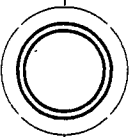
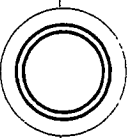


# Preferences in Procurement



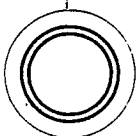
PRESENTATION TO THE  
GOVERNMENT EFFICIENCY COMMITTEE  
FEBRUARY 13, 2012

# Kansas and Competitive Bids



- KSA 75-3739 *et seq* sets out guidelines for “Sealed Bids”
  - Non-Negotiated bid events
  - Evaluation focus is on the “...lowest responsive bidder...” who “...meets specifications...”
- KSA 75-37,102 sets out Negotiated Bid guidelines
  - Best Value Procurement for technical goods and services
  - Evaluation of technical proposal, then cost proposal
  - Statute sets a course...start with the lowest bid received; if not awarded to low bid, the result is reported to Legislature.

## Small Business Procurement Act



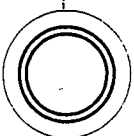
- In 1986, the Kansas Small Business Procurement Act was allowed to sunset...
  - A sub-office within the Department of Administration, Division of Purchases was responsible for collecting and reporting information on procurement activities with disadvantaged businesses
  - Reporting was the limit of the SBPA requirements
    - ★ No decisions were made based on a business' status
    - ★ No Set-Asides
    - ★ No Evaluation Preferences

# Common Acronyms



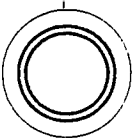
- DBE – Disadvantaged Business Enterprise
- SBE – Small Business Enterprise
- HUB – Historically Underutilized Businesses
- MBE – Minority Owned Business Enterprise
- WBE – Women Owned Business Enterprise
- VBE – Veteran Owned Business Enterprise
- DVBE – Disabled Veteran Business Enterprise

## DBE / SBE Programs



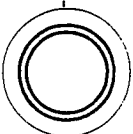
- Disadvantaged Business Enterprise and Small Business Enterprise (DBE/SBE) Programs...
  - Create a level playing field by removing barriers and assisting in the development of businesses
  - Certification by Kansas Department of Commerce
    - ★ Other agencies monitor expenditures with DBE/SBE businesses
  - Help achieve compliance with goals that typically accompany federal grants or funds
  - Provide training so DBE/SBEs can understand their responsibilities and maneuver through bureaucracy

## Small Business Enterprises (SBE)



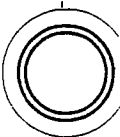
- Programs are typically established to accommodate small businesses in a race-neutral and gender-neutral framework.
- In Kansas, we see some attention to SBEs in federally funded projects
  - Subcontracting opportunities
- Certification granted through the Kansas Department of Commerce
  - Significant application process

## **Disadvantaged Business Enterprises (DBE)**



- Programs are typically established to accommodate historically under-utilized businesses
- Currently, goals set for federally funded projects with subcontracting potential
- Certification granted through KS Department of Commerce
- KDOT has a complimentary program

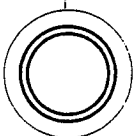
## What Preferences Currently Exist in Kansas?



- Tie Bids can be broken in favor of a Kansas Bidder
- From KSA 75-3740
  - ...the director of purchases shall have power to decide as to the lowest responsible bidder for all purchases, but if:
    - (1) The dollar amount of the bid received from the lowest responsible bidder from within the state is identical to the dollar amount of the bid received from the lowest responsible bidder from without the state, the contract shall be awarded to the bidder from within the state;



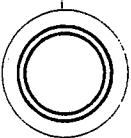
# Preferences



- Take the form of a percentage buffer in the evaluation of costs
- Kansas Bidder: \$100,000
- Missouri Bidder: \$97,000
  - Difference between bids: 3.1%
  - If Kansas enacts a local 5% preference, the Kansas bidder would win the contract

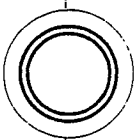
★ Assumes all else is equal

## Set Asides



- Specific contracts or projects are “set aside” so that only DBE vendors can bid
- Some projects might include a statement that a percentage of the overall work product must be supported by a DBE
- These can be sticky unless supported by a Diversity Study

# Diversity Study



- Performed by a consultant
  - Estimated Cost for Kansas: \$1.0 to \$1.5 million
- Looks at the population of the jurisdiction
- Set Aside percentages must reflect the demographics of the jurisdiction
- Most set aside programs conducted without a diversity study end up in court, and the jurisdiction almost always loses.

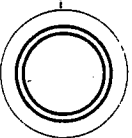
# Reciprocity



- **If another state or entity enacts a preference law, Kansas can apply those preferences to bids from vendors in that jurisdiction;**
- **If Kansas enacts a preference law, a state or entity with a Reciprocity Law can assess the same “penalty” against Kansas vendors bidding in their jurisdiction**

- **KSA 75-3740a.**
- **State and local government contracts; bidders domiciled in other states.** To the extent permitted by federal law and regulations whenever the state of Kansas or any agency, department, bureau or division thereof or any municipality of the state including, but not limited to, county, school district, improvement district or other public body lets bids for contracts for the erection, construction, alteration or repair of any public building or structure or any addition thereto or for any public work or improvement or for any purchases of any goods, merchandise, materials, supplies or equipment of any kind, the contractor domiciled outside the state of Kansas, to be successful, shall submit a bid the same percent less than the lowest bid submitted by a responsible Kansas contractor as would be required of such Kansas domiciled contractor to succeed over the bidding contractor domiciled outside Kansas on a like contract let in such contractor's domiciliary state.

## 2012 Legislative Session



- HB2211 – Preference for Disabled Veterans
- HB2442 – Preference for companies that hire persons with disabilities / buy from State Use Catalog
- HB2463/SB318 – Requires vendor to use Kansas Workers (70%) in service contracts greater than \$100,000
- HB 2450 / SB268 – SBE MBE WBE Act