

SRF PROJECT CONSTRUCTION CONTRACT ASSURANCES
Design/Build - Post Equivalency

- A. Advertising Time - KDHE policy recommends the request for qualifications and/or request for proposals be publicly advertised at least 30 days prior to request opening.
- B. Reserved
- C. Reserved
- D. Reserved
- E. Reserved
- F. Anti-Discrimination - The KDHE SRF Program requires the following clause be contained in the Request for Qualifications and/or Request for Proposals for this project:

“Contractors on this work, including sub-contractors or vendors, will be required to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et. seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et. seq.)”.

The enclosed “Contract Provisions of Kansas Statute Annotated (K.S.A.) 44-1030 Kansas Act Against Discrimination” information sheet (Appendix G-1) and the “State of Kansas Act Against Discrimination Contract Revisions” certification form (Appendix G-2) must be included in the contract documents. The subject form (Appendix G-2) must be executed, a copy retained for your files and a copy submitted to KDHE prior to approval for contract award. This should be included as part of the contractor’s Request for Proposal or Request for Qualifications if no Request for Proposal is utilized.

- G. Reserved
- H. Reserved
- I. Disadvantaged Business Enterprise Participation- The Federal SRF program requires the following documents be included in the contract documents: Participation By Disadvantaged Business Enterprises Information Sheet (Appendix E-1), EPA form 6100-2 (Subcontractor Participation Form), EPA form 6100-3 (DBE Subcontractor Performance Form), and EPA Form 6100-4 (DBE Subcontractor Utilization Form). All bidders must be required to submit EPA form 6100-3, EPA form 6100-4, and proof of demonstration of compliance with Good Faith Efforts with bids.
- J. Reserved
- K. Reserved
- L. Award of Contract - KDHE Policy requires the proposal fully explain ranking system and the basis for determining the successful contractor.
- M. Reserved

N. Completion Time - KDHE Policy suggests the specifications contain a provision for the maximum calendar or work days allowed for completion of the project.

O. Right of Entry - The Federal SRF program requires that right of entry to the project site be provided for representatives of the Kansas Department of Health and Environment, so they may have access to the work wherever it is in preparation or progress. A paragraph approximately as follows must be included in the contract documents:

The design builder shall secure the right of entry to the project site for representatives of the Kansas Department of Health and Environment, so they may have access to the work whenever it is in preparation or progress and also to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examinations, excerpts and transcriptions. Proper facilities and safe conditions must be provided for access and inspections, including advice regarding site safety procedures and programs to allow compliance.

P.Q. One Hundred Percent Performance and Payment Bonds - KDHE Policy suggests separate performance and payment bonds, each in the amount of 100 percent of the contract price, be required on construction contracts of \$100,000 or more. Use of the loan recipient's own bonding policies and requirements may be utilized but are subject to review and approval by KDHE.

R. Historical and Archeological - The Federal SRF program requires that a paragraph approximately as follows be included in the contract documents:

If during the course of construction evidence of deposits of historical or archeological interest is found, the contractor shall cease operations affecting the find and shall notify the owner who shall notify the Kansas Department of Health and Environment and the Executive Director, Kansas State Historical Society, 6425 SW 6th Street, Topeka, Kansas 66615. No further disturbance of the deposits shall ensue until the contractor has been notified by the owner that he may proceed. The owner will issue a notice to proceed only after the State official has surveyed the find and made a determination to Kansas Department of Health and Environment and the owner. Compensation to the contractor, if any, for lost time or changes in construction to avoid the find, shall be determined in accordance with changed conditions or change order provisions of the specifications.

S. Reserved

T. Reserved

U. Reserved

V. Reserved

W. Reserved

X. Reserved

Y. Reserved

Z. Payment Provisions - The KDHE SRF program demands prompt progress payments be made by the Recipient to contractors. Adequate provisions for such payments must be included in the Contract Documents. Delays in payment to contractors for SRF-funded portions of the project may result in monetary penalty to the Recipient due to the "Rebate" requirements of Federal tax law.

AA. Reserved

BB. Reserved.

CC. Reserved

DD. Reserved

EE. If Arbitration is included in the specifications, KDHE recommends disputes proceed to binding arbitration only by Mutual Consent.

FF. Reserved

GG. Reserved

HH. State and Local Laws, Ordinances, and Restrictions - The contract documents and specifications must be in compliance with all State and Local laws, ordinances, and restrictions.

II. NPDES General Permit Coverage for Discharges of Stormwater Runoff from Construction Activities - The owner or design builder must obtain, prior to construction, permit coverage from KDHE to discharge stormwater runoff associated with construction activity for any project which disturbs one acre or more of soils. A Notice of Intent form (NOI) must be submitted to KDHE 60 days before the start of construction and a permit determination from KDHE must be made before construction can begin. The Kansas construction stormwater general permit, a Notice of Intent (application form), a frequently asked questions file, and supplemental materials are available on-line on the KDHE Stormwater Web Page at www.kdhe.state.ks.us/stormwater.

CONTRACT PROVISIONS OF KANSAS STATE ANNOTATED
(K.S.A.) 44-1030
KANSAS ACT AGAINST DISCRIMINATION

Except as provided by subsection (c) of this section, every contractor for or on behalf of the State and any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, for the construction, alteration, or repair of any public building or public work or for the acquisition of materials, equipment, supplies, or services shall contain provisions by which the contractor agrees that:

1. The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin, or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Commission;
3. If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A. 1977 Supp. 44-1031, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency; and
5. The contractor shall include the provisions of paragraphs (1) through (4) inclusively of this subsection (a) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
 - (b) The Kansas Commission on Civil Rights shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas Act Against Discrimination.
 - (c) The provisions of this section shall not apply to a contract entered into by a contractor (1) who employs fewer than four (4) employees during the term of such contract; or (2) whose contracts with the governmental entity letting such contract cumulatively total five thousand dollars (\$5,000) or less during the fiscal year of such governmental entity. (K.S.A. 44-1030; L. 1977, ch. 183, 1; July 1)

STATE OF KANSAS
ACT AGAINST DISCRIMINATION
CONTRACT PROVISIONS

During the performance of this contract, the contractor agrees as follows:

1. The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin, or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Commission;
3. If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A. 1977 Supp. 44-1031, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency; and
5. The contractor shall include the provisions of paragraphs (1) through (4) inclusively of this subsection (a) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
 - (b) The Kansas Commission on Civil Rights shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas Act Against Discrimination.
 - (c) The provisions of this section shall not apply to a contract entered into by a contractor (1) who employs fewer than four (4) employees during the term of such contract; or (2) whose contracts with the governmental entity letting such contract cumulatively total five thousand dollars (\$5,000) or less during the fiscal year of such governmental entity. (K.S.A. 44-1030; L. 1977, ch. 183, 1; July 1)

PROJECT/CONTRACT NAME AND NO.

MUNICIPALITY _____

KPWSLF or KWPCRLF Project # _____

CONTRACTOR'S
SIGNATURE _____

TITLE _____

DATE _____

KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
DIVISION OF ENVIRONMENT
BUREAU OF WATER

KANSAS PUBLIC WATER SUPPLY LOAN FUND
KANSAS WATER POLLUTION CONTROL REVOLVING LOAN FUND

Participation By Disadvantaged Business Enterprises Information Sheet

As a recipient of EPA SRF Capitalization Grants, the Kansas Department of Health and Environment (KDHE) is required by 40 CFR Part 33 to seek and is encouraged to utilize small, minority, and women-owned businesses in procurement under loan agreements associated with those grants . Because this project will receive funding, at least in part, from KDHE through a Kansas Public Water supply Loan Fund (KPWSLF) or a Kansas Water Pollution Control Revolving Loan Fund (KWPCRLF) loan agreement, those requirements are applicable to the loan recipient (municipality), engineering firm responsible for construction phase services, and prime contractor.

This information sheet explains requirements of the KPWSLF and KWPCRLF for Disadvantaged Business Enterprises (DBE) utilization. A copy of this Information Sheet must be included within engineering contracts for construction phase services and must be included within the contract documents of construction specifications.

Definitions

Disadvantaged Business Enterprise - entities owned and/or controlled by socially and economically disadvantaged individuals (as described in 42 USC 7601 and 42 USC 4370d - which includes Women's Business Enterprises (WBE) and Minority Business Enterprises (MBE) as defined in this information sheet); a Small Business Enterprise (SBE); a Small Business in Rural Area (SBRA); a Labor Surplus Area Firm (LSAF); or a Historically Underutilized Business (HUB) Zone Small Business Concern or a concern under a successor program.

Socially disadvantaged individual – individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities, and are further defined as:

Black Americans	Asian Pacific Americans	Indian Tribes
Hispanic Americans	Native Hawaiian Organizations	Women
Native Americans	Historically Black Colleges and Universities	

Economically disadvantaged individual - those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital or credit opportunities, as compared to others in the same business area who are not socially disadvantaged.

Women's Business Enterprise (WBE) – a business concern which is at least 51% owned or controlled by women for purposes of 42 USC 7601 of 42 USC 4370d.

Minority Business Enterprises (MBE) - a Disadvantaged Business Enterprise other than a SBE, SBRA, LSAF, or WBE.

KDHE Implementation Requirements for DBE Procurement Opportunities

KDHE has an objective of using an amount equal to 4.1% of the capitalization grant as awarded by EPA to KDHE, for construction procurement performed by MBE entities and 6.9% of the capitalization grant for WBE entities. This is referred to as a fair share objective. The loan recipient (municipality), engineering firm responsible for construction phase services, and prime contractor are required to adopt this same fair share objective. The fair share objective is not a quota and EPA cannot penalize KDHE, the loan recipient, engineering firm, or the prime contractor for not meeting MBE or WBE participation objectives.

The prime contractor and consulting engineer responsible for construction phase services **are** required to make the good faith efforts and apply the administrative requirements listed below. If the good faith efforts are not made when subcontracts are considered for the prime construction contract or for engineering construction phase services, the ability of the KDHE to fund this project, or portion thereof, will be jeopardized. Under no circumstances are race and/or gender conscious actions required by EPA or KDHE.

Good Faith Efforts

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities.

This step may include sending letters or making other personal contacts with DBEs. DBEs should be contacted when other potential subcontractors/suppliers are contacted, within reasonable time (i.e. minimum of fifteen days) prior to bid submission or closing date for receipt of initial offers. Those letters or other contacts should communicate the following:

- i. Specific description of the work to be subcontracted or supplies to be purchased;
 - ii. How and where to obtain a copy of plans and specifications or other detailed information needed to prepare a detailed price quotation;
 - iii. Date the quotation is due to the prime contractor;
 - iv. Name, address, and phone number of the person in the prime contractor's firm whom the prospective DBE subcontractor/supplier should contact for additional information.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

Administrative Requirements

The prime contractor/engineering firm responsible for construction phase services:

1. Must pay its subcontractor for satisfactory performance not more than 30 days from the prime contractor's receipt of payment.
2. Must notify KDHE in writing prior to termination of a DBE subcontractor for convenience.
3. Must employ the good faith efforts when soliciting a replacement subcontractor, if the original subcontractor fails to complete work for any reason.
4. Shall provide EPA Form 6100-2—DBE Program Subcontractor Participation Form to all of its DBE subcontractors. Subcontractors can submit this form to KDHE if there are any concerns regarding the project.
5. Must have its DBE subcontractors complete EPA Form 6100-3—DBE Program Subcontractor Performance Form, and submit it with the bid or proposal package.
6. Must complete and submit EPA Form 6100-4—DBE Program Subcontractor Utilization Form with the bid or proposal package (use additional copies of form if needed).
7. 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 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. 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 other legally available remedies.

Finding DBE Firms

The Central Contractor Registration (CCR) maintains a database for the U.S. Federal Government that can be searched for various DBE contractors certified by SBA. The database is located on the web at <https://www.bpn.gov/CCRSearch/Search.aspx>.

The Kansas Department of Transportation Directory of Disadvantaged Business Enterprise (DBE) can be found on the web at <http://www.ksdot.org/divAdmin/DBEConstruction/dbedir.aspx>.

The Minority Business Development Agency of the Department of Commerce maintains a business locator database on the web at <http://www.mbda.gov>.

KDHE and the municipality are required to maintain a list of bidders that have competed for loan fund projects. This list can be used in conjunction with the directories listed above to find DBE firms. This list can be found on the web at <http://www.kdheks.gov/pws/loan/SRFbidlist.xls>.

DBE firms are not limited by the directories listed above. Prime contractors should use any means necessary to locate and contact DBE firms.

In order for a DBE to participate as an MBE or WBE, that entity must be certified by one of the following; the (1) Environmental Protection Agency (EPA), (2) Small Business Administration (SBA), (3) US Department of Transportation, or (4) any other state or local government or private organization certification that has standards that meet or exceed the EPA certification program. MBE's and WBE's must be certified in order for procurement to count towards meeting Fair Share Goals.

Determination of Compliance

Prime contractors must demonstrate compliance with DBE requirements in order to be deemed responsive prior to contract award. Demonstration of compliance shall include submittal of EPA Form 6100-3, EPA Form 6100-4, and a list of DBE subcontractors contacted and the method used to contact them (the attached Demonstration of Compliance with DBE Good Faith Efforts Worksheet can be used for this purpose).

Engineering firms responsible for construction phase services must demonstrate compliance with DBE requirements prior to the construction contract award. Demonstration of compliance shall include submittal of EPA Form 6100-3, EPA Form 6100-4, and a list of DBE subcontractors contacted and the method used to contact them (the attached Demonstration of Compliance with DBE Good Faith Efforts Worksheet can be used for this purpose).

The municipality is required to submit a copy of this information to KDHE as well as submit the Applicant Assurance with Respect to Good Faith Efforts for DBE Utilization form prior to the award of the construction contract. The municipality is also required to submit to KDHE by April 15 and October 15 (during project construction), EPA Form 5700-52A - MBE/WBE Utilization under Federal Grants, Cooperative Agreements, and Interagency Agreements. If MBE/WBE firms are utilized, proof of certification must be submitted with EPA Form 5700-52A



Environmental
Protection Agency

OMB Control No: 2090-0030
Approved: 05/01/2008
Approval Expires: 01/31/2011

**Disadvantaged Business Enterprise Program
DBE Subcontractor Participation Form**

NAME OF SUBCONTRACTOR¹	PROJECT NAME
ADDRESS	CONTRACT NO.
TELEPHONE NO.	EMAIL ADDRESS
PRIME CONTRACTOR NAME	

Please use the space below to report any concerns regarding the above EPA-funded project (e.g., reason for termination by prime contractor, late payment, etc.).

CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES RECEIVED FROM THE PRIME CONTRACTOR	AMOUNT SUBCONTRACTOR WAS PAID BY PRIME CONTRACTOR

_____	_____
Subcontractor Signature	Title/Date

¹Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



Environmental
Protection Agency

OMB Control No: _____
Approved: _____
Approval Expires: _____

**Disadvantaged Business Enterprise Program
DBE Subcontractor Performance Form**

NAME OF SUBCONTRACTOR ¹		PROJECT NAME
ADDRESS		BID/PROPOSAL NO.
TELEPHONE NO.		E-MAIL ADDRESS
PRIME CONTRACTOR NAME		
CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES BID TO PRIME	PRICE OF WORK SUBMITTED TO PRIME CONTRACTOR
Currently certified as an MBE or WBE under EPA's DBE Program? _____ Yes _____ No		
_____ Signature of Prime Contractor		_____ Date
_____ Print Name		_____ Title
_____ Signature of Subcontractor		_____ Date
_____ Print Name		_____ Title

¹Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



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**Disadvantaged Business Enterprise Program
DBE Subcontractor Utilization Form**

BID/PROPOSAL NO.	PROJECT NAME
NAME OF PRIME BIDDER/PROPOSER	E-MAIL ADDRESS
ADDRESS	
TELEPHONE NO.	FAX NO.

The following subcontractors¹ will be used on this project:

COMPANY NAME, ADDRESS, PHONE NUMBER, AND E-MAIL ADDRESS	TYPE OF WORK TO BE PERFORMED	ESTIMATE D DOLLAR AMOUNT	CURRENTLY CERTIFIED AS AN MBE OR WBE?

I certify under penalty of perjury that the forgoing statements are true and correct. In the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302(c).

Signature of Prime Contractor

Date

Print Name

Title

¹Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

Demonstration of Compliance with DBE Good Faith Efforts Worksheet

Project Name _____

KPWSLF or KWPCRLF Project No. _____

Prime Contract Bidder/Engineering Firm _____

Address _____

Contact Person: _____ Telephone No. _____

The following firms were made aware of subcontracting/supplier opportunities related to the project listed above.

DBE Subcontractor/Supplier contacted _____

Address _____

Contact Person: _____ Telephone No. _____

Email _____ Method used to contact (circle one): Phone Mail Fax

Is entity also a certified as a MBE _____ or WBE _____? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other _____

DBE Subcontractor/Supplier contacted _____

Address _____

Contact Person: _____ Telephone No. _____

Email _____ Method used to contact (circle one): Phone Mail Fax

Is entity also a certified as a MBE _____ or WBE _____? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other _____

DBE Subcontractor/Supplier contacted _____

Address _____

Contact Person: _____ Telephone No. _____

Email _____ Method used to contact (circle one): Phone Mail Fax

Is entity also a certified as a MBE _____ or WBE _____? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other _____

DBE Subcontractor/Supplier contacted _____

Address _____

Contact Person: _____ Telephone No. _____

Email _____ Method used to contact (circle one): Phone Mail Fax

Is entity also a certified as a MBE _____ or WBE _____? (if no leave blank)

MBE/WBE status certified by (circle one) EPA SBA Other _____

Comments _____

Prepared By: _____

Date: _____

(Use additional copies of this sheet if needed)