follows these guidelines:

1. Use trucks owned by the certified DBE trucking company using drivers it employs;
2. Use trucks leased from another DBE firm, including an owner/operator who is a certified DBE;
3. Use trucks leased from a non-DBE firm as long as transportation services provided by the non-DBE firm lease does not exceed the value of the transportation services provided by DBE-owned trucks on the contract. Prior written permission is required.

The guidelines are listed in order of preference of utilization. KDOT written permission from the Office of Civil Rights is required before #3 is allowed. The DBE owner must be in charge of all trucks utilized, have exclusive use of and control over the trucks. The DBE will be considered a broker only, if there are no DBE trucks or employees and the DBE does not exercise full control. A broker arranges or expedites transactions only. 100 % of the broker fee or commission received by the DBE broker can be counted toward the goal. Only the broker fee is eligible to count toward the goal, no materials or labor related to the work.

The DBE must provide a list of trucks and truck drivers to be utilized for the duration of the project and updated throughout the duration of the project. The list will include the VIN, truck and tag numbers and/or other vehicle identification. The prime contractor for the project will maintain this information.

The prime contractor will submit to the KDOT field office, a spread sheet or list which contains all trucks hauling on the project and the dates and tons hauled which count toward the DBE goal. This will be submitted monthly.

Note: To count towards DBE goal credit, DBE trucking must be monitored by KDOT field personnel and hauled to a dedicated project stock pile. If the trucking activity cannot be monitored, it will not count toward the DBE goal.

When a separate, dedicated aggregate stockpile is designated at a commercial batch plant for a specific KDOT project, the prime contractor must submit a written request to the KDOT field office if the prime contractor is requesting permission to count the DBE trucking for this stockpile to count for DBE goal credit. To ensure fulfillment of the project goal, the prime should make this request as soon

as possible when considering project bid. The KDOT field office should make a consistent effort to provide monitoring of DBE participation at commercial plants per this request.

DBE Responsibility

- Prime negotiates with potential DBEs, including DBE truckers for Project.
- DBE(s) notified of DBE commitment
- DBE confirms commitment
- DBE develops list of trucks and potential trucks to supplement own fleet.
- If DBE plans to lease non-DBE trucks for one-to-one match, send written request to Office of Civil Rights prior to Pre-Construction meeting
- DBE submits list of vehicles and drivers to Prime contractor prior to Pre-Construction meeting
- DBE starts hauling
- Job tickets are generated
- DBE submits certified payrolls to Prime- both for Davis Bacon and non-Davis Bacon jobs
- DBE submits invoice to prime
- Prime Contractor pays DBE for hauling
- If needed, DBE notifies Prime of changes to vehicle list. Prime will forward copies of any trucking vehicle changes to KDOT field office and OCR.
- DBE submits Monthly DBE Payment Affidavit to KDOT OCR, including breakout of subcontractors or owner/operators used to supplement their own trucks. Indicate those that are DBE certified.

KDOT OCR

- DBE(s) notified of DBE commitment
- DBE confirms commitment
- If DBE plans to lease non-DBE trucks for one-to-one match, send written request to Office of Civil Rights prior to Pre-Construction meeting
- KDOT field office forwards prime request to OCR with recommendation of DBE trucking for DBE goal credit at a commercial plant for concurrence.
- OCR sends letter of concurrence to prime if KDOT approves DBE trucking for goal credit to designated stockpile at commercial plant
- Prime contractor submits two copies of DBE trucking vehicle list to KDOT field during Project Pre-Construction meeting. One for KDOT field office and one for OCR
- OCR monitors that equipment list matches up with list of equipment in DBE's file
- BUCAM forwards copy of approved Form 259 to OCR
- KDOT field office notifies OCR of any problems/issues found
- If needed, DBE notifies Prime of changes to vehicles list. Prime will forward copies of any trucking vehicle changes to KDOT field office and OCR

- DBE submits Monthly DBE Payment Affidavit to KDOT OCR including breakout of subcontractors or owner/operators used to supplement their own trucks. Indicate those that are DBE certified.
- OCR forwards copy of DBE Payment Affidavit to KDOT field staff
- KDOT OCR and field staff spot check Affidavit with list of previously submitted DBE trucks
- KDOT BUCAM forwards Form 270 to OCR
- OCR reviews Form 270 to verify prime contractor met DBE goal achievement
- KDOT BUCAM approves Subcontractor Approval Form 259
- BUCAM forwards copy of approved Form 259 to OCR
- Prime contractor submits Final DBE Payment Affidavit Form 270 to KDOT BUCAM
- KDOT BUCAM forwards Form 270 to OCR

KDOT Field Office

- If prime wants to use a DBE trucking firm towards the DBE goal, at a commercial plant, a separate, designated aggregate stockpile must be maintained. The prime must submit a written request to the KDOT field office for approval.
- KDOT field office forwards prime request to OCR with recommendation of DBE trucking for DBE goal credit at a commercial plant for concurrence.
- Prime contractor submits two copies of DBE trucking vehicle list to KDOT field office during the Project Pre-Construction meeting. One for KDOT field office and one for OCR.
- Prime contractor submits Request for Subcontractor Approval Form 259 to KDOT before DBE trucker starts.
- KDOT field office monitors hauling.
- KDOT field office notifies OCR of any problems/issues found.
- Prime forwards trucker payrolls to KDOT field office.
- If needed, DBE notifies Prime of changes to vehicle list. Prime will forward copies of any trucking vehicle changes to KDOT field office and OCR.
- Prime submits Prompt Pay Form 1010 to KDOT field office.
- KDOT field office reviews Prompt Pay Form 1010 and maintains in project files.
- OCR forwards copy of DBE Payment Affidavit to KDOT field staff.
- KDOT OCR and field staff spot check Affidavit with list of previously submitted DBE trucks.

Prime Contractor

- Prime selects projects they are interested in bidding on.
- Prime negotiates with potential DBEs, including DBE truckers for Project.
- Prime apparent low bidder on Project.
- If prime wants to use a DBE trucking firm towards the DBE goal, at a commercial plant, a separate, designated aggregate stockpile must be maintained. The prime must submit a written request to the KDOT field office for approval.

- OCR sends letter of concurrence to prime if KDOT approves DBE trucking for goal credit to designated stockpile at commercial plant.
- DBE submits list of vehicles and drivers to Prime contractor prior to Pre-Construction meeting.
- Prime contractor submits two copies of DBE trucking vehicle list to KDOT field office during Project Pre-Construction meeting. One for KDOT field office and one for OCR.
- Prime contractor submits Request for Subcontractor Approval Form 259 to KDOT before DBE trucker starts.
- DBE submits certified payrolls to Prime – Both for Davis Bacon and non-Davis Bacon jobs.
- Prime forwards DBE trucker's payrolls to KDOT field office.
- DBE submits invoice to prime.
- Prime contractor pays DBE for hauling.
- If needed, DBE notifies Prime of changes to vehicle list. Prime will forward copies of any trucking vehicle changes to KDOT field office and OCR.
- Prime submits Prompt Pay Form 1010 to KDOT field office.
- Prime contractor submits Final DBE Payment Affidavit Form 270 to KDOT BUCAM.

(APPENDIX Q)

UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS									
Please refer to the Instructions sheet for directions on filling out this form									
1. Submitted to (check only one): <input type="checkbox"/> FHWA <input type="checkbox"/> FAA <input type="checkbox"/> FTA—Vendor Number									
2. AIP Numbers (FAA Recipients Only):									
3. Federal fiscal year in which reporting period falls: FY _____					4. Date This Report Submitted:				
5. Reporting Period <input type="checkbox"/> Report due June 1 (for period Oct. 1-Mar. 31) <input type="checkbox"/> Report due Dec. 1 (for period April 1-Sept. 30)									
6. Name of Recipient:									
7. Annual DBE Goal(s): Race Conscious Goal % Race Neutral Goal % OVERALL Goal %									
AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD <small>(total contracts and subcontracts awarded or committed during this reporting period)</small>	A	B	C	D	E	F	G	H	I
	Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs /Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs
8. Prime contracts awarded this period									
9. Subcontracts awarded/committed this period									
TOTAL									
DBE AWARDS/COMMITMENTS THIS REPORTING PERIOD-BREAKDOWN BY ETHNICITY & GENDER	A	B	C	D	E	F	G	H	I
	Black American	Hispanic American	Native American	Subcont. Asian American	Asian-Pacific American	Non-Minority Women	Other (i.e. not of any other group listed here)	TOTALS (for this reporting period only)	Year-End TOTALS
10. Total Number of Contracts (Prime and Sub)									
11. Total Dollar Value									
ACTUAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	A		B		C		D		E
	Number of Prime Contracts Completed		Total Dollar Value of Prime Contracts Completed		DBE Participation Needed to Meet Goal (Dollars)		Total DBE Participation (Dollars)		Percentage of Total DBE Participation
12. Race Conscious									
13. Race Neutral									
14. Totals									
15. Submitted by (Print Name of Authorized Representative)					16. Signature of Authorized Representative				
17. Phone Number:					18. Fax Number:				

(APPENDIX R)

Add DBE Uniform Report

* = Required, all fields are required except Grant Number

Recipient: 1513-KDOT
 Fiscal Year: * 2012
 Grant Number(s):
(separated by commas;
 ex. DC-01-1234.00 or DC-01-X001.01)
 Status: * --Select--
 Reporting Period: * --Select--

Annual DBE Goal(s):

Race Conscious Goal: * %
 Race Neutral Goal: * %
 Overall Goal: * %

Awards/Commitments Made During This Reporting Period:

	A. Total Dollars	B. Total Number	C. Total to DBEs (dollars)	D. Total to DBEs (number)	E. Total to DBEs/Race Conscious (dollars)	F. Total to DBEs/Race Conscious (number)	G. Total to DBEs/Race Neutral (dollars)	H. Total to DBEs/Race Neutral (number)	I. Percentage of Total Dollars to DBEs
8. Prime Contracts Awarded This Period:	\$		\$0	0	\$		\$		0%
9. Subcontracts Awarded/Committed This Period:	\$		\$0	0	\$		\$		0%
Total:			\$0	0	\$0	0	\$0	0	0%

DBE Awards/Commitments This Reporting Period Breakdown By Ethnicity & Gender:

	A. Black American	B. Hispanic American	C. Native American	D. Subcont. Asian American	E. Asian-Pacific American	F. Non-Minority Women	G. Other	H. Total (number)
10. Total Number of Contracts (Prime and Sub)								0
11. Total Dollar Value:	\$	\$	\$	\$	\$	\$	\$	\$0

Actual Payments on Contracts Completed This Reporting Period:

	A. Number of Prime Contracts Completed	B. Total Dollar Value of Prime Contracts Completed	C. DBE Participation Needed to Meet Goal (dollars)	D. Total DBE Participation (dollars)	E. Percentage of Total DBE Participation
12. Race Conscious:		\$	\$	\$	0%
13. Race Neutral:		\$		\$	0%
Totals:	0	\$0		\$0	0%

**KANSAS DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION TO THE
STANDARD SPECIFICATIONS, EDITION 2007**

07-18-80, latest revision

**FEDERAL AID CONTRACTS
UTILIZATION OF DISADVANTAGED BUSINESSES**

Sheet 2, delete subsection II.F. and replace with the following:

F. When projects are State or Contractor tied, the assigned DBE Contract Goals must be met for each project. To check DBE participation on tied projects the following method will be used:

(1) If the dollar amount actually subcontracted to DBEs on each contract is equal to or greater than the minimum dollar amounts assigned to each contract, it will be determined that the DBE goals have been met.

(2) 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.

06-15-11 C&M
Jun-11 Letting

(APPENDIX T)

DISCRIMINATION COMPLAINT PROCEDURE

Any external complaints alleging discrimination, violation of civil rights or non-compliance with civil rights requirements shall receive prompt and thorough attention from KDOT. The Civil Rights Administrator should be involved at the earliest stages of any external civil rights complaints.

- A. KDOT will notify the public of its Title VI/Non-Discrimination policy, the right to file complaints of discrimination, the 180-day time limit for filing, and the avenues of appeal.
- B. KDOT will notify the FHWA or FTA of Title VI/Non-Discrimination complaints received.
- C. KDOT will process, investigate and resolve all complaints in a timely manner. The Civil Rights Administrator has the responsibility for surveillance and review of all Title VI/Non-Discrimination, equal employment opportunity and civil rights related complaints and shall be advised of all formal complaints relating to civil rights matters and be furnished copies of all correspondence related thereto. Title VI/Non-Discrimination complaints may originate from a variety of sources but, generally, will fall within one of two categories:
 - 1) Complaints originated by individuals or firms alleging that they were unable to bid upon or obtain a contract with the Department for furnishing of goods and/or services with KDOT or any local government.
 - 2) Complaints from individuals or groups alleging discriminatory treatment resulting in loss of property, unfair compensation, inequitable benefits or other forms of hardship caused by department activities.

The Civil Rights Administrator will:

- 1) Advise upon, if necessary, and maintain surveillance over the progress, handling and disposition of any formal complaint being processed by any Office, Bureau or District, or;
- 2) Within 60 days process and handle the case in its entirety, including investigation of facts and make recommendations of corrective action or other disposition to the Secretary as deemed appropriate.
- 3) Notify the complainant in writing of the finding and proposed action.
- 4) Notify the complainant of the right to bring the matter to the attention of the FHWA, FTA, DOT, Department of Justice or other appropriate federal authority.
- 5) Initiate prompt action to amend any KDOT procedure that caused a complaint and to preclude further complaints arising from the same cause.

6) Ensure that the investigation and resolution of discrimination complaints will take place within the time frame established by the appropriate federal agency.

7) Forward the department's report of investigation to the FHWA division office within 60 days from the date the complaint was received.

Contact Information:

Kansas Department of Transportation
Office of Civil Rights
Eisenhower State Office Building
700 SW Harrison 3rd Floor West
Topeka, KS 66603
(785) 296-7940