

Engineering Consultant Contract Requirements for KPWSLF

For consultant engineering contracts for Kansas Public Water Supply Loan Fund projects the following items must be addressed if the municipality wishes to be reimbursed for consultant costs. If the system chooses to be responsible for any of the first 4 items listed, KDHE will need to be notified in writing. The engineering contract must include the remaining items. The exact required language for the last 5 items can be found in the KPWSLF SRF Contract Provisions For Consultant Contracts section at the end of this document. KDHE recommends this section be added as part of the contract rather than list the individual requirements in different sections of the contract.

- O & M manual
- Final Plan of Operation
- Project management services
- Inspection of construction
- Project Performance services
- Contract Provisions of Kansas Statute Annotated (K.S.A.) 44-1030 Kansas Act Against Discrimination.
- Contract Provisions for Restrictions on Lobbying
- Contract Provisions for the Trafficking Victims Protection Act of 2000
- Contract Provisions for Suspension and Debarment
- Contract Provisions for Non Discrimination

O&M Manual

Municipalities using Kansas Public Water Supply Loan Fund money for projects are required to submit a final operation and maintenance manual prior to 90% construction completion. The operations and maintenance manual must include, but is not limited to, a description of the operation and managerial responsibility, detailed operation and controls, operators and personnel classification and requirements, operational testing, equipment maintenance schedule, operational records, and emergency operating and shutdown procedures. The O&M manual requirement can be waived if the project is strictly for pipeline construction and the Final Plan of Operation indicates that the O&M for the completed project will be consistent with the system's existing O&M practices. Two templates are included (one for treatment plants and one for wells, water storage, and pump stations).

Final Plan of Operation

Municipalities using Kansas Public Water Supply Loan Fund money for projects are required to submit a final plan of operation prior to 50% construction completion. The plan of operation must include, but is not limited to, an overall Project completion schedule, annual operating cost projections for a minimum of five years, a description of the financial management system, and the projected revenues to operate and maintain the public water supply system. Revenue projections shall also include the Loan Repayments. The Final Plan of Operation serves as a snap shot of how the loan fund project has progressed, a projection of how it will be completed, and how the addition of the project effects the operation and management of the public drinking water system in whole. The Final Plan of Operation further confirms that the system has the required Technical, Financial, and Managerial capacity. A proposed format is included.

Project Management Services

These services can include interpretation of specifications, review of contractor data submittals for conformance with design, recommendation of change orders, and review contractor requests for payment.

Inspection of Construction

Observe key phases of construction and provide opinions on compliance with contract documents.

Project Performance Services

The Municipality must assure that the engineering firm principally responsible for supervising construction and for providing engineering services during construction will continue its relationship with the Municipality for a period

of up to one year after initiation of operation of the Project. At that time the consultant will need to make a determination on whether the project operates as designed. If the project does not meet performance standards or design specifications at the end of this period, a corrective action report must be submitted containing: an analysis of the cause of the Project's inability to meet performance standards; actions necessary to bring it into compliance, and a reasonably scheduled date for positive certification of the Project. If needed during this period, the engineering firm shall direct the operation of the Project, train operating personnel and prepare curricula and training material for operating personnel.

Kansas Act Against Discrimination Requirements

All contracts must certify they comply with the Kansas Act Against Discrimination Requirements and attach a copy of the certification to the contract.

Contract Provisions for Restrictions on Lobbying

All contracts and subcontracts exceeding \$100,000, at any tier under a KPWSLF Loan Agreement shall comply with the Anti-Lobbying Act, Section 319 of Public Law 101-121, and file an Anti-Lobbying Certification form, and the Disclosure of Lobbying Activities form, if required, to the next tier above.

Contract Provisions for the Trafficking Victims Protection Act of 2000

All contracts must require that any contract or subcontract must comply with the Trafficking Victims Protection Act of 2000.

Contract Provisions for Suspension and Debarment

All contracts must include provisions that prohibit participation with entities that have been excluded from federal assistance or benefit programs.

Contract Provisions for Non Discrimination

The contractor must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements.

Other civil rights laws may impose additional requirements on the contractor. These laws include, but are not limited to, Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

OPERATION AND MAINTENANCE MANUAL FORMAT
For Water Treatment Plants

This Operation and Maintenance Manual Format is presented for use in the Kansas Public Water Supply Loan Fund program in conformance with K.A.R. 28-15-61(b)(4). The following subjects and topics, applicable to the actual Loan project being constructed, must be addressed in the text of the O&M Manual. The Consultant is encouraged to call KDHE to discuss scope and applicability of this requirement.

I. INTRODUCTION - Manual User Guide

A. Operation and Managerial Responsibility

1. Operator responsibilities defined
2. Manager responsibilities
3. List of available training
4. List of recommended publications
5. List of publications furnished facility

B. Process Type Description

1. Type of treatment process
 - a) Brief description of major process
 - b) Brief description of individual units
2. Flow pattern with diagram

II. PERMITS AND STANDARDS

A. Treatment requirements/effluent limitations

B. List of permits affecting facility (including NPDES, Corps of Engineers Section 10/404, etc.)

1. Permit number and renewal date
2. Permit requirements/regulations of permitting agency
3. Reporting procedure for spills

III. DESCRIPTION, OPERATION, AND CONTROL OF PROJECT FACILITIES

A. For each unit process, general coverage of the following:

1. Description, function, flow routing and design process removal efficiency
2. Listing of major components and mechanical equipment
3. Relationship to adjacent units
4. Methods of control
5. Discussion of common operating problems and control

6. Start-up procedures
7. Emergency shut-down procedures
- B. For each unit process, specific coverage of the following:
 1. Normal operation (valve positions, sludge depths, etc.)
 2. Alternate operation modes
 3. Emergency operations/failsafe features
- C. Sludge Hauling and Application Equipment
- D. Sludge Disposal Method and Final Disposal Location

IV. PERSONNEL

- A. Staffing And Training Plan
 1. Supervision
 2. Administration
 3. Operation
 4. Maintenance
 5. Total personnel
 6. Annual training
 7. Laboratory training needs
- B. Qualifications
 1. Training
 2. Skills required
 3. Experience
 4. Certification required
- C. Certification
 1. Copy State rules and regulations
 2. Certification requirements, this facility

V. LABORATORY TESTING

- A. Outline of sampling and testing program, discussion of purpose
- B. Discussion of laboratory results, expected ranges and process control adjustments from test results
- C. Provision of sample laboratory worksheet, instructions, and test results forms
- D. Recommended list of laboratory references
- E. Laboratory equipment, supplies and chemicals inventory

VI. RECORDS

- A. General - importance of record keeping

- B. Facility construction records
- C. Sample, daily operating log of process operations, instructions
- D. Sample, monthly operating report to State Agency, instructions
- E. Sample, annual report format
- F. Operating cost record keeping system recommendations
- G. Personnel record system recommendations
- H. Emergency conditions; bypass reports, permit violations, etc.
- I. Maintenance and laboratory, if not provided elsewhere

VII. MAINTENANCE

- A. Conceptual Description of Maintenance Program
- B. Equipment Record System
 - 1. Equipment numbering system
 - 2. Equipment catalog (configuration list)
 - 3. Maintenance record cards, instructions
 - 4. Nameplate data cards, all major equipment
 - 5. List of warranted equipment, warranty provisions
- C. Miscellaneous Maintenance Records
- D. Planning and Scheduling
 - 1. Normal preventive maintenance schedule provided
 - 2. Lubrication schedule, lubricant list
 - 3. Emergency, corrective maintenance
 - 4. Work order system and sample forms
- E. Storeroom and Inventory System
 - 1. Recommended list of spare parts
 - 2. Procedures; stockroom inventory, sample forms and records
- F. Special tool list, toolroom control
- G. Maintenance personnel staffing requirements
- H. System for cost accounting and budgeting
- I. Recommended list outside contract maintenance tasks, firms

VIII. EMERGENCY OPERATING AND RESPONSE PLAN

- A. Objectives
- B. Vulnerability analysis
- C. Mutual aid list

- D. Emergency equipment list
- E. Records preservation
- F. List of industrial sources (including monitoring and response system)
- G. Police/fire coordination
- H. Personnel assignment in detail
- I. Readiness/emergency response center
- J. Emergency/operating plan

IX. SAFETY

- A. Importance of safety program
- B. Content
 - 1. Emergency phone list
 - 2. Safety equipment list
 - 3. Sewer hazards
 - 4. Electrical hazards
 - 5. Mechanical equipment hazards
 - 6. Explosion and fire hazards
 - 7. Bacterial infection
 - 8. Chlorine hazards
 - 9. Oxygen deficiency/gases
 - 10. Laboratory hazards
 - 11. Process chemicals handling
 - 12. List of references
- C. Periodic safety program review
- D. Accident report form

X. UTILITIES

- A. List of utility suppliers
 - 1. Electrical
 - 2. Telephone
 - 3. Natural gas
 - 4. Water
 - 5. Fuel oil
- B. Capacities, limitation, responsibility coordination

XI. ELECTRICAL SYSTEM

- A. Power source description
- B. Distribution system
- C. Control and monitoring system
- D. Emergency procedures

XII. APPENDIX

- A. Schematics
- B. Valve indices
- C. Sample forms
- D. Process chemicals/source
- E. Detailed design criteria
- F. Equipment suppliers
- G. Manufacturer's manuals
- H. Sources; service & parts
- I. As-built drawings
- J. Approved shop drawings
- K. Dimension prints
- L. Construction photos
- M. Warranties, bonds
- N. Piping color code
- O. Protective coating list
- P. Recommended references

OPERATION AND MAINTENANCE MANUAL FORMAT

For Water Towers, Wells, and Pump Stations

This Operation and Maintenance Manual Format is presented for use in the Kansas Public Water Supply Loan Fund program in conformance with K.A.R. 28-15-61(b)(4). The following subjects and topics, applicable to the actual Loan project being constructed, must be addressed in the text of the O&M Manual.

- I. Title – Name and list type of infrastructure, brief description of what the Manual is to be used for.
- II. Location – Describe location using Section Township and Range, Highways, Longitude and Latitude, or show location on map.
- III. Personnel – Describe operator’s classification requirements and managerial responsibility associated with the operation of the infrastructure.
- IV. General Operation – Describe how infrastructure interacts with entire water system, where it receives water from, where it transports water to, etc. Describe how the infrastructure is controlled.
- V. Infrastructure Description – Describe capacity and component information For water storage include type (ground, standpipe, or elevated), overflow elevation, distances from foundation to overflow and to the bottom of the storage volume for elevated storage, diameter of standpipe/tank for ground storage and riser pipe and storage volume for elevated storage, interior/exterior coating system, etc. For pump stations include number of pumps, model #'s, capacity, electrical requirements, pump and motor manufacturers, and any treatment facilities (e.g., disinfection, fluoridation, sequestration, etc.) included as part of the project. For wells include well type (line shaft turbine, pitless, horizontal collector, etc.), bore and depth, depth to first screen, yield (capacity) and pump information. Where applicable include well house dimensions, a description of any equipment within including ventilation, and a brief discussion of treatment facilities (e.g., disinfection, fluoridation, sequestration, etc.) included as part of the project.
- VI. Operation and Maintenance – Outline daily, weekly, monthly, semi annual, annual, and or biennial, etc., testing, maintenance, and operation duties. Describe valve operation system and specific configurations to achieve specific results. Describe telemetry system operation. Describe operation of system during water conservation or emergency conditions.
- VII. Access – Describe any special requirements to access the infrastructure.
- VIII. Records – List location of construction records, outline what information should be retained for records of

maintenance, repair, and testing, and how they should be stored.

- IX.** Safety – Describe any safety issues and requirements associated with the infrastructure, include ventilation system description, particularly if disinfection treatment is included.
- X.** Contacts – List emergency contact information, equipment manufacturer and dealer contact information, regulatory contact information, etc.
- XI.** Appendix. Items in the appendix do not need to be submitted to KDHE for O&M manual approval. Suggested items include water system map, sample forms, as-built drawings, construction photos, warranty information, maintenance agreements, specifications, electrical schematics, equipment manuals, copy of KDHE permit, copy of emergency plan, etc.

PLAN OF OPERATION FORMAT

The Plan of Operation Format is to be used to develop the Final Plan of Operation for Kansas Public Water Supply Loan Fund Projects as required by K.A.R. 28-15-61(b)(3). The Plan of Operation must include/discuss the following subjects:

1. **General Information:**

Name of Project, Project Number, Project Consulting Engineer, and Brief Project Description

2. **Chronological summary:** *Implementation dates, including design phase, bid date, construction start date, projected construction completion date, and projected final loan disbursement date.*

3. **Staffing and training:** *What additional Staff or Staff skills will be necessary? Will special start-up training be needed?*

4. **Records and reports:** *What records are to be produced during the construction of the project (progress/inspection reports, contract change orders, contractor pay requests, etc)? Will new records and reports be needed due to the addition of the project (disinfection residual records, maintenance records, financial record keeping due to loan requirements, water use reports, etc)?*

5. **Laboratory control:** *What additional new equipment and new testing protocols will be necessary to assure quality control after completion of the project (only applies to projects that alter treatment processes)?*

6. **Process control and "fine tuning" procedures:** *What additional testing, monitoring and treatment control applications will be necessary to assure compliance with the regulations (only applies to projects that alter treatment processes)?*

7. **Safety:** *What areas of safety need to be addressed and what areas of increased risk are associated with the operation of the system when the project is completed, if any?*

8. **Emergency operating plan:** *Does the system have an Emergency Operating Plan approved by KDHE? Does it need to be updated for the addition of the project?*

9. **Maintenance management:** *What systems of routine maintenance need to be placed in service to ensure maximum life from the project? (If the project is for pipeline, address how leaks, services, flushing, disinfection, and valve exercising activities will be routinely carried out.)*

10. **Operation and maintenance manual:** *Will the addition of the project to the system alter an existing O&M manual? Will an O&M Manual be needed because the project created a system component that did not exist before? (Typically, pipeline projects will not require an O&M manual if a statement is*

made in this section indicating that the O&M for the completed project will be consistent with the system's existing O&M practices. Projects for wells, storage, and pump stations will still require an O&M manual but the O&M manual need not be as detailed as an O&M manual would need to be for changes in treatment processes.)

11. **O&M budget and ordinance development:** *Describe the process for calculating annual cost projections for the system as a whole, including cost projections for long term capital needs. Also describe the process that would alert the system that the user rate structure would need to be adjusted.*
12. **Project performance criteria:** *Describe how the project will be evaluated to determine whether it has met its operational goals. How will you determine the project met the need it was designed to fulfill?*
13. **Project construction schedule:** *Provide a schedule of the remaining construction milestones with special attention to the times and the areas where existing facilities or operations will be impacted.*
14. **Estimated remaining construction payments schedule:** *Summarize the remaining construction contract and reimbursement requests from the loan fund.*
15. **Projections of annual operating costs and revenue:** *Provide a summary of loan repayments, operational costs, maintenance and replacement costs, and revenues for the next 5-year period.*

	<i>Year 1</i>	<i>Year 2</i>	<i>Year 3</i>	<i>Year 4</i>	<i>Year 5</i>
<i>Revenue</i>					
<i>Expenses</i>					
<i>Debt Service</i>					
<i>Excess/Shortfall</i>					

16. **Description of existing Financial Management System of water supply utility:** *Who makes financial decisions for the system? Explain how the system's finances are maintained. Are revenues regularly transferred to support other municipal operations? Does the system have a minimum year end cash balance goal?*

**KPWLSF SRF CONTRACT PROVISIONS
FOR CONSULTANT CONTRACTS**

**Kansas Act Against Discrimination
Contract Provisions of Kansas Statutes Annotated (K.S.A.) 44-1030
State and Local Government contracts; Mandatory Provisions**

- (a) 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, disability, 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.44-1031 and amendments thereto, 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;
 - (5) The contractor shall include the provisions of subsections (a)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
- (b) The Kansas Human Rights Commission 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 employees during the term of such contract; or
 - (2) Whose contracts with the governmental entity letting such contract cumulatively total \$5,000 or less during the fiscal year of such governmental entity.

Contract Provisions for Restrictions on Lobbying

The Consultant agrees to comply with Title 40 CRF Part 34, New Restrictions on Lobbying and sign a Certification form.

Contract Provisions for the Trafficking Victims Protection Act of 2000

The Consultant, its employees, sub-contractors, and sub-contractors employees under any KPWSLF Loan Agreement, may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under the award.

Contract Provisions for Suspension and Debarment

The Consultant certifies that it is not suspended or debarred from participating in federal assistance and benefit programs and further agrees to fully comply with Subpart C of 40 CFR Part 32, entitled “Responsibilities of Participants Regarding Transactions.” The Contractor must ensure that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled “Covered Transactions,” includes a term or condition requiring compliance with Subpart C.)

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state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.

(b) An exception granted by one agency for an excluded person does not extend to the covered transactions of another agency.

~~§ 32.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?~~

~~If any Federal agency excludes a person under its nonprocurement common rule on or after August 25, 1995, the excluded person is also ineligible to participate in Federal procurement transactions under the FAR. Therefore, an exclusion under this part has reciprocal effect in Federal procurement transactions.~~

~~§ 32.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?~~

~~If any Federal agency excludes a person under the FAR on or after August 25, 1995, the excluded person is also ineligible to participate in nonprocurement covered transactions under this part. Therefore, an exclusion under the FAR has reciprocal effect in Federal nonprocurement transactions.~~

~~§ 32.135 May the EPA exclude a person who is not currently participating in a nonprocurement transaction?~~

~~Given a cause that justifies an exclusion under this part, we may exclude any person who has been involved, is currently involved, or may reasonably be expected to be involved in a covered transaction.~~

~~§ 32.140 How do I know if a person is excluded?~~

~~Check the *Excluded Parties List System (EPLS)* to determine whether a person is excluded. The General Services Administration (GSA) maintains the *EPLS* and makes it available, as detailed in subpart E of this part. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the *EPLS*.~~

~~§ 32.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?~~

~~Except if provided for in Subpart J of this part, this part—~~

~~(a) Addresses disqualified persons only to—~~

~~(1) Provide for their inclusion in the *EPLS*; and~~

~~(2) State responsibilities of Federal agencies and participants to check for disqualified persons before entering into covered transactions.~~

~~(b) Does not specify the—~~

~~(1) EPA transactions for which a disqualified person is ineligible. Those transactions vary on a case-by-case basis, because they depend on the language of the specific statute, Executive order, or regulation that caused the disqualification;~~

~~(2) Entities to which the disqualification applies; or~~

~~(3) Process that the agency uses to disqualify a person. Unlike exclusion, disqualification is frequently not a discretionary action that a Federal agency takes.~~

Subpart B—Covered Transactions

§ 32.200 What is a covered transaction?

A covered transaction is a nonprocurement or procurement transaction that is subject to the prohibitions of this part. It may be a transaction at—

(a) The primary tier, between a Federal agency and a person (see appendix to this part); or

(b) A lower tier, between a participant in a covered transaction and another person.

§ 32.205 Why is it important if a particular transaction is a covered transaction?

The importance of a covered transaction depends upon who you are.

(a) As a participant in the transaction, you have the responsibilities laid out in Subpart C of this part. Those include responsibilities to the person or Federal agency at the next higher tier from whom you received

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the transaction, if any. They also include responsibilities if you subsequently enter into other covered transactions with persons at the next lower tier.

(b) As a Federal official who enters into a primary tier transaction, you have the responsibilities laid out in subpart D of this part.

(c) As an excluded person, you may not be a participant or principal in the transaction unless—

(1) The person who entered into the transaction with you allows you to continue your involvement in a transaction that predates your exclusion, as permitted under § 32.310 or § 32.415; or

(2) A(n) EPA official obtains an exception from the EPA Debarring Official to allow you to be involved in the transaction, as permitted under § 32.120.

§ 32.210 Which nonprocurement transactions are covered transactions?

All nonprocurement transactions, as defined in § 32.970, are covered transactions unless listed in § 32.215. (See appendix to this part.)

§ 32.215 Which nonprocurement transactions are not covered transactions?

The following types of nonprocurement transactions are not covered transactions:

(a) A direct award to—

(1) A foreign government or foreign governmental entity;

(2) A public international organization;

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

(b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, if a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 et seq., those benefits are not covered transactions and, therefore, are not affected if the person is excluded.

(c) Federal employment.

(d) A transaction that the EPA needs to respond to a national or agency-recognized emergency or disaster.

(e) A permit, license, certificate, or similar instrument issued as a means to regulate public health, safety, or the environment, unless the EPA specifically designates it to be a covered transaction.

(f) An incidental benefit that results from ordinary governmental operations.

(g) Any other transaction if the application of an exclusion to the transaction is prohibited by law.

§ 32.220 Are any procurement contracts included as covered transactions?

(a) Covered transactions under this part—

(1) Do not include any procurement contracts awarded directly by a Federal agency; but

(2) Do include some procurement contracts awarded by non-Federal participants in nonprocurement covered transactions (see appendix to this part).

(b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction that is covered under § 32.210, and the amount of the contract is expected to equal or exceed \$25,000.

(2) The contract requires the consent of a(n) EPA official. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the appendix to this part.

(3) The contract is for federally-required audit services.

(c) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, regardless of tier, to be funded or provided by the EPA under a nonprocurement transaction that is expected to equal or exceed \$25,000. (See optional lower tier coverage shown in the diagram in the appendix to this part.)

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§ 32.225 How do I know if a transaction in which I may participate is a covered transaction?

As a participant in a transaction, you will know that it is a covered transaction because the agency regulations governing the transaction, the appropriate agency official, or participant at the next higher tier who enters into the transaction with you, will tell you that you must comply with applicable portions of this part.

Subpart C—Responsibilities of Participants Regarding Transactions

DOING BUSINESS WITH OTHER PERSONS

§ 32.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

- (a) Checking the *EPLS*; or
- (b) Collecting a certification from that person if allowed by this rule; or
- (c) Adding a clause or condition to the covered transaction with that person.

§ 32.305 May I enter into a covered transaction with an excluded or disqualified person?

(a) You as a participant may not enter into a covered transaction with an excluded person, unless the EPA grants an exception under § 32.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you have obtained an exception under the disqualifying statute, Executive order, or regulation.

§ 32.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions,

and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the EPA grants an exception under § 32.120.

§ 32.315 May I use the services of an excluded person as a principal under a covered transaction?

(a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should make a decision about whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the EPA grants an exception under § 32.120.

§ 32.320 Must I verify that principals of my covered transactions are eligible to participate?

Yes, you as a participant are responsible for determining whether any of your principals of your covered transactions is excluded or disqualified from participating in the transaction. You may decide the method and frequency by which you do so. You may, but you are not required to, check the *EPLS*.

§ 32.325 What happens if I do business with an excluded person in a covered transaction?

If as a participant you knowingly do business with an excluded person, we may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

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§ 32.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to—

(a) Comply with this subpart as a condition of participation in the transaction. You may do so using any method(s), unless § 32.440 requires you to use specific methods.

(b) Pass the requirement to comply with this subpart to each person with whom the participant enters into a covered transaction at the next lower tier.

DISCLOSING INFORMATION—PRIMARY TIER PARTICIPANTS

§ 32.335 What information must I provide before entering into a covered transaction with the EPA?

Before you enter into a covered transaction at the primary tier, you as the participant must notify the EPA office that is entering into the transaction with you, if you know that you or any of the principals for that covered transaction:

(a) Are presently excluded or disqualified;

(b) Have been convicted within the preceding three years of any of the offenses listed in § 32.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;

(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in § 32.800(a); or

(d) Have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default.

§ 32.340 If I disclose unfavorable information required under § 32.335, will I be prevented from participating in the transaction?

As a primary tier participant, your disclosure of unfavorable information about yourself or a principal under § 32.335 will not necessarily cause us to deny your participation in the covered transaction. We will consider the information when we determine whether to

enter into the covered transaction. We also will consider any additional information or explanation that you elect to submit with the disclosed information.

§ 32.345 What happens if I fail to disclose information required under § 32.335?

If we later determine that you failed to disclose information under § 32.335 that you knew at the time you entered into the covered transaction, we may—

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ 32.350 What must I do if I learn of information required under § 32.335 after entering into a covered transaction with the EPA?

At any time after you enter into a covered transaction, you must give immediate written notice to the EPA office with which you entered into the transaction if you learn either that—

(a) You failed to disclose information earlier, as required by § 32.335; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 32.335.

DISCLOSING INFORMATION—LOWER TIER PARTICIPANTS

§ 32.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

Before you enter into a covered transaction with a person at the next higher tier, you as a lower tier participant must notify that person if you know that you or any of the principals are presently excluded or disqualified.

§ 32.360 What happens if I fail to disclose the information required under § 32.355?

If we later determine that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, we

Environmental Protection Agency

§ 32.425

may pursue any available remedies, including suspension and debarment.

§ 32.365 What must I do if I learn of information required under § 32.355 after entering into a covered transaction with a higher tier participant?

At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that—

(a) You failed to disclose information earlier, as required by § 32.355; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 32.355.

Subpart D—Responsibilities of EPA Officials Regarding Transactions

§ 32.400 May I enter into a transaction with an excluded or disqualified person?

(a) You as an agency official may not enter into a covered transaction with an excluded person unless you obtain an exception under § 32.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ 32.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

As an agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded, unless you obtain an exception under § 32.120.

§ 32.410 May I approve a participant's use of the services of an excluded person?

After entering into a covered transaction with a participant, you as an agency official may not approve a participant's use of an excluded person as a principal under that transaction, unless you obtain an exception under § 32.120.

§ 32.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

(a) You as an agency official may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was excluded. You are not required to continue the transactions, however, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper.

(b) You may not renew or extend covered transactions (other than no cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under § 32.120.

§ 32.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

If a transaction at a lower tier is subject to your approval, you as an agency official may not approve—

(a) A covered transaction with a person who is currently excluded, unless you obtain an exception under § 32.120; or

(b) A transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ 32.425 When do I check to see if a person is excluded or disqualified?

As an agency official, you must check to see if a person is excluded or disqualified before you—

(a) Enter into a primary tier covered transaction;

(b) Approve a principal in a primary tier covered transaction;

(c) Approve a lower tier participant if agency approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if agency approval of the principal is required.

Contract Provisions for Non Discrimination

The contractor must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements.

Other civil rights laws may impose additional requirements on the contractor. These laws include, but are not limited to, Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.



United States Environmental Protection Agency
Washington, DC 20460

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

I am unable to certify to the above statements. My explanation is attached.

EPA Form 5700-49 (11-88)

KDHE PROJECT #

CERTIFICATION REGARDING LOBBYING

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Typed Name & Title of Authorized Representative

Signature and Date of Authorized Representative

STATE OF KANSAS
ACT AGAINST DISCRIMINATION
CONTRACT PROVISION CERTIFICATION FORM

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, disability, 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.44-1031 and amendments thereto, 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;
- (5) The contractor shall include the provisions of (1) through (4) in every applicable subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

PROJECT/CONTRACT NAME AND NO.

MUNICIPALITY _____

CONTRACTOR'S
SIGNATURE _____

TITLE _____

KDHE PROJECT NO. _____

DATE _____