

DESCRIPTION OF SRF PROJECT CONSTRUCTION CONTRACT ASSURANCES
For Projects using funds from American Recovery and Reinvestment Act of 2009

A. Advertising Time - KDHE policy recommends the invitation for bids be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening of bids. Projects should be advertised for bids at least 30 days prior to bid opening. To allow ample time for bidders to comply with minority business enterprise requirements, it is suggested a period longer than 30 days be considered.

B. Nondiscrimination in Advertisement - The KDHE SRF program requires the following paragraph be contained in the “Advertisement for Bids” for this project:

Nondiscrimination in Employment

“Bidders on this work will be required to comply with the presidents Executive Order No. 11246 as amended. Requirements for bidders and contractors under this order are explained in the specifications.”

C. Anti-Discrimination - The KDHE SRF Program requires the following clause be contained in the “Information to Bidders” for this project:

“Bidders 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. **The certification form should be included as part of the contractor’s bid submittal.**

D. Certification of Non-Segregated Facilities - EPA procedures to implement Executive Order 11246 (Equal Opportunity Clause) require the “Certification of Nonsegregated Facilities” form be included in the specifications and **submitted with the bid documents**

E. Equal Employment Opportunity- Section 202 of Executive Order 11246 must be included in the contracts and subcontracts for all construction contracts exceeding \$10,000.

F. 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.**

G. Bid Bond - KDHE recommends if the contract price is expected to exceed \$100,000, each bidder furnish a bid guarantee equivalent to 5 per cent of the bid. Contracts less than \$100,000 are subject to State and local requirements relating to bid guarantee.

H. Award of Contract - KDHE Policy requires the proposal fully explain the basis for determining the low bidder and include a statement that the contract will be awarded to the lowest responsive, responsible bidder.

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

J. 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 specifications:

The successful bidder 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.

K.L. 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.

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

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.

N. 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 specifications. 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.

O. Debarred or Suspended Contractors- Bid advertisements must include the following statement:

“Bidders must fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons). Contractors, subcontractors, or suppliers that appear on the Excluded Parties List System at www.epls.gov are not eligible for award of any contracts funded by the Kansas Public Water Supply Loan Fund.”

Subpart C of 2 CFR part 180 must be included as part of the contract documents.

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

Q. 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.

R. NPDES General Permit Coverage for Discharges of Stormwater Runoff from Construction Activities - The owner or successful bidder must obtain, prior to construction, permit coverage from KDHE to discharge stormwater runoff associated with construction activity for most 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.

S. Anti-Lobbying Act - The Contract Documents must include the Anti-Lobbying Certification form, which must be **completed and returned with the bid form**.

T. Davis-Bacon Wage Requirements – The Contract Documents must provide that all laborers and mechanics employed by contractors and sub contractors on projects funded directly by or assisted in whole or in part by and through this loan agreement shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. The Contract Documents must include 29 CFR Part 5.5(a). When the project is advertised for bid there must be a section in the contract documents that lists the required wage rates for workers.

U. American Iron, Steel, and Manufactured Goods – The Contract Documents must provide that all of the iron, steel, and manufactured goods used for the construction, alteration, maintenance, or repair of a public building or public work, is produced in the United States unless a waiver is provided to the recipient by EPA. The ARRA Buy American Contract Provisions must be made part of the contract documents. **The Buy American Certification must be submitted with the bid.**

V. Trafficking Victim Protection Act of 2000 – The Contract Documents must contain the following Clause:

“The Contractor, its employees, subcontractors and subcontractors’ employees may not engage in severe forms of trafficking in persons during the period of time that the contract is in effect; procure a commercial sex act during the period of time that the contract is in effect; or use forced labor in the performance of the contract or subcontract.”

W. Reporting The Use of Funds – The Contractor agrees to comply with all requests for data related to the use of the funds provided by this Contract, including the information required in section 1512 of American Recovery and Reinvestment Act of 2009, and to report to the Owner all uses of the fund no less than weekly, as EPA specifies for the Drinking Water Project Tracking System.

X. Inspector General Reviews – The Contract Documents must include a provision that the Contractor must allow any appropriate representative of the EPA Office of Inspector General to (1) examine any of its records and subcontractors’ records, that pertain to, and involve transactions relating to, the procurement contract or subcontract for this project, (2) interview any officer or employee of the contractor or subcontractor regarding such transactions.

Y. Protection of Whistleblowers – The Contract Documents must include a provision the in accordance with section 1553 of the American Recovery and Reinvestment Act of 2009 (Act), the Contractor agrees that employees and subcontractors receiving funds from this agreement may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee’s duties, to the Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement Agency, a person with supervisory authority over the employee, a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of (1) gross mismanagement of an agency contract or grant relating to grant funds; (2) a gross waste of covered funds; (3) a substantial and specific danger to public health or safety related to implementation or use of grant funds; (4) an abuse of authority related to implementation or use of covered funds; or (5) a violation of law, rule, or regulation related to a grant awarded or issued relating to covered funds.

Z. American Recovery and Reinvestment Act Logo – The Contract Documents must require a provision to display signage that features the ARRA Primary Emblem throughout the construction phase. The signage should be displayed in a prominent location on site. The Primary Emblem should not be displayed at a size less than 6 inches in diameter. The emblem can be found at <http://www.recovery.gov/files/ARRA.zip>. All colors in the ARRA logos have precise color references, shown in the color specifications chart below. Always use the exact color values listed. Do not use screens or tints of any of the colors for any part of the logo.

<u>COLOR</u>	<u>CMYK</u>
Navy	00 / 00 / 00 / 00
Red	30 / 100 / 100 / 50
Green	65 / 25 / 100 / 7

Quick Reference Review Checklist

Documents that must be submitted with bids

	Form Name	Page #
1	Certification of Non Segregated Facilities	1
2	Kansas Act Against Discrimination Contract Provisions	4
3	Demonstration of Compliance with DBE Good Faith Efforts Worksheet (or equivalent)	24
4	EPA Form 6100-3 (DBE Subcontractor Performance Form)	26
5	EPA Form 6100-4 (DBE Subcontractor Utilization Form)	27
6	Anti Lobbying Certification Form	28
7	Buy American Certification	29

Clauses that must be included in the Advertisement for Bid

Bidders on this work will be required to comply with the presidents Executive Order No. 11246 as amended. Requirements for bidders and contractors under this order are explained in the specifications.

Bidders must fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons). Contractors, subcontractors, or suppliers that appear on the Excluded Parties List System at www.epls.gov are not eligible for award of any contracts funded by the Kansas Public Water Supply Loan Fund.

Clauses that must be included in the Information for Bidders Section

Bidders 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.)

Other Items

Are the KDHE ARRA Contract Provisions Section defined as part of the Contract Documents in the Agreement?

Is the Correct Wage Rate Determination from the US Department of Labor included in the Contract Documents?

KDHE ARRA CONTRACT PROVISIONS

U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF POLICY AND MANAGEMENT

CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to federally assisted construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity clause.)

The federally assisted construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The federally assisted construction contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certifications in his files.

Signature

Date

Name and Title of Signer (Please Type)

Firm Name

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

KANSAS PUBLIC WATER SUPPLY LOAN FUND

Executive Order 11246 (Contracts/subcontracts above \$10,000)

(a) Section 202 Equal Opportunity Clause. During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisement for employees placed by or behalf of the Contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and others.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulations or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the provisions of the sentence immediately preceding paragraph 1, and the provisions of paragraphs 1 through 7 in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or Vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or Vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

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 _____

CONTRACTOR'S
SIGNATURE _____

TITLE _____

KPWSLF NO. _____

DATE _____

ARRA Buy American Contract Provisions

The Contractor Acknowledges to and for the benefit of the Owner and the State of Kansas, that it understands the goods and services under this agreement are being funded with monies made available by the federal American Recovery and Reinvestment Act of 2009 (ARRA) and such law contains provisions commonly known as “Buy American” that requires all of the iron, steel, and manufactured goods used in the project be produced in the United States (“Buy American Requirements”) including iron, steel, and manufactured goods provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner and the State of Kansas that (a) the Contractor has reviewed and understands the Buy American Requirements, (b) all of the iron, steel, and manufactured goods used in the project will be and/or have been produced in the United States in a manner that complies with the Buy American Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Buy American Requirements, as may be requested by the Owner or the State of Kansas. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner or State of Kansas to recover as damages against the Contractor any loss, expense or cost (including without limitation attorney’s fees) incurred by the Owner or State of Kansas resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State of Kansas or any damages owed to the State of Kansas by the Owner). While the Contractor has no direct contractual privity with the State of Kansas, as a lender to the Owner for the funding of this project, the Owner and the Contractor agree that the State of Kansas is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State of Kansas.

A waiver to this requirement may be provided if (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent. If a Contractor believes a waiver is appropriate, a request for waiver must be made to the Owner in a format required by the Owner. The Owner will then make a request to EPA for the waiver. Bids that are made with the assumption of a waiver that is not granted could be considered unresponsive.

EPA has granted a nationwide waiver effective May 22, 2009, that permits the use of non-domestic iron, steel, and manufactured goods when they occur in *de minimis* incidental components of projects funded by ARRA, where such components comprise no more than 5 percent of the total cost of the materials used in and incorporated into a project. These incidental components would include non-major components that are essential for construction such as nuts, bolts, other fasteners, tubing, gaskets, etc. If the contractor wishes to use this waiver, the contractor must determine the items to be covered by this waiver, must retain relevant documentation as to those items in their project files, and must summarize in reports to KDHE the types and/or categories of items to which this waiver is applied, the total cost of incidental components covered by the waiver for each type of category, and the calculations by which they determined the total cost of materials used in and incorporated into the project.

The following definitions apply to this provision.

Steel: An alloy that includes at least 50 percent iron, between .02 and 2 percent carbon and may include other elements. Production in the United State of the iron or steel used in the project requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to iron or steel used as components or subcomponents of manufactured good used in the project.

Manufactured Good: Means a good brought to the construction site for incorporation into the building or work that has been, (1) Processed into a specific form and shape; or (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials. There is no requirement with regard to the origin of components or subcomponents in manufactured goods, as long as the manufacture of the goods occurs in the United States.

Reasonably Available Quantity: The quantity of iron, steel, or the relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.

Satisfactory Quality: The quality of iron, steel, or the relevant manufactured good as specified in the project plans and designs.

Trafficking Victim Protection Act of 2000 Contract Provisions

The Contractor, its employees, subcontractors and subcontractors' employees may not engage in severe forms of trafficking in persons during the period of time that the contract is in effect; procure a commercial sex act during the period of time that the contract is in effect; or use forced labor in the performance of the contract or subcontract.

Contract Provisions for Reporting the Use of Funds

The Contractor agrees to comply with all requests for data related to the use of the funds provided by this Contract, including the information required in section 1512 of American Recovery and Reinvestment Act of 2009, and to report to the Owner all uses of the fund no less than weekly, as EPA specifies for the Drinking Water Project Tracking System.

Contract Provisions for Inspector General Reviews

The Contractor must allow any appropriate representative of the EPA Office of Inspector General to (1) examine any of its records and subcontractors' records that pertain to, and involve transactions relating to, the procurement contract or subcontract for this project, (2) interview any officer or employee of the contractor or subcontractor regarding such transactions. Providing false, fictitious or misleading information with respect to the receipt of funds provided by the Kansas Public Water Supply Loan fund may result in criminal, civil or administrative fines and /or penalties.

Contract for Protection of Whistleblowers

In accordance with section 1553 of the American Recovery and Reinvestment Act of 2009 (Act), the Contractor agrees that employees and subcontractors receiving funds from this agreement may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement Agency, a person with supervisory authority over the employee, a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of (1) gross mismanagement of an agency contract or grant relating to grant funds; (2) a gross waste of covered funds; (3) a substantial and specific danger to public health or safety related to implementation or use of grant funds; (4) an abuse of authority related to implementation or use of covered funds; or (5) a violation of law, rule, or regulation related to a grant awarded or issued relating to covered funds.

Contract Provisions for the American Recovery and Reinvestment Act Logo

The Contractor must display signage that features the ARRA Primary Emblem throughout the construction phase. The signage should be displayed in a prominent location on site. The Primary Emblem should not be displayed at a size less than 6 inches in diameter. The emblem can be found at <http://www.recovery.gov/files/ARRA.zip>. The precise color references, shown in the color specifications chart below, must be used. Screens or tints of any of the colors for any part of the logo are not allowed.

<u>COLOR</u>	<u>CMYK</u>
Navy	00 / 00 / 00 / 00
Red	30 / 100 / 100 / 50
Green	65 / 25 / 100 / 7

Contract Provisions for right of entry by KDHE

The Contractor 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.

Contract Provisions for Historical and Archeological Deposits

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.

Contract Provisions for NPDES General Permit Coverage for Discharges of Stormwater Runoff from Construction Activities

The owner or Contractor must obtain, prior to construction, permit coverage from KDHE to discharge stormwater runoff associated with construction activity for most 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 for Restrictions on Lobbying

The Contractor agrees to comply with Title 40 CRF Part 34, New Restrictions on Lobbying. **A Certification form must be submitted with the bid documents.**

§ 180.220

2 CFR Ch. I (1-1-09 Edition)

~~(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 a Federal agency 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 a Federal agency specifically designates it to be a covered transaction.~~

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

~~(g) Any other transaction if—~~

~~(1) The application of an exclusion to the transaction is prohibited by law; or~~

~~(2) A Federal agency's regulation exempts it from coverage under this part.~~

~~§180.220 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.~~

~~(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 §180.210,~~

~~and the amount of the contract is expected to equal or exceed \$25,000.~~

~~(2) The contract requires the consent of an official of a Federal agency. 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) A subcontract also is a covered transaction if—~~

~~(1) It is awarded by a participant in a procurement transaction under a nonprocurement transaction of a Federal agency that extends the coverage of paragraph (b)(1) of this section to additional tiers of contracts (see the diagram in the appendix to this part showing that optional lower tier coverage); and~~

~~(2) The value of the subcontract is expected to equal or exceed \$25,000.~~

~~[70 FR 51865, Aug. 31, 2005, as amended at 71 FR 66432, Nov. 16, 2006]~~

~~§180.225 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 Federal agency regulations governing the transaction, the appropriate Federal 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~~

~~§ 180.300 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; or

(c) Adding a clause or condition to the covered transaction with that person.

[70 FR 51865, Aug. 31, 2005, as amended at 71 FR 66432, Nov. 15, 2006]

§ 180.305 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 Federal agency responsible for the transaction grants an exception under § 180.135.

(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.

§ 180.310 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 Federal agency responsible for the transaction grants an exception under § 180.135.

§ 180.315 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 Federal agency responsible for the transaction grants an exception under § 180.135.

§ 180.320 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.

§ 180.325 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, the Federal agency responsible for your transaction may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

§ 180.330 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 the regulation of the Federal agency responsible for the transaction 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.

§ 180.335

2 CFR Ch. I (1-1-09 Edition)

DISCLOSING INFORMATION—PRIMARY
TIER PARTICIPANTS

§ 180.335 What information must I provide before entering into a covered transaction with a Federal agency?

Before you enter into a covered transaction at the primary tier, you as the participant must notify the Federal agency 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 § 180.800(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 § 180.800(a); or
- (d) Have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default.

§ 180.340 If I disclose unfavorable information required under § 180.335, 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 § 180.335 will not necessarily cause a Federal agency to deny your participation in the covered transaction. The agency will consider the information when it determines whether to enter into the covered transaction. The agency will also consider any additional information or explanation that you elect to submit with the disclosed information.

§ 180.345 What happens if I fail to disclose information required under § 180.335?

If a Federal agency later determines that you failed to disclose information under § 180.335 that you knew at the time you entered into the covered transaction, the agency 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.

§ 180.350 What must I do if I learn of information required under § 180.335 after entering into a covered transaction with a Federal agency?

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

- (a) You failed to disclose information earlier, as required by § 180.335; or
- (b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 180.335.

DISCLOSING INFORMATION—LOWER TIER
PARTICIPANTS

§ 180.355 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.

§ 180.360 What happens if I fail to disclose information required under § 180.355?

If a Federal agency later determines 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, the agency may pursue any available remedies, including suspension and debarment.

§ 180.365 What must I do if I learn of information required under § 180.355 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 § 180.355; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 180.355.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

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

(a) You as a Federal agency official may not enter into a covered transaction with an excluded person unless you obtain an exception under § 180.135.

(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.

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

As a Federal 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 § 180.135.

§ 180.410 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 a Federal 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 § 180.135.

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

(a) You as a Federal 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 § 180.135.

§ 180.420 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 a Federal agency official may not approve—

(a) A covered transaction with a person who is currently excluded, unless you obtain an exception under § 180.135; 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.

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

As a Federal 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 your agency's approval of the lower tier participant is required; or

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

§ 180.430 How do I check to see if a person is excluded or disqualified?

You check to see if a person is excluded or disqualified in two ways:

(a) You as a Federal agency official must check the EPLS when you take any action listed in § 180.425.

(b) You must review information that a participant gives you, as required by § 180.335, about its status or the status of the principals of a transaction.

~~(EPA) policies and procedures for non-procurement debarment and suspension. It thereby gives regulatory effect for the EPA to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3927).~~

§ 1532.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

- (a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970;
- (b) Respondent in an EPA suspension or debarment action;
- (c) EPA debarment or suspension official; or
- (d) EPA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 1532.30 What policies and procedures must I follow?

~~The EPA policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., § 1532.220).~~

For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, EPA policies and procedures are those in the OMB guidance.

Subpart A—General

§ 1532.137 Who in the EPA may grant an exception to let an excluded person participate in a covered transaction?

~~The EPA Debarring Official has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135. If the EPA Debarring Official grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.~~

Subpart B—Covered Transactions

§ 1532.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

~~In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the EPA under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the EPA nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(e) (see optional lower tier coverage in the figure in the appendix to 2 CFR part 180).~~

Subpart C—Responsibilities of Participants Regarding Transactions

§ 1532.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the

Environmental Protection Agency

§ 1532.890

OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 1532.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower tier covered transactions.

Subparts E–F [Reserved]

Subpart G—Suspension

§ 1532.765 How may I appeal my EPA suspension?

(a) If the EPA suspending official issues a decision under 2 CFR 180.755 to continue your suspension after you present information in opposition to that suspension under 2 CFR 180.720, you can ask for review of the suspending official's decision in two ways:

(1) You may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the suspending official's decision to continue your suspension within 30 days of your receipt of the suspending official's decision under 2 CFR 180.755 or paragraph (a)(1) of this section. However, the OGD Director can reverse the suspending official's decision only where the OGD Director finds that the decision is based on a clear error of material fact or law, or where the OGD Director finds that the suspending official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in

error; and include the reasons or legal bases for your position.

(c) A review under paragraph (a)(2) of this section is solely within the discretion of the OGD Director who may also stay the suspension pending review of the suspending official's decision.

(d) The EPA suspending official and the OGD Director must notify you of their decisions under this section, in writing, using the notice procedures at 2 CFR 180.615 and 180.975.

Subpart H—Debarment

§ 1532.890 How may I appeal my EPA debarment?

(a) If the EPA debarring official issues a decision under 2 CFR 180.870 to debar you after you present information in opposition to a proposed debarment under 2 CFR 180.815, you can ask for review of the debarring official's decision in two ways:

(1) You may ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the debarring official's decision to debar you within 30 days of your receipt of the debarring official's decision under 2 CFR 180.870 or paragraph (a)(1) of this section. However, the OGD Director can reverse the debarring official's decision only where the OGD Director finds that the decision is based on a clear error of material fact or law, or where the OGD Director finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) A review under paragraph (a)(2) of this section is solely within the discretion of the OGD Director who may also stay the debarment pending review of the debarring official's decision.

(d) The EPA debarring official and the OGD Director must notify you of their decisions under this section, in writing, using the notice procedures at 2 CFR 180.615 and 180.975.

Davis Bacon Wage Rate Contract Provisions

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5 (a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster

(WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, www.wdol.gov.

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA award official shall coordinate with the Department of Labor Wage and Hour Division to approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the

subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer award official or will notify the contracting officer award official within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

The subrecipient(s) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls.

Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient (s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient (s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under

§ 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid

at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(11) Contract Provision for Contracts in Excess of \$100,000.

(a) The following provisions apply to all contracts that are in excess of \$100,000. As used in these provisions, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The municipality, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same

prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in (a)(3), above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

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 CRF 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

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)



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.



Environmental
Protection Agency

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

**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.

EPA Project Control Number

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

ARRA BUY AMERICAN CERTIFICATION

1. Identification of American-made Iron, Steel, and Manufactured Goods: Consistent with the terms of the Purchaser's bid solicitation and the provisions of ARRA Section 1605, the Bidder certifies that this bid reflects the Bidder's best, good faith effort to identify domestic sources of iron, steel, and manufactured goods for every component contained in the bid solicitation where such American-made components are available on the schedule and consistent with the deadlines prescribed in or required by the bid solicitation.

2. Verification of U.S. Production: The Bidder certifies that all components contained in the bid solicitation that are American-made have been so identified, and if this bid is accepted, the Bidder agrees that it will provide reasonable, sufficient, and timely verification to the Purchaser of the U.S. production of each component so identified.

3. Documentation Regarding Non-American-made Iron, Steel, or Manufactured Goods: The Bidder certifies that for any component or components that are not American-made and are so identified in this bid, the Bidder has included in or attached to this bid one or both of the following, as applicable:

a. Identification of and citation to a categorical waiver published by the U.S. Environmental Protection Agency in the Federal Register that is applicable to such component or components, and an analysis that supports its applicability to the component or components;

b. Verifiable documentation sufficient to the Purchaser, as required in the bid solicitation or otherwise, that the Bidder has sought to secure American-made components but has determined that such components are not available on the schedule and consistent with the deadlines prescribed in the bid solicitation, with assurance adequate for the Bidder under the applicable conditions stated in the bid solicitation or otherwise.

4. Information and Detailed Justification Regarding Non-American-made Iron, Steel, or Manufactured Goods: The Bidder certifies that for any such component or components that are not so available, the Bidder has also provided in or attached to this bid information, including but not limited to the verifiable documentation and a full description of the bidder's efforts to secure any such American-made component or components, that the Bidder believes are sufficient to provide and as far as possible constitute the detailed justification required for a waiver under section 1605 with respect to such component or components. The Bidder further agrees that, if this bid is accepted, it will assist the Purchaser in amending, supplementing, or further supporting such information as required by the Purchaser to request and, as applicable, implement the terms of a waiver with respect to any such component or components.

Signature

Name and Title of Signer (Please Print)

Date

Appendix 1: Information Checklist for Waiver Request

The purpose of this checklist is to ensure that all appropriate and necessary information is submitted to EPA. Please review this checklist carefully and provide all required information to EPA. This checklist is for informational purposes only and does not need to be included as part of a waiver application.

Items	✓	Notes
<p>General</p> <ul style="list-style-type: none"> • Waiver request includes the following information: <ul style="list-style-type: none"> — Description of the foreign and domestic construction materials — Unit of measure — Quantity — Price — Time of delivery or availability — Location of the construction project — Name and address of the proposed supplier — A detailed justification for the use of foreign construction materials • Waiver request was submitted according to the instructions in the memorandum • Assistance recipient made a good faith effort to solicit bids for domestic construction materials/manufactured goods, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor 		
<p>Cost</p> <ul style="list-style-type: none"> • Waiver request includes the following information: <ul style="list-style-type: none"> — Price Comparison Worksheet shown in Table 1 — Relevant excerpts from the bid documents used by the contractors to complete the Price Comparison Worksheet — Supporting documentation indicating that the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers 		
<p>Availability</p> <ul style="list-style-type: none"> • Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested: <ul style="list-style-type: none"> — Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials — Documentation of the assistance recipient’s efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers. — Project schedule — Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials • Waiver request includes a statement from the prime contractor confirming the non-availability of the domestic construction materials for which the waiver is sought • Has the State received other waiver requests for the materials described in this waiver request, for comparable projects? 		

Table 1: Foreign and Domestic Construction Materials Price Comparison Worksheet

Instructions: To be completed by the prime contractor. In column a), enter all iron, steel, and manufactured goods required to build the project as designed. In column b) enter the cost estimate for each component as supplied by domestic sources. In column c) enter the cost estimate for each component for which waivers are requested, as supplied by foreign sources.

(a) Material	Unit of Measure	Quantity	(b) Price – Domestic Material*	(c) Price – Foreign Material*
			(d) Total Domestic Project Cost:	(e) Total Foreign Project Cost:

*Include all delivery costs to the construction site

WAGE RATE DETERMINATION