

**KANSAS CITY AREA TRANSPORTATION AUTHORITY
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM**

**FEDERAL FISCAL YEARS
2021 THROUGH 2023**

Updated June 2022

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DISADVANTAGED BUSINESS ENTERPRISE POLICY STATEMENT

**KANSAS CITY AREA TRANSPORTATION AUTHORITY
FEDERAL TRANSIT ADMINISTRATION ASSISTANCE GRANTS**

The Kansas City Area Transportation Authority (KCATA) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26 "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Program."

It is the policy of the KCATA to ensure that DBE's as defined in CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also KCATA's policy to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBE's in DOT-assisted contracts;
6. Promote the use of DBE's in all types of federally assisted contracts and procurement activities; and
7. Assist the development of firms that can compete successfully in the marketplace outside of the DBE Program.

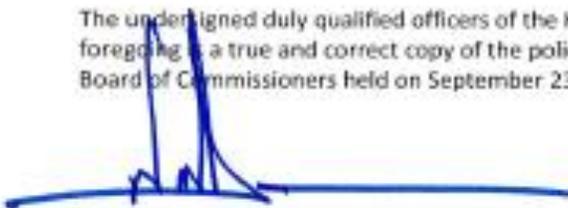
Mr. Whitney Morgan has been appointed as the DBE Liaison Officer. Mr. Morgan is responsible for implementing all aspects of the DBE program in cooperation with the KCATA Procurement Department. All executives and their management staff share in the responsibility for making KCATA's DBE Program a success.

Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the KCATA in its financial assistance agreements with the Department of Transportation.

The KCATA has disseminated this policy statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts as part of the solicitation documents.

CERTIFICATE

The undersigned duly qualified officers of the Kansas City Area Transportation Authority certify that the foregoing is a true and correct copy of the policy statement adopted at a legally convened meeting of the Board of Commissioners held on September 23, 2020.



David Bower, Chairman
Board of Commissioners



Anne Post, Secretary
Board of Commissioners

GENERAL REQUIREMENTS

1. Objectives and Policy Statement §26.1

The objectives of Kansas City Area Transportation Authority's ("KCATA," "Authority") DBE Program are found in the policy statement on the first page of this document. This policy statement is circulated throughout our organization and to the business communities that perform work on KCATA's United States Department of Transportation (DOT)-assisted contracts.

2. Applicability § 26.3

The KCATA is the recipient of Federal transit funds authorized by Bipartisan Infrastructure Law.

3. Definition of Terms §26.5

The terms used in the Program are defined in 49 CFR Part 26.5 and are attached as Attachment A. KCATA will add and include any new or amended definitions as they are provided by the USDOT.

4. Non-discrimination §26.7

The KCATA will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 Code of Federal Regulations (CFR) Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the KCATA will not, directly or through contractual or other arrangements, use criteria or methods of administration that defeat or substantially impair accomplishing the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

5. Record Keeping §26.11

Uniform Report of DBE Awards or Commitments and Payments (§26.11(a)):

KCATA will report DBE participation to the FTA using the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to 49 CFR Part 26, at the intervals stated on the form. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List (§26.11(c)):

The KCATA has created a bidders list, consisting of information about DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to use the bidders' list approach to calculating overall goals. The bidder list includes the firm name, address, DBE/non-DBE status, firm's age, and annual gross receipts.

The information is primarily obtained through the Vendor Registration Form. It is KCATA's policy that any firm wishing to do business with the Authority shall complete a Vendor Registration form that includes the above information. These forms are included in KCATA's bid documents with instructions that Prime Contractors shall complete them if not already on file.

KCATA also utilizes the Missouri Regional Unified Certification Committee (MRCC) database to solicit DBE firms as potential bidders on projects.

6. Federal Financial Assistance Agreement §26.13

The Kansas City Area Transportation has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

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

This language will appear in DOT-assisted agreements with sub-recipients.

Contract Assurance (§26.13(b)):

KCATA will ensure nondiscrimination contract assurance in all contracts with DOT funds. KCATA ensures that the following clause is placed in every DOT-assisted contract and subcontract (see attached sample of KCATA's CIVIL RIGHTS CLAUSES Template):

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the KCATA deems appropriate, which may include but is not limited to:

1. Withholding monthly progress payment;
2. Assessing sanctions;

3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsive.

KCATA contractors are notified that KCATA will periodically review and audit subcontractor agreements to ensure that the proper clauses flow down.

ADMINISTRATIVE REQUIREMENTS

1. DBE Program Updates §26.21

KCATA will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

2. DBE Liaison Officer (DBELO) §26.25

KCATA has designated the following individual as our DBE Liaison Officer (DBELO):

Whitney Morgan, Civil Rights/DBE Manager
1350 East 17th Street
Kansas City, MO 64108
(816) 346-0277
wmorgan@kcata.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the KCATA complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to President/CEO Frank White III, concerning DBE program matters.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in cooperation with KCATA's Procurement Department. The duties and responsibilities of the DBELO include the following:

- a. Gathers and reports statistical data and other information as required by DOT.
- b. Reviews third party contracts and purchase requisitions for compliance with this program.
- c. Works with all departments to set overall annual goals.
- d. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
- e. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.
- f. Analyzes KCATA's progress toward attainment and identifies ways to improve progress.
- g. Participates in pre-bid meetings and in project kick-off meetings.

- h. Advises the General Manager and Board of Commissioners on DBE matters and achievement.
- i. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- j. Plans and participates in DBE training seminars.
- k. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Missouri Regional Unified Certification Committee.
- l. Provides outreach to DBEs and community organizations to advise them of opportunities.
- m. Accesses and monitors the Missouri Regional Certification Committee's updated directory of certified DBEs.

Other Support Personnel

KCATA's Procurement and Project Management departments share the responsibility for ensuring the effective implementation of the DBE Program. They shall give full cooperation and active support to the DBELO and designees in this effort. Superiors, as part of their tasks and standards, shall evaluate their performance in this area.

Procurement and Project Management staff shall

- a. Incorporate DBE aspirational goal and appropriate DBE language and provisions into IFBs and KCATA'S CIVIL RIGHTS CLAUSESs.
- b. Inform the DBELO of any changes to IFBs and KCATA'S CIVIL RIGHTS CLAUSESs.
- c. Forward copies of bids to the DBELO for evaluation and compliance with DBE requirements.
- d. Allocate appropriate resources to participate with the DBELO at major trade fairs targeted to DBEs.
- e. Alert the DBELO of any potential problems concerning DBE utilization during contract administration.
- f. Ensure that KCATA'S CIVIL RIGHTS CLAUSESs do not contain unnecessary requirements which could unduly restrict or eliminate small businesses from competition.

3. DBE Financial Institutions §26.27

It is the policy of the KCATA to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions. To identify and use such institutions, we review the market on a quarterly basis for financial institutions owned,

controlled and managed by socially and economically disadvantaged individuals and assess the viability of such institutions. To do this, KCATA utilizes the Missouri Regional Certification Committee's database of DBE firms, as well as searching the Federal Reserve's list of minority owned banks (www.federalreserve.gov/releases/mob/current/default.htm). KCATA has identified the following minority-owned financial institutions in the Kansas City area:

Liberty Bank & Trust Company
Sidney King, Regional Vice President
1314 N. 5th Street
Kansas City, KS 66101
(913) 321-7005
sking@libertybank.net

Liberty Bank & Trust Company
Victor Hammonds, Vice President – Commercial Lending
1670 E. 63rd Street
Kansas city, MO 64110
(816) 822-8560
vhammonds@libertybank.net

Central Bank of Kansas City
2301 Independence Boulevard
Kansas City, MO 64124
(816) 483-1210

KCATA has requested information from these banks to develop literature that will be provided to DBE and non-DBE companies on the business banking services offered. This literature will be available during community outreach activities and at pre-bid conferences when appropriate. Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

4. Prompt Payment Mechanisms §26.29

Prompt Payment 26.29(a): The following language is included in each DOT-assisted prime contract and applies to both DBE and non-DBE subcontractors.

Prompt Payment. The Contractor shall establish procedures to ensure timely payment of amounts due pursuant to the terms of its subcontracts. The Contractor shall pay each DBE and non-DBE subcontractor for satisfactory performance of its contract, or any billable portion thereof, in accordance with the timing set forth in any applicable laws or no later than 30 days, whichever is less, from the date of the Contractor's receipt of payment from the Authority for work by that subcontractor.

Retainage 26.29 (b): The following language is included in each DOT-assisted prime contract and applies to both DBE and non-DBE subcontractors.

Prompt Return of Retainage. If retainage is withheld from subcontractors, the Contractor is required to return any retainage payment to those DBE and non-DBE subcontractors in accordance with the timing set forth in any applicable laws

or within 30 days, whichever is less, from the date of receipt of the retainage payment from the Authority related to the subcontractor's work. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of KCATA. KCATA may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

Monitoring and Enforcement 26.29(d): The following language is included in each DOT-assisted prime contract and applies to both DBE and non-DBE subcontractors.

The Contractor shall certify on each payment request to the Authority that payment has been or will be made to all subcontractors. Lien waivers may be required for the Contractor and its subcontractors. The Contractor shall notify KCATA on or before each payment request, of any situation in which scheduled subcontractor payments have not been made.

If a subcontractor alleges that the Contractor has failed to comply with this provision, the Contractor agrees to support any Authority investigation, and if deemed appropriate by the Authority, to consent to remedial measures to ensure that subcontractors are properly paid as set forth herein.

The participation of the DBE subcontractor or supplier will not be credited toward the Prime Contractor's DBE achievement unless and until the amount being counted toward the goal has been paid to the DBE.

If the Contractor fails to comply in the time specified our contract officer will issue an order stopping all payments until satisfactory action has been taken.

5. DBE Directory §26.31

The KCATA, in cooperation with the Missouri Regional Certification Committee, maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The directory is updated on a monthly basis. The Directory is currently located on the Missouri Department of Transportation's website at www.modot.mo.gov/ecr/index.htm. This link is included on KCATA's website and in KCATA's procurement solicitations.

6. Overconcentration §26.33

Overconcentration exists when DBE firms are so over concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work. No later than May 2021, KCATA will conduct a review of the scopes of work being awarded to DBE subcontractors to ensure that DBEs are not over-utilized in specific areas to the exclusion of non-DBE firms.

KCATA's approach to this analysis will be similar to the DBE goal setting process. KCATA will determine the number of DBEs in relevant industries listed in the Missouri Regional Certification Committee (MRCC) DBE Directory compared to the number of firms listed in the census bureau database. KCATA will also review current, relevant disparity and/or availability studies that have been performed by DOT recipients in the MRCC to determine if they have identified any issues with overconcentration. Data from KCATA's contract awards over a three-period will also be reviewed to determine if DBE's are being overused in any area of work in the categories relative to KCATA's projects. Should a determination of overconcentration be made, KCATA would consider using technical assistance, incentives and other appropriate measures designed to assist DBEs in performing work outside of the specific field of over concentration. KCATA may also consider varying the use of contract goals in accordance with §26.51 to ensure that non-DBEs are not prevented from competing for subcontracts. FTA must review KCATA's determination of overconcentration and approve any measures designed to address the issue.

Subsequently, KCATA will conduct re-evaluations for overconcentration on a triennial basis during the DBE goal setting process.

7. Business Development Program §26.35

KCATA does work closely with the metropolitan organizations and local agencies to coordinate outreach activities to assist DBEs in accessing Prime Contractors and to educate small and minority businesses on how to do business with KCATA. A list of these organizations and activities is included as Attachment C. In addition, KCATA electronically communicates bid proposals to minority/small business community organizations, trade organizations, area Chambers of Commerce, and known DBE firms on its bidder's list and those found in the MRCC database.

KCATA also hosts its own DBE/SBE workshops where vendors are able to learn more about DBE/SBE certification, upcoming procurements, vendor registration, and how to bid properly. These workshops are hosted quarterly and are hosted in KCATA's Board Room. The standard attendance at these workshops is between 30-40 vendors and KCATA staff. Vendors are also able to meet and greet with KCATA staff to develop better working relationships with each other.

The KCATA is working with the MRCC partners to develop a "back office" initiative to provide DBEs and Small Business Enterprises (SBEs) with educational classes, seminars and networking opportunities to help make their businesses more successful. These seminars and classes will focus on business development and will evolve as participants provide input on additional training areas. This initiative is currently underway in the St. Louis area, and is being developed for the Kansas City area.

As KCATA continues to develop its SBE Program, non-DBE small business will be identified and included in the announcements for these training opportunities and community outreach activities. During the last FTA reporting period, KCATA established its first 100% SBE Set-Aside projects being the Regional Bus Stop Improvements project. During this next FTA reporting period KCATA hopes to identify several projects to set aside for SBEs.

8. Monitoring and Enforcement Mechanisms §26.37

The KCATA will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

- a. We provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This is accomplished by requiring that Prime Contractors submit lien waivers, copies of all subcontractors' certified payrolls (if applicable), and/or copies of paid invoices from DBE subcontractors with each application for payment. The Subcontractor Utilization form captures payment information for all DBE and non-DBE subcontractors and is also required with each pay application.
- b. KCATA performs Commercially Useful Function (CUF) Determination On-Site interviews with DBE subcontractors during the project performance to determine that the DBE is performing a commercial useful function as defined in 26.55. KCATA also conducts Labor Compliance and EEO Contract Compliance Job-Site interviews regarding Davis Bacon/Prevailing Wage compliance.
- c. KCATA performs periodic reviews of the agreements between the Prime Contractor and its subcontractors, as well as subcontractor invoices to the Prime Contractor and from its suppliers.
- d. The following language is included in KCATA's Contracts:

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as KCATA deems appropriate. Each subcontract the Contractor signs with the subcontractor must include the assurance in this paragraph (see 49 CFR Part 26.13(b)).

- e. KCATA maintains records of actual payments to DBE firms for work committed to them at the time of contract award and compares these attainments to commitments. KCATA provides information for both commitments and attainments on its required reports to FTA.
- f. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
- g. We will consider similar action, including responsibility determinations in future contracts.

9. Small Business Development Program §26.39

To facilitate competition by small business on projects funded in part by the Federal Transit Administration (FTA), KCATA is partnering and collaborating with Missouri Regional Certification Committee in a Small Business Development Program. This program fosters small business growth and competitive bidding on USDOT funded projects. The program operates in a race and gender-neutral manner and is designed to include all segments of the region's

business community. The program is open to participation without regard to race, color, sex, religion, national or ethnic origin, age or disability. KCATA uses the Small Business Administration's (SBA) definition and size standards (as it may be amended from time to time) to define a small business as:

“...a small business concern is one that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period.”

Small Business Enterprises (SBEs) shall complete a “Small Business Enterprise Declaration of Certification” affidavit developed by the MRCC and may submit a copy of its SBA 8A Certification if applicable. KCATA also utilizes the information obtained from firms on its Vendor Registration Form.

The program will be implemented and monitored by KCATA's DBELO in cooperation with the Procurement Department. The program will become effective February 28, 2013 or nine months after USDOT approval.

KCATA's Small Business Enterprise Program is included as Attachment H.

GOALS, GOOD FAITH EFFORTS, AND COUNTING

1. Set asides or Quotas §26.43

KCATA does not use quotas or DBE set-asides in any way in the administration of this DBE program.

2. Overall Goals §26.45

KCATA will follow the guidance established in 49 CFR Part 26.45 to determine the overall DBE goals. A description of the methodology used to calculate the overall goal of 23.3 % follows.

DBE Overall Goal Summary FFY 2021-2023:

KCATA's overall Disadvantaged Business Enterprise (DBE) goal for federal fiscal years 2021 through 2023 is projected at 23.0%. KCATA projects that 16.9% of the overall goal will be achieved through race-neutral means and 6.4% of the overall goal will be achieved through race-conscious means.

Race-conscious means are means that achieve DBE participation by establishing contract specific goals for projects. Race-neutral means are means, which can be used to increase opportunity, in part, for DBE vendors absent of contract specific goals.

Methodology for Calculating KCATA's Overall DBE Goal

Step One: Base figure

KCATA's methodology for establishing its goal for federal fiscal years 2021 through 2023 is based, in part, on the availability of DBE vendors relative to the availability of all businesses able to participate on DOT assisted contracts in the area. The availability of DBE vendors are derived from *Missouri Regional Certification Committee* (MRCC) directory. The MRCC partners are: St. Louis Lambert International

Airport, MoDOT, Metro (Bi-State Development Agency), Mid America Regional Council (MARC), City of Kansas City, Missouri, and East-west Gateway Council of Governments. For the availability of all business vendors, the information is gathered from U.S Census Bureau data.

The base figure for the relative availability of DBE's was calculated as follows:

$$\text{Base figure} = \frac{\text{Ready, willing, and able DBEs (from MRCC directory)} \quad 1,509}{\text{All firms ready, willing and able (from U. S. Census Data)} \quad 8,631} = 17.48\%$$

Weighted Rate

The Weighted Rate is based on the formula:

# of DBEs in Work Category	÷	# of Total Firms In Category	×	% of Contract \$\$ in Category	×	100
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KCATA reviews the contracting opportunities that are derived from its capital project projection for federal fiscal year 2018 through 2020 and estimated funding from federal sources – operating funds for CMAQ, JARC, Enhanced Mobility 5310 funding and Urbanized Formula Fund 5307.

Work Category	# of DBEs in Category	# of Total Firms in Category	Value of Federal Funds in Category	% of Total Categories	Total
Professional Services	268	2,825	\$1,623,200	2.5%	0.0023
Other Services	251	2,117	\$4,929,498	7.5%	0.0089
Construction	956	3,059	\$42,219,672	64.1%	0.2005
Materials & Equipment	34	630	\$17,044,933	25.9%	0.0140
TOTAL OF WEIGHTED RATE (BASED ON FORMULA)					22.57%

Step Two: Adjustments to Goal

Step Two allows for adjustment to the goal based on KCATA's achievement of DBE participation in previous years. For this period, KCATA used the following information:

FFY	Approved Goal	Actual Achievement	Race Conscious		Race Neutral	
			Goal	Actual	Goal	Actual
2016/2017	15.0%	17.0%	4.1%	4.7%	10.9%	12.3%
2018/2019	15.0%	31.0%	4.1%	9.9%	10.9%	22.5%

KCATA determined the median value of this data to be 24.0% (17.0 + 31.0/2)

Based on the accepted methodology, KCATA determined the overall goal as:

Median Value	24.0%
Plus HIGHER of Base Rate or Weighted Rate	<u>22.6%</u>
	46.6%

Average of Two Figures (46.6% ÷ 2)

23.3%

KCATA's overall annual goal for federal fiscal years 2021 - 2023 is the 23.0% of the Federal financial assistance we will expend in DOT-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles.

\$65,817,303 is the dollar amount of DOT-assisted contracts that KCATA expects to award during FFYs 2021 through 2023. This means that KCATA has set a goal of expending \$15,335,431,59 with DBEs during this three-year term, exclusive of FTA funds to be used in the purchase of transit vehicles.

Public Participation

KCATA published its goal information for 45 days and notice of a pending public hearing in these publications:

Kansas City Star
Kansas City Hispanic News (minority-owned)
Kansas State Globe (minority-owned)

Kansas City Call (minority-owned)
Dos Mundos (minority-owned)

This proposed goal and public hearing notice was also issued to 13 minority and community organizations. KCATA did not receive any comments on this proposed goal. KCATA held a public meeting on September 4th to present the methodology that determined our DBE goal. There were 15 attendees.

This section of the program will be updated every three years to coincide with the DOT goal submittal timeline and will reflect any changes in the regulations and guidance.

In accordance with Section 26.45(f) KCATA will submit its overall goal to DOT on August 1st (October 1st this time) at three-year intervals, based on a schedule established by FTA. KCATA publishes a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at its principal office for 30 days following the date of the notice, and informing the public that KCATA and DOT will accept comments on the goals for 45 days from the date of the notice. This notice is e-mailed to minority and community organizations in the metropolitan Kansas City area, posted on KCATA's website, and posted on KCATA's various social media platforms. Normally, we will issue this notice by June 1 or each year. The notice includes addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed. KCATA also publishes a notice for a public hearing in which the proposed goal and its rationale are explained.

KCATA's CEO and Board of Commissioners are briefed on the proposed goal and staff's efforts in soliciting public input before approving the goal for submission to FTA. The overall goal submission to FTA will include a summary of information and comments received during this public participation process and our responses.

The overall goal becomes effective on October 1st, unless we have received other instructions from FTA. This overall goal will remain in effect for three years. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

3. Goal Setting and Accountability §26.47

If the awards and commitments shown on KCATA's "Uniform Report of Awards or Commitments and Payments" at the end of any fiscal year are less than the overall applicable to that fiscal year, KCATA will:

- a. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments; and
- b. Establish specific steps and milestones to correct the problems identified in the analysis.

This analysis and corrective action plan will be disseminated to KCATA personnel and will be available for review by FTA. The DBELO will be responsible for monitoring the action plan.

Shortfall Analysis:

KCATA understands that should we fall short of achieving the overall DBE goal by the end of each federal fiscal year, a shortfall analysis must be prepared and submitted to FTA by December 29 of that year. Data used in the completion of the June 1 and December 1 Uniform Report of Commitments, Awards and Payments reports will be the factor used to determine if KCATA fell short of meeting the overall DBE goal. The shortfall analysis will:

- Detail and explain the level of DBE participation achieved during the federal fiscal year
- Identify the percentage of the goal met through race-neutral and race-conscious measures
- Contain a list of race-neutral measures used during the fiscal year
- Describe the corrective action plan to put in place for the following federal fiscal year in an effort to meet the overall DBE goal

Identify a timeline for implementing the corrective actions.

4. Transit Vehicle Manufacturers (TVM) Goals §26.49

KCATA will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. KCATA is required to submit, within 30 days of making an award, the name of the successful bidder and the total dollar value of the contract. Only eligible TVMs may bid on FTA-assisted transit vehicle procurements. As applicable KCATA reviews FTA's "List of Transit Vehicle Manufacturers (TVMs) Eligible to Bid on Federally Funded Transit Contracts." Only those transit vehicle manufacturers listed on FTA's eligible TVMs list, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.

If non-TVM vehicles are purchased, or DBE TVMs are not available, KCATA may, at its discretion and with FTA approval, establish project specific goals or triennial DBE goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this section.

5. Breakout of Estimated Race-Neutral & Race-Conscious Participation §26.51(a-c)

KCATA will meet the maximum feasible portion of our overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a

prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

In an effort to facilitate race-neutral participation, KCATA's efforts include, but are not limited to, the following:

- a. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under 26.39 of this part;
- b. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- c. Providing technical assistance and other services;
- d. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; providing information in languages other than English, where appropriate);
- e. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- f. Providing services to help DBEs and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency (see "KCATA's Small Business Enterprise Program," Attachment H);
- g. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- h. Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- i. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

Each time KCATA submits its overall goal for review by the FTA, we will also submit our projection of the portion of the goal that we expect to meet through race-neutral means and the basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.

KCATA will adjust the use of race neutral and/or race conscious measures as needed to meet the overall goal. It is KCATA's policy to keep its Board of Commissioners and executive staff apprised on an annual basis of DBE participation achieved.

Breakout of KCATA's Estimated
Race-Neutral & Race Conscious Participation

DOT recipients must meet the maximum feasible portion of their overall goal by using race neutral means of achieving DBE participation. Race neutral DBE participation occurs when a DBE wins a contract or subcontract that did not have contract specific goals, or when the DBE status was not considered when making the award.

Race neutral does not mean that no efforts are made to facilitate DBE participation. Race neutral means include:

- Making bid solicitations attractive to DBE firms
- Simplifying or reducing bonding requirements
- Making DBEs aware of opportunities
- Distributing DBE directories to prime contractors

Race Conscious means the Recipient must establish contract goals to meet any portion of its overall goal that it does not project being able to meet using race neutral means. The following rules apply:

- Contract goals may only be used on DOT-assisted contracts with subcontracting opportunities (set-asides are not allowed).
- Goals are not required on all contracts, nor must they match the overall goal.
- KCATA may not set contract goals at all if it projects meeting the entire goal through race neutral means.
- KCATA must reduce contract goals if it projects that during the year it will exceed the overall goal.
- Conversely, if KCATA expects to fall short of its overall goal, it should add contract goals, as appropriate.

KCATA will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. KCATA estimates that, in meeting its overall goal of 23.3%, KCATA will obtain 16.9% from race-neutral participation and 6.41% through race-conscious measures.

KCATA's race neutral goal calculation for the federal fiscal years 2021-2023 is based on historical race neutral participation in achievement/commitment for the DOT-assisted contracts.

According to KCATA's December 2019 semi-annual report for FFY 2019, KCATA achieved 25.6% DBE participation via race neutral means based on the actual percentages of total DBE participation.

FFY	Approved Goal	Actual Achievement	Race Conscious		Race Neutral	
			Goal	Actual	Goal	Actual
2016/2017	15%	17%	4.1%	4.7%	10.9%	12.3%
2017/2018	15%	31.0%	4.1%	8.5%	10.9%	22.5%

Based on the mathematical calculation found in 49 CFR 26.51(f)(4), KCATA determined the following:

$$22.5\% \times .725 = 16.9\% \text{ of Overall Goal will be Race Neutral (R/N)}$$
$$2.5\% \times .275 = 6.41\% \text{ of Overall Goal will be Race Conscious (RC)}$$

In order to ensure that KCATA's program will be narrowly tailored to overcome the effects of discrimination, if contract goals are used, KCATA will adjust its use of contract goals as needed to meet the overall goal. KCATA will track and report race neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:

- DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures;
- DBE participation through a subcontract on a prime contract that does not carry DBE goal;
- DBE participation on a prime contract exceeding a contract goal; and
- DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

KCATA will maintain data separately on DBE achievements in contracts with and without contract goals.

This section of the program will be updated tri-annually when the goal calculation is updated.

6. Contract Goals §26.51(d-g)

KCATA will use contract goals to meet any portion of the overall goal it does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

KCATA will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. KCATA need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

KCATA will express its contract goals as a percentage of the total amount of a DOT-assisted contract.

If KCATA determines that it will exceed its overall goal, it will reduce or eliminate the use of contract goals to the extent necessary to ensure that the overall goal is not exceeded. If KCATA determines that it will fall short of the overall goal, appropriate modifications to the use of race-neutral and/or race-conscious measures will be made.

7. Good Faith Efforts Procedures §26.53

Demonstration of good faith efforts (§26.53(a) & (c)):

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. KCATA's bid solicitation documents contain language on the Contractor's DBE requirements, including acceptable examples of good faith efforts, which have been adopted from Appendix A of Part 26. The solicitation language is found in Attachment D.

The DBELO is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

KCATA will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before we commit to the performance of the contract by the bidder/offeror. KCATA may also take into consideration the past performance of a contractor with regards to meeting the DBE commitment on previous contracts as a matter of responsibility.

Information to be submitted (§26.53(b)):

KCATA treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsibility.

Each solicitation, whether or not a contract goal has been established, will require the bidders/offerors to submit the following information:

- a. The names and addresses of DBE firms that will participate in the contract;
- b. A description of the work that each DBE will perform;
- c. The dollar amount of the participation of each DBE firm participating;
- d. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal (Letter of Intent to Subcontract); and
- e. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment (Letter of Intent to Subcontract).

If the contract goal is not met, evidence of good faith efforts must be submitted by the Contractor. In evaluating good faith efforts, KCATA will consider whether the Bidder has performed the following, along with any other relevant factors:

- a. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- b. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract

work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

- c. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- d. Negotiating in good faith with interested DBEs.
 - 1) It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - 2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, include DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- e. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- f. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the KCATA or contractor.
- g. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- h. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs

KCATA has developed forms to capture this information; see Attachment E. These forms are to be included in the bidder/offeror's bid submittals.

In determining whether a bidder has made good faith efforts, KCATA may take into account the performance of other bidders in meeting the contract goals. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, KCATA may reasonably

raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtain by other bidders, KCATA may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

The form "KCATA's Determination of Good Faith Efforts" is included as Attachment F.

Administrative reconsideration (§26.53(d)):

Within five days of being informed by KCATA has failed to document sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offeror should make this request in writing to

Terri Barr, VP and Chief of Staff
Kansas City Area Transportation Authority
1350 East 17th Street
Kansas City, Missouri 64108
(816) 346-0835
tbarr@kcata.org

The VP and Chief of Staff will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the Director of Procurement to discuss the issue of whether it met the goal or made adequate good faith efforts to do. KCATA will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract (§26.53(f)):

A prime contractor cannot terminate, release, or substitute a listed or approved DBE subcontractor without prior written consent from KCATA. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

KCATA will provide written consent only if the prime contractor has demonstrated good cause to terminate the DBE firm, as established by Section 26.53(f)(3) of the DBE regulations. Good cause includes the following circumstances:

- a. The listed DBE subcontractor fails or refuses to execute a written contract;
- b. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;

- c. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
- d. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- e. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- f. KCATA has determined that the listed DBE subcontractor is not a responsible contractor;
- g. The listed DBE subcontractor voluntarily withdraws from the project and provides written notice of its withdrawal to the prime contractor and/or KCATA;
- h. The listed DBE is ineligible to receive DBE credit for the type of work required;
- i. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- j. Other documented good cause that KCATA determines compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

The prime contractor must submit a "Request for Subcontractor Modification, Replacement or Termination of Disadvantaged Business Enterprise (DBE) Project Participation" form and include any supporting documentation that demonstrates good cause for the request. This form is included as F.

Before submitting its request to terminate or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to KCATA, of its intent to request to terminate and/or substitute, and the reason for the request. The DBE has five days to respond to the prime contractor's notice and advise KCATA and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why KCATA should not approve the prime contractor's action.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions and/or substitutions of DBE firms put forward by bidders/offerors in negotiated procurements.

If the prime contractor fails or refuses to comply with the procedures specified, KCATA's contracting officer will issue an order stopping all or part of payment/work until satisfactory action has been taken.

This language is part of KCATA's bid solicitations and is included as Attachment D of this program.

8. Counting DBE Participation §26.55

KCATA will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. KCATA will count work only from those DBE contractors that are performing a commercially useful function, which may be defined as follows:

- a. To be considered performing a commercially useful function, the DBE is responsible for executing the work of the contract and is actually performing, managing and supervising the work involved. The DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the materials, installing it (where applicable) and paying for the materials itself.
- b. The DBE must perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force.
- c. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.
- d. In order for a trucking firm to be performing a commercially useful function, it:
 - 1) Must be responsible for the management and supervision of the entire trucking operation.
 - 2) The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
 - 3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - 4) The DBE may lease trucks from another DBE firm, and will receive credit for the total value of the transportation services.

KCATA includes language in its solicitations informing bidders/offers of the amount and type of credit for DBE participation that will be counted on their project. This information is included in Attachment D.

KCATA will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the KCATA or DOT. This reporting requirement also extends to any certified DBE subcontractor. In the event of litigation or settlement of claims, KCATA requires the Contractor and Subcontractors to maintain these records/documents until such litigation, appeals, claims or exceptions related thereto have been concluded.

KCATA will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation. Prime Contractors are required to submit lien waivers and/or copies of invoices from the Subcontractors, copies of certified payrolls (if applicable) and a Subcontractor Utilization Report with each application for payment.

CERTIFICATION STANDARDS

1. Certification Process §26.61-26.73

KCATA will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. KCATA's certification decisions are based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact:

Whitney Morgan, Civil Rights/DBE Manager
Kansas City Area Transportation Authority
1350 East 17th Street
Kansas City, Missouri 64108
(816) 346-0277
wmorgan@kcata.org
www.kcata.diversitycompliance.com

KCATA utilizes the certification application forms and documentation requirements adopted by the Missouri Regional Certification Committee for the Missouri Unified Certification Program. The certification application forms and required documents are found in Attachment I to this program. KCATA also utilizes the B2Gnow software for all of our certification applications.

Please see Attachment H for SBE certification procedures.

CERTIFICATION PROCEDURES

1. Unified Certification Programs §26.81

KCATA is a member of a Missouri Unified Certification Program (UCP) administered by Missouri Regional Certification Committee (MRCC). The UCP will meet all of the requirements of this section. The following is a description of the UCP:

The Disadvantaged Business Enterprise (DBE) requirements contained in 49 CFR Part 26 include a provision for a "one-stop" certification process. The process must be well defined and include all agencies that are recipients of federal funds from the USDOT.

The five agencies that receive direct USDOT funds and currently operate a USDOT approved DBE program are Missouri Department of Transportation (MoDOT), City of St. Louis, Missouri, Metro, Kansas City Area Transportation Authority (KCATA), and the City of Kansas City, Missouri and shall hereinafter be referred to as the "Direct Partners," and shall constitute the members of the Missouri Regional Certification Committee (MRCC). All other Missouri agencies that receive indirect funding from the USDOT shall be referred to as "Sub-recipient Partners (Sub-recipients)."

Participation of Metropolitan Planning Organizations (MPO) and Sub-recipients was essential for the successful implementation of any UCP developed. Several of those entities also

volunteered to act as local assistance agencies in certifications, including availability for on-site reviews and firm contacts. The Sub-recipients that have agreed to assist in this process are:

- City of Columbia
- City of Springfield
- City Utilities of Springfield
- Mid America Reg. Council
- East/West Gateway Council of Governments
- Springfield Branson Regional Airport
- County Of Andrew
- County Of Putnam
- City Of Breckenridge Hills
- City Of Branson
- City Of West Plains
- City of St. Joseph

The specific Sub-recipients of highway and enhancement funds, which are administered by MoDOT, were identified. All Sub-recipients were contacted by mail and asked to submit a DBE plan or as an alternative, adopt MoDOT's DBE program. It is acknowledged that all Partners agree to the procedures, processes and requirements set out in this document. Further, it is agreed that all certification and non-discrimination obligations and requirements of 49 CFR Part 26 will be carried out by the MRCC and no recipient, direct or indirect, may accept any other MBE or WBE Certification for use on USDOT funded projects. All certification decisions within the state of Missouri will be made and agreed to by the MRCC.

The UCP will not establish, recommend, or alter any agencies' overall DBE Program, DBE goal or methodology other than to supplement an approved program submittal process. DBE goal development, administration, monitoring, and reporting remains the sole responsibility of KCATA with a USDOT approved DBE Program in accordance with 49 CFR Part 26, subject to any oversight requirements of the lead agency. Any agency which elects not to establish a DBE Program as set forth in 49 CFR Part 26 will be required to adopt and implement the lead agency's program. MoDOT is the lead agency in Missouri.

All recipients of federal funds administered by the USDOT, both directly or indirectly, must ratify and comply with the UCP agreement. Failure to do so may result in the loss of federal funds from the MRCC Partners and/or the USDOT.

All Partners agree that they will not execute any reciprocity agreements with any other agency or entity, including city, county, state or federal agencies, binding that Partner, and subsequently the UCP, to a reciprocity agreement. The MRCC may elect to enter into a written reciprocity agreement with UCPs in other states or regions. The decision to execute such an agreement will be made by a majority vote of the Direct Partners of the MRCC – MoDOT, KCATA, Metro, City of St. Louis and City of Kansas City.

Pursuant to 49 CFR 26.85 (revised) when another USDOT funded agency or UCP has certified a firm, the Certifying Partner has the discretion to take any of the following actions:

- a. Accept another agency or UCP's certification decision and certify the firm, upon the Certifying Partner's approval as set forth in the UCP agreement

- b. Make a certification decision based on documentation provided by the other agency or UCP augmented by any additional information required by the Certifying Partner
- c. Require the applicant to go through the Certifying Partner's application process without regard to the action of other agencies or UCP's

The Certifying Partner may choose to take any of the above actions in relation to a certification decision made by a non-USDOT funded agency that certifies based upon 49 CFR Part 26, upon a majority vote of the MRCC.

A DBE that is not certified by the MRCC will not be prohibited from working on any project, but the firm's participation will not be counted toward the DBE goal for that project.

2. Procedures for Certification Decisions §26.83

The Missouri Regional Certification Committee's (MRCC) Unified Certification Program (UCOP) Policies and Procedures can be found on MoDOT's website at the following link:

www.modot.mo.gov/business/contractor_resources/External_Civil_Rights/DBE_program.htm.

Re-certifications (§26.83(a) & (c)):

KCATA will review the eligibility of DBEs that we certified under former part 23, to make sure that they will meet the standards of Subpart E of Part 26.

Once a firm has been certified as a DBE, it shall remain certified until and unless the MRCC has removed its certification, in whole or in part, through the procedures of Section 26.87. KCATA may not require DBEs to reapply for certification or require "recertification" of currently certified firms. However, KCATA may conduct a certification review of a certified DBE firm, including a new on-site review, three years from the date of the firm's most recent certification, or sooner if appropriate in light of changed circumstances, a complaint, or other information concerning the firm's eligibility. If KCATA has grounds to question the firm's eligibility, it may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.

If the DBE fails to provide requested information in a timely manner, it will be deemed to have failed to cooperate and certification may be removed as set forth in 49 CFR Part 26.109(c).

"No Change" Affidavits and Notices of Change (§26.83(i) & (j)):

We require all DBEs to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with KCATA's application for certification.

KCATA also requires all owners of all DBEs it has certified to submit, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(j). The text of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no

material changes in the information provided with [*name of DBE*]'s application for certification, except for any changes about which have provided by written notice to the KCATA under 26.83(j). [*Name of firm*] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$22.41 million.

KCATA requires DBEs to submit with this affidavit documentation of the firm's size and gross receipts which includes corporate tax returns, personal tax returns and Personal Net Worth statements.

We will notify all currently certified DBE firms of these obligations by mail at least 90 days in advance. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet Part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

3. Denials of Initial Requests for Certification §26.86

When KCATA denies a request for DBE certification by a firm that is not currently certified, it will provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based will be made available to the applicant upon request.

If a firm is denied, or KCATA decertifies it, it may not reapply until one year from the date of the action.

4. Removal of a DBE's Eligibility §26.87

In the event KCATA proposes to remove a DBE's certification, it will follow procedures consistent with 49 CFR Part 26.87. The DBELO will provide the firm a written explanation of the reasons for the removal, specifically referencing the evidence in the record that supports each reason for the action. All documents and other information on which the removal of eligibility is based will be made available to the firm upon request. To ensure separation of functions in a decertification, KCATA has determined that the Missouri Regional Certification Committee will serve as the decision-maker in decertification proceedings. KCATA has established an administrative "firewall" to ensure that the Missouri Regional Certification Committee will not have participated in any way in the decertification proceeding against the firm (including in the decision to initiate such a proceeding).

A firm that is decertified is required to wait one year from the date of the notice before it may reapply for DBE certification with the KCATA.

5. Certification Appeals §26.89

Any firm that has been denied initial certification must appeal directly to the DOT to:

U. S. Department of Transportation

Department Office of Civil Rights
External Civil Rights Program Division (S-33)
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

KCATA will provide the firm written notice of the decision and the reasons, including specific references to the evidence in the record that supports the decision. The notice will inform the firm of the consequences of KCATA's decision and of the availability of an appeal to DOT.

KCATA will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

When KCATA removes a firm's DBE eligibility, the written notice will include their rights to appeal the decision to the MRCC. The firm must exhaust all administrative avenues at the local level prior to appeal to the USDOT. If the firm chooses to appeal to the MRCC they maintain the right to appeal to the USDOT. A firm remains an eligible DBE during any appeal to the MRCC.

COMPLIANCE AND ENFORCEMENT

1. Information, Confidentiality, Cooperation §26.109

We will safeguard from disclosure to third party's information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Each public governmental body must appoint a custodian of records responsible for maintaining the body's records and for handling requests (ref: Missouri Revised Statutes Section 610.023.1). All public records must be made available for public inspection and copying, unless there is a statute that either permits or requires them to be closed.

KCATA's Custodian of Records is Frank White III, Chief Executive Officer. Requests for public records under the Missouri Sunshine Law should be in writing, specifically identifying the records, mailing address of requestor and directed to Mr. Makinen at:

Frank White III, Chief Executive Officer
Kansas City Area Transportation Authority
1200 East 18th Street
Kansas City, MO 64108

According to Missouri Revised Statutes Section 610.01.6, a public record is defined as, any record, whether written or electronically stored, retained by or of any public governmental body including any report, survey, memorandum, or other document or study prepared for the public governmental body by a consultant or other professional service paid for in whole or in part by public funds.

Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the DBE firm. KCATA will send written notification to the DBE firm that the information had been requested.

2. Monitoring Payments to DBEs §26.37

KCATA requires prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the KCATA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

KCATA performs interim audits of contract payments to DBEs. The audit reviews payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation. On an annual basis KCATA's independent auditor reviews the achievement/commitments reports submitted to FTA and FTA's approval of KCATA's DBE goal.

ATTACHMENT A DEFINITIONS

The definition of terms as found in 49 CFR Part 26.5 are as follows:

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

- (1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
 - (i) One concern controls or has the power to control the other; or
 - (ii) A third party or parties controls or has the power to control both; or
 - (iii) An identity of interest between or among parties exists such that affiliation may be found.
- (2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

Compliance means that a recipient has correctly implemented the requirements of this part.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged Business Enterprise or DBE means a for-profit small business concern--

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

DOT/SBA Memorandum of Understanding or MOU refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

Good faith efforts mean efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Home state means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual – United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: <http://www.ntis.gov/products/naics.htm>.

Primary recipient means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or SBA means the United States Small Business Administration.

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is –

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- (i) **“Black Americans,”** which includes persons having origins in any of the Black racial groups of Africa;
- (ii) **“Hispanic Americans,”** which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (iii) **“Native Americans,”** which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (iv) **“Asian-Pacific Americans,”** which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) **“Subcontinent Asian Americans,”** which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (vi) **Women;**
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Transit vehicle manufacturer means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., ‘You must do XYZ’ means that recipients must do XYZ).

ATTACHMENT B
MRCC DIRECTORY

The KCATA utilizes the DBE certified vendors in the Missouri Regional Certification Committee's database. This list can be obtained via the internet at www.modot.mo.gov/ecr/index.htm. A reference to this database is also listed on KCATA's website http://www.kcata.org/about_kcata/entries/dbe_certification/

The following is a sample entry:

DBE Details

DBE Name:	<input type="text" value="A Clean Slate"/>	Vendor #:	<input type="text" value="0028238"/>	Tax ID:	<input type="text" value="205655228"/>
CEO Name:	<input type="text" value="Carol Taylor"/>	Ethnicity:	<input type="text" value="African American"/>		
Address:	<input type="text" value="3200 Wayne"/>	Gender:	<input type="text" value="Male"/>	Classification:	<input type="text" value="MBE"/>
City:	<input type="text" value="Kansas City"/>	Agency:	<input type="text" value="City of Kansas City"/>		
District:	<input type="text" value="KC"/>	County:	<input type="text" value="Jackson"/>	DBE Status:	<input type="text" value="Certified"/>
State:	<input type="text" value="MO"/>	Zip Code:	<input type="text" value="64109"/>	Phone:	<input type="text" value="816-221-08"/>
Add Date:	<input type="text" value="06/08/2007"/>	Record Status:	<input type="text" value="Active"/>	Renewal Date:	<input type="text" value="02/23/2018"/>
Received Date:	<input type="text"/>	ACDBE:	<input type="text" value="No"/>		
Update Date:	<input type="text" value="03/24/2017"/>	Update By:	<input type="text" value="hawkins"/>		
Approved Date:	<input type="text" value="03/30/2017"/>	Approved By:	<input type="text" value="ethrit1"/>	Email:	<input type="text" value="cleanslate@att.net"/>
Small Business Only:	<input type="checkbox"/>				

Renewal Approved. dch 5/17/10, annual approved. dch 8/13/2013. s

Comments:

NAICS (Work Type) :

Code	Description	Eff. Date	Status
561740	Carpet and Upholstery Cleaning Services	01/01/1900	Active
238910	Site Preparation Contractors - Demolition Contractor	01/01/1900	Active
238990	All Other Specialty Trade Contractors - Cleaning building interiors during and immediately after construction	01/01/1900	Active
561720	Janitorial Services	01/01/1900	Active
561790	Other Services to Buildings and Dwellings - Power Washing Services	06/25/2014	Active

**ATTACHMENT C
MINORITY AND COMMUNITY ORGANIZATIONS,
PUBLIC AGENCIES AND OUTREACH EFFORTS
KANSAS CITY METROPOLITAN AREA**

KCATA works with the following organizations in the metropolitan area that are designed to develop small and minority businesses. Public notices concerning DBE goals, and public hearings are sent to these organizations.

Chambers of Commerce

African Chamber of Commerce
Contact: Rev. John Akin
P O Box 412632
Kansas City, MO 64141
Phone: 816-241-8085
Fax: 816-531-2271
africanchambergreaterkc@yahoo.com

Hispanic Chamber of Commerce
1600 Baltimore, Ste. 250
Kansas City, MO 64106
Ph: 816-472-6767
Contact: Carlos Gomez
cgomez@hccgkc.com

American Indian Council
Contact: Christine Molle, Executive Director
310 Armour Rd Suite 205
N. Kansas City, Mo 64116
Phone: 816-471-4898
Fax: 816-471-8543
aicmolle@kc.rr.com

National Native American Chamber of Commerce
310 Armour Road
North Kansas City, MO 64116
Contact: John J H O'Brien, President CEO
Phone: 816-392-7611
johnjhobrien@nnacc.org

Asian Chamber of Commerce
Contact: Sook Park
8645 College Blvd.
Overland Park, KS 66210
Ph: 913-338-0774
sook_park@asianchamberkc.com

Women's Chamber of Commerce
727 Minnesota Ave.
Kansas City, KS 66117
Contact: Cindy Cash
chamber@kckchamber.com

Heartland Chamber of Commerce
607 – A Minnesota Avenue
Kansas City, KS 66101
Ph: 913-948-9680
Contact: Christal Watson
info@heartlandblackchamber.com

Contractor Associations

Hispanic Contractors Association of Greater
Kansas City, Inc.
Contact: Jerry B. Adriano
541 South 11th Street
Kansas City, KS 66105
Phone: 816-309-2705
Fax 913-621-4354
adriano_associates@yahoo.com

Kansas City Hispanic Association of Contractors
Enterprise, Inc. (KCHACE)
2130 Jefferson
Kansas City, MO 64108
(816) 842-7101
Fax: (816) 221-6458
Email: info@kchace.org
Website: www.kchace.org

Contractor Associations (Continued)

National Association of Women in Construction
(NAWIC)
1722 Oak
Kansas City, MO 64108
Ph: 816-421-7097
Contact: Candice Anderson
Candice.kucharzak@jedunn.com

Mid-America Minority Business Development
Council (MAMBDC)
1109 E. 9th Street
Kansas City, MO 64106
Ph: 816-221-4200
Contact: Lonnie C. Scott
Lonnie.scott@mambdc.org

Minority Contractors Association (MCA)
3200 Wayne Ave., #202
Kansas City, MO 64109
Ph: 816-924-4441
Contact: Joe Mabin or Johnny Wright
mcakcmo@sbc.global.net
jwright@kcmca.com

Women Construction Owners and Executives
4410 A. Connecticut Ave. N.W.
Washington DC 20008
800-788-3548
www.info@wcoeusa.org

Assistance Centers

Missouri Women's Center at UMKC
Contact: Jean Zimmerman
4747 Troost Ave.
Kansas City, MO 64110
Phone: 816-235-1000
Fax: 816-235-6586
www.umkc.edu/womenc/umkc-womens-center@umkc.edu

Kansas City Society of Black Architects and
Engineers
818 Grand, Ste. 1000
Kansas City, MO 64106
Ph: 816-283-3456
Contact: Leonard Graham
lgraham@tb-engr.com

Kansas Women's Business Center
Contact: Sherry Turner
sturner@kansaswbc.com

Kansas City Council of Women Business
Owners(KC-CWBO)
Contact: Nancy Zurbuchen
nancyz@motional.com

Women's Business Center
3813 NW 60th St.
Kansas City, MO 64151
Ph: 816-741-8869
Contact: Linda Eakes
lindaeakes@sbcglobal.net

Urban League of Kansas City
Contact: Melva Brownlee
janette@ulkc.org

Institute for Entrepreneurship and Innovation
Business Acceleration
Missouri PTAC (Missouri Companies Only)
4747 Troost Ave. #105
Kansas City, MO 64110
Ph: 816-235-2891 ext. 2
Contact: Donna Leonard
leonardd@umkc.edu
entrepreneurship@umkc.edu

News and Print Publications – Minority Owned

Barrio Bulletin (Published once each month)
1015 Avenida Ceasar E. Chavez
Kansas City, MO 64108
Ph: 816-421-1015 ext. 105
C/o Guadalupe Center
Editor: Tania Casas
tcasas@guadalupecenters.org

Kansas City Globe Newspaper (Published weekly)
615 E. 29th St.
Kansas City, MO 64108
Ph: 816-531-5253
Editor: Marion Jordan Jr.
kcglobe@swbell.net

Dos Mundos (Published weekly)
902 A Southwest Blvd.
Kansas City, MO 64108
Ph: 816-221-4747
Editor: Clara Reyes
creyes@dosmundos.com

Kansas City Hispanic News
1911 Baltimore Ave.
Kansas City, MO 64108
Ph: 816-472-5246
Contract: Richard Ware and/ or Joe Arce
(Publisher)
kchnews@swbell.net

Kansas City Call (Published weekly)
1715 E. 18th St.
Kansas City, MO 64108
Ph: 816-842-3804
Editor: Donna Stewart
kccallnews@hotmail.com

Dos Mundos Bilingual Newspaper
902 A Southwest Blvd.
Kansas City, MO 64108
Ph: 816-221-4747
Editor: Clara Reyes
mreyes@dosmundos.com

KCATA collaborates with the following metropolitan agencies to develop and educate small and minority businesses on how to do business with KCATA and the requirements of DBE certification.

- City of Kansas City, Missouri HRD
- Unified Government/Wyandotte County, KS
- Jackson County, Missouri
- Mid America Regional Council
- Johnson County Transit
- Missouri Office of Equal Opportunity
- Metropolitan Community College (MCC)

KCATA also participates in the following outreach activities to establish contact with current and potential DBE and SBE firms, and to notify firms of upcoming procurement opportunities.

- Conference of Minority Transportation Officials (COMTO) Kansas City
- KC Urban Summit
- KC BizCare
- KC SourceLink
- Kansas City District Office – Small Business Administration
- Black Chamber of Commerce – Membership
- Asian Chamber of Commerce – Membership
- Hispanic Chamber of Commerce – Membership
- Mid America Minority Business Supplier Council – Membership

- Kansas City, Missouri Government Contracting & Procurement Forum
- Minority Enterprise Development (MED) Week – Planning Committee Member (activities include GSA Small Business Networking Breakfast, Minority Business Bus Tour, Awards Luncheon)
- Mid America Council of Public Purchasing Reverse Vendor Fair
- Gov Fest – Sponsored by State of Kansas (held at Johnson County Public Library)
- Missouri Department of Transportation (EEO Contractor Conference)

ATTACHMENT D KCATA BIDDER/OFFER DBE REQUIREMENTS

The following excerpt is from KCATA's procurement solicitation documents, regarding Bidder/Offeror requirements on DBE participation. These requirements apply to both Invitations for Bid (IFBs) and Requests for Proposals (KCATA'S CIVIL RIGHTS CLAUSES).

SECTION 5 DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

This project is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. Failure by the Contractor to carry out these requirements is a material breach of the resulting contract, which may result in the termination of the contract or such other remedy as KCATA deems appropriate.

It is the policy of KCATA and the United States Department of Transportation (USDOT) that Disadvantaged Business Enterprises (DBE's) and Small Business Enterprises (SBE's), as defined herein and in the Federal regulations published as 49 CFR Part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of KCATA to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's/SBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBE's in DOT assisted contracts;
6. To promote the use of DBE's in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

Certified Minority Owned Business Enterprises (MBE's), Woman Owned Business Enterprises (WBE's), Small Business Enterprises (SBE's) and DBE firms are encouraged to submit proposals as prime or subcontractors.

Non-discrimination. Proposers shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The proposer shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the proposer to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the KCATA deems appropriate, which may include but is not limited to:

1. Withholding monthly progress payment;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsive.

DBE Certification. DBE firms may participate as prime Contractors, subcontractors or suppliers. KCATA will only recognize firms that are certified as DBEs under the DOT guidelines found in 49 CFR Part 26. Firms must be certified as a DBE by a member of the Missouri Regional Certification Committee, which includes KCMO, MoDOT, City of St. Louis, Metro in St. Louis or KCATA. A list of certified firms may be found at www.modot.mo.gov/ecr/index.htm.

MBE and WBE certifications from an MRCC partner (City of Kansas City, City of St. Louis) will be accepted.

DBE Participation Credit. DBE firms may participate as Prime Contractors, Subcontractors or Suppliers.

The following shall be credited towards achieving the goals, except as provided herein:

1. The total contract dollar amount that a qualified DBE Prime Contractor earns for that portion of work on the contract that is performed by its own workforce, is performed in a category in which the DBE is currently certified, and is a commercially useful function as defined by the Program.
2. The total contract dollar amount that a Prime Contractor has paid or is obligated to pay to a subcontractor that is a qualified DBE; and
3. Subcontractor participation with a lower tier DBE subcontractor; and
4. Sixty percent (60%) of the total dollar amount paid or to be paid by a Prime Contractor to obtain supplies or goods from a supplier who is not a manufacturer and who is a qualified DBE. If the DBE is a manufacturer of the supplies, then one hundred percent (100%) may be credited, to be determined on a case-by-case basis.
5. NO CREDIT, however, will be given for the following:
 - a. Participation in a contract by a DBE that does not perform a commercially useful function as defined by the Program; and
 - b. Any portion of the value of the contract that a DBE Subcontractor subcontracts back to the prime contractor or any other contractor who is not a qualified DBE; and
 - c. Materials and supplies used on the contract unless the DBE is responsible for negotiating the price, determining quality and quantity, ordering the materials and installing (where applicable) and paying for material itself; and
 - d. Work performed by a DBE in a scope of work other than that in which the DBE is currently certified.

Good Faith Efforts. Failure to meet the contracted DBE participation commitment without documented evidence of good faith efforts may result in termination of the contract.

- a. In evaluating good faith efforts, KCATA will consider whether the Proposer has performed the following, along with any other relevant factors:
 - a. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations. Copies of the solicitation efforts (dated facsimiles, advertisements, emails) must be submitted.
 - b. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
 - c. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 - d. Negotiating in good faith with interested DBEs.
2. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

3. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, include DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
4. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
5. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the KCATA or contractor.
6. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
7. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
8. In determining if the Contractor did use good faith efforts in securing DBE Participation, KCATA may request copies of each DBE and non-DBE subcontractor quote in the event a non-DBE subcontractor was selected over a DBE for work on the contract.

Request for Modification, Replacement or Termination of Disadvantaged Business Enterprise (DBE) Project Participation. Contractor is responsible for meeting or exceeding the DBE commitment it has proposed for the project and as amended by any previously approved Request for DBE Modification/Substitution. Any Change Orders or amendment modifying the amount Contractor is to be compensated will impact the amount of compensation due to DBEs for purposes of meeting or exceeding the Proposer commitment. Contractor shall consider the effect of a Change Order or amendment and submit a Request for Modification/Substitution if the DBE commitment changes.

1. **Termination Only for Cause** - Once the contract has been awarded; Contractor may not terminate a DBE subcontractor without KCATA's prior written consent. This includes, but is not limited to, instances in which a Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

a. **Good Cause** - Good cause includes the following circumstances:

The listed DBE subcontractor fails or refuses to execute a written contract; or

- a. The listed DBE subcontractor fails or refuses to perform the work of its normal industry standards. Provided, however, that the good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Prime Contractor; or
- b. The listed DBE subcontractor fails or refuses to meet the Prime Contractor's reasonable, nondiscriminatory bond requirements; or
- c. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness; or
- d. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1200 or applicable state law; or

- e. The DBE subcontractor is not a responsible contractor; or
 - f. The listed DBE subcontractor voluntarily withdraws from the project and provides the Prime Contractor written notice of its withdrawal;
 - g. The listed DBE is ineligible to receive DBE credit for the type of work required;
 - h. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
 - i. Other documented good cause that compels KCATA to terminate the DBE subcontractor. Provided the good cause does not exist if the Prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Prime Contractor can self-perform the work for which the DBE contractor was engaged or so that the Prime Contractor can substitute another DBE or non-DBE contractor.
2. Before submitting its request to terminate or substitute a DBE subcontractor, the Prime Contractor must give notice in writing to the DBE subcontractor, with a copy to KCATA, of its intent to request to terminate and/or substitute, and the reason for the request.
 3. The Prime Contractor must give the DBE five days to respond to the Prime Contractor's notice and advise the KCATA and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why KCATA should not approve the Prime Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the response period may be shortened.

DBE Job-Site Review Commercially Useful Function (CUF) Determination. KCATA will be conducting on-site interviews with all DBE contractors. The number of interviews will be based on the DBE's projected scope of work. KCATA staff will work closely with the Prime Contractor on the project schedule to determine when DBE subcontractors will be on the project.

For questions concerning KCATA's DBE Program or Vendor Registration/Affirmative Action Requirements please contact us.

*Whitney Morgan
Civil Rights/DBE Manager
(816) 346-0277 telephone
(816) 346-0367 facsimile
wmorgan@kcata.org*

*Maurice Gay
Contract Vendor Specialist Coordinator
(816) 346-0366 telephone
(816) 346-0336 facsimile
mgay@kcata.org*

**ATTACHMENT E
KCATA BID SUBMITTAL DOCUMENTS
REGARDING DBE PARTICIPATION**

KCATA has developed forms to capture a Bidder/Offeror's proposed DBE participation on those projects that have a contract goal.

SCHEDULE OF PARTICIPATION BY CONTRACTOR & SUBCONTRACTORS

SCHEDULE OF PARTICIPATION BY CONTRACTOR & SUBCONTRACTORS

Project # _____ Description: _____ Date: _____

Form must be submitted for each prospective offeror and submitted with proposal

PRIME CONTRACTOR					
Name and Address	Telephone No. Fax No.	Type of Work To Be Performed	NAICS Code	Value of Work	DBE % Participation
				\$	%
PARTICIPATION BY SUBCONTRACTOR(S) AND MAJOR SUPPLIERS - DBE & NON-DBE					
Name and Address	Telephone No. Fax No.	Type of Work To Be Performed	NAICS Code	Value of Work	DBE % Participation
				\$	%
				\$	%
				\$	%
				\$	%
				\$	%

TOTAL VALUE OF WORK \$ _____

TOTAL CONTRACT VALUE OF WORK
(FROM BID FORM) \$ _____

TOTAL DBE PARTICIPATION \$ _____

TOTAL PERCENTAGE OF DBE PARTICIPATION _____%

THE UNDERSIGNED WILL ENTER INTO A FORMAL AGREEMENT WITH THE SUBCONTRACTOR(S) FOR THE WORK LISTED ON THIS SCHEDULE.

Prime Contractor (Type/Print) _____ Date _____

Authorized Signature _____ Title _____

Name (Type/Print) _____ Telephone #/Fax # _____

4. Bidder/Proposer acknowledges that the monetary amount to be paid each listed DBE for their work, and which is approved herein, is an amount corresponding to the percentage of the total contract amount allocable to each listed DBE as calculated in the **Schedule of Participation by Contractor and Subcontractors** form. Bidder/Proposer further acknowledges that this amount may be higher than the subcontract amount listed therein as change orders and/or amendments changing the total contract amount may correspondingly increase the amount of compensation due a DBE for purposes of meeting or exceeding the Bidder/Proposer participation commitment.

5. Bidder/Proposer acknowledges that it is responsible for considering the effect that any change orders and/or amendments changing the total contract amount may have on its ability to meet or exceed the Bidder/Proposer participation. Bidder/Proposer further acknowledges that it is responsible for submitting a **Request for Modification or Substitution** form if it will be unable to meet or exceed the Bidder/Proposer participation set forth herein.

6. If Bidder/Proposer has not achieved the DBE commitment set for this Project, Bidder/Proposer hereby requests a waiver of the DBE commitment that Bidder/Proposer has failed to achieve.

7. Bidder/Proposer will present documentation of its good faith efforts, a narrative summary detailing its efforts and the reasons its efforts were unsuccessful when requested by KCATA.

8. I hereby certify that I am authorized to sign this Affidavit on behalf of the Bidder/Proposer named below and who shall abide by the terms set forth herein:

Bidder/Proposer Primary Contact: _____

Address: _____

Phone Number: _____ Facsimile number: _____

E-mail Address: _____

By _____
 (Signature)

Title _____

Date _____
 (Attach corporate seal if applicable)

NOTARY:

Subscribed and sworn to before me this _____ day of _____, 20__.

My Commission Expires: _____

Notary Public

(Seal)

KANSAS CITY AREA TRANSPORTATION AUTHORITY
LETTER OF INTENT TO SUBCONTRACT
(To be Completed for Each DBE Subcontractor on Project)

Project Number _____

Project Title _____

_____ (“Prime Contractor”) agrees to enter into a contractual agreement with _____ (“DBE Subcontractor”), who will provide the following goods/services in connection with the above-referenced contract:

(Insert a brief narrative describing the goods/services to be provided. Broad categorizations (e.g., “electrical,” “plumbing,” etc.) or the listing of the NAICS Codes in which DBE Subcontractor is certified are insufficient and may result in this Letter of Intent to Subcontract not being accepted.)

for an estimated amount of \$ _____ or _____ % of the total estimated contract value.

DBE Subcontractor is currently certified with the Missouri Regional Certification Committee (MRCC) to perform in the capacities indicated herein. Prime Contractor agrees to utilize DBE Subcontractor in the capacities indicated herein, and DBE Subcontractor agrees to work on the above-referenced contract in the capacities indicated herein, contingent upon award of the contract to Prime Contractor.

Signature: Prime Contractor

Signature: DBE Subcontractor

Print Name

Print Name

Title

Date

Title

Date

**KANSAS CITY AREA TRANSPORTATION AUTHORITY
REQUEST FOR MODIFICATION, REPLACEMENT OR TERMINATION
OF DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROJECT PARTICIPATION**

This form must be submitted to request substitutions for a DBE listed in the Schedule of Participation By Contractor and Subcontractors form submitted as part of Contractor's Bid Documents as amended by any Change Orders or previously approved Requests for Modification/Substitution. This executed document shall be an amendment to the Contractor's DBE utilization plan.

CONTRACTOR _____

ADDRESS _____

PROJECT NUMBER AND NAME _____

1. As the duly authorized representative of the above Contractor, I am authorized to request this substitution or modification on behalf of the Contractor and hereby request that the Kansas City Area Transportation Authority (KCATA) recommend or approve:

_____ SUBSTITUTION OF DBE FIRM

Name of Current DBE Firm To Be Removed _____

Scope of Work _____

Contracted Amount \$ _____ Amount of Work Completed To Date \$ _____

Name of Proposed DBE Firm _____

Scope of Work _____

Amount of Proposed Work \$ _____ Date Scheduled To Begin Work _____

_____ MODIFICATION OF THE AMOUNT OF WORK BY DBE FIRM

Name of DBE Firm _____

Current % of Contract Commitment _____ Changed % of Contract Commitment _____

2. This Substitution/Modification is necessary because (check all applicable)

_____ The DBE Subcontractor failed or refuses to execute a written contract.

_____ The DBE Subcontractor failed or refuses to perform the work of its normal industry standards without good cause and that failure or refusal of the DBE is not a result of bad faith or discriminatory action of the Contractor.

- _____ The DBE Subcontractor failed or refuses to comply with reasonable, non-discriminatory bonding requirements.
- _____ The DBE Subcontractor has become bankrupt, insolvent, or exhibits credit unworthiness (supporting documentation is attached).
- _____ The DBE Subcontractor has committed a material default or breach of its contract.
- _____ The DBE Subcontractor has voluntarily withdrawn from the project (DBE's written notice of withdrawal is attached).
- _____ The DBE owner has died or has become disabled and is unable to complete its work on this Project.
- _____ A Change Order and/or Amendment of the Project was issued that modifies the amount Contractor is to be compensated and correspondingly impacts the amount of compensation due to the DBE Subcontractor.

3. I affirm that written notice has been given to the DBE Subcontractor of Contractor's intent to request a substitution or modification (copy attached) and the DBE Subcontractor has been given five (5) business days to respond to the notice (a copy of DBE firm's response is attached).

EXCEPTION: If required in a particular case as a matter of public necessity (e.g., safety) the response period may be shortened.

4. The following is a narrative summary of Contractor's good faith efforts (as listed in Part A of the City's Bid Documents) exhausted in attempts to substitute the DBE firm named above with other qualified, certified DBE firms for the listed scope of work or any other scope of work on the project. Supporting documentation is attached.

5. Contractor hereby affirms that it has not intentionally attempted to evade the requirements of the Contract or the DBE Program and it is in KCATA's best interest to approve this Request for Substitution or Modification. Additional documentation will be presented when requested by KCATA in order to make its determination.

Submitted By:

Approved By:

Contractor's Authorized Representative

KCATA's Authorized Representative

Title

Title

Date

Date

**KANSAS CITY AREA TRANSPORTATION AUTHORITY
SUBCONTRACTOR MONTHLY UTILIZATION REPORT**

Report Date:	Project Number:	Project Name:		
Project Address:		Contract Award Date:	Contract Start Date:	Total Contract Days:
Prime Contractor Name:		Contact Person/Phone:		Email Address:
Prime Contractor Address:		Total Contract Amount:	Project DBE Goal (%)	Contractor's DBE Commitment On Project (%):

PAYMENTS TO SUBCONTRACTORS (INCLUDE DBE & NON-DBE SUBCONTRACTORS)

Subcontractor Name	DBE? Yes/No	Date of Subcontact	Estimated Start Date	Subcontract Amount	% of Total Contract	Amount Paid This Period	Retainage Amount Withheld	Total Amount Paid To Date	% of Contract Paid To Date
TOTALS FOR THIS REPORTING PERIOD:									

Comments: _____

Report Submitted By: _____ Dated Submitted: _____

Report is to be submitted with each pay application

REMINDER: Contractor is responsible for meeting or exceeding the DBE commitment amounts listed on the Schedule of Participation by Contractor and Subcontractors form submitted as part of Contractor's Bid Documents and as amended by any previously approved Request for Modification/Substitution. Any Change Orders or amendments modifying the amount Contractor is to be compensated will have correspondingly impacted the amount of compensation due to DBEs for purposes of meeting or exceeding the Bidder/Proposer commitment. Contractor shall consider the effect of a Change Order or amendment and submit a Request for Modification/Substitution form if appropriate.

**ATTACHMENT F
KANSAS CITY AREA TRANSPORTATION AUTHORITY
DETERMINATION OF GOOD FAITH EFFORTS**

Project Number: _____ Project Title: _____

Prime Contractor: _____ Date of Bid: _____

Project DBE Goal: _____ % Contractor's Proposed DBE Commitment: _____ %

KCATA has reviewed the following documents submitted by the Prime Contractor as evidence of their good faith efforts in trying to obtain DBE participation on the this project:

- _____ Attended KCATA's pre-bid conference held on _____ to assess interested DBEs.
- _____ Advertised for DBE participation in minority-owned newspapers, journals, or through minority/women community organizations' websites. Advertisements allowed for sufficient time for DBEs to respond. Copies of advertisements reviewed are attached.
- _____ Reviewed copies of facsimile (fax) and electronic mail (email) notifications to DBEs soliciting interest in the upcoming project. Solicitations allowed sufficient time for DBEs to respond. Copies of advertisements reviewed are attached. A list of names, addresses, telephone numbers, email addresses, and fax numbers of DBEs that were considered is attached. A description of the information provided regarding the plans and specifications for the work is included.
- _____ Copies of evidence of attempted negotiations with available DBEs subcontractors and suppliers to perform the portions of work or material needs consistent with the available DBE subcontractors and suppliers.
- _____ Evidence that the Contractor accessed the MRCC database to obtain a list of available DBEs in the scope of work or materials needed for the project. Evidence may include a list of those firms and a screen snapshot of the DBE directory listings.
- _____ Made contact with KCATA's DBELO to provide assistance in locating available DBEs, and to verify certification status of those DBE firms.
- _____ Reviewed Contractor's past performance of meeting or exceeding the DBE goals established on previous KCATA contracts awarded to Contractor to determine responsibility.
- _____ Other: _____

Based on the above, KCATA hereby ___ACCEPTS___ ___DENIES___ Contractor's evidence of good faith efforts.

COMMENTS: _____

Submitted by:

KCATA DBELO (date)

Copies to: _____ Contracting Officer _____ Project Manager _____ DBE Project File

ATTACHMENT G
MONITORING AND ENFORCEMENT MECHANISMS/LEGAL REMEDIES

The KCATA will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

- a. We provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This is accomplished by requiring that Prime Contractors submit lien waivers, copies of all subcontractors' certified payrolls (if applicable), and/or copies of paid invoices from DBE subcontractors with each application for payment. The Subcontractor Utilization form captures payment information for all DBE and non-DBE subcontractors and is also required with each pay application. KCATA performs Commercially Useful Function (CUF) Determination On-Site interviews with DBE subcontractors during the project performance to determine that the DBE is performing a commercial useful function as defined in 26.55. KCATA also conducts Labor Compliance and EEO Contract Compliance Job-Site interviews regarding Davis Bacon/Prevailing Wage compliance. KCATA performs periodic reviews of the agreements between the Prime Contractor and its subcontractors, as well as subcontractor invoices to the Prime Contractor and from its suppliers.

- b. The following language is included in KCATA's Contracts:

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as KCATA deems appropriate. Each subcontract the Contractor signs with the subcontractor must include the assurance in this paragraph (see 49 CFR Part 26.13(b)).

- c. KCATA maintains records of actual payments to DBE firms for work committed to them at the time of contract award and compares these attainments to commitments. KCATA provides information for both commitments and attainments on its required reports to FTA.

- d. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.

- e. We will consider similar action, including responsibility determinations in future contracts.

ATTACHMENT H

KANSAS CITY AREA TRANSPORTATION AUTHORITY (KCATA) SMALL BUSINESS ENTERPRISE (SBE) PROGRAM

A. Objective (49 CFR Part 26.39)

The Kansas City Area Transportation Authority (KCATA, the Authority) is committed to meeting its overall goal by using a mixture of race conscious and race neutral means of facilitating DBE participation. Any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contract that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts) it is considered race neutral.

By definition, DBE firms are small businesses; the KCATA seeks to implement a small business element into its current DBE policy in accordance with applicable law. The KCATA is including this element to facilitate competition by and expand opportunities for small businesses. The Authority is committed to taking all reasonable steps to eliminate obstacles to small businesses that may preclude their participation in procurements as prime contractors or subcontractors. KCATA's methods and strategies will include set-asides unbundling and collaboration with local partners.

KCATA's Small Business Enterprise (SBE) Program is a race-neutral program for projects funded by the Federal Transit Administration (FTA). The following strategies will be implemented to obtain race neutral participation.

1. Set-asides. Where feasible, the KCATA will establish a percentage of the total value of all prime contract and subcontract awards to be set aside for participation by small businesses on contracts funded by the U. S. Department of Transportation (USDOT). A "set-aside" is the reserving of a contract or a portion of a contract exclusively for participation by small businesses. This requires that the KCATA and its prime contractors/consultants set aside a portion of the value of each contract for participation by small businesses. A small business set-aside is open to all small businesses regardless of the owner's gender, race or geographic location. The project manager and KCATA's DBELO will review DOT-funded purchases and contracts to assess the small business opportunities, giving consideration to the size and scope of each purchase or contract to establish the set aside portion of the value of each contract for participation by small businesses. This set-aside is in addition to the DBE contract goals which may be required pursuant to applicable law or policy. In the event that a set-aside is not established on a DOT-funded contract, the project manager and DBELO will document why a small business set-aside is inappropriate.
2. Unbundling. The KCATA, where feasible, will continue to "unbundle" projects or separate large contracts into smaller contracts which may be more suitable for small business participation. The KCATA will continue to review DOT-funded solicitations to determine whether portions of the project could be "unbundled" or bid separately. Similarly, the KCATA will encourage its prime contractors or prime consultants to unbundle contracts to facilitate participation by small businesses.
3. Business Development Opportunities. KCATA works closely with the Missouri Regional Certification Committee (MRCC), metropolitan minority/women organizations and local

agencies to coordinate outreach activities to assist DBEs in accessing Prime Contractors and to educate small and minority businesses on how to do business with KCATA and notify them of any upcoming opportunities. Information pertaining to available services from Kansas City area minority-owned financial institutions will be made available at outreach activities and at pre-bid conferences when appropriate.

The KCATA is working with the MRCC partners to develop a “back office” initiative to provide DBEs and Small Business Enterprises (SBEs) with educational classes, seminars and networking opportunities to help make their businesses more successful. These seminars and classes will focus on business development and will evolve as participants provide input on additional training areas. This initiative is currently underway in the St. Louis area, and is being developed for the Kansas City area.

4. In addition, KCATA electronically communicates bid proposals to minority/small business community organizations, trade organizations, area Chambers of Commerce, and known DBE firms on its bidder’s list and those found in the MRCC database.
5. Encourage prime contractors to subcontract portions of work normally done by their own forces, when subcontractors submit a lower quote.
6. Select solicitations, times for the presentation of bids, quantities and specifications, and delivery schedules to facilitate small business participation.
7. Circulate a pamphlet to SBEs at outreach activities that discloses upcoming contracting opportunities.
8. Utilize the directory of SBEs that will be developed by MODOT and posted on their website. KCATA will include the link to this directory on its website and include it in bid solicitation documents, outreach pamphlets, etc.

A. Definitions

1. Small Business. A small business is a business that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period. Small businesses must meet the definitions specified in Section 3 of the Small Business Act and the Small Business Administration (SBA) regulations implementing it (13 CFR Part 121).
2. Disadvantaged Business Enterprise. A for-profit small business as defined by the SBA –
 - That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals;
 - Whose socially and economically disadvantaged owners do not exceed the personal net worth (PNW) described in 49 CFR Part 26. The current PNW cap is \$1.32 million.
 - Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and
 - Has been certified as a DBE by the Missouri Regional Certification Committee (MRCC) under the regulations in 49 CFR Part 26.

For the purposes of the small business element of the Authority's DBE Program, small businesses which are also owned and controlled by socially disadvantaged individuals will be encouraged to see DBE certification. Only DBE certified firms will be counted towards DBE race-neutral participation on DOT-assisted contracts.

B. Certification and Verification Procedures

Firms must meet the small business requirements established under the Small Business Administration (SBA) size standards, contained in 13 CFR Part 21.101-201. Specifically, KCATA accepts the SBA size standards as outlined in www.sba.gov. The KCATA will accept the following certifications for participation in the small business element of the Authority's DBE Program with applicable stipulations:

1. MRCC DBE Certification. DBE certification by the MRCC which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. All certification determinations are evidenced by a letter of DBE certification issued by a Certifying Partner of the Missouri Regional Certification Committee under the policy and procedures established by the Missouri Unified Certification Program (UCP). These firms will not need to submit a SBE application.
2. MRCC Small Business Enterprise (SBE) Program Declaration of Certification. Other firms seeking certification as a SBE must submit this form. This notarized certification shall be accompanied by copies of the corporate tax returns for the most recent three-year period indicating gross receipts. KCATA shall review and make eligibility determinations based on the Declaration of Certification.
3. SBA 8(a) Business Development Certification. This certification, as described in 13 CFR Parts 121 and 124, will require submittal of three years of business tax returns.
4. A small business that provides evidence at the time of a solicitation submittal that it qualifies as a small business concern for the specific task to be performed. Such evidence can be provided by either of the appropriate following means:
 - a. A copy of business tax returns for the most recent three-year period indicating the gross receipts; or
 - b. If the SBA uses the number of employees to determine small business eligibility, a copy of the firm's payroll statement indicating the average annual employment for the most recent year.

Note: Minority and women-owned business enterprises which are awarded contracts under the Small Business Enterprise set-aside will be strongly encouraged to seek DBE certification in order to be counted towards race neutral DBE participation.

C. Certification Determinations

KCATA will make a decision on an application within ninety (90) days of receiving all required information from the applicant. KCATA may extend this time period once, for no more than an additional sixty (60) days, upon written notice to the firm explaining the reasons for the extension.

1. Approvals. Upon a finding by KCATA that the firm is eligible to participate in the SBE program, the firm will receive notice of approval. The firm will be required to submit an updated Declaration of Certification of three years from the initial date of submission to remain certified. Failure to submit the required Declaration of Certification will result in a letter notifying the SBE that such Declaration is past due, and if the SBE fails to respond with a complete Declaration of Certification KCATA will make a preliminary determination to remove the firm's eligibility.
2. Denials. If a firm fails to meet any aspect of the SBE program rules, KCAA will provide the firm with a denial letter detailing the reasons for the denial, specifically referencing the evidence in the record that supports each reason. The applicant may appeal the decision to the Missouri Regional Certification Committee (MRCC) or the U. S. Department of Transportation.
3. Removals. If during a firm's certification, it is determined the firm is no longer eligible or that the firm failed to cooperate fully and promptly, the firm will be notified of KCATA's preliminary determination to remove the firm's eligibility. The applicant may appeal the decision to the MRCC or U.S. Department of Transportation.
4. Third Party Challenge. Any person or agency may file a written complaint challenging the eligibility status of a certified firm and specify the alleged reasons why the firm is ineligible. If there is reasonable cause to believe the firm is ineligible, KCATA will provide written notice to the challenged firm and the complainant of the preliminary decision to find the firm ineligible. The firm may appeal the decision to the MRCC or U. S. Department of Transportation. If KCATA finds reasonable cause does not exist for removal of eligibility, KCATA will notify the complainant and the challenged firm, in writing, of this determination and the basis for the decision. KCATA will make every effort to maintain the confidentiality of complainants' identities, however, in some cases, it may be necessary to divulge the identity of the complainant in order to continue review of the challenge.

D. Outreach Efforts

The KCATA is committed to minimizing the barriers to participation in Authority contracts to all small business concerns. To provide support to the small business concerns, KCATA will

1. Host Quarterly Workshop to educate local firms on how to get certified with us, bid on our projects, and important staff to communicate with.
2. Promote small business opportunities at public events hosted by community organizations advocating small and minority businesses.
3. Notify small businesses of upcoming bid opportunities through postings on its website and email blasts to known small business concerns, area chambers of commerce and community organizations.
4. Partnering with other MRCC partners in their small business programs to maximize available personnel and resources.

E. Implementation Schedule

The KCATA has incorporated this small business element into its DBE Program within nine (9) months after approval of the element by the Federal Transit Administration (FTA).

F. Assurances

The KCATA makes the following assurances:

1. KCATA's DBE Program, including its small business element, is not prohibited by state law;
2. Certified DBEs that meet the size criteria established under the DBE Program are presumptively eligible to participate in the small business element of the DBE program;
3. There are no geographic or local preferences or limitations imposed on DOT-assisted contracts and the DBE Program is open to small businesses regardless of their location;
4. There are no limits on the number of contracts awarded to firms participating in the DBE Program;
5. Reasonable effort will be made to avoid creating barriers to the use of new, emerging or untried businesses; and
6. Aggressive steps will be taken to encourage those minority and women owned firms participating in the small business element of the DBE Program that are eligible for DBE certification to become certified.

ATTACHMENT I

The following documents can be accessed via internet at the following links listed below:

- 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises In Department of Transportation Financial Assistance Programs"

<https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/49-cfr-part-26-sample-disadvantaged-business>

- Uniform Certification Application Adopted by the Missouri Regional Unified Certification Program

<http://www.kcata.org/documents/uploads/dbecertificationapplication.pdf>

- Missouri Regional Certification Committee (MRCC) DBE Personal Financial Statement

<http://www.kcata.org/documents/uploads/networth.pdf>

- MRCC Small Business Enterprise (SBE) Program Declaration of Certification Form

http://www.kcata.org/documents/uploads/SMALL_BUSINESS_ENTERPRISE_PROGRAM_APPLICATION.docx

The following documents are attached herein as Pages 61 through 65:

- MRCC Authorization to Release Information Form
- MRCC DBE Certification Eligibility Worksheet
- Sample of KCATA's Civil Rights Clauses

AUTHORIZATION TO RELEASE INFORMATION

_____ does hereby authorize _____
(Name of Applicant Firm) (Name of Certifying Agency)

to release to the KANSAS CITY AREA TRANSPORTATION AUTHORITY (KCATA) all information obtained by them for the purpose of certifying _____ as a Disadvantaged Business Enterprise under
(Firm Name)
49 CFR Part 26 issues by the United States' Department of Transportation (U.S. DOT).

This authorization allows for full disclosure of all such information including, but not limited to, financial statements, statements of certification, investigation reports, names of employees and number of employees. All information pertaining to the certification application will be disclosed unless specified, in writing, of any information that is to be excluded.

The Kansas City Area Transportation Authority may use this information for the sole purpose of evaluating whether the applicant firm qualifies as a Disadvantaged Business Enterprise under KCATA guidelines. The KCATA may not use this information for any other purpose without prior, written authorization from the owner of the Applicant Firm. The KCATA may not disclose this information to any third party without prior, written authorization from the Applicant Firm.

This authorization is valid for one year from the date of signature.

_____ Name of Applicant Firm	KANSAS CITY AREA TRANSPORTATION AUTHORITY
_____ Signature of Authorized Official	_____ KCATA Employee
_____ Title	_____ Title
_____ Date	_____ Date
_____ Certifying Agency Contact Name/Telephone #	
_____ Agency Email Address	
_____ Agency Address/City/State/Zip	

Failure to submit this form to KCATA may result in Applicant being denied DBE certification/recertification under 49 CFR Part 26.

**KCATA CONTRACT CLAUSES
CIVIL RIGHTS**

CIVIL RIGHTS

- A. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, age, sex, sexual orientation, gender identity, national origin or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing regulations that the Federal Transit Administration (FTA) may issue.
- B. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Contract:
1. Race, Color, Creed, National Origin or Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, *et seq.*, and Federal transit laws at 49 U.S.C. §5332, the Contractor agrees to comply with all applicable equal opportunity requirements of the U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor” 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, age, sex, sexual orientation, gender identity 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 2. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commissioner (U.S.EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, and U. S. Department of Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F. R. part 90, and Federal transit law at 49 U.S.C. §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 3. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §12102 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et eq.*, and the Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- C. Contractor understands that it is required to include this Article in all subcontracts. Failure by the Contractor to carry out these requirements or to include these requirements in any subcontract is a material breach of this Contract, which may result in the termination of this Contract or such other

remedy as the KCATA deems appropriate, including but not limited to withholding monthly progress payments and/or disqualifying the Contractor from future bidding as non-responsible.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- A. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE's) is 10 percent. *KCATA's overall goal for DBE participation is 15.0 percent. No separate contract goal has been established for this procurement.*
- B. The Contractor shall not discriminate on the basis of race, color national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR. Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as KCATA deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 C.F.R. 26.13(b)).
- C. The Contractor may not substitute, remove or terminate a DBE subcontractor without KCATA's prior written consent. Written consent of termination may only be given if the Contractor has demonstrated good cause. Before submitting its request to terminate or substitute a DBE subcontractor, the Prime Contractor must give notice in writing to the DBE subcontractor, with a copy to KCATA, of its intent to request to terminate and/or substitute, and the reason for the request. The Contractor must give the DBE five days to respond to the Contractor's notice and advise KCATA and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why KCATA should not approve the Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the response period may be shortened.
- D. **Good Cause.** Good cause includes the following circumstances:
1. The listed DBE subcontractor fails or refuses to execute a written contract; or
 2. The listed DBE subcontractor fails or refuses to perform the work of its normal industry standards. Provided, however, that the good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Prime Contractor; or
 3. The listed DBE subcontractor fails or refuses to meet the Prime Contractor's reasonable, nondiscriminatory bond requirements; or
 4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness; or
 5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1200 or applicable state law; or
 6. The DBE subcontractor is not a responsible contractor; or
 7. The listed DBE subcontractor voluntarily withdraws from the project and provides the Prime Contractor written notice of its withdrawal;
 8. The listed DBE is ineligible to receive DBE credit for the type of work required;
 9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to

complete its work on the contract;

10. Other documented good cause that compels KCATA to terminate the DBE subcontractor. Provided the good cause does not exist if the Prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Prime Contractor can self-perform the work for which the DBE contractor was engaged or so that the Prime Contractor can substitute another DBE or non-DBE contractor.
- E. Before submitting its request to terminate or substitute a DBE subcontractor, the Prime Contractor must give notice in writing to the DBE subcontractor, with a copy to KCATA, of its intent to request to terminate and/or substitute, and the reason for the request. The Prime Contractor must give the DBE five days to respond to the Prime Contractor's notice and advise the KCATA and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why KCATA should not approve the Prime Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the response period may be shortened.

REQUESTS FOR PAYMENT

- A. Invoices requesting payment shall be submitted directly to KCATA's Procurement Department. All invoices shall be numbered, dated and submitted in duplicate, and contain full descriptive information of materials or services furnished. All invoices and correspondence shall reference KCATA's Contract number. Separate invoices shall be submitted for each purchase order or work (task) order.
- B. Payment by KCATA will be made within the later of 1) 30 days after receipt of a proper invoice, or 2) 30 days after KCATA's acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.
- C. All final invoices shall be submitted to KCATA within 90 days of project completion or contract termination. Invoices submitted more than 90 days after project completion or contract termination will not be valid and will not be paid. Contractor indemnifies and holds KCATA harmless for any suit filed for payment of invoices submitted after 90 days of project completion or contract termination.
- D. **Subcontractor Payments**
1. Prompt Payment. The Contractor shall establish procedures to ensure timely payment of amounts due pursuant to the terms of its subcontracts. The Contractor shall pay each DBE and non-DBE subcontractor for satisfactory performance of its contract, or any billable portion thereof, in accordance with the timing set forth in any applicable laws or no later than 30 days, whichever is less, from the date of the Contractor's receipt of payment from the Authority for work by that subcontractor.
 2. Prompt Return of Retainage. If retainage is withheld from subcontractors, the Contractor is required to return any retainage payment to its DBE and non-DBE subcontractors in accordance with the timing set forth in any applicable laws or no later than 30 days, whichever is less, from the date of receipt of the retainage payment from the Authority related to the subcontractor's work. Any delay or postponement of payment from said time frame may occur only for good cause following written approval from KCATA. KCATA may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.
 3. The Contractor shall certify on each payment request to the Authority that payment has been or will be made to all subcontractors. Lien waivers may be required for the Contractor and its subcontractors. The

Contractor shall notify KCATA on or before each payment request, of any situation in which scheduled subcontractor payments have not been made.

4. If a subcontractor alleges that the Contractor has failed to comply with this provision, the Contractor agrees to support any Authority investigation, and if deemed appropriate by the Authority, to consent to remedial measures to ensure that subcontractors are properly paid as set forth herein.
5. The Contractor agrees that the Authority may provide appropriate information to interested subcontractors who inquire about the status of Authority payments to the Contractor.
6. Nothing in this provision is intended to create a contractual obligation between the Authority and any subcontractor or to alter or affect traditional concepts of privity of contract between all parties.

