

KANSAS PETROLEUM STORAGE TANK RELEASE TRUST FUND
POLICY AND PROCEDURE MANUAL

September 2019



Kansas Department of Health and Environment
Division of Environment
Bureau of Environmental Remediation
Storage Tank Section
1000 SW Jackson, Suite 410
Topeka, Kansas 66612-1367

Telephone: (785) 296-1678
FAX: (785) 559-4260

**KANSAS PETROLEUM STORAGE TANK RELEASE TRUST FUND
POLICY AND PROCEDURE MANUAL**

TABLE OF CONTENTS

| | | <u>Page No.</u> |
|------------------|--|-----------------|
| SECTION 1 | GENERAL | 1 |
| SECTION 2 | BID ELIGIBILITY | |
| | First Time Bidders | 1-2 |
| | Disqualification of Bidders | 2-3 |
| | Failure to Establish or Maintain Qualifications. | 4 |
| | Reinstatement of Bidders | 4 |
| SECTION 3 | BID PROPOSALS | |
| | Obtaining Trust Fund Bid Lists | 1 |
| | Notification of Pending Bids. | 1 |
| | No Bid Assistance. | 1-2 |
| | Owner/Operator Unable to Obtain Minimum Number of Bids | 2 |
| | Obtaining Bid Packages – Bid Assist. | 2 |
| | Questions or Errors on Request for Proposals (Bids). | 3 |
| | Conflicts or Ambiguities. | 3 |
| | Bid Submittals. | 3 |
| | Proposals Received After the Bid Closing Deadline | 3 |
| | Withdrawal of Proposal by the Consultant. | 3 |
| | Improper and/or Incomplete Proposal Submittal | 3-4 |
| | Bid Package Not Requested – Bid Assist | 4 |
| | Proposal Evaluation. | 4-5 |
| | Math Errors on Proposals | 5 |
| | Reasonable Rates. | 5 |
| | Omissions from Bid Proposals by the Consultant. | 5 |
| | Proposal Does Not Follow the Scope of Work on the Bid Proposal Sheets. | 5-6 |
| | Cost Plus Surcharge – Materials and Subcontractor Services. | 6 |
| SECTION 4 | OPERATIONS - CONSULTANTS | |
| | Personnel and Subcontractors. | 1 |
| | KRBCA Training/Certification | 1 |
| | Due Date Change. | 1 |
| | Reports with Missing or Inaccurate Documentation | 1 |
| | Disqualification from Site | 1 |
| | Property Access | 2 |
| | Due Date Considerations | 2-3 |
| | Soil and Water Sampling Expense. | 3 |
| | Equipment Substitution. | 3-4 |
| | Establish Monitor Rates. | 5 |

**PETROLEUM STORAGE TANK RELEASE TRUST FUND
TRUST FUND POLICY AND PROCEDURE MANUAL**

| | | |
|--------------------|---|-----------------------|
| SECTION 5 | REQUESTS FOR REIMBURSEMENT | |
| | Applicant Seeks Reimbursement. | 1 |
| | Co-Pay Method | 1 |
| | Attorney in Fact | 1 |
| | RFR Received Prior to Work or Service Performed | 1 |
| | Improper Invoice Format | 1 |
| | Release of % Withheld | 2 |
| | Lost Checks | 2 |
| | Invoices | 3 |
| | | |
| SECTION 6 | BREACH OF CONSENT AGREEMENT | |
| | Applicant Fails to Sign the Consent Agreement. | 1 |
| | Applicant Fails to Sign a Contract with a Consultant | 1 |
| | Non-Payment of Deductible by the Applicant. | 2 |
| | Non-Payment of Invoice(s) by the Applicant | 2 |
| | Applicant Does Not Submit RFR in a Timely Manner | 3 |
| | Applicant Deposits a Co-Pay Check. | 3 |
| | Applicant Does Not Forward a Co-Pay Check. | 3 |
| | | |
| SECTION 7 | RECOVERY OF FUNDS | |
| | Consultant Paid - Work Incomplete or Incorrect | 1 |
| | Non-Payment of Subcontractors and or Material Vendors | 1 |
| | | |
| SECTION 8 | OTHER APPROVALS | |
| | Adding Equipment to a Remedial System. | 1 |
| | Adding a Site to an Existing Scope of Work | 1 |
| | Advance Approval of Soil Removal | 2 |
| | Remediation by Soil Removal and Treatment ("Digout") | 2-3 |
| | | |
| SECTION 9 | ADMINISTRATIVE | |
| | Information Requests | 1 |
| | Bid Results | 1 |
| | | |
| ATTACHMENTS | | <u>Attachment No.</u> |
| | Bid Assistance Modification Form | 1 |
| | Owner/Operator Standard Contract | 2 |
| | Limited Power of Attorney (Attorney in Fact). | 3 |

SECTION 1

GENERAL

The policies and procedures included in this manual are not all-inclusive. They are intended to be used as aids in the daily operation and administration of the Trust Fund.

All references to the Trust Fund mean the Underground and/or the Aboveground Petroleum Storage Tank Release Trust Funds.

Unless noted otherwise, all references to the Kansas Department of Health and Environment (KDHE) mean the Trust Fund Staff.

All references to owner/operator (O/O) mean the tank owner and/or operator who applied to the respective Trust Fund and is not necessarily the current owner or operator.

All references to consultant(s) or vendor(s) means the firm(s) that participates in the Trust Fund bidding process with the intent to enter into a contract with the owner/operator of a site to conduct an approved scope of work.

All references to RFP mean Request for Proposal.

Bid types and their abbreviations referenced in this manual are:

- DO - Dig Out
- LSA - Limited Site Assessment
- MON - Monitoring
- OMM - Remediation System Operation, Maintenance, and Monitoring
- LKRBCA - Limited Kansas Risk Based Correction Action (RBC)
- RDP - Remedial Design Plan
- ReDI SRP - Remedial Design/Implementation Site Remediation Plan (RDI)
- SR - Soil Removal
- SRP - Site Remediation Plan Implementation
- SSA - Summary Site Assessment: Combination LSA and RDP, could also include SRP

The KDHE is not the client for any Trust Fund scope of work. The contract is between the owner/operator and the consultant. All correspondence must indicate that the owner/operator is the client.

SECTION 2

BID ELIGIBILITY

FIRST TIME BIDDERS

Consultants who have not conducted Storage Tank Trust Fund work must successfully complete one scope of work before they are eligible to contract on additional projects of that same type. KDHE's intent is to ensure that consultants are familiar with the requirements of Trust Fund projects before committing to additional contracts.

For example, once a consultant has signed a contract with an owner/operator for a LSA scope of work, they will not be considered eligible for additional LSA contracts until they have successfully completed one LSA. The same requirement applies to all other types of projects (LSA - SSA - RDP - LKRBCA – ReDI SRP – SRP).

If a consultant is awarded a contract for more than one site from a multiple site bid, they only need to complete one site and be current on all other sites within the package in order to be considered eligible to contract on similar type projects.

LSA

A Limited Site Assessment is complete when the Trust Fund Project Manager has approved the Final Report.

SSA/RDP and RDP

A Remedial Design project is complete when the Trust Fund Project Manager has approved the Remedial Design Plan.

If a consultant has successfully completed an SSA/RDP project but has not contracted on an RDP project, the consultant is eligible to contract on RDP projects. If a consultant has successfully completed an RDP project but has not contracted on an SSA/RDP project, the consultant will need to successfully complete one SSA/RDP project before being eligible to contract on additional SSA/RDP projects.

LKRBCA (RBC)

A Limited Kansas Risk Based Corrective Action project is complete when the Limited KRBCA report has been approved.

SRP and ReDI SRP (RDI)

An Implementation project is complete when the remedial system has been installed and successfully operated for 30 days. To be eligible for future SRP or ReDI SRP bids, the consultant must submit written notification to Trust Fund Staff indicating the system has been installed and successfully operated for at least 30 days.

If a remedial system has been installed but is not operational due to design deficiencies that are not the fault of the consultant, the 30-day operational requirement may be waived by the KDHE Remedial Unit Chief upon receipt of documentation of the deficiency. If the 30-day period is waived, the consultant may participate in additional SRP or ReDI SRP bids.

If a consultant has successfully completed either an SRP project or an ReDI SRP project, the consultant will be eligible to contract on both SRP projects and ReDI SRP projects.

NOTE: KDHE reserves the right to require any consultant to follow the First Time Bidder

procedures. This decision will be made by internal committee and will be based on quality of work performed, maintenance of qualifications, and compliance with deadlines as described below and on the following pages.

DISQUALIFICATION OF BIDDERS

Due Dates:

Within each Trust Fund project, deadlines are established for submission of plans, reports, and certain work operations. If a report or plan is not received, or the work operation is not completed by the established due date, cost denials will be implemented related to the scope of work. The consultant will not be eligible to contract on future Trust Fund projects for that scope of work type until the delinquent document has been submitted to Trust Fund Staff and approved or the work operation has been completed and approved.

When reports and plans are received, the project manager performs a preliminary review within five working days of receipt. Reports which are missing any of the basic required elements such as maps, figures, report sections or that do not meet minimum standards of professionalism will be returned without having satisfied the deadline.

After regaining bidding eligibility, the consultant can contract on any type of Trust Fund project which they have completed successfully.

Poor Performance:

Poor performance can result in consultants being disqualified. Many of these problems seem insignificant when viewed individually, but over extended time periods the problems can result in significant loss of resources due to ongoing problems with performance of the projects. Consultants who consistently take short cuts with the work and do not follow bid specifications create considerable additional workload for KDHE staff that reviews the reports and fieldwork.

Reports are managed according to the following process:

The KDHE Project Manager reviews reports within five working days to determine if the reports are basically complete. If not complete, reports will be rejected without a complete review.

Reports will be reviewed and comments will be transmitted to consultants within 60 days of receipt. The comments will explain what portions of the RFP were not satisfied. The consultant will have 30 days to provide the corrections to the original report. If all of the requirements are not satisfied by the end of the 30-day period, the consultant may be disqualified until the requirements of the RFP are completed and approved.

Consultants who consistently make the same errors will be provided warning letters regarding their poor performance and the potential for their disqualification. If the problems persist after sufficient notice, the firm may be disqualified. The following are some of the issues which may result in a consultant being disqualified:

A. Technical Problems

1. Constructing wells improperly.
2. Placing groundwater probes, wells, and borings in locations that, based on previously collected data, would not be expected to provide useful or valid information.
3. Failure to place initial groundwater probes and borings in locations that will provide the

information necessary to determine the most appropriate locations for subsequent wells.

4. Submitting inaccurate design calculations.
5. Conducting and/or analyzing pilot tests improperly.
6. Submitting design drawings and specifications that do not allow for an easy determination of all equipment and materials necessary to construct and operate a remedial system.
7. Submitting as-built reports and/or OMM reports that demonstrate the consultant does not understand how the system is operating. Some examples are: failing to indicate that the system is not operating as designed, failing to properly calculate or measure process flow rates, and failing to identify incipient problems from available data before they become critical and require replacement of materials or equipment.
8. Failure to follow acceptable sampling methods and sample handling procedures that are standard acceptable business practices approved by the EPA and KDHE or as specified in the appropriate RFP.

B. Scheduling and Notification Problems - Deadlines

1. Conducting off-site work without obtaining property access, in writing, from the property owner or their designated agent.
2. Conducting field activities without notifying the Trust Fund Project Manager and the KDHE district office.
3. Failing to notify the owner/operator and the current property tenant of site visits and/or site work.
4. Failing to communicate with the owner/operator and the property tenant regarding the location of the wells and equipment.

C. Billing Problems

1. Using personnel that have not established minimum qualifications with KDHE. This includes using personnel with expired OSHA certification and project geologists that have not been certified or approved by KDHE.
2. Failing to restore damaged property.
3. Submitting unnecessary change orders which result in delay of work.
4. Submitting incorrect information regarding work performed. This includes verbal communication, incorrect invoices, and/or incorrect data in reports.
5. Failing to follow line item bid costs when submitting costs for additional work, resulting in unnecessary and time-consuming negotiations, telephone conversations, etc.

D. Other

Any action which might endanger the project or the image of the Trust Fund program.

FAILURE TO ESTABLISH OR MAINTAIN QUALIFICATIONS

Consultants are required to provide evidence of minimum qualifications as outlined in the respective RFP package. It is their responsibility to maintain current documentation of their qualifications by providing the Trust Fund Staff with timely updates. The RFP associated with the bid provides details of the documentation required for that particular bid.

Establishing Minimum Qualifications:

Consultants must submit documentation establishing their qualifications prior to or with their first proposal. If the bid evaluation indicates a consultant's submission could be approved but the consultant does not meet minimum qualifications, the consultant will be allowed two weeks from the bid-closing deadline to establish their qualifications. If the consultant is unable to establish minimum qualification, their submittal will be disqualified. Future proposals from said consultant will not be considered until all required documentation has been submitted and the consultant has demonstrated that they meet the minimum requirements.

Maintaining Minimum Qualifications:

Consultants under contract with owner/operators and currently performing approved corrective action work on any Trust Fund site are responsible for maintaining their minimum eligibility criteria with the Trust Fund Staff.

Once it is determined that a consultant is ineligible because they no longer meet minimum requirements, they must come into compliance in time to complete work by the established deadlines or risk disqualification. If compliance is not obtained and the work is not complete within 60 days after the due date, KDHE will recommend the owner/operator make a claim under the Professional Liability Insurance and complete the work by one of the following methods:

1. Contract with the consultant that submitted the second lowest bid
2. Bid the remaining work

Owner/operators are not eligible for reimbursement of any corrective action work performed by consultants not meeting minimum Trust Fund eligibility criteria.

REINSTATEMENT OF BIDDERS

Consultants who have been deemed ineligible to contract on Trust Fund work as a result of unsatisfactory performance may be permitted to enter into contracts after all unsatisfactory items have been resolved. In order to contract on a project, the bid must have closed after the consultant became eligible.

The consultant may be requested to submit evidence demonstrating that their ability to successfully meet the requirements of the scope of work has improved. The nature of this evidence will depend on the type of performance problem that led to their ineligibility. Some examples are:

1. Documentation of replacement of poor performing equipment or personnel
2. Written comments on recent performance from clients, adjacent landowners, or local government officials
3. Documentation that unsatisfactory subcontractors have been replaced
4. Documentation of staff training in relevant areas

After regaining bidding eligibility, the consultant can contract on any type of Trust Fund project which they have completed successfully.

OBTAINING TRUST FUND BID LISTS

Consultants may receive the KDHE BID LIST by submitting a written request to the Contractual Services Unit. The request should include the following:

1. Company name
2. Bid contact person
3. Mailing address
4. Company phone number
5. Company fax number
6. Bid contact e-mail address
7. Bid contact office phone
8. Bid contact cell phone
9. 2nd e-mail address (optional)
10. Signature of requestor
11. Date of request

Submit the written request to the following:

Kansas Department of Health and Environment
BER - Storage Tank Section – Contractual Services Unit
1000 SW Jackson, Suite 410
Topeka, KS 66612-1367

or e-mail request to:
kdhe.STSbidlist@ks.gov
or fax request to:
(785) 559-4260

KDHE occasionally purges the list of prospective bidders. KDHE will notify all consultants receiving the list that their company will be deleted from the list unless a written request that their name be retained is received within 30 days.

NOTIFICATION OF PENDING BIDS

The KDHE BID LIST is e-mailed to all consultants on the prospective bidder list during the night (Thursday PM/Friday AM) prior to the Bid Open Date.

Consultants on the prospective bidder list without e-mail will be sent the Bid List via first class mail on the following workday.

NO BID ASSISTANCE

KDHE offers a bid assistance program for those who prefer to have KDHE obtain bids for them. Owner/operators who prefer to retain responsibility for obtaining bids and decline bid assistance will be provided with the corrective action plan and instructions for obtaining bids. Bids must be obtained from at least three consultants who fulfill the minimum criteria to perform corrective action work on Trust Fund sites.

Trust Fund Staff will establish a deadline for receiving bids. This time frame will normally be five weeks, which is one week more than the standard Bid Assistance program.

Information pertaining to no bid assistance sites will not be available from KDHE until after the owner/operator has been informed of the approved amount.

It is the responsibility of the owner/operator to have at least three bids from qualified consultants submitted to the Contractual Services Unit on or before the bid deadline.

The owner/operator may be permitted a two week extension of the bid deadline if a written request

stating adequate reason(s) for the requested extension is received and approved by the Trust Fund Staff prior to the first bid deadline.

OWNER/OPERATOR UNABLE TO OBTAIN MINIMUM NUMBER OF BIDS

If the owner/operator is unable to secure a minimum of three bids within the time frame allowed or the bids received are not reasonable and customary, the owner/operator may apply for Bid Assistance from the Trust Fund Staff (see Attachment 1). The owner/operator will be permitted ten workdays to sign and return the Bid Assistance request.

After a Bid Assistance request is received, the Trust Fund Staff will secure a minimum of three competitive bids from consultants who fulfill the criteria to perform corrective action work on Trust Fund sites. The Trust Fund Staff will evaluate the bids and approve an amount for the corrective action plan. The established corrective action process will continue from this point.

Owner/operators who are unable or unwilling to obtain the minimum three bids, and who refuse to participate in the bid assistance program, may be denied access to the Trust Fund. If Trust Fund access is denied, the owner/operator will be required to perform corrective action using their own resources.

65-34,118.(b) If the owner or operator is unable or unwilling to perform corrective action as provided for in subsection (a) or no owner operator can be found, the secretary may undertake appropriate corrective action utilizing funds from the underground fund, if the release was from an underground petroleum storage tank, or from the aboveground fund, if the release was from an aboveground petroleum storage tank. Costs incurred by the secretary in taking corrective action, including administrative and legal expenses, are recoverable from the owner or operator and may be recovered in a civil action in district court brought by the secretary. Corrective action costs recovered under this section shall be deposited in the underground fund, if the release was from an underground petroleum storage tank, or in the aboveground fund, if the release was from an aboveground petroleum storage tank. Corrective action taken by the secretary under this subsection need not be completed in order to seek recovery of corrective action costs, and an action to recover such costs may be commenced at any stage of corrective action.

OBTAINING BID PACKAGES – BID ASSIST

For the consultant to obtain a KDHE BID PACKAGE:

1. Circle or highlight the bid number(s) desired on the Bid List.
2. On the bottom of the Bid List, indicate the following:
 - a. Company name (clearly printed or typed)
 - b. Name of person requesting bid (clearly printed or typed)
 - c. Signature of person requesting bid
3. Submit the completed request to the following:

Kansas Department of Health and Environment
BER - Storage Tank Section – Contractual Services Unit
1000 SW Jackson, Suite 410
Topeka, KS 66612-1367

E-mail: kdhe.STSbidlist@ks.gov
Fax Number:
(785) 559-4260

In order to obtain the bid package(s), the request must be received no later than the bid package request deadline indicated on the Bid List.

QUESTIONS OR ERRORS ON REQUEST FOR PROPOSALS (BIDS)

All questions concerning the information in the proposal are to be directed to the KDHE Project Manager responsible for the site. If the Project Manager will be unavailable for an extended period of time, their supervisor or designated backup Project Manager is to be contacted.

If an error is discovered after the bid has been distributed, the KDHE Project Manager will provide written notice (e-mail, fax, and/or mail) to all consultants that received the request for proposal.

CONFLICTS OR AMBIGUITIES

Consultants shall notify KDHE immediately if conflicts or ambiguities are found in the RFP. Failure to do so prior to the specified closing date may result in these items being resolved in a manner deemed to be in the State's best interest as judged by the KDHE Storage Tank Staff.

BID SUBMITTALS

Bids must be e-mailed to kdhe.STSbidlist@ks.gov on or before 5:00 p.m. on the due date. Bids must be submitted as specified in the RFP in the format provided by KDHE.

PROPOSALS RECEIVED AFTER THE BID CLOSING DEADLINE

Proposals from consultants must be received on or before the time and date of the bid closing deadline. Late proposals will be disqualified and the consultants will be notified by e-mail of the same. The proposal will remain on file with the Trust Fund Staff for a period of one year beyond the closing date for the bid.

WITHDRAWAL OF PROPOSAL BY THE CONSULTANT

Prior to Bid Deadline:

A consultant may withdraw a proposal prior to the scheduled bid closing deadline by providing a written request to the Trust Fund Staff via e-mail, fax, or mail.

After Bid Deadline:

The Trust Fund Staff may allow a consultant to withdraw their proposal after the bid closing deadline if, in the opinion of the Trust Fund Staff, there are obvious omissions and/or mistakes that cannot be absorbed in the proposed total project cost, and approval of the proposal as submitted would not be in the best interest of the owner/operator and/or the State of Kansas.

After Bid Approval:

A proposal cannot be withdrawn after it has been approved. KDHE expects the consultant to complete the approved scope of work.

IMPROPER AND/OR INCOMPLETE PROPOSAL SUBMITTAL

Proposals must include the following completed documents attached in the order listed below:

1. Exhibit 2 Project Bid Summary Sheet (multiple site bids only).
2. Bid Proposal Cover Sheet with Vendor Information.
3. Exhibit 2 Project Bid Proposal Sheet. The Vendor's name must be entered in the upper right corner in the designated location. Proposals not submitted on the original form will be disqualified.
4. List of potential subcontractors not included on the Exhibit 2 Project Bid Proposal Sheet and a description of the work to be subcontracted.

All proposals must be submitted by e-mail to kdhe.STSbidlist@ks.gov. Each bid must be sent in a separate e-mail with the Consultant's Name and the Bid Number in the Subject line. Multiple bids should not be combined and sent in one e-mail.

Proposals that are not properly submitted and/or are not complete will be disqualified. Consultants will be notified in writing if a proposal has been disqualified because it was an improper or incomplete submittal.

BID PACKAGE NOT REQUESTED - BID ASSIST

If a consultant submits a bid and the consultant did not request the bid package, the bid submittal will not be evaluated.

PROPOSAL EVALUATION

Bids will be reviewed to ensure that line item costs are equitably distributed across all required tasks. Prices must accurately reflect the actual cost to complete each segment of the project because additional scopes of work may be required. To avoid the potential problem of consultants unfairly "loading" costs into certain categories to avoid cost proration, KDHE Trust Fund Bid proposals will be evaluated on a line item basis. KDHE will review individual line item rates with respect to bids from other consultants for the same project, and to historical costs.

KDHE reserves the right to require an explanation of all higher or lower than normal line item costs. If an explanation is deemed to be inadequate, the bid may be rejected as unresponsive. The fact that previous bids may have been approved with unreasonable line item costs does not mean that future bids with similar costs will be approved.

The following procedure must be used in preparing the bid package:

1. If a line item unit rate is listed as zero (0) or is left blank, and the activity associated with that line item is required to complete the scope of work, the consultant will be required to perform that item at no cost (see Item 3).
2. The line item unit rate and line item total cost should be entered as "Included" (INC) if the cost for that line item is included in the rate for another line item. The line item in which it is included must be specified.
3. The line item unit rate and line item total cost should be entered as "NC" if it is proposed to perform the activity at no cost.
4. If a line item unit rate is listed with a dollar amount and the quantity is blank or the quantity and/or line item total cost is entered as "NC" and/or "NA", the consultant will be required to perform that item at no cost.
5. If "NA" is entered for the line item unit rate and/or quantity, and the line item is applicable to complete the scope of work, the consultant will be required to perform that item at no cost.

KDHE reserves the right to approve or deny proposed rates and/or quantities on a line item basis. If deemed to be in the best interest of the O/O and the State, KDHE may propose reduced but reasonable (as determined by KDHE) costs for specific line items and approve the revised total project cost. If the consultant is not willing to perform the task(s) at the reasonable rate, they may withdraw their bid.

KDHE will not allow costs to be moved between line items to meet the reasonable cost requirement after the bid closing date.

In addition to the above described line item cost evaluation, proposals will be evaluated on:

1. the Consultant's total cost as submitted on the Project Bid Proposal Sheets
2. experience
3. expertise
4. past performance on KDHE Trust Fund Sites.

The final determination of approved costs for the project will be in the best interest of the O/O and KDHE.

MATH ERRORS ON PROPOSALS

The consultant is responsible for any mathematical errors and/or incorrect extension of any calculations in their line item price quotes. In the case of discrepancies, the proposed unit cost will be multiplied by the units provided to obtain a revised total cost - or the total line cost will be divided by the units to determine the unit rate and the submitted total line will be used. The method resulting in the lowest total amount will be used in the evaluation of the proposal.

If there is an error on a proposal sheet and the corrected total is the lowest proposal, the percent difference between the corrected total and the total of the next lowest proposal will be calculated. If this difference is equal to or less than five percent or \$5,000 - whichever is the least, the proposal in error will be disqualified. If the percent difference is greater than five percent or \$5,000 - whichever is the least, the proposal will not be disqualified for that particular error condition and the corrected total will become eligible for approval.

REASONABLE RATES

Costs quoted or referenced in bid proposals must be reasonable and customary on a line item basis when compared with recently approved amounts for similar scopes of work. If the costs in the bid proposals are not reasonable and customary, an explanation of why KDHE should view the bid rate as reasonable must be included with the bid. This explanation could include bids or quotes from the consultant's subcontractors indicating the lower or higher than normal cost and why this rate is offered. Additionally, when one or more rates are not reasonable and customary, KDHE will compare the bid at maximum average and minimum levels of effort to ensure that the best bid is approved. If adequate explanation is provided for the higher or lower than reasonable rate and excessive front loading is not apparent, the bid may be approved with the submitted rates. If a bid is submitted with rates that are not reasonable and customary without an explanation being included, the bid will be rejected.

OMISSIONS FROM BID PROPOSALS BY THE CONSULTANT

In the event an omission or major error is made by the bidder in the proposal, and the error is not discovered until after the bid is closed, the consultant may agree to complete the full scope of work for an amount not to exceed the proposed total project cost. If the consultant is willing to do the work for the proposed amount, a written and signed statement of agreement from the consultant must be submitted to KDHE within one work day.

(See also "Withdrawal of Proposal by Contractor" - "After Bid Deadline".)

PROPOSAL DOES NOT FOLLOW THE SCOPE OF WORK ON THE BID PROPOSAL SHEETS

Any proposal that alters the scope of work specified on any project bid proposal sheet without specific prior written approval from the Trust Fund Staff will be disqualified.

Any qualifying statements or *caveats* in a cover letter accompanying a proposal and/or added to the project bid proposal sheets altering the specified scope of work will disqualify a proposal.

Consultants will be notified in writing of the reason for disqualification.

COST PLUS SURCHARGE – MATERIALS AND SUBCONTRACTOR SERVICES

The surcharge will be applied to the cost of the item, including tax and shipping, when applicable. The surcharge rate will be determined by the sum of the cost plus items approved for reimbursement during the scope of services, as opposed to individual cost plus line items, in accordance with the following table:

| IF THE SUM OF COST PLUS ITEMS IS: | THE SURCHARGE PERCENTAGE FOR THOSE ITEMS IS: |
|--|---|
| less than \$5,000 | 10% |
| between \$5,000 and \$25,000 | 8% |
| greater than \$25,000 | 6% |

The Consultant shall obtain a minimum of three written bids for purchases made or subcontracted that are in excess of \$500.00 per item, unless otherwise specified by KDHE in the specific work request. If the materials or services are less than \$500.00, the subcontractor services can be approved by Trust Fund Staff without a bid process. A detailed invoice for all rental equipment must be submitted to KDHE for reimbursement consideration.

Costs for equipment or subcontracted services will be reimbursed by the following guidelines:

1. the Consultant will obtain three bids for KDHE approval
2. KDHE will reimburse lowest bid cost plus the applicable surcharge
3. labor costs for installation will be reimbursed with prior approval in writing by KDHE.

This refers to materials, labor and contracted services not specified in the original RFP - such as changes in equipment/material or an excavation added to an OMM scope of work.

The surcharge is intended to compensate the consultant for their time and effort to obtain the additional material and should be considered an acquisition or labor charge. KDHE will reimburse the consultant for the true cost of the material including shipping and sales tax and payment of the applicable surcharge.

The consultant is to obtain three bids and KDHE is the entity that is to approve the bid. If the consultant is unable to obtain three bids, they are to provide KDHE with documentation of their attempts to obtain the bids. At that time KDHE will determine if additional attempts are to be made or if the bids that were obtained are sufficient. If the consultant obtains the material or subcontracted service without the bidding process and/or KDHE written approval, the consultant is not eligible for reimbursement. Copies of all bids are to be routed with the add scope during the approval process.

NOTE: Unless there is a major change in the scope of work, all items of material, labor and contracted services are part of the consultant's original bid and additional expenses will not be approved for them without justification. If a consultant forgets to include certain costs in their original bid submission, they are to absorb that expense. In some instances, the missing cost of these forgotten items is what allowed the consultant to be the lowest bidder.

SECTION 4

OPERATIONS - CONSULTANTS

PERSONNEL AND SUBCONTRACTORS

The consultant is solely responsible for ensuring all personnel and subcontractors obtain and maintain applicable licenses, certifications, and training as required by Federal, State, and Local governments in addition to satisfying the minimum qualifications required in the respective RFP.

KANSAS RISK BASED CORRECTIVE ACTION (KRBCA) TRAINING/CERTIFICATION

The individual signing KRBCA documents must have a certificate on file with Trust Fund staff verifying the completion of a KRBCA program conducted by an American Society for Testing and Materials (ASTM) certified trainer.

DUE DATE CHANGE

If a consultant has extenuating circumstances and they feel an extension of a due date for a specific scope of work is justified, they may submit a written request prior to the due date to the Trust Fund Project Manager. This request must state the reason for the extension and their proposed completion date. A committee of three Trust Fund staff members will review the request and a written approval or denial will be transmitted to the requesting consultant within two workdays of receiving the request.

REPORTS WITH MISSING OR INACCURATE DOCUMENTATION

Reports received with missing or inaccurate documentation may be rejected as determined by a committee of KDHE Storage Tank Section Unit Chiefs. If a report is rejected, a new report will have to be re-submitted. Due dates will not be extended for re-submitted reports.

DISQUALIFICATION FROM SITE

The following may disqualify a consultant from continuation of work at a site at any point during the scope of work:

Cost proposal, such as that for renewal and add scope, submitted to the KDHE Project Manager after the established deadline may not be considered for approval and KDHE may consider placing the scope of work or site out for bid or utilizing the State corrective action contract.

Report revision or add scope not completed by the established deadline may result in KDHE placing the scope of work or site out for bid or utilizing the State corrective action contract.

Remedial system operating less than 50% of the time at any capacity for more than one quarter without the consultant providing written justification and obtaining KDHE Project Manager approval.

Final Remedial Report 60 days beyond established deadline.

Quarterly Monitoring Report or Operation, Maintenance, and Monitoring Report 60 days beyond established deadline.

Remedial system start-up 60 days beyond established start-up deadline.

Using any unapproved used equipment on the project.

PROPERTY ACCESS

Property access agreements are to be between the property owner and the consultant, not the property owner and KDHE. The consultant is responsible for contacting all on-site and off-site property owners to obtain property access. Initial contact may be verbal, but written permission must be obtained from each owner of all property to be accessed.

For off-site access, the consultant should utilize city and utility easements when appropriate and necessary. Written permission to drill in city and utility easements must be obtained. Property owners may retain ownership of utility and other easements and access from the property owner may be required in addition to the entity granting the easement. The consultant is responsible for researching the terms of the easement to determine if the property owner's permission is required.

At least two written and two verbal attempts to obtain access should be made. The first should be made within two weeks and the second within three weeks of the contract being signed by all parties or from receipt of work plan approval. If no response is received from the property owner within one week of the second contact, the KDHE Project Manager should be notified in writing. The written notification should include copies of the letters sent and records of verbal attempts such as phone records, field notes, etc.

If property access authorization is initially denied, the consultant must notify the Trust Fund Project Manager in writing. The project manager will determine if access to the relevant property appears to be required to achieve the investigation goals.

1. If the scope of work can be completed without the access and an alternate access is not needed, the consultant will be instructed to proceed with fieldwork.
2. If information available about the site is such that it is unclear if access will be needed (i.e., probable extent of contamination, general groundwater flow direction, etc. are unknown), the consultant may be instructed to begin fieldwork to determine if access is vital to the investigation goals. If access is vital and no alternative sites are acceptable, KDHE will authorize costs to re-mobilize to the site to complete fieldwork once access is obtained (see Item 4).
3. If the scope of work can be completed without the access but requires that access to an alternative property be obtained, the consultant will be instructed to obtain access to the alternate property.
4. If the scope of work cannot be completed without the access, KDHE will either move to obtain access through legal action or instruct the consultant to continue attempts to obtain access. If it is probable that access can be obtained without KDHE taking legal action, the consultant will remain responsible for obtaining access. Examples of situations in which the consultant will be expected to continue efforts are if the property owner is temporarily unavailable, or if the property is owned by a corporation or other entity that must await a scheduled board meeting to decide if access can be granted.

DUE DATE CONSIDERATIONS

If a consultant is unable to obtain written access and fails to notify the Project Manager, due dates will not be extended.

If the Project Manager is notified and determines that the consultant should continue attempts to obtain access, due dates may be extended for the time period that access is being sought.

If the Project Manager is notified and KDHE is attempting to obtain access, due dates may be extended for the time period that access is being sought.

If the consultant is unable to obtain access within 30 days of work plan approval, KDHE is to be notified.

SOIL AND WATER SAMPLING EXPENSE

Unless otherwise stated in the RFP or bid forms, the bid rate for soil and water samples must include all costs associated with the collection and analysis of the samples, including equipment, supplies, purging, shipping, documentation lab work, reports, and any other expenses related to samples.

All samples are to be analyzed in accordance with the criteria provided in the bid package for the constituents outlined in the bid sheet.

This item is to be bid on a per sample basis. If additional samples are required, additional authorization and reimbursement will be on a per sample basis in accordance with the approved bid rate.

EQUIPMENT SUBSTITUTION

Proposed equipment substitutions must be denoted as such on the Project Bid Proposal Sheets. A section at the end of the Bid Proposal sheets is provided and must be completely filled out to be considered responsive. Stipulations outlined in the SRP RFP attachment "Equipment Standards" must be complied when substitutions are proposed.

Before a bid with substitutions is awarded, the Project Manager will discuss the proposed substitutions internally to determine if the proposed equipment meets the design specifications and stipulations outlined in the "Equipment Standards" attachment of the RFP. Approval from the original design engineer may be necessary to determine if the proposed equipment meets the design specifications. If the proposed equipment is approved, the low bid will be awarded with the proposed substitutions. If the equipment does not meet the design specifications or stipulations, and is not approved, the consultant will have the opportunity to substitute equipment that does meet the design specifications at the original bid price, or withdraw from consideration.

Written approval for any additional equipment substitution must be obtained from the KDHE Project Manager in order to be reimbursed for that piece of equipment.

All remedial equipment installed at the site must be new and represent the most recent make of the equipment specified (or approved equivalent); the use of used or out of date equipment is not acceptable unless such equipment is supplied by the KDHE Project Manager from another KDHE project.

In circumstances where equipment substitutions are proposed as a result of an engineering review or for other reasons after the bids have been approved, the following procedure will be followed. If equipment substitutions are proposed which cause a substantial increase in the cost of the project, the KDHE will review the original bids to ensure that the current bidder's alternate proposal still represents the best value for the state.

1. Substitutions of equipment will not be granted unless it is in the best interest of the project as determined by KDHE.
2. If determined by KDHE that equipment substitution is in the best interest of the project, the

following will be required by KDHE to gain permission for the equipment substitution:

- a. the SRP consulting firm or Project Engineer requesting the substitution will be required to obtain three bids from equipment suppliers for both the originally proposed system component (OPSC) and the proposed substitute (PS).
- b. the lowest of the three bids for the OPSC will be compared to the line item bid in the SRP bid sheet to determine the maximum profit margin in percentage and dollars.

$$((\text{SRP bid cost} / \text{OPSC}) \times 100) - 100 = \text{maximum profit margin in percent}$$

$$\text{SRP bid cost} - \text{OPSC} = \text{maximum profit margin } \$\$$$

- c. the approved cost for the proposed substitute (PS) will be determined by the following method:
 - (1.) the lowest of the three bids for the PS plus the applicable surcharge (or plus the **maximum profit margin in percent** (as calculated during step b), whichever is the lower markup).
If the PS plus the appropriate markup results in a profit margin in dollars greater than the **maximum profit margin in dollars** (as calculated in step b) then:
 - (2.) the approved cost will be calculated by adding the maximum profit margin in dollars (as calculated in step b) to the lowest of the three bids for the PS.
3. If a proposed equipment substitution is denied, it does not relieve the implementation consulting firm or Project Engineer of any responsibilities related to guarantees, maintenance, and operation of the remedial system(s).

ESTABLISH MONITOR RATES

If routine monitoring is required for the site, the Trust Fund staff may work with the contracted consultant and approve an additional scope of work based on current reasonable rates. Consideration might also be given to rates submitted in previous bids. The following cost areas will be considered when awarding monitoring work:

1. Mobilization on a per mile basis for vehicle expense and a per hour basis for staff expense.
2. Staff time for development and sampling of the wells. This time allocation will be based on the number of wells, well depth and diameter.
3. Per diem if justified by number of wells or sites in the area and the proximity of consultant's offices.
4. Analytical cost not to exceed reasonable costs based on current prices and not to exceed prices quoted in the previous bid.
5. Report cost will be determined based on the size of the monitoring scope.

If the contracted consultant and KDHE do not agree on monitoring rates, monitoring bids will need to be obtained for the site's scope of work.

SECTION 5

REQUESTS FOR REIMBURSEMENT

APPLICANT SEEKS REIMBURSEMENT

If the applicant desires to pay the consultant and seek reimbursement from KDHE, they must submit one copy of the canceled check (front and back) as proof of payment. The copy is to be included with the Request for Reimbursement Form (RFR) and consultant invoices.

CO-PAY METHOD

Reimbursements may be paid jointly to the owner/operator and consultant. The co-payee (company name of the consultant contracted to perform the work) must be designated in Section 1, Item D of the RFR.

ATTORNEY IN FACT

Many of the consultants performing Trust Fund work have realized benefit from having Attorney in Fact agreements with their clients (the owner/operator). This agreement, also known as a Limited Power of Attorney (LPOA), provides the consultant with the limited authority to submit request reimbursement forms on behalf of the owner/operator and redeem co-pay reimbursements checks on behalf of the owner/operator. The benefits are primarily two-fold: 1. Faster turn around on accounts receivable, and 2. Fewer incidences of lost reimbursement checks.

Attorney in Fact or LPOA agreements must be site specific and contain the following information:

1. KDHE Project Name
2. KDHE Project Code
3. Site address

(Refer to Attachment 3 for a sample Attorney in Fact/LPOA)

The Attorney in Fact authorization is to be provided to KDHE at the same time as the signed contract.

KDHE will not process Request for Reimbursement forms that the consultant has completed as Attorney in Fact without having a signed copy of the agreement on file. The request forms must bear the original signature of the consultant's representative who is authorized to sign on behalf of their client.

RFR RECEIVED PRIOR TO WORK OR SERVICE PERFORMED

Neither the owner/operator nor the consultant will be eligible for any reimbursements unless the work has actually been completed. Reimbursement for documents will not be considered until the Project Manager has received and approved copies of the appropriate documents.

IMPROPER INVOICE FORMAT

Invoices must be in the same format as the approved bid proposal. If invoices are not in the same format, they will be returned to the owner/operator with an explanatory letter. A copy of the letter will be sent to the consultant.

It will be the owner/operator's responsibility to contact the consultant in a timely manner and obtain an invoice in the correct format.

In cases where the reimbursement request involves co-payment and the owner/operator does not return the reimbursement request with a corrected invoice to KDHE within 30 days, the owner/operator is responsible for paying the consultant immediately. The owner/operator will be required to submit copies of their canceled check with their request for reimbursement to KDHE.

RELEASE OF % WITHHELD

The KDHE Project Manager is to review the Final Report and submit written comments to the consultant within 60 calendar days from the stamped receipt date.

If the Project Manager approves the Final Report, any percentage withheld will be released and paid when invoiced. If revisions to the report are required, written comments will be submitted to the consultant.

If the Project Manager fails to review the Final Report and approve it or provide written comments within 60 calendar days from the stamped receipt date of the report, the Project Manager is to authorize the release of any percentage withheld.

LOST CHECKS

KDHE will assist the owner/operator and/or the consultant if a check is lost.

Upon determining that a check has not been received in a reasonable time, the owner/operator or the consultant should contact KDHE.

KDHE staff will query the State Treasurer's web site to see if the check has been redeemed.

If it has not been redeemed, KDHE staff will wait 45 calendar days from the date the check was written before canceling the old check and issuing a new one.

If the check has been redeemed, KDHE staff will request a copy of the canceled check from the Business Office.

If it is determined that the check was redeemed by the owner/operator, KDHE staff will send a copy of the redeemed check to them and notify them that the consultant must be paid immediately.

If it is determined that the check was redeemed by the consultant, KDHE staff will send a copy of the redeemed check to them and the owner/operator.

INVOICES

KDHE will not reimburse costs for sampling events unless the owner/operator and the Trust Fund Project Manager have received reports for the sampling events.

The request for reimbursement and supporting invoices must include all charges for the sampling event (i.e. mobilization, labor hours, sampling & analytical, waste handling & treatment, report preparation, etc.). Partial requests will not be processed.

Invoices must be in the approved Trust Fund format and must indicate the sampling period and the actual date the sampling was conducted.

The request for reimbursement form must be signed and dated by the owner/operator or their designated agent.

The maximum labor hours approved for a sampling event will be pro-rated by the actual work completed (i.e. 100% of wells sampled = 100% of labor hours; 80% of wells sampled = 80% of labor hours).

Late penalties are applicable to all reports, including those associated with additional scopes of work. Costs associated with report preparation will be denied 25% if the report is received one to four calendar days late. Costs associated with report preparation will be denied 100% if the report is received five or more calendar days late. All costs associated with an event will be denied if the report is received more than 30 calendar days late. The consultant remains responsible for report submittal.

If the completion deadline is not met by the consultant for additional scopes of work not associated with a report, KDHE reserves the right to deny partial or complete costs for the approved add scope.

The state of Kansas is relieved of all liability to an owner/operator, property owner, or renter for any loss of business, damages and taking of property associated with the corrective action. Any property damaged or destroyed during implementation of the project must be repaired to its original condition. All damaged property (i.e. utilities, product lines, electrical supplies, etc.) directly resulting from the consultant's work or the consultant's subcontractor's work will be repaired or replaced at the consultant's expense. The consultant must repair or replace such damaged utilities immediately. Failure to restore the property to (at least) original condition within 30 calendar days will result in holding of retainage until restoration is complete. Failure to restore the damaged property could result in disqualification from KDHE Trust Fund work.

Costs for reports not stamped by the appropriate Kansas licensed professional may be denied.

SECTION 6

BREACH OF CONSENT AGREEMENT

APPLICANT FAILS TO SIGN THE CONSENT AGREEMENT

To be eligible for Trust Fund reimbursement, the owner/operator must sign a consent agreement. If the owner/operator fails to sign the consent agreement, the KDHE Legal Staff will send a letter to the owner/operator notifying them that:

1. a copy of the consent agreement was sent to them on a given date,
2. KDHE has not received a signed copy of the consent agreement,
3. if a copy of the consent agreement is not received by a certain date, it will be understood that the O/O has withdrawn their application to the Trust Fund,
4. the O/O will be responsible for submitting a remediation plan to their respective District Office and the expenses associated with the implementation of the plan will not be eligible for reimbursement from the Trust Fund,
5. if the O/O does not implement the approved remediation plan, the site will be turned over to a Federal program for remedial action, and
6. action will be initiated to recover from the O/O all costs reimbursed to them by the Trust Fund.

APPLICANT FAILS TO SIGN A CONTRACT WITH A CONSULTANT

The owner/operator must sign a contract with a qualified consultant within four weeks of the bid amount being approved. (See Attachment 2 for a sample contract.) If an extension needs to be obtained, the owner/operator should make a verbal or written request to the Contractual Services Unit Supervisor. Failure to sign a contract in a timely manner can result in the owner/operator forfeiting their eligibility for reimbursement from the Trust Fund. Even though the owner/operator has a responsibility under the Consent Agreement, the contracting consultant has a responsibility to contact the owner/operator and send the contract to them in a timely manner.

If the owner/operator fails to sign a contract with a consultant within the four weeks allowed, the Trust Fund Staff will send a certified letter to the owner/operator notifying them that:

1. the Petroleum Storage Tank Release Trust Fund approved a certain amount of money for the scope of work outlined in the appropriate bid number,
2. an approved consultant submitted the amount,
3. the approval letter stated they had two weeks to sign a contract with a qualified consultant,
4. if the O/O fails to comply with the provisions outlined in the Consent Agreement and/or fail to follow the schedule described in the approval letter, it will be our understanding that they have withdrawn their application from the Trust Fund, and
5. if the O/O withdraws their application, their site will be turned over to the Federal Leaking Underground Storage Tank program for remediation. Under this program, action will be initiated to recover all costs expended by that program for remedial activity at their site.

NON-PAYMENT OF DEDUCTIBLE BY THE APPLICANT

The owner/operator is responsible for meeting their deductible under the conditions of the Trust Fund Consent Agreement (CA). Failure to pay the deductible costs will be treated as follows:

1. Consultants should notify KDHE that the owner/operator has not paid their deductible. The Trust Fund Staff will request the consultant's phone log and a copy of their correspondence with the owner/operator to determine if the consultant has taken reasonable steps to receive payment.
2. The Trust Fund Staff will contact the owner/operator informing them of their responsibility concerning the deductible. Per the Consent Agreement, the owner/operator is responsible for the first expenses up to and including their deductible amount. The deductible will be applied to the first RFR(s) received for processing, even if there are previous eligible expenses.
3. If the owner/operator does not pay the deductible within 30 days of contact, a certified letter will be sent to the owner/operator. Payment or payment arrangements must be made with the consultant within 30 days of the letter receipt date.
4. Thirty days after the letter receipt date in Item 3, the Trust Fund Staff will contact the consultant to determine payment status.
5. If the amount has not been paid, or satisfactory arrangements have not been made, the KDHE Legal Staff will send a certified letter to the owner/operator advising them that the owner/operator is in violation of their Consent Agreement and will be considered to have withdrawn their application to the Trust Fund. The KDHE will initiate cost recovery action and seek enforcement action to ensure the remediation is completed.

NON-PAYMENT OF INVOICE(S) BY THE APPLICANT

Applicants are responsible for payment of consultants. Failure to do so will result in the applicant bearing the full financial responsibility for remediating the site. When KDHE is notified that an applicant has failed to pay an invoice, the following steps will be taken:

1. Upon notification from the consultant that the owner/operator has not made payment, Trust Fund Staff will determine if the consultant has taken reasonable steps to receive payment.
2. Trust Fund Staff will attempt to call the owner/operator and inform them of their responsibility concerning paying the invoice(s) in a timely manner. If the owner/operator cannot be reached by telephone, a letter will be sent to them explaining their responsibility.
3. If the owner/operator does not pay the amount due within 10 days of the phone call or 14 days after KDHE mails the letter, Trust Fund Staff will send a certified letter to the owner/operator.
4. Ten days after the letter date in Item 3, Trust Fund Staff will contact the consultant to determine payment status.
5. If the amount due is not paid within the ten days, the KDHE Legal Staff will send a certified letter to the owner/operator advising them that the owner/operator is in violation of the Consent Agreement and will be considered to have withdrawn their application to the Trust Fund. KDHE will initiate cost recovery action and seek enforcement action to ensure the remediation is completed.

APPLICANT DOES NOT SUBMIT RFR IN A TIMELY MANNER

Applicants must submit RFRs in a timely manner. Consultants will notify KDHE if owner/operators have not forwarded RFRs for remediation. Upon receipt of such notification, KDHE will send a letter to the owner/operator informing them that:

1. KDHE has been notified by the consultant that an invoice or invoices have not been paid or forwarded by the owner/operator;
2. any and all invoices submitted by the consultant must be paid by the owner/operator OR forwarded to KDHE for processing within seven calendar days of receiving the invoices; and
3. the owner/operator must either pay the consultant immediately and request reimbursement from KDHE, or forward the invoice(s) with the request for reimbursement to KDHE for processing.

If the owner/operator fails to submit all invoices within seven calendar days of receiving the invoices, they will no longer be permitted to request co-payment of invoices. They will then be required to pay the consultant for all future invoices and will need to submit copies of canceled checks when they request reimbursement from KDHE.

APPLICANT DEPOSITS A CO-PAY CHECK

Consultants must notify KDHE if they have reason to believe that the owner/operator has deposited a co-pay check resulting in the consultant not receiving payment in a timely manner. Upon notification, KDHE staff will check with the Business Office to see if the co-pay check was indeed deposited.

If it was deposited, KDHE will send a letter to the owner/operator notifying them to send a check to the consultant within seven calendar days. If the owner/operator does not send a check to the consultant within the seven days, KDHE will forward the information to the KDHE Legal Office for further action.

APPLICANT DOES NOT FORWARD A CO-PAY CHECK

The owner/operator must forward co-pay checks to the consultant in a timely manner. If consultants have reason to believe that a check has not been forwarded, the consultants should notify KDHE.

Once KDHE has received notification, the Trust Fund Staff shall contact the owner/operator to find out what happened to the check.

If the owner/operator has inadvertently neglected to forward the check to the consultant, KDHE will advise them to do so immediately.

If the owner/operator has lost the check, KDHE will refer to the procedure for dealing with lost checks.

If the owner/operator has deposited the co-pay check and it has been cashed or credited to their account, KDHE will notify the owner/operator that they must send a check in the amount of the KDHE check to the consultant immediately.

If the owner/operator does not send a check to the consultant within seven calendar days of the notification, the Trust Fund Staff will forward the information to the KDHE Legal Office for further action.

CONSULTANT PAID - WORK INCOMPLETE OR INCORRECT

Consultants are expected to complete all work in a professional manner. If the Project Manager determines the Final Report is inadequate, the consultant will have 30 calendar days from the mailing date of the written comments to correct the deficiencies. If the deficiencies are not corrected within 30 calendar days, the original line item costs of those items will be subtracted from the percentage withheld.

If several discrepancies exist and the costs associated with them exceed the percentage withheld, KDHE will contact the consultant and request reimbursement of those costs. Reimbursement will be sent to KDHE (in the case of co-payments) or the owner/operator.

In the case of co-payments, if the consultant refuses to reimburse KDHE, the owner/operator will be requested to make the reimbursement.

If the owner/operator does not reimburse KDHE, they will be considered in violation of the consent agreement.

Violation of the consent agreement by the owner/operator will result in automatic withdrawal from the Trust Fund. KDHE will initiate legal action for cost recovery from the owner/operator.

NON-PAYMENT OF SUBCONTRACTORS AND OR MATERIAL VENDORS

A Release of Liens (or a Notarized Affidavits of Payment) from all subcontractors and major equipment suppliers is to be provided to KDHE before payment is made for related services or materials. If payment has been made to the contractor and KDHE receives notice from the subcontractor/vendor that they have not been paid, the consultant will be required to immediately make payment or reimburse KDHE for that amount. They also can be considered ineligible to participate in Trust Fund projects.

SECTION 8

OTHER APPROVALS

ADDING EQUIPMENT TO A REMEDIAL SYSTEM

When additional equipment for a remedial system is necessary, the following cost ranges will be used to determine the documentation requirements:

1. If the equipment unit cost will be greater than \$1,000, three written bids from various equipment vendors for the equipment will be required. All bidders are to bid on identical make and model of equipment.
2. If the equipment unit cost is between \$500 and \$1,000, three phone bids from various equipment vendors for the equipment will be required. All bidders are to bid on identical make and model of equipment.
3. If the equipment cost is less than \$500, the equipment can be approved by Trust Fund Staff without a bid process.

ADDING A SITE TO AN EXISTING SCOPE OF WORK

Sites may be added to approved scopes of work if KDHE determines an adjacent site should be worked (investigated/assessed/remediated) in conjunction with the original approved site.

When KDHE determines it is in the best interest of the citizens of Kansas to perform the scopes of work together, the Project Manager will contact the owner/operator of the adjacent site(s) and initiate action to:

1. verify that the owner/operator has an approved application to the Trust Fund.
2. determine if the consultant that contracted for the original investigation is willing to perform the additional scope of work for the original bid line item rates.
3. ensure the owner/operator is willing to have their site worked with the original site.
4. request that the owner/operator enter into a ¹Bid Assistance Modification agreement.
5. develop and obtain approval of a scope of work using rates established for the original site.
6. arrange for the consultant contracted to perform the original scope of work to enter into a contract with the owner/operator of the adjacent property.

¹ The Bid Assistance Modification agreement (Attachment 1) indicates that the owner/operator is aware that they have the option to hire the qualified consultant of their choice, but chose to enter into a contract with the aforementioned consultant performing the scope of work at the original site. This may be done without the adjacent site(s) going through the normal bidding process, as competitive bids have already been obtained for the original site.

ADVANCE APPROVAL OF SOIL REMOVAL

At times, it may be in the best interest of KDHE to have contaminated soil removed from a tank excavation at the time the tank is being removed. In most instances, this will be before the owner/operator has applied to the Trust Fund.

In these cases, the KDHE District representative can contact the Contractual Services Unit Chief and obtain advanced approval for specified work. The KDHE District representative will be present during soil removal and determine the volume that should be removed. Costs for removal of any soil beyond the amount removed under the direction of the KDHE District representative will not be applied towards the owners/operator's deductible. All pre-approved expenses will be applied toward the owner/operator's deductible when application is made to the Trust Fund.

REMEDICATION BY SOIL REMOVAL AND TREATMENT ("DIGOUT")

Qualified sites may be remediated through the Trust Fund without going through the normal preliminary investigation, monitoring, design and implementation stages if the quantity of contaminated soil is small. The Remediation by Soil Removal and Treatment policy allows for the transfer of contaminated soil to landfills as a remedial alternative for treatment of small quantities of soil. Other options include - but are not limited to - land farming, heat treatment, and bio-treatment.

The site clean up will be performed under a formal Trust Fund bid approval process and will be under the oversight of Trust Fund Staff. In general, the site activities will include soil removal, transportation to a treatment facility, soil replacement, compaction, replacement of concrete or asphalt (resulting from remediation), treatment of soil to within the acceptable petroleum clean-up guideline limits, and site restoration (grading, reseeded, structure replacement, etc.)

Guidelines are outlined below:

1. KDHE District Staff evaluate the site through a leak investigation or a closure assessment. During the assessment, district staff determines if remediation is possible through a soil removal and treatment process.
2. The vertical and horizontal extent of contamination should be limited and well defined.
3. Submission of a minimum of three bids and pre-approval of costs in writing by the Trust Fund Staff is required. Bids are to be on the company's letterhead and may be faxed to the Topeka office at (785) 559-4260 or e-mailed to the KDHE Project Manager for a rapid approval. The work activity is to be bid based upon units (such as cubic yards or tons) and rate per unit. Hours are not valid units for this procedure. Trust Fund staff determines if the unit rates are reasonable and if the technology is acceptable (land filling will generally not be approved). Incomplete bids will not be considered and will be returned to the owner/operator. To minimize the time involved in receiving bids, a bidding deadline may be assigned to the bid package. All deadlines must be met in order for a contractor to be considered for the proposed site activities.
4. The removal actions must significantly reduce potential health or environmental risks or project cost.
5. District Staff must make the recommendation to Trust Fund Staff that the site be considered for the procedure. District Staff and Trust Fund Staff must approve the

- proposed scope of work.
6. The proposed scope of work and all bids must be reviewed by Trust Fund staff. A maximum number of units and unit rates will be approved by Trust Fund Staff based upon the lowest bid. If all bid rates are higher than customary, Trust Fund Staff can establish and approve reasonable rates based upon data gleaned from similar projects. Only items approved by the Trust Fund Staff in advance, and in writing, will be eligible for reimbursement.
 7. The tank owner/operator must have an approved application to the Trust Fund.
 8. A deductible amount shall be established for the site based upon the Trust Fund's standard \$3,000 base and an additional \$500 per tank. Applicants are responsible for the first portion of remedial expense based upon this deductible amount. If the owner/operator fails to pay their deductible amount, they will be in violation of Trust Fund agreements and all expenses previously reimbursed by the KDHE will be recovered from the owner/operator.
 9. Applicants enter into contracts with the contractor(s) before work begins. Both parties must sign the contract.
 10. Applicants and contractors will be liable for all activities associated with the project.
 11. Applicants must enter into a formal Consent Agreement with KDHE. This Consent Agreement will be forwarded to the owner/operator after their application to the Trust Fund has been approved.
 12. All reimbursement requests must be submitted to the Trust Fund Staff no later than 60 days after the completion of the project.
 13. Only expenses associated with remedial activities are eligible for reimbursement. Reimbursement excludes costs associated with removal, replacement or retrofitting of petroleum storage tanks or any other costs incurred during the project that are not specifically included in the bid document(s) or pre-approved in writing by Trust Fund Staff.
 14. Any changes to the approved project must be submitted in writing and approved by Trust Fund Staff before the work is executed.
 15. Contractors are under contract to the Trust Fund applicant who is responsible for all costs incurred in completing the project.
 16. It is the responsibility of the contractor(s) to secure the site to protect the public from danger.
 17. If remediation cannot be completed such that the site can be closed according to KDHE criteria and the owner elects not to continue the work at their own expense, the site will be placed back into the normal UST fund procedure. The owner will be eligible for reimbursement of authorized expenses and will not incur additional deductible expenses.

SECTION 9

ADMINISTRATIVE

INFORMATION REQUESTS

Requests from the general public to review Trust Fund records are to be submitted in accordance with the instructions located on the Kansas Department of Health and Environment web page at http://www.kdheks.gov/open_records.html.

BID RESULTS

Bid results are available to the public as open records. To request bid results, a “Kansas Department of Health and Environment (KDHE) Request for Records – Kansas Open Records Act” Form located at http://www.kdheks.gov/open_records.html must be submitted. The requested information will not be released until after the Bid Approval letters have been mailed. (See also “Information Requests”.)

ATTACHMENT 1

UNDERGROUND PETROLEUM STORAGE TANK RELEASE TRUST FUND

BID ASSISTANCE MODIFICATION FORM

Facility Name: _____

Facility Address: _____

KDHE Project Code: _____

Facility Contact Person: _____

I understand that KDHE is in the process of investigating an Underground Fund site adjacent to the above referenced facility. KDHE is requesting to conduct the investigatory work to be performed at the above facility in conjunction with the adjacent site.

As the owner/operator of the above facility, I understand that I have the option to hire the consultant of my choice to perform the required site investigation at my facility; however, I intend to hire the same consultant who is investigating the adjacent facility so that a concurrent investigation can be conducted. KDHE is hereby authorized to combine investigatory and corrective action plans necessary to address contamination detected at the above facility with the same work being performed at the adjacent Underground Fund facility. This authorization is granted with the understanding that charges assessed to perform the investigatory work will be consistent with that bid by the consultant for the adjacent facility. The standard bidding procedure for Underground Fund sites will not be utilized for the above facility.

Print
Name: _____

Signature: _____

Date: _____

Please return completed form within two weeks -- Thank You

CONTRACT

This **CONTRACT** is entered into between _____ hereinafter referred to as the Owner/Operator; and _____ hereinafter referred to as the Vendor.

WHEREAS, the Owner/Operator is in need of Storage Tank consulting and testing services at KDHE project name _____, KDHE project code _____, site address _____,

the Owner/Operator has requested bids from qualified firms to provide said services, and the Vendor is qualified to provide the required services, the Owner/Operator and Vendor agree as follows:

1. The Vendor shall perform all services called for under the Request for Proposal (RFP) in accordance with the specifications called for in said RFP.
2. The Owner/Operator shall compensate the Vendor for its services under the terms and conditions of said RFP in the amount of \$_____, with payment to be made upon successful completion of the services required by the RFP which is incorporated herein.
3. It is expressly agreed that the terms of each and every provision in this Contract shall prevail and control over the terms of any other conflicting provision in any other document relating to the subject matter of this Contract or to which this Contract is attached.
4. This Contract shall be subject to, governed by, and construed according to the laws of the State of Kansas.
5. The Vendor shall comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and shall not discriminate against any person who performs work pursuant to this Contract, because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in this work, national origin or ancestry, or age.
6. This Contract shall not be considered accepted, approved or otherwise effective until the Owner/Operator receives the required insurance certificates.
7. By signing this Contract, the respective representatives of the Owner/Operator and Vendor hereby represent that they are duly authorized to execute this Contract on behalf of the party they represent and that their principal agrees to be bound by the provisions herein.
8. The Owner/Operator will not be responsible for, nor indemnify a Vendor for, any federal, state or local taxes that may be imposed or levied upon the subject matter of this Contract.

Owner/Operator

Date

Vendor

Date

ATTACHMENT 3

LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

I/We, the undersigned Owner(s)/Operator(s) do hereby appoint _____, herein after referred to as "Vendor", of _____ County, _____ State, to be my/our true and lawful attorney in fact as defined in the KDHE's Bid Project Proposal in my place and stead, and for my use and benefit to represent me/us concerning reimbursement matters relating to KDHE project name _____, KDHE project code ____ - ____ - _____, site address _____.

I/We authorize the Vendor to prepare, sign, and submit reimbursement requests to KDHE on my/our behalf.

I/We authorize the Vendor to receive, endorse, and redeem co-pay reimbursement checks from KDHE on my/our behalf.

I/We further give and grant unto said attorney in fact full power and authority to do everything necessary and proper to be done in the exercise of any of the foregoing powers as fully as I/we might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirm all that the attorney shall lawfully do or cause to be done hereunder. Granting these powers do not relieve me/us of our obligations as defined the Consent Agreement signed between me/us and KDHE.

IN TESTIMONY WHEREOF, I have hereunder set my hand this ____ day of _____, 20____.

Signature of Owner/Operator

Printed Name of Owner/Operator