

REVISION OF SECTIONS 101 AND 106  
BUY AMERICA REQUIREMENTS

**Sections 101 and 106 of the Standard Specifications shall include the following:**

**Add the following to Subsection 101.02:**

**Construction Material:** Includes an article, material, or supply — other than an item of primarily iron or steel — that is or consists primarily of non-ferrous metals; plastic and polymer-based products (including polyvinyl chloride [PVC], composite building materials, and polymers used in fiber optic cables); glass; lumber; or drywall.

**Domestic Content Procurement Preference:** A phrase meaning that all iron and steel used in the project is produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

**Infrastructure:** Includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

**Section 106 of the Standard Specifications is hereby revised as follows:**

**106.11 Buy America Requirements, delete and replace with the following:**

- (a) *Steel and Iron.* All manufacturing processes, including the application of a coating, for all steel and iron products permanently incorporated in the work shall have occurred in the United States of America. All manufacturing processes include the processes that change the raw ore or scrap metal into a finished steel or iron product. This requirement will not prevent a minimal use of foreign steel or iron, provided the total cost, including delivery to the project, of all such steel and iron products does not exceed one-tenth of one percent of the total contract cost or \$2,500, whichever is greater. When there is foreign steel or iron permanently incorporated into the project, the Contractor shall provide documentation of the project delivered cost of that foreign steel or iron.

The Contractor shall maintain on file Buy America certifications that every process from either the original smelting or melting operation, including the application of a coating, performed on steel or iron products either has or has not been carried out in the United States of America. These Buy America certifications apply to every steel and iron product that requires pre- inspection, pretesting, certified test results, or a certificate of compliance. Shipping invoices, bar lists, and mill test reports shall accompany the Buy America certifications. The Contractor shall obtain a Buy America certification from each supplier, distributor, fabricator, and manufacturer that has handled each steel or iron product. These Buy America certifications shall create a chain of custody trail for every supplier, distributor, fabricator, and manufacturer that handled the steel or iron product and shall include certified mill test reports with heat numbers from either the original smelting or melting operation. Upon request, the Contractor shall allow the State, FHWA, and their representatives access to the Buy America certifications including supporting documentation. When the Contractor does not provide the Buy America certifications at the Engineer's request, the Engineer will reject the steel or iron product.

REVISION OF SECTIONS 101 AND 106  
BUY AMERICA REQUIREMENTS

Before the permanent incorporation into the project and before payment for steel or iron products, the Contractor shall provide an assurance document. The assurance document shall certify in writing that the steel or iron products comply with Buy America requirements; the Buy America certifications and supporting documentation are on file; and when requested, the Contractor has submitted the required documentation to CDOT. The Contractor shall also maintain an assurance document that summarizes the date and quantity of all steel and iron material delivered to the project. This assurance document shall include the pay item, quantity of material delivered to the project, mill test reports with heat numbers, and the quantity of material installed by the monthly progress payment cutoff date. The assurance document shall reconcile the pay item quantities and certified mill test reports, for the material delivered to the project to the Buy America certifications and supporting documentation. The assurance documentation shall include the cost of all foreign steel or iron delivered and permanently incorporated into the project. The Contractor shall also submit a summary for each month that no steel or iron products are incorporated into or delivered to the project. The Contractor shall submit the assurance documentation to the Engineer by the monthly progress payment cutoff date. The assurance documentation does not relieve the Contractor of providing the necessary Buy America certifications and supporting documentation for steel or iron products.

- (b) *Manufactured Products.* Regulations require the use of domestic steel and iron in Federally funded construction projects. Buy America applies to construction components which are “predominantly steel or iron products,” defined by CDOT as products which are manufactured with at least **90%** steel or iron content by weight when delivered to the job site for installation. FHWA provides waivers for manufactured products and products that are not predominantly steel or iron. The FHWA’s 1983 final Buy America regulations (see <https://www.fhwa.dot.gov/programadmin/contracts/112583.cfm>) waive the application of Buy America to manufactured products that do not include steel and iron components. However, Buy America applies to the steel wire mesh or steel reinforcing components of manufactured products (i.e. precast reinforced concrete elements).
- (c) *Glass Beads for Pavement Marking.* All post-consumer and industrial glass beads for pavement marking shall have been manufactured from North American glass waste streams in the United States of America. The bead manufacturer shall submit a COC in accordance with subsection 106.12 confirming that North American glass waste streams were used in the manufacture of the glass beads.
- (d) *Construction Materials.* All manufacturing processes for eligible construction materials permanently incorporated into the work shall have been manufactured in the United States of America. All manufacturing processes for construction materials consist of at least the final manufacturing process and the immediately preceding manufacturing stage for the construction material. Buy America requirements shall apply to the following eligible construction materials:
1. Non-ferrous metals;
  2. Plastic and polymer-based products (including, but not limited to, polyvinylchloride [PVC]);
  3. Glass;
  4. Lumber; or
  5. Drywall

**Note 1:** Raw materials such as cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives are excluded from Buy America requirements.

REVISION OF SECTIONS 101 AND 106  
BUY AMERICA REQUIREMENTS

Items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials.

Before the permanent incorporation into the project for all eligible construction materials, the Contractor shall obtain a certification from each supplier. This certification must identify where the construction material was manufactured and attest specifically to Buy America compliance.

The Contractor shall maintain and submit on a monthly basis, CDOT Form #1600, Contractor's Certificate of Compliance summarizing the Item Description, CDOT Bid Item #, Manufacturer Name Identifier, Date and Quantity Received, Date and Quantity Installed, and Bid Item Unit of all eligible construction materials.

The COC does not relieve the Contractor of providing the necessary Buy America supplier certifications prior to permanent incorporation into the project. Upon request, the Contractor shall allow the State, FHWA, and their representatives access to the Buy America certifications. The lack of these certifications will be justification for rejection of the construction material.

- (e) *Waivers.* The Federal Highway Administration is responsible for processing and approving all waivers, including waivers requested by recipients and on behalf of subrecipients. More information on Buy America waivers can be found in Section 5.2 of the Field Materials Manual Special Notice to Contractors.

If a Contractor desires to pursue a waiver they shall notify the CDOT Project Engineer in writing who will then submit it to the CDOT Materials & Geotechnical Services Unit, Pavement Design and Documentation Services Program. The Pavement Design and Documentation Services Program will review it and forward it to the FHWA Division Office for consideration.

A Contractor's decision to pursue any waivers on the project shall not waive or otherwise nullify any provisions of the Contract. In addition, the time to obtain a waiver shall be considered a non-excusable, non-compensable delay and Liquidated Damages (per Subsection 108.09) will be enforced should the Contract Time (original or as-amended) expire due to the approval or non-approval of a waiver.

The Contractor will not be entitled to an extension of contract time due to the approval or non-approval of a waiver and no such claim will be considered.



1  
**REVISION OF SECTION 109  
 ASPHALT CEMENT COST ADJUSTMENT  
 (ASPHALT CEMENT INCLUDED IN THE WORK)**

Section 109 of the Standard Specifications is hereby revised for this project as follows:  
 Delete subsection 109.06 (j) and replace with the following:

- (j) *Asphalt Cement Cost Adjustments.* Contract cost adjustments will be made to reflect increases or decreases in the monthly average price of asphalt cement from the average price for the month preceding the month in which bids were received for the Contract. These cost adjustments are not a change to the contract unit prices bid. When bidding, the Contractor shall specify on the Form 85 whether the cost adjustment will apply to the Contract. After bids are submitted, the Contractor will not be given the opportunity to accept or reject this adjustment. If the Contractor fails to indicate a choice on the Form 85, the cost adjustment will not apply to the Contract. If the asphalt cement cost adjustment is accepted by the Contractor, the adjustment will be made in accordance with the following criteria:

Abbreviations and Terms

1. Estimate Price for asphalt (EP) – Average Asphalt Cement price index for the calendar month prior to the calendar month in which the partial estimate pay period ends.

- a. On the first Monday of each month, the Department determines the EP using price values from the most recent **Poten & Partners Asphalt Weekly** and the **Argus Americas Asphalt Report**. The Department averages values for the following, eliminating the single highest and single lowest values, before averaging.

The high reported selling price (per ton) of typical non-modified paving grades of asphalt from the **Poten and Partners Asphalt Weekly Monitor**.

Colorado

Colorado Springs Area

Montana

Eastern markets

Western markets

Nebraska

Western markets

New Mexico

Northern

Southern

Utah

Salt Lake City area

Wyoming

Northern markets

Southern markets

The high reported selling price (per ton) of typical non-modified paving grades of asphalt from the **Argus Americas Asphalt Report**.

Denver

Kansas City

Omaha

Salt Lake City

Wyoming

This average value is then averaged with values obtained in the same manner for the previous three weekly reports to establish the EP.

- b. The EP remains in effect until the first Monday of the following month and is used for regular partial estimates closed before the first Monday of the following month.

2. Base Price for asphalt (BP) – Average Asphalt Cement price index for the calendar month prior to the calendar month in which bids are opened.

2  
**REVISION OF SECTION 109  
 ASPHALT CEMENT COST ADJUSTMENT  
 (ASPHALT CEMENT INCLUDED IN THE WORK)**

3. Asphalt cost adjustment (ACCA) – Asphalt Cement Cost Adjustment.  
<https://www.codot.gov/business/designsupport/cdot-construction-specifications/2022-construction-specifications/acca>

1. Cost adjustments will be made on a monthly basis subject to the following conditions:
  - A. Adjustment will be based on the pay quantities on the monthly partial pay estimate for the following two pay items when measured by the ton and asphalt cement is included in the pay items:

Item No.	Item	Pay Unit
403*	Hot Mix Asphalt (Grading __) (Asphalt)	Ton
403	Stone Matrix Asphalt (Grading __) (Asphalt)	Ton
*Hot Mix Asphalt (Patching) is not subject to asphalt cement cost adjustment.		

- B. A cost adjustment will be made only when the EP asphalt cement price index varies by more than 10 percent from the BP asphalt cement price index, and only for that portion of the variance in excess of 10 percent. Cost adjustments may be either positive or negative dollar amounts.
- C. The maximum allowable monthly and final price adjustment to the Contractor or rebate to The Department is limited to a (EP/BP) ratio of 1.6 and 0.4, respectively.
- D. Asphalt cement cost adjustments will not be made for any partial estimate falling wholly after the expiration of contract time.
- E. Adjustment formula:

EP greater than BP:

$$ACCA = (EP - 1.10 BP) (PA) (Q)$$

EP less than BP:

$$ACCA = (EP - 0.90 BP) (PA) (Q)$$

Where:

**BP** = Average Asphalt Cement price index for the calendar month prior to the calendar month in which bids are opened

**EP** = Average Asphalt Cement price index for the calendar month prior to the calendar month in which the partial estimate pay period ends

**ACCA** = Asphalt Cement Cost Adjustment

**PA** = Percent of the paving mixture that is asphalt cement. Asphalt Cement content will be determined by the weighted average of all asphalt cement content percentages obtained from the field acceptance tests for that item (Use decimal in formula, e.g.: 0.053). If Reclaimed Asphalt Pavement (RAP), Reclaimed Asphalt Shingles (RAS), or both is used, the percent of Virgin Asphalt Cement added to the mix will be determined by subtracting the percent of asphalt cement in the RAP, RAS, or both from the percent of asphalt cement in the mix as calculated from Revision of Section 401, Reclaimed Asphalt Pavement and Revision of Section 401 Reclaimed Asphalt Shingles.

**Q** = Pay quantity for all 403 items shown above on the monthly partial pay estimate in Tons.

REVISION OF SECTION 109  
ASPHALT CEMENT COST ADJUSTMENT  
(ASPHALT CEMENT INCLUDED IN THE WORK)

Example: Bids are opened on July 16. The BP will be the average of the weekly postings for June 1 through June 30. For an estimate cut-off date selected by the Contractor at the Pre-Construction Conference of the 20<sup>th</sup> of the month a February estimate will include HMA quantities measured from the 21<sup>st</sup> of January through the 20<sup>th</sup> of February, and the EP index used to calculate ACCA will be the average of the weekly prices for January 1 through January 31 as established by CDOT.

- F. Cost adjustment will not be made for the quantity of any item that is left in place at no pay or for material removed and replaced at the Contractor's expense.
- G. Cost adjustments will not be made to items of work added to the Contract by Change Order after the award of the Contract.
- H. The asphalt cement cost adjustment will be the sum of the individual adjustments for each of the pay items shown above. No adjustment will be made for asphalt cement costs on items other than those shown above.
- I. Asphalt cement cost adjustments resulting in an increased payment to the Contractor will be paid for under the planned force account item: Asphalt Cement Cost Adjustment. Asphalt cement cost adjustments resulting in a decreased payment to the Contractor will be deducted from monies owed the Contractor.





REVISION OF SECTION 207  
TOPSOIL

Section 207 of the Standard Specifications is hereby deleted for this project and replaced with the following:

**DESCRIPTION**

**207.01** This work consists of salvaging topsoil from onsite locations, stockpiling, maintaining, and preparing the subsoils for the placement of the topsoil at locations shown on the plans. It also includes creating seeding media by amending subsoils, and importing offsite topsoil when shown on the plans.

Substitutions from this specification will not be allowed unless submitted in writing to the Engineer and approved by the Region or Headquarters Landscape Architect.

**MATERIALS**

**207.02 General.** Topsoil shall be salvaged onsite, imported, or produced as shown on the plans. Topsoil shall be free of refuse and litter along with noxious weed seed and reproductive plant parts, as listed in current State of Colorado A and B Noxious Weed List and local agency weed lists. Topsoil shall not include heavy clay, hard clods, toxic substances, pathogens, or other material, which would be detrimental to growing native vegetation. All required amendments shall be thoroughly incorporated to parent material, onsite. All amendments shall conform to Section 212. Topsoil and parent material shall be free of clods, sticks, stones, debris, concrete, and asphalt in excess of 4 inches in any dimension for all material used within the designed clear zone for the project. Topsoil outside of the clear zone may contain rock larger than 4 inches in any dimension. For slopes with no structures being used to protect areas from falling rocks the Contractor shall remove or secure any rocks deemed unstable and could pose a safety hazard.

Topsoil shall be generated from one or more of the following as shown on the plans:

- (a) *Topsoil (Onsite)*. Topsoil shall consist of the upper 6-inch layer of the A horizon, as defined by the Soil Science Society of America, or at the depths and locations shown on the Stormwater Management Plan (SWMP). It shall consist of loose friable soil, salvaged from onsite and stockpiled or windrowed. Litter and duff (layer of partially decomposed plant material) shall be collected as part of the salvaging of topsoil unless specified to be removed and hauled offsite on the plans.
- (b) *Topsoil (Wetland)*. Wetland topsoil shall consist of moist, organic soil obtained from delineated wetlands, including any existing wetland vegetation and seeds. Wetland topsoil shall be extracted from the project site at locations shown on the plans or as directed, to a minimum depth of 12 inches or at the depths as shown on the plans.
- (c) *Seeding Media*. Seeding Media shall consist of one or all of the following approved materials: sub-soil, overburden, or material generated from rock. Contractor shall select onsite or offsite locations to generate material that meet the requirements of Table 207-1. The Contractor shall provide a Certified Test Report (CTR) in accordance with subsection 106.13, excluding lot, heat, and batch confirming that the excavated material conforms to Table 207-1.
- (d) *Topsoil (Offsite)*. The Contractor shall submit a CTR for Topsoil (Offsite) for approval a minimum of 60 days prior to import in accordance with subsection 106.13. The Contractor shall include with the CTR a complete Soil Nutrient Analysis for the properties listed in Table 207-2 from an independent laboratory that participates in the National Association for Proficiency Testing (NAPT). If topsoil nutrient analysis is deficient, an Amendment Protocol shall be submitted by the Contractor for approval. The Amendment Protocol shall contain a complete list of amendments and associated quantities to produce topsoil that conforms to Table 207-2.

2  
 REVISION OF SECTION 207  
 TOPSOIL

The Contractor shall submit a Certificate of Compliance (COC) for Topsoil (Offsite) for approval a minimum of 60 days prior to import that the source has controlled noxious weeds in accordance with the State of Colorado Noxious Weed Act 35-5.5-115.

**Table 207-1  
 PHYSICAL PROPERTIES OF SEEDING MEDIA**

Property	Range	Test
Soil pH (s.u.)	5.6 – 7.5	ASA Mono. #9, Part 2, Method 10-3.2 or TMECC 04.11-A
Soil Electrical Conductivity (EC) (mmhos/cm or ds/m)	< 5.0	ASA Mono. #9, Part 2, Method 10-3.3
Soil SAR (s.u.)	0 - 10	ASA Mono. #9, Part 2, Method 10-3.4
Rock Content (%)	≤ 25	USDA NRCS Rock Fragment Modifier Usage
Trace Contaminants (Arsenic, Cadmium, Copper, Mercury, Selenium, Zinc, Nickel, and Lead)	Meets US EPA, 40 CFR 503 Regulations	TMECC 04.06 or EPA6020/ASA (American Society of Agronomy)
Rock Content (%) greater than 3” diameter	≤ 25	USDA NRCS Rock Fragment Modifier Usage
USDA Soil Texture	No more than 70% clay, silt, and sand by percentage volume of topsoil.	ASA Monograph #9, Part 1, Method 15-4 or ASA 1 43-5
All Particle Sizes	< 6 Inches	
Physical contaminants (man-made inerts) (%)	< 1	TMECC 03.08-C
C:N ratio	<20	TMECC 05.02-A
* Fines % when manufacturing material from rock	>25% material passing through #4 sieve	ASTM D6913

Amendments to the base imported material shall have the quantities of material verified onsite prior to incorporation into parent material, either at the stockpiles or after placement of parent material. Topsoil amended at the stockpiles shall be distributed to the site within seven days. \* Substitute this requirement for USDA Soil Texture requirement when project are approved to use material manufactured from native rock material on site.

3  
REVISION OF SECTION 207  
TOPSOIL

**Table 207-2  
TOPSOIL (OFFSITE) PROPERTIES**

Property	Range	Test Methods
Soil pH (s.u)	5.6 – 7.5	ASA Mono. #9, Part 2, Method 10-3.2 or TMECC 04.11-A
Salt by Electrical Conductivity (EC) (mmhos/cm or ds/m)	< 2.0	ASA Mono. #9, Part 2, Method 10-3.3
Soil SAR (s.u.)	0 – 10	ASA Mono. #9, Part 2, Method 10-3.4
Soil OM (%)	3 – 5	Methods of Soil Analysis, Part 3, Method 34
Soil N (NO <sub>3</sub> -n, ppm)	≥ 20.0	Methods of Soil Analysis, Part 3. Chemical Methods. Ch. 38 Nitrogen – Inorganic Forms
Soil P (ppm)	≥ 13.0	ASA Mono. #9, Part 2, Method 24-5.4 or others as required based on soil pH
Soil K (ppm)	≥ 80	ASA Mono. #9, Part 2, Method 13-3.5
Rock Content (%) greater than 3” diameter	≤ 25	USDA NRCS Rock Fragment Modifier Usage
Bioassay (seedling emergence and relative vigor)	> 80% of control	TMECC 05.05-A or Approved Germination Test
Soil Texture	No more than 70% clay, silt and sand by percentage volume of topsoil	ASA Mono. #9, Part 1, Method 15-4
Physical contaminants (man-made inerts) (%)	< 1	TMECC 03.08-C
Trace Contaminants (Arsenic, Cadmium, Copper, Mercury, Selenium, Zinc, Nickel, and Lead)	Meets US EPA, 40 CFR 503 Regulations	TMECC 04.06 or EPA6020/ASA (American Society of Agronomy)
All Particle Sizes	< 6 Inches	
C:N ratio	<20	TMECC 05.02-A

The Contractor shall utilize a rod penetrometer for determining subgrade soil preparation and determining looseness of soil after ripping. The penetrometer shall have a psi pressure gage, and shall meet the following requirements:

- (1) Steel rod with a minimum diameter of ½ inch with graduations (tick marks) every 6 inches.
- (2) The rod shall be made of stainless steel or other metal that will not bend when weight is applied.
- (3) The end of the rod shall have a 30-degree cone tip.
- (4) The diameter of the cone at its tip shall be no more than 0.1 inch.
- (5) The top of the rod shall be a T-handled configuration.

REVISION OF SECTION 207  
TOPSOIL**CONSTRUCTION REQUIREMENTS**

**207.03 Site Pre-vegetation Conference.** Prior to the start of the initial Subgrade Soil Preparation for the project, the Contractor shall request a Site Pre-vegetation Conference. The Engineer will set up the conference and will include: the Engineer or designated representative, the Superintendent or designated representative, the sub-contractor(s) performing the subgrade soil preparation and soil amendments, and the CDOT Landscape Architect representing the Region. Only one meeting is required for the project unless a new sub-contractor is brought on that did not attend the previous meeting.

The Agenda of the Pre-vegetation Conference can be found in Appendix A of the Construction Manual and includes the following:

- (1) Final review of the Topsoil (Offsite) Amendment Protocol
- (2) Review of the Method Statement detailing the equipment which will be used for the subgrade soil preparation operations
- (3) Review of rod penetrometer which will be used to determine subgrade soil preparation of topsoil
- (4) Permanent Stabilization Phasing Plan (identify strategies and site management measures to protect de-compacted, topsoil amended, seeded, and blanketed areas from foot, vehicle loads, and other disturbances).
- (5) Seeding. See subsection 212.03 for submittal requirements.
- (6) Meeting attendee sign-in log

**207.04 Topsoil Stockpiling.** Stockpiles of topsoil shall be created as shown on the plans or as approved by the Engineer. All Stockpiles of topsoil which are scheduled to remain in place for 14 days or more shall receive interim stabilization in accordance with subsection 208.04. All topsoil stockpiles shall be identified using white pin flags with "TOPSOIL" printed in black letters and shall have their locations shown on the SWMP Plans. Each individual stockpile shall require at least one flag, and one additional flag for each 10 cubic yards of salvaged topsoil. The contractor shall provide only perimeter flags for stockpile larger than 100 cubic yards with a minimum spacing of 25 feet.

Topsoil may be placed in stockpiles or windrowed at the edge of the disturbance. Windrowed topsoil shall not be used as perimeter erosion control or extensively compacted. When topsoil is windrowed, all stockpile requirements still apply.

- (1) Upland Topsoil. If included on the plans, stockpiles shall be treated with herbicide, in accordance with Section 217, or as directed.
- (2) Wetland Topsoil. Wetland stockpiles shall not be treated with herbicide. Weeds shall be hand pulled. Wetland topsoil shall be placed within 24 hours from excavation, unless otherwise approved by the Engineer. Wetland topsoil shall not be stockpiled for more than six months.

**207.05 Subgrade Soil Preparation.** Before placement of topsoil, the subgrade shall be ripped to a minimum depth of 14 inches. Subgrade shall be mostly dry and friable. Subgrade shall crumble without sticking together, yet not be so dry and hard that it does not break apart easily.

Underground utilities shall be located prior to soil preparation.

REVISION OF SECTION 207  
TOPSOIL

Subgrade soil preparation equipment shall meet the requirements for either winged tip or parabolic shanks. Operation shall be performed to fracture the soil uniformly without lifting or furrowing the surface excessively. The Contractor shall submit a method statement for subgrade soil preparation other equipment will be considered.

1. Winged tip shanks (dozer equipment) shall be a minimum of 6 inches wide and have 2 inches of vertical profile change on the blade with a 40 – 60-degree sweep angle.

The Contractor shall calibrate the subgrade soil preparation equipment using a minimum 30 linear feet of the initial pass. The Contractor shall utilize the rod penetrometer to verify that that de-compaction was successfully done. The Contractor shall take penetration measurements every 6 inches across a transect perpendicular to the direction of the tractor and spanning the width of the subgrade soil preparation. Depths of penetration shall confirm that a minimum of 12 inches can be achieved without reaching 300 psi on the rod penetrometer pressure gage (approximately 30 pounds of pressure on the T-handle).

Existing subgrade shall be de-compacted to a depth of 14 inches. If multiple passes are needed, the subsequent passes shall be positioned so that the ripping equipment (subsoilers) from the previous pass are split by the subsequent pass. Following ripping, the Contractor shall remove all sticks, stones, debris, clods, and all other substances greater than 6 inches in diameter. The Contractor shall restrict motorized vehicle and foot traffic from passing over the ripped area since this would recompact the areas that received subgrade soil preparation.

The first 4 feet from the edge of pavement shall be ripped to a depth of 6 inches. If the project is going to use aggregate base course or recycled asphalt as a shouldering technique, those areas will not require subgrade soil preparation. Depth of soil ripping for the subgrade soil preparation shall be checked with the rod penetrometer.

The Contractor shall verify adequate de-compaction of the entire area to have topsoil placed using a rod penetrometer in the presence of the Engineer. Tests shall be performed at a minimum of ten random locations per each acre as selected by the Engineer. The Test shall verify that a depth of 12 inches of penetration into the soil can be achieved without reaching 300 psi on the rod penetrometer pressure gage (approximately 30 pounds of pressure on the T-handle). If this depth cannot be achieved for 80 percent of the penetrations, the Contractor shall re-rip the area at no additional cost to the Department.

**207.06 Placement of Topsoil and Seeding Media.** Topsoil and Seeding Media shall be hauled and placed at the locations disturbed and will be re-vegetated or as shown on the plans. The contractor shall place a minimum thickness of 6 inches and should only be handled when it is dry enough to work without damaging soil structure. Topsoil and Seeding Media shall be placed a minimum depth of twelve (12) inches when placed over riprap as required on the plans. No Topsoil or Seeding Media shall be placed below ordinary high water mark except as otherwise specified in bio-stabilization bank treatments.

Salvaged topsoil placement deeper than 6 inches is allowed if additional approved material is on-site.

Contractor shall place topsoil in a method that does not re-compact subgrade material using low ground-contact pressure equipment, or by excavators and/or backhoes operating adjacent to it.

The final grade shall be free of all materials greater than 4 inches in diameter within the designed clear zone for the project. Equipment not required for revegetation work will not be permitted in the areas of placed topsoil.

Soil amendments, seedbed preparation, and permanent stabilization mulching shall be accomplished within four working days of placing the topsoil on the de-compacted civil subgrades. If placed topsoil is not mulched with permanent stabilization mulch within four working days, the Contractor shall complete interim stabilization methods in accordance with subsection 208.04(e), at no additional cost to the Department. Time to perform the work may be extended for delays due to weather.

REVISION OF SECTION 207  
 TOPSOIL

**METHOD OF MEASUREMENT**

**207.07** Topsoil material will be measured by the actual number of cubic yards of topsoil placed and accepted. Subgrade soil preparation will be measured by the square yards of subgrade which is ripped and accepted for adequate de-compaction.

**BASIS OF PAYMENT**

**207.08** The accepted quantities measured will be paid for at the Contract unit price for each of the pay items listed below that appear in the bid schedule.

Payment will be made under:

<b>Pay Item</b>	<b>Pay Unit</b>
Topsoil (Onsite)	Cubic Yard
Seeding Media	Cubic Yard
Topsoil (Offsite)	Cubic Yard
Topsoil (Wetland)	Cubic Yard
Subgrade Soil Preparation	Square Yard

Amendments for Topsoil (Onsite) and Seeding Media will be measured and paid for in accordance with Section 212.

Amendments for Topsoil (Offsite) will not be measured and paid for separately, but shall be included in the work.

Noxious Weed Management will be measured and paid for in accordance with Section 217.

Stockpiling or windrowing of topsoil will not be measured and paid for separately, but shall be included in the work.

Testing of Seeding Media and Topsoil (Offsite) will not be measured and paid for separately but shall be included in the work.

Rod penetrometer and associated verification testing of random locations will not be measured and paid for separately, but shall be included in the work.

The Site Pre-vegetation Conference will not be paid for separately, but shall be included in the work.

Additional passes with the ripping equipment to achieve the desired de-compaction will not be measured and paid for separately, but shall be included in the work.

Removing of clods, sticks, stones, debris, concrete, and asphalt in excess of 4 inches in any dimension for all topsoil and Seeding Media used within the designed clear zone for the project will not be measured and paid for separately, but shall be included in the work.



CERTIFIED PAYROLL REQUIREMENTS  
FOR CONSTRUCTION CONTRACTS

All applicable contractors subject to Davis-Bacon and Related Acts (DBRA) requirements shall submit all payrolls weekly (at least every seven days), related to Form FHWA 1273, *Required Contract Provisions for Federal-Aid Construction Contracts*, and the Colorado Senate Bill 19-196. The Contractor, all subcontractors, and applicable suppliers required to submit certified payrolls shall follow all DBRA requirements, including sections 5.5, 3.5, and 3.6 of the 29 CFR. Contractors shall upload a completed Contractor Fringe Benefit Statement (CFBS) into LCPtracker at least once per project, utilizing the following web link:

<https://prod-cdn.lcptracker.net/login/login>

The CFBS shall include benefit details for employees who perform work on the project. The CFBS shall provide an overview of the bona fide benefits provided by the employer. If a contractor's fringe benefits change during the project's life, a revised CFBS shall be submitted to reflect the changes accurately. Note other deductions by type and amount. Attach required supporting documentation in the LCPtracker system. Contractors, subcontractors, and applicable suppliers shall establish and utilize a process that allows all employees to verify the number of hours and classifications submitted to pay wages and benefits.

The Contractor, subcontractors, and applicable suppliers shall submit payrolls directly into LCPtracker for approval by the Contractor. The prime approver for the Contractor shall approve or reject payrolls within seven days after submission into LCPtracker.





1  
REVISION OF  
DISADVANTAGED BUSINESS  
ENTERPRISE (DBE) REQUIREMENTS

**1. Definitions.**

Terms not defined in this special provision shall have the meaning provided in the *CDOT Standard Specifications for Road and Bridge Construction*.

- A. *CDOT Form 1414 Anticipated DBE Participation Plan*. Document that lists all of the bidder's DBE Commitments and submitted with the bid.
- B. *CDOT Form 1415 Commitment Confirmation*. Document confirming the bidder's Commitments and submitted post-bid.
- C. *CDOT Form 1416 Good Faith Effort Report*. Document that details the actions taken to meet the Contract Goal.
- D. *CDOT Form 1417 Approved DBE Participation Plan*. Document that lists the bidder's approved Commitments at the time of Contract award.
- E. *CDOT Form 1432 Commercially Useful Function Questionnaire*. Document that records and verifies each DBE's CUF for Eligible Participation.
- F. *Commitment*. A portion of the Contract, identified by dollar amount and work area, designated by the bidder or Contractor for participation by a particular DBE. Commitments are initially submitted to CDOT via Form 1414 and/or Form 1415.
- G. *Commercially Useful Function (CUF)*. Responsibility for the execution of the work and carrying out such responsibilities by actually performing, managing and supervising the work per Section 8 of this special provision.
- H. *Contract Goal*. The percentage of the Contract designated by CDOT for DBE participation as specified by the Project Special Provision *Disadvantaged Business Enterprise (DBE) Contract Goal*. For determining whether the Contract Goal was met before award, the Contract Goal will be based upon the proposal amount excluding force account items. In the event a Contract Modification Order increases the amount of the Contract, as described in Section 6 of this special provision, the Contract Goal shall be based on the Total Earnings Amount.
- I. *DBE Program Manual*. The manual maintained by the Civil Rights & Business Resource Center (CRBRC) detailing CDOT's policies and procedures for administering the DBE program.
- J. *Disadvantaged Business Enterprise (DBE)*. A Colorado-certified Disadvantaged Business Enterprise listed on the Colorado Unified Certification Program (UCP) DBE Directory.
- K. *Eligible Participation*. Work by a DBE which counts as valid DBE participation on the Contract and may be used towards fulfillment of a Commitment.
- L. *Good Faith Efforts*. All necessary and reasonable steps to meet the Contract Goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if not fully successful. Good Faith Efforts are evaluated before award and throughout performance of the Contract. For guidance on Good Faith Efforts, see Section 4 of this special provision below.
- M. *Joint Check*. A check issued by the Contractor or one of the Contractor's subcontractors to a DBE firm and a material supplier or other third party for materials or services to be incorporated into the work.

2  
 REVISION OF  
 DISADVANTAGED BUSINESS  
 ENTERPRISE (DBE) REQUIREMENTS

- N. *Race-Neutral*. DBE Participation on the Contract obtained through customary competitive procedures.
  - O. *Reduction*. Lessening the Commitment amount to a DBE. A Reduction constitutes a partial termination and includes, but is not limited to, instances in which a Contractor seeks to perform work originally designated for a DBE with the Contractor's own forces or to have that work performed by a business entity other than the committed DBE.
  - P. *Subcontractor*. An individual, firm, corporation or other legal entity to whom the Contractor sublets part of the Contract, as per Section 101 in the *Standard Specifications for Road and Bridge Construction*. For purposes of this special provision, the term Subcontractor includes suppliers.
  - Q. *Substitution*. When a Contractor seeks to find another DBE to perform work on the Contract as a result of a Reduction or Termination.
  - R. *Termination*. When a Contractor no longer intends to use a DBE for fulfillment of a Commitment.
  - S. *Total Earnings Amount*: Amount of the Contract earned by the Contractor, including approved Contract Modification Orders and approved force account work performed, but not including deductions for liquidated damages, price reduced material, work time violations, overweight loads or liens. The amount of the Contract earned does not include plan force account items (i.e. OJT, pavement incentives, etc).
  - T. *Work Code*. A code to identify the work that a DBE is certified to perform as a DBE. A work code includes a six digit North American Industry Classification System (NAICS) number plus a descriptor. Work Codes are listed on a firm's profile on the UCP DBE Directory. The Contractor may contact the CRBRC to receive guidance on whether a work code covers the work to be performed.
2. **Overview**. The Disadvantaged Business Enterprise (DBE) Program is a federally-mandated program that seeks to ensure non-discrimination in the award of U.S. Department of Transportation (DOT)-assisted contracts and to create a level playing field on which DBEs can compete fairly for DOT-assisted contracts. When a Contract Goal for DBE participation is set pursuant to the U.S. Department of Transportation's DBE Program, the apparent low responsible bidder must show that they have committed to DBE participation sufficient to meet the Contract Goal or has otherwise made Good Faith Efforts to do so in order to be awarded the Contract.

The Contractor's progress towards the Contract Goal will be monitored throughout the Contract to ensure the fulfillment of the Contractor's DBE Commitments. Modifications to the Commitments must receive prior approval. If the amount of the Contract increases during the performance of the Contract, the Contractor must make Good Faith Efforts to obtain additional DBE participation to meet the Contract Goal. Final payment to the Contractor may be reduced if the Contractor has failed to fulfill Commitments and/or make Good Faith Efforts to meet the Contract Goal following an increase in the amount of the Contract. The Contractor may be subject to the withholding of payment and/or other contractual remedies if the Contractor does not comply with the requirements of this special provision.

For general assistance regarding the DBE program and compliance, contact CDOT's CRBRC or the CDOT Region Civil Rights Office overseeing the project. For project specific issues, contact the Engineer or CDOT Regional Civil Rights Office.

All forms referenced by this special provision can be found on the CDOT website in the CDOT Forms Catalog: <http://www.codot.gov/library/forms>.

3. **Contract Assurance**. By submitting a proposal for this Contract, the bidder agrees to the following assurance and shall include the following paragraph verbatim in all subcontracts including those with non-DBE firms:

3  
 REVISION OF  
 DISADVANTAGED BUSINESS  
 ENTERPRISE (DBE) REQUIREMENTS

The Contractor, subrecipients of DOT-assistance through CDOT, 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 CDOT deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

4. **Good Faith Efforts.** Good Faith Efforts may be required before award and/or during Contract performance. Good Faith Efforts should include, but are not limited to, reaching out to DBEs that could perform subcontracting opportunities on the Contract, breaking out contract work items into economically feasible units (e.g., smaller tasks or quantities) to facilitate DBE participation even when the bidder/Contractor might otherwise self-perform these items, negotiating in good faith with DBEs and not refusing to utilize a DBE for price alone, and other efforts to obtain DBE participation on the Contract. For additional guidance on making Good Faith Efforts see 49 CFR Part 26 Appendix A.

(a) *Bidding Requirements.* When a Contract Goal is established, the Contract may not be awarded until the apparent low responsible bidder has demonstrated Good Faith Efforts to meet the Contract Goal by either

- Documenting sufficient Commitments to meet the Contract Goal, or
- Documenting adequate Good Faith Efforts to meet the Contract Goal even though they did not obtain enough Commitments to do so.

A Commitment may be made to a firm at any tier. The apparent low responsible bidder must have received a quote from a DBE in order to claim a Commitment to a DBE.

(1) *Anticipated Participation Plan.* All bidders shall submit Form 1414 listing Commitments obtained from DBEs, with their proposal, even if such Commitments do not meet the Contract Goal. If the apparent low responsible bidder has not obtained any Commitments or if the Contract Goal is 0% and the apparent low responsible bidder is electing not to make voluntary Commitments, they shall still submit Form 1414 documenting zero anticipated participation. Failure to submit a signed Form 1414 shall result in rejection of the proposal and the apparent low responsible bidder deemed non-responsive. The apparent low responsible bidder shall ensure that Commitments, and the resulting estimated Eligible Participation, have been properly calculated before submitting their proposal. If the apparent low responsible bidder is a DBE seeking Eligible Participation credit for self-performance, the apparent low responsible bidder shall include themselves in Form 1414, list the work to be self-performed, and the amount that the bidder intends to count as Eligible Participation.

(2) *Utilization Plan.*

- a. *CDOT Advertised Projects.* These projects will require the submission of a DBE Utilization Plan (UP) via B2GNow. The apparent low responsible bidder shall submit the UP within five days of bid opening. In order to complete the UP, the apparent low responsible bidder shall obtain and upload in B2GNow a completed Form 1415 for each DBE listed on Form 1414. If the total Eligible Participation submitted on the Form 1414 and/or confirmed on Form 1415 did not meet the Contract Goal, the apparent low responsible bidder shall also submit Form 1416 with the UP in B2GNow. The Form 1416 should include any supporting documentation which the apparent low responsible bidder would like to be considered as evidence of their Good Faith Efforts. If a non-DBE was selected in lieu of a DBE, the apparent low responsible bidder shall include all quotes from the non-DBE and DBE firms.

REVISION OF  
DISADVANTAGED BUSINESS  
ENTERPRISE (DBE) REQUIREMENTS

The apparent low responsible bidder shall complete Section 1 of the Form 1415 and the DBE shall complete Section 2 of Form 1415. The Commitment in Form 1415 shall be consistent with the Commitment listed on Form 1414. If a Commitment is made to second tier or lower DBE subcontractor, the apparent low responsible bidder maintains responsibility for the fulfillment of the Commitment and shall sign the Form 1415. The apparent low responsible bidder shall not Terminate, Reduce, or Substitute a Commitment listed on Form 1414 without following the procedures outlined in Section 5 below. Increases in the Commitment amount do not require CDOT approval per the procedures in Section 5 below.

- b. *Projects Not Advertised by CDOT.* The apparent low responsible bidder shall submit to the project owner a completed Form 1415 for each DBE listed on the Form 1414 by 4:30 pm on the fifth day after bid opening. If the total Eligible Participation submitted on the Form 1414 and/or Form 1415 does not meet the Contract Goal, the apparent low responsible bidder shall also submit Form 1416 along with any supporting documentation of the apparent low responsible bidder's Good Faith Efforts. If a non-DBE was selected in lieu of a DBE, the apparent low responsible bidder shall include all quotes from the non-DBE and DBE firms.

The apparent low responsible bidder shall complete Section 1 of the Form 1415 and the DBE shall complete Section 2 of Form 1415. The Commitment in Form 1415 shall be consistent with the Commitment listed on Form 1414. If a Commitment is made to second tier or lower DBE subcontractor, the apparent low responsible bidder maintains responsibility for the fulfillment of the Commitment and shall sign the Form 1415. The apparent low responsible bidder shall not Terminate, Reduce, or Substitute a Commitment listed on Form 1414 without following the procedures outlined in Section 5 below. Increases in the Commitment amount do not require approval per the procedures in Section 5 below.

- (3) *Good Faith Effort Review Before Award.* The Forms 1414, 1415, and UP (for CDOT advertised projects) will be evaluated to ensure that each Commitment is valid and all Eligible Participation has been properly calculated. The apparent low responsible bidder may be required to provide additional information in order to confirm the accuracy of a Commitment.

If the apparent low responsible bidder's Forms 1414, 1415, and UP (for CDOT advertised projects) claimed that the Contract Goal was met but the total estimated Eligible Participation of the Commitments does not meet the Contract Goal, the apparent low responsible bidder will be given two working days to amend their Commitments by submitting amended Form(s) 1415 and UP (for CDOT advertised projects). If the total Eligible Participation on the amended Commitments do not meet the Contract Goal, the apparent low responsible bidder shall submit Form 1416 and provide documentation of their Good Faith Efforts.

When the total estimated Eligible Participation of the Commitments does not meet the Contract Goal, the Form 1416 and all supporting documentation will be evaluated per Appendix A of 49 CFR Part 26. The apparent low responsible bidder will be deemed to not have made Good Faith Efforts if a Commitment lists a DBE for a work area for which the DBE is not certified and the apparent low responsible bidder cannot establish a

5  
 REVISION OF  
 DISADVANTAGED BUSINESS  
 ENTERPRISE (DBE) REQUIREMENTS

reasonable basis for the error. Commitments made after submission of the bid will only be considered for acceptance if the bidder demonstrates that (1) Good Faith Efforts were made before submission of the bid, and (2) there is reasonable justification for not obtaining sufficient Commitments before submission of the bid.

The apparent low responsible bidder will be notified in writing if CRBRC determines that Good Faith Efforts to meet the Contract Goal were not demonstrated. The apparent low responsible bidder may request administrative reconsideration as outlined in subsection 4(a)(4) of this special provision. CDOT will include instructions on how to request administrative reconsideration in the written Good Faith Effort determination.

- (4) *Administrative Reconsideration.* The apparent low responsible bidder will be provided an opportunity to request administrative reconsideration if the CRBRC determines that the apparent low responsible bidder did not demonstrate Good Faith Efforts to meet the Contract Goal. The independent Administrative Reconsideration Official is the CDOT Chief Engineer or designee, provided that such designee did not participate in the original determination. The CRBRC will provide the Administrative Reconsideration Official with a copy of the Good Faith Effort notice issued to the apparent low responsible bidder. The apparent low responsible bidder shall have five working days from the date of the Good Faith Effort determination notice to submit a written request for administrative reconsideration. The written request shall include the apparent low responsible bidder's basis for reconsideration, including any supporting documentation which they would like to be considered. The written request shall also include a statement as to whether the apparent low responsible bidder would like an in-person or telephonic hearing before the Administrative Reconsideration Official. If the apparent low responsible bidder does not specify a hearing request, the right to a hearing will be waived and administrative reconsideration will be based on the available record, as well as any written documentation provided by the apparent low responsible bidder. If the apparent low responsible bidder requests a hearing, the Administrative Reconsideration Official will establish a date and time for the hearing and send written notice at least two working days in advance of the hearing. The Administrative Reconsideration Official may waive the two-day requirement if holding the hearing sooner is determined to be in the public interest. The Administrative Reconsideration Official may request additional documentation. A copy of all requests and responses shall be provided to all parties. The Administrative Reconsideration Official will issue the final determination as to whether the apparent low responsible bidder demonstrated Good Faith Efforts to meet the Contract Goal. The determination of the Administrative Reconsideration Official is final.
- (5) *Approval.* Upon a determination that the apparent low responsible bidder has demonstrated Good Faith Efforts to meet the Contract Goal, the apparent low responsible bidder will be issued Form 1417 or an approved UP in B2GNow (for CDOT advertised projects), documenting the approved Commitments on the Contract.

5. **Commitment Modifications.** The Contractor shall fulfill Commitments unless the Contractor obtains approval for Termination, Reduction, or Substitution. Unless approved, the Contractor will not be entitled to payment for the work or materials pertaining to an unapproved Termination, Reduction, or Substitution. During the performance of the Contract, the Contractor shall use Form 1420, *DBE Participation Plan Modification Request* to communicate all requests for Termination, Reduction, and/or Substitution. One Form 1420 may include multiple Commitment modification requests and must be submitted to CDOT at the time of the occurrence or, if that is not possible, within a reasonable time of the occurrence requiring Termination, Reduction, and/or Substitution. Failure by the Contractor to carry out the requirements of

6  
 REVISION OF  
 DISADVANTAGED BUSINESS  
 ENTERPRISE (DBE) REQUIREMENTS

this section is a material breach of the Contract and may result in the termination of the Contract or other established remedies.

- (a) *Good Cause Requirement.* Termination, Reduction, and/or Substitution will not be approved unless the Contractor has Good Cause to modify the Commitment. Good Cause includes, but is not limited to
- i. The DBE fails or refuses to execute a written contract;
  - ii. The DBE fails or refuses to perform the work of their subcontract consistent with normal industry standards, provided that such failure is not the result of bad faith or discriminatory actions of the Contractor or one of their subcontractors;
  - iii. The DBE fails to meet reasonable, nondiscriminatory bond requirements;
  - iv. The DBE becomes bankrupt, insolvent, or exhibits credit unworthiness;
  - v. The DBE is ineligible to work because of suspension or debarment proceedings or other state law;
  - vi. The DBE is not a responsible contractor;
  - vii. The DBE voluntarily withdraws from the project and provides written notice;
  - viii. The DBE is ineligible to receive DBE credit for the work required;
  - ix. The DBE owner dies or becomes disabled and is unable to complete the work;
  - x. The DBE ceases business operations or otherwise dissolves; or
  - xi. Other documented Good Cause that compels termination.

Good Cause does not exist if the Contractor seeks Termination so that the Contractor can self-perform the work for which the DBE was engaged or solely so that the Contractor can Substitute another DBE or non-DBE contractor after Contract award. When work Committed to a DBE is eliminated or reduced and such change is not due to and/or initiated by the Contractor, the change shall be Good Cause for Termination or Reduction. Upon approval of a Termination and/or Reduction, the Contractor will be subject to the Substitution requirements of subsection 5(d) of this special provision.

- (b) *Notice to the DBE.* The Contractor shall notify the DBE in writing of the Contractor's intent to Terminate, Reduce, or Substitute, and the underlying reason(s) before submitting the Form 1420 requesting the proposed Commitment modification. In the notice of intent, the Contractor shall provide the DBE at least five days to respond to the notice and inform the Contractor of the reasons, if any, why the DBE objects to the proposed Commitment modification. The Contractor is not required to provide the five days written notice in cases where the DBE in question has provided written notice they are withdrawing from their subcontract or purchase order. The notice period may be reduced if determined to be in the public interest by the project owner.

Following the notice period, the Contractor shall submit a Form 1420 to request approval of the proposed Commitment modification, along with written documentation of the notice given to the DBE.

- (c) *Determination.* The Contractor will be notified in writing of the Good Cause determination and whether the modification request is approved or denied.
- (d) *Substitution Requirement.* When a Commitment is Terminated or Reduced (including when a DBE withdraws), the Contractor shall make Good Faith Efforts to find another DBE to Substitute for the original DBE. These Good Faith Efforts shall be directed at finding another DBE to perform at least the same amount, but not necessarily the same type, of work under the Contract as the participation that was Terminated or Reduced up to the Contract Goal. To make a Substitution, the Contractor may:

REVISION OF  
DISADVANTAGED BUSINESS  
ENTERPRISE (DBE) REQUIREMENTS

- i. Make a new Commitment to any unperformed work on the Contract by providing a completed Form 1415, *Commitment Confirmation* for each new DBE Commitment;
- ii. Increase the amount of an existing Commitment for any unperformed work on the Contract by submitting a revised Form 1415 for that Commitment; or
- iii. Utilize any Race-Neutral Eligible Participation on the Contract performed before the Form 1420 submission as part of their Good Faith Efforts pursuant to this subsection by submitting a completed Form 1420.

If the Contractor has not obtained sufficient Substitutions up to the Contract Goal, the Contractor shall submit evidence of Good Faith Efforts to Substitute via the Form 1416 *Good Faith Effort Report*. The Contractor shall have seven days from the submission date of the Commitment modification request (Form 1420) to submit documentation of Substitutions and/or Form 1416 evidencing Good Faith Efforts to obtain sufficient Substitutions despite failing to do so. This period may be extended at the discretion of CDOT.

**6. Contract Modification Orders.** When one or more Contract Modification Orders, as defined in CDOT's *Standard Specifications for Road and Bridge Construction*, adds new work items or increases the total dollar amount of the Contract, the Contractor is required to make Good Faith Efforts to obtain additional Eligible Participation sufficient to meet the Contract Goal on the Total Earnings Amount. Under this section, the Contractor may obtain additional Eligible Participation by:

- i. Making a new Commitment to any unperformed work on the Contract by providing a completed Form 1415, *Commitment Confirmation* for each new DBE Commitment;
- ii. Increasing the amount of an existing Commitment for any unperformed work on the Contract by submitting a revised Form 1415 for that Commitment;
- iii. Utilizing other Eligible Participation on the Contract as part of Good Faith Efforts pursuant to this Section by submitting a completed Form 1420.

When the Contractor elects to obtain additional Eligible Participation under subpart (iii), such Eligible Participation does not need to be included as part of an approved Commitment. However, the Contractor is responsible to provide a completed Form 1420 documenting all additional Eligible Participation obtained under subpart (iii) before, or at the time of, Contract finalization.

If the Contractor determines they will be unable to obtain additional Eligible Participation sufficient to meet the Contract Goal on the Total Earnings Amount following a Contract Modification Order(s), the Contractor shall provide documentation of Good Faith Efforts to obtain additional DBE participation by submitting a completed Form 1416, along with any supporting documentation which they would like considered as evidence of Good Faith Efforts. The Form 1416 must be submitted within a reasonable time of the Contractor's initial determination that they will be unable to obtain additional Eligible Participation sufficient to meet the Contract Goal on the Total Earnings Amount. The Contractor may be required to provide additional documentation. The Contractor's Good Faith Efforts to obtain additional Eligible Participation, or lack thereof, will be considered when assessing any potential payment reductions to the Contractor per Section 9 of this special provision.

When one or more Contract Modification Orders, as defined under subsection 101.18 of CDOT's *Standard Specifications for Road and Bridge Construction*, reduces work items or decreases the total dollar amount of the Contract, any approved Commitments on the Contract continue to be binding on the Contractor unless Good Cause is established to Substitute, Terminate, and/or Reduce the Commitment per Section 5 of this special provision.



8  
REVISION OF  
DISADVANTAGED BUSINESS  
ENTERPRISE (DBE) REQUIREMENTS

7. **Counting.** In order for work performed by a DBE to count as Eligible Participation, the following criteria must be met:

- (a) *DBE Certified to Perform the Work.* The DBE must be certified by the Colorado UCP in the work to be performed. DBEs are certified in particular areas of work which are designated by a Work Code. Each DBE's Work Codes can be found on their profile on the Colorado UCP DBE Directory.

The DBE must be certified to perform the work, and not under suspension, upon submission of the Commitment and upon execution of the DBE's subcontract. When a Commitment has been made, but upon review of the Form 205, *Sublet Permit Application*, or Form 1425, *Supplier Application Approval Request*, the DBE is no longer certified in the Work Code which covers the work to be performed, the Contractor may not use the DBE's participation as Eligible Participation. The Contractor shall Terminate the DBE Commitment and seek Substitution(s) per subsection 5(d) of this special provision. However, a DBE's work will continue to count as Eligible Participation if the DBE was certified upon approval of the Form 205 or Form 1425 but the certification status changes during the performance of the work. Suppliers must be certified upon execution of the purchase order.

- (b) *Work Included in Commitment and/or Verified via Form 205 or Form 1425.* The work performed by the DBE must be reasonably construed to be included in the work area and Work Code identified by the Contractor in an approved Commitment or verified via Form 205 or Form 1425. The work identified on a Form 1425 shall not count against the Contractor's 30 percent as required under CDOT's *Standard Specifications for Road and Bridge Construction*.

If the Contractor intends to use a DBE for work in order to fulfill an existing Commitment to that DBE but the work was not listed in the original Commitment (Form 1415), the Contractor shall submit a request for modification per Section 5 of this special provision to include the new area of work to be performed. Unapproved work may count as Eligible Participation on the Contract but may not be used towards the fulfillment of the original Commitment to the DBE. A DBE Commitment cannot be modified to include work for which the DBE was not certified at the time of the approval of the original Commitment unless such work is in addition to the original Commitment.

Form 205 will be reviewed to determine whether the work being sublet is consistent with the Contractor's Commitments. Approval of the sublet request may be withheld if the Contractor has Reduced, Terminated, or otherwise modified the type or amount of work to be performed by a DBE without seeking advanced approval.

- (c) *Work Performed by DBE.* The work must be actually performed by the DBE with their own forces. For purposes of this specification, work performed by the DBE with their own forces includes work by temporary employees, provided such employees are under the control of the DBE; the cost of supplies and materials obtained by the DBE for their work on the Contract, provided that such supplies are not purchased or leased from the Contractor or a subcontractor that is subletting to the DBE; the cost of any equipment leased by the DBE, provided that such equipment is not leased from the Contractor or a subcontractor that is subletting to the DBE.

When a DBE subcontracts part of the work, the value of the subcontracted work shall be counted as Eligible Participation only if the subcontractor is a DBE and meets the criteria of this special provision. Performance of subcontracted work by non-DBE subcontractors, including non-DBE trucking firms and owner-operators, is not Eligible Participation and may not be used towards the fulfillment of a Commitment, the Substitution requirements under Section 5(d) of this special provision, and/or additional Eligible Participation under Section 6 of this special provision.

- (d) *Payment Received for Work.* The DBE must receive payment, including the release of their retainage, in order for the work to count as Eligible Participation.

REVISION OF  
DISADVANTAGED BUSINESS  
ENTERPRISE (DBE) REQUIREMENTS

- (e) *Special Calculations for Suppliers.* When a DBE supplies goods or materials for a project, the DBE may be classified as a manufacturer, dealer or broker. The DBE's status as a manufacturer, dealer or broker is determined on a contract-by-contract basis, based upon the actual work performed, per 49 CFR Part 26.55(e). When a DBE is deemed to be acting as a manufacturer, 100 percent of the cost of the materials and/or supplies will count as Eligible Participation. When a DBE is deemed to be acting as a regular dealer (non-manufacturer supplier), only 60 percent of the cost of the materials and/or supplies will count as Eligible Participation. When a DBE is deemed to be acting as a broker, only the reasonable brokerage fee will count as Eligible Participation.
- (f) *Service Fees.* For a DBE firm providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, the fees and commissions charged by the DBE shall count as Eligible Participation, provided the fees are not excessive as compared with fees customarily allowed for similar services. In the case of DBE temporary employment placement agencies, only the placement fee for a temporary employee that will be specifically and exclusively used for work on the contract shall count as Eligible Participation; the hourly fee does not count as Eligible Participation unless the firm is also certified in the work to be performed.
- (g) *Joint Venture Calculation.* When a DBE is a participant in a joint venture, the DBE must submit Form 893, *Information for Determining DBE Participation when a Joint Venture Includes a DBE*, to determine how much of the work performed by the joint venture may be considered Eligible Participation. To ensure sufficient time for review, Form 893 shall be submitted to CDOT no less than ten days before the submission of the bid or, if requested during the Contract, the point at which the DBE will begin work.
- (h) *Commercially Useful Function.* Upon a determination that a DBE has not performed a Commercially Useful Function (CUF) on the project, no participation by such DBE is Eligible Participation. DBE performance on the Contract will be monitored to ensure each DBE is performing a CUF. The DBE, Contractor, and any other involved third parties may also be subject to additional enforcement actions as described in Section 9 of this special provision.

The amount of work subcontracted, industry practices, the amount the firm is to be paid compared to the work performed and eligible participation claimed, and any other relevant factors will be considered in evaluating whether a DBE is performing a CUF. With respect to material and supplies used on the Contract, the DBE must be responsible for negotiating price, determining quality and quantity, ordering the material, installing the material, if applicable, and paying for the material itself in order to perform a CUF.

With respect to trucking, the DBE trucking firm must own and operate at least one fully licensed, insured, and operational truck used on the Contract in order to perform a CUF. Additionally, the DBE trucking firm must be responsible for the management and supervision of their entire trucking operation on the Contract. Work by a DBE trucking firm will count as Eligible Participation only if the work was performed (i) with trucks owned and insured by the DBE trucking firm and those trucks were operated by drivers employed by the DBE trucking firm or (ii) with trucks leased by the DBE trucking firm from another DBE firm including owner operators who are certified DBEs. The DBE who leases trucks from another DBE receives credit for the transportation services the lessee DBE provides on the contract.

A DBE does not perform a CUF when their 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. Similar transactions involving non-DBEs will be evaluated in order to determine whether a DBE is an extra participant. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of their contract or subcontract with their own work force, or the DBE subcontracts a greater portion of the work than would be expected on the basis of normal industry

10  
REVISION OF  
DISADVANTAGED BUSINESS  
ENTERPRISE (DBE) REQUIREMENTS

practice for the type of work involved, CDOT will presume the DBE is not performing a CUF. The DBE may present evidence to rebut this presumption.

CUF will be evaluated using Form 1432 per Section 8(a) below.

- (i) *Joint Checks.* All Joint Checks must be approved before they are used in payment to a DBE. Joint Checks used in payments to DBEs will be monitored closely to ensure the DBE is performing a CUF and the Joint Checks are not being used in a discriminatory manner. The Contractor shall request approval for the use of a Joint Check in a written letter signed by the DBE and the Contractor, stating the reason for the Joint Checks and the approximate number of checks that will be needed. Failure to receive approval of a Joint Check may result in not counting such payment as Eligible Participation.

## 8. Contract Finalization

- (a) *Form 1432.* In order to have work performed and/or supplies provided by a DBE on the Contract count as Eligible Participation, the Contractor must submit a Form 1432 for that DBE. The Form 1432 must be signed by the DBE, Contractor and Project Engineer. Work performed and/or supplies provided on the Contract by a DBE Commitment will not count as Eligible Participation without a corresponding Form 1432 and the Contractor may be subject to a payment reduction as described in subsection 8(b) of this special provision.
- (b) *Payment Reduction.* The Contractor's retainage will not be released until a determination is made as to whether the Contractor will be subject to a payment reduction. The Contractor will be subject to a payment reduction for any unapproved Termination, Reduction, and/or Substitution. Additionally, the Contractor will be subject to a payment reduction for any portion of a Commitment that was not fulfilled. The Contractor will not be subject to duplicate payment reductions for the same offense. The amount of the payment reduction may be adjusted if the Contractor demonstrates that a failure to fulfill a Commitment or otherwise meet their obligations under this special provision was due to circumstances outside of their control.

- 9. **Other Enforcement.** As necessary, participants may be reviewed or investigated. All participants, including, but not limited to, DBE firms and applicants for DBE certification, complainants, and contractors using DBE firms to meet contract goals, are required to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information.

Participants shall not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by the DBE program or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the DBE program. Failure to comply with this paragraph shall be a ground for appropriate action against the party involved (with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility, and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

Upon a determination that a Contractor or subcontractor was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE participation or any other impermissible business arrangement, or if the Contractor engages in repeated violations, falsification or misrepresentation, any fraudulent or misrepresented DBE participation shall not count as Eligible Participation, progress payments may be withheld from the Contractor commensurate with the violation, the Contractor's prequalification status may be suspended, the matter may be referred to the Office of Inspector General of the U.S. Department of Transportation for investigation and/or any other available contractual remedy may be sought.



<b>Decision Nos. CO20230008</b> dated January 6, 2023 supersedes <b>Decision Nos. CO20220008</b> dated January 7, 2022.		<b>Modifications</b>			<b>ID</b>
		<b>MOD Number</b>	<b>Date</b>	<b>Page Number(s)</b>	
When work within a project is located in two or more counties and the minimum wages and fringe benefits are different for one or more job classifications, the higher minimum wages and fringe benefits shall apply throughout the project.		1	2/24/23	1	1
General Decision No. CO20230008 applies to the following counties: El Paso, Pueblo, and Teller counties.					
General Decision No. CO20230008 <b>The wage and fringe benefits listed below reflect collectively bargained rates.</b>					
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod	
<b>ELECTRICIAN:</b>					
1199	El Paso, Teller	34.90	17.25		
1200	Pueblo	29.80	13.00 + 3%		
<b>POWER EQUIPMENT OPERATOR:</b>					
<b>Drill Rig Caisson</b>					
1201	Smaller than Watson 2500 and similar	33.30	13.30		1
1202	Watson 2500 similar or larger	33.48	13.30		1
<b>Crane</b>					
1203	50 tons and under	33.83	13.30		1
1204	51 - 90 tons	33.48	13.30		1
1205	91 - 140 tons	35.28	13.30		1
General Decision No. CO20230008 <b>The wage and fringe benefits listed below do not reflect collectively bargained rates.</b>					
<b>CARPENTER:</b>					
1206	Excludes Form Work	24.15	6.25		
<b>Form Work Only</b>					
1207	El Paso, Teller	19.06	5.84		
1208	Pueblo	19.00	5.88		
<b>CEMENT MASON/CONCRETE FINISHER:</b>					
1209	El Paso, Teller	17.36	3.00		
1210	Pueblo	17.74	3.00		

General Decision No. CO20230008				
<b>The wage and fringe benefits listed below do not reflect collectively bargained rates.</b>				
<b>Code</b>	<b>Classification</b>	<b>Basic Hourly Rate</b>	<b>Fringe Benefits</b>	<b>Last Mod</b>
1211	<b>FENCE ERECTOR</b>	13.02	3.20	
1212	<b>GUARDRAIL INSTALLER</b>	12.89	3.20	
	<b>HIGHWAY/PARKING LOT STRIPING:</b>			
1213	Painter	12.62	3.21	
	<b>IRONWORKER:</b>			
	<b>Reinforcing</b> (Excludes Guardrail Installation)			
1214	El Paso, Teller	20.49	1.65	
1215	Pueblo	16.69	5.45	
1216	<b>Structural</b> (Excludes Guardrail Installation)	18.22	6.01	
	<b>LABORER:</b>			
1217	Asphalt Raker	17.54	3.16	
1218	Asphalt Shoveler	21.21	4.25	
1219	Asphalt Spreader	18.58	4.65	
	<b>Common or General</b>			
1220	El Paso	17.05	3.69	
1221	Pueblo	16.29	4.25	
1222	Teller	16.88	3.61	
1223	Concrete Saw (Hand Held)	16.29	6.14	
1224	Landscape and Irrigation	12.26	3.16	
1225	Mason Tender - Cement/Concrete	16.29	4.25	
1226	Pipelayer	18.72	3.24	
1227	Traffic Control (Flagger)	9.55	3.05	
1228	Traffic Control (Sets Up/Moves Barrels, Cones, Installs signs, Arrow Boards and Place Stationary Flags), (Excludes Flaggers)	12.43	3.22	
1229	<b>PAINTER (Spray Only)</b>	16.99	2.87	

General Decision No. CO20230008				
<b>The wage and fringe benefits listed below do not reflect collectively bargained rates.</b>				
<b>Code</b>	<b>Classification</b>	<b>Basic Hourly Rate</b>	<b>Fringe Benefits</b>	<b>Last Mod</b>
	<b>POWER EQUIPMENT OPERATOR:</b>			
1230	Asphalt Laydown	22.67	8.72	
1231	Asphalt Paver	21.50	3.50	
	<b>Asphalt Roller</b>			
1232	El Paso	24.42	6.96	
1233	Pueblo	23.67	9.22	
1813	Teller	24.42	6.96	
1234	Asphalt Spreader	22.67	8.72	
	<b>Backhoe/Trackhoe</b>			
1235	El Paso	23.31	5.61	
1236	Pueblo	21.82	8.22	
1237	Teller	23.32	5.50	
1238	Bobcat/Skid Loader	15.37	4.28	
1239	Boom	22.67	8.72	
	<b>Broom/Sweeper</b>			
1240	El Paso, Teller	23.43	8.04	
1241	Pueblo	23.47	9.22	
	<b>Bulldozer</b>			
1242	El Paso	26.56	7.40	
1243	Pueblo, Teller	26.11	6.92	
1244	Drill	17.59	3.45	
1245	Forklift	15.91	4.68	
	<b>Grader/Blade</b>			
1246	El Paso	22.83	8.72	
1247	Pueblo	23.25	6.98	
1248	Teller	23.22	8.72	
1249	Guardrail/Post Driver	16.07	4.41	

General Decision No. CO20230008				
<b>The wage and fringe benefits listed below do not reflect collectively bargained rates.</b>				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	<b>POWER EQUIPMENT OPERATOR (con't.):</b>			
	<b>Loader (Front End)</b>			
1250	El Paso	23.61	7.79	
1251	Pueblo	21.67	8.22	
1252	Teller	23.50	7.64	
	<b>Mechanic</b>			
1253	El Paso	22.35	6.36	
1254	Pueblo	24.02	8.43	
1255	Teller	22.16	6.17	
	<b>Oiler</b>			
1256	El Paso	23.29	7.48	
1257	Pueblo	23.13	7.01	
1258	Teller	22.68	7.11	
	<b>Roller/Compactor (Dirt and Grade Compaction)</b>			
1259	El Paso	16.70	3.30	
1260	Pueblo, Teller	18.43	4.62	
1261	Rotomill	16.22	4.41	
1262	Scraper	24.28	4.83	
	<b>Screed</b>			
1263	El Paso, Teller	25.22	5.74	
1264	Pueblo	23.67	9.22	
1265	Tractor	13.13	2.95	



General Decision No. CO20230008				
<b>The wage and fringe benefits listed below do not reflect collectively bargained rates.</b>				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	<b>TRUCK DRIVER:</b>			
	<b>Distributor</b>			
1266	El Paso, Teller	17.98	3.97	
1267	Pueblo	18.35	3.85	
	<b>Dump Truck</b>			
1268	El Paso, Teller	16.85	4.83	
1269	Pueblo	16.87	4.79	
1270	Lowboy Truck	17.25	5.27	
1271	Mechanic	26.69	3.50	
1272	Multi-Purpose Specialty & Hoisting Truck	17.27	3.71	
1273	Pickup and Pilot Car	13.93	3.68	
1274	Semi/Trailer Truck	16.00	2.60	
1275	Truck Mounted Attenuator	12.43	3.22	
	<b>Water Truck</b>			
1276	El Paso	17.24	4.15	
1277	Pueblo	20.93	4.98	
1278	Teller	17.31	4.07	

**WELDERS** - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

**WAGE DETERMINATION APPEALS PROCESS**

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program.

If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7).

Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

**END OF GENERAL DECISION NO. CO20230008**



1  
ON THE JOB TRAINING

This On-the-Job Training (OJT) special provision is an implementation of 23 U.S.C, 140(a), a federal requirement to provide equal opportunity and training on federal-aid construction projects. The Contractor shall meet the requirements of the FHWA 1273 for all apprentices and trainees. For additional guidance, please look at the OJT Contractor Manual.

### 1. Goal Setting

CDOT will set OJT goals for every federally-assisted project. Goals for the projects will be set based on the criteria that is outlined in the 23 CFR Part 230, Appendix B to Subpart (A):

- A. Availability of minorities, women, and disadvantaged persons for training;
- B. The potential for effective training;
- C. Duration of the contract;
- D. Dollar value of the contract;
- E. Total normal workforce that the average bidder could be expected to use;
- F. Geographic location;
- G. Type of work;
- H. The need for journey-level workers in the area;
- I. Recognition of the state's goal;
- J. A satisfactory ratio of trainees to journeymen expected to be on the workforce.

The number of required training hours will be identified in the Contract. The following chart provides guidelines based on contract value, but the required number of hours will be determined by CDOT after consideration of the aforementioned variables.

Contract dollar value	Training hours to be provided on the project
Up to 1 million	0
>1 - 2 million	320
>2 - 4 million	640
>4 - 6 million	1280
>6 - 8 million	1600
>8 - 12 million	1920
>12 - 16 million	2240
>16 - 20 million	2560
For each increment of \$5 million, over \$20 million	1280

### 2. Training Plan Options

CDOT accepts the following training programs:

- A. CDOT's pre-approved classifications utilization program (PAC-UP);
- B. A registered U.S. Department of Labor training program or apprenticeship program;

2  
ON THE JOB TRAINING

- C. Approved programs through workforce centers and through specific groups like Colorado Contractors Association (CCA) and Western Colorado Contractors Association (WCCA);
- D. A Contractor specific plan approved by CDOT and the Federal Highway Administration (FHWA).

The minimum length and type of training for each skilled craft shall be as established in the training program selected by the Contractor.

When one or more approved plans are chosen, the Contractor shall submit the OJT Contractor Commitment to Meet OJT Requirements, CDOT Form 1337 to the Engineer. Additional pre-approved training programs and/or additional apprentices/trainees may be utilized at any point throughout the project. The plan option(s) that the Contractor chooses will be effective for the duration of the project.

### 3. Journey-Level Worker to Apprentice/Trainee Ratio

The OJT goal requirement shall be met through approved trainee(s)/apprentice(s) working on the CDOT project under the supervision of a journey-level worker. For the CDOT Pre-Approved Classification Training Programs (PAC-UP), the apprentice/trainee ratio to journey-level worker shall not exceed a one to one ratio for all classifications, and the Contractor shall not exceed 25 percent of the workforce as trainees/apprentices at any time. Furthermore, it is at CDOT's discretion that a stricter ratio guideline may be imposed as outlined in the specific training classification. For all other approved programs, the apprentice/trainee ratio shall be as outlined in the specific program. When apprentices/trainees are on the job without proper supervision as outlined above, they shall be paid full Davis-Bacon wages.

### 4. Trainee Selection

Two components must be considered when choosing a trainee:

- A. The intent of this program is for Contractors to recruit and train entry-level individuals or individuals who will be working within new classifications and guide them toward journey-level status in that specific classification. A trainee will not be approved in any classification for which they have already obtained journey-level status.
- B. Another intent of the OJT program is the primary consideration for the Contractor to use minorities, women, and disadvantaged persons to fulfill the trainee roles, and as such, the Contractor shall make every effort to enroll such individuals in the program by using "systematic and direct recruitment through public and private sources."

The consideration to include women and minorities is based on the regulation; however, it will not be used to systematically deny any one person or group from the opportunity to be a part of the OJT program. CDOT may reject non-minority male trainees for entry into the program if it is determined that a Contractor failed to make sufficient good faith efforts (GFE) to hire minorities or female trainees and/or the Contractor failed to document or submit evidence of its GFE to do so. CDOT will consider a Contractor's documentation of all GFE on a case-by-case basis and will take into account the items listed in the goal setting section of this specification. For more information, please see Section 11 of this specification.

### 5. OJT Apprentice/Trainee Approval

As a condition of the OJT program, the Contractor will:

- A. Notify all employees at the start of employment and at a minimum of at least once per year regarding the available training programs, positions, and eligibility requirements. The Contractor shall document that this information was conveyed to and received by employees.
- B. Provide each trainee with a copy of his or her enrollment form (if applicable) and the training program within a month of starting the chosen plan.

The OJT submittals (CDOT Form 1337, Contractor Commitment to Meet OJT Requirements; CDOT Form 832, Trainee Status and Evaluation; CDOT Form 838, OJT apprentice/trainee Record) shall be filled out completely and approved or rejected by CDOT. If the apprentice/trainee is working within the proposed classification before approval is granted, full Davis-Bacon prevailing wages shall be paid to the individual.

The Regional Civil Rights Office must approve the CDOT Form 838 prior to any of the hours counting toward the OJT goal. If there is a CDOT delay that is completely outside of the Contractor's responsibility for approval of the apprentices/trainees, and if approval is ultimately granted, the date that will be utilized will be ten business days after the date that the CDOT Form 838 was submitted.

3  
ON THE JOB TRAINING

The Contractor shall retain full responsibility for meeting the training requirements imposed by this special provision.

**6. Eligible Work Activities that Count Toward the Training Goal**

The work hours that are completed on the site of work and per the training documents for approved apprentices/trainees in approved classifications and programs will apply toward the project goal. Hours for work performed outside the individual's approved training classification will not count toward the project OJT goal and the individual shall be paid full applicable prevailing wage.

Job shadowing can apply toward the project goal if it is written into the specific training plan. If the Contractor is using CDOT's PAC-UP training program, job shadowing can apply toward the project goal when the approved employee is performing within the "Observation" component of the plan (hours vary by classification). Non-CDOT project hours will not be accepted toward the project goal.

Although US DOL apprenticeship programs can use the reduced wages for any CDOT job (with or without an OJT goal) with approval, none of these "additional" hours may be banked or included for use as part of the required special provisions on any project other than that for which it was approved.

The Contractor may count OJT hours accomplished by a subcontractor with an approved plan. The subcontractor's trainee or apprentice, who is enrolled in any of the approved OJT programs and is contributing toward meeting a project's OJT goal hours, can count toward the project's OJT goal to satisfy the requirement of this specification. A subcontractor who chooses to participate in meeting the OJT goal shall follow the same process as the Contractor in terms of approving apprentices/trainees, submitting forms, etc. The Contractor retains the full responsibility for meeting the training requirements imposed by this special provision.

**7. Contractor Training and Trainee Monitoring**

The Contractor's representative (supervisor, manager, or other designee) will evaluate progress for the apprentice/trainee monthly and will provide a copy to the apprentice/trainee of the submitted CDOT Form 832 within 30 calendar days. This evaluation will include documentation of the apprentice/trainee's performance including what was done well and what needs to be improved. The Contractor training and monitoring will be evaluated through CDOT's use of the CDOT Form 200 Interview.

**8. Wages**

The Contractor may pay apprentice/trainee wages at a reduced rate for those that are in an approved program according to the following guidelines:

**US DOL Apprenticeship Programs**

Rates (at minimum) will be paid according to the scaled adjustments for a registered US DOL Apprentice. Fringe benefits (either in cash and/or bona fide benefits in lieu of cash) will be paid in full and as outlined by the bargained agreement. If fringe benefits are not mentioned as part of a bargained agreement or if there is no collectively bargained agreement, full fringe benefits will be paid as outlined through the US DOL wage decision. Approved US DOL apprenticeship programs can use the reduced wages for any CDOT project.

If the project does not have a training goal and the Contractor is seeking to pay apprenticeship rates as part of a registered US DOL Apprenticeship Program, the following documentation is required to ensure wages are being paid correctly: apprenticeship program registration, OA (formerly BAT) certificates, and collective bargaining agreement including the wage sheet.

**Other Approved Programs**

For all other OJT wage reductions, reduced percentages are allowed for the project if there is a goal greater than zero as outlined in the 23 CFR Appendix B to Subpart A of Part 230 (as described in this section), in the collectively bargained agreement, or as outlined in the specific plans. If the Contractor chooses to pay the trainee rates, the reduced percentage shall be based only on the base rate of pay. Fringe benefits shall be paid at 100 percent of the journey-level wage. If the apprentice/trainee is working within the proposed classification before approval is granted, full Davis-Bacon prevailing wages shall be paid to the apprentice/trainee.

The minimum trainee wage (base and fringe) shall be no less than \$13.00 per hour. Trainees shall be paid at minimum:

4  
ON THE JOB TRAINING

First half of the training period -- at least 60 percent of the appropriate minimum journey-level rate

Third quarter of the training period -- at least 75 percent of the appropriate minimum journey-level rate

Last quarter of the training period -- at least 90 percent of the appropriate minimum journey-level rate

**9. Contractor Reporting**

The Contractor shall keep all data associated with the trainees and the project for a period of at least three years from the closing date of the Contract.

**10. Reimbursement to Contractors**

For the purposes of reimbursement, the Contractor will have satisfied its responsibilities under this specification if CDOT has determined that it has fulfilled the acceptable number of training hours. Contractors will be reimbursed at a rate of \$10.00 per hour per (approved) trainee for all OJT hours worked in approved classifications up to the project goal.

The Contractor will be reimbursed for no more than the amount outlined in the OJT Force Account budget.

**11. OJT Good Faith Efforts (GFE)**

CDOT recognizes two explanations of good faith efforts: (1) The Contractor will be required to prove an effort has been made to achieve a diversified workforce, but it has not yet been accomplished, or (2) The attempt has been made to meet the number of required OJT hours by using approved trainees or apprentices in approved classification(s) utilizing approved plans, but the Contractor cannot meet the required number of hours. In either case, a GFE will be required, and the Region Civil Rights Office will make the determination.

- A. If the Contractor does not meet its OJT project goal with the inclusion of some female and/or minority trainees, the Contractor may be requested to produce documentation of adequate good faith efforts taken to fill that position with a minority or female applicant. Good faith efforts are designed to achieve equal opportunity through positive, assertive, and continuous result-oriented measures. Good faith efforts should be taken as hiring opportunities arise.
- B. If the Contractor does not meet its OJT project goal, the Contractor may submit a CDOT Form 1336, Waiver Request for Contract's OJT Hours. On the form, the Contractor shall outline and submit all good faith efforts made when it is believed that the required number of training hours will not be met. If GFE is not demonstrated and approved, The Contractor will be subject to payment reductions outlined in the Disincentive Section.

If a good faith effort has been denied by CDOT, the Contractor may ask for reconsideration by the Region Civil Rights Manager and the Resident Engineer for the region where work is being performed. Additionally, if requested by the Contractor, the Region Civil Rights Office and the Project Engineer will meet with the Contractor to discuss the Contractor's initial Good Faith Effort determination.

**12. Disincentive**

A failure to provide the required training without the demonstration and approval of GFE to meet the project OJT goal may result in the Region Civil Rights Office assigning the following disincentive: A sum representing the total number of hours not met in the contract shall be multiplied by the journey worker hourly wages plus fringe benefits [(hours not met) x (dollar per hour + fringe benefits) = disincentive amount].

In order to obtain the disincentive amount, the journey worker wages will be figured using the prevailing wages for the classifications outlined on the CDOT Form 1337. If a single classification is noted on the submitted CDOT Form 1337, then that one wage will be used to figure the monetary amount owed. If multiple classifications are used, then the journey worker wages of all classifications will be used to determine an average wage rate. If the Contractor does not submit any documentation toward the OJT goal, the disincentive rate will be calculated at \$30.00 per hour. CDOT will provide the Contractor a written notice at the final acceptance stage of the project informing them of the noncompliance with this specification which will include a calculation of the disincentive(s) to be assessed.





October 1, 2022

1

REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS

Attached is Form FHWA 1273 titled *Required Contract Provisions Federal-Aid Construction Contracts*. As described in Section I. General, the provisions of Form FHWA 1273 apply to all work performed under the Contract and are to be included in all subcontracts with the following modification:

For TAP (Transportation Alternatives Program) funded Recreational Trails projects, Section I (4) regarding convict labor and all of Section IV of the FHWA 1273 do not apply.

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

FHWA-1273 -- Revised July 5, 2022

### REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

#### ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

#### I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

#### II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

**1. Equal Employment Opportunity:** Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

### 6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

### 10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient 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 recipient deems appropriate, which may include, but is not limited to:

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

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages (29 CFR 5.5)

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

### 2. Withholding (29 CFR 5.5)

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics,

including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### 3. Payrolls and basic records (29 CFR 5.5)

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

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

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

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

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

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

#### 4. Apprentices and trainees (29 CFR 5.5)

##### a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State

Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

**9. Disputes concerning labor standards.** As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor

set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

### 10. Certification of eligibility (29 CFR 5.5)

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

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

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

### V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph 1 of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum currently provided in 29 CFR 5.5(b)(2)\* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section. 29 CFR 5.5.

\* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) as may be adjusted annually by the Department of Labor; pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990).



## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

### 3. Withholding for unpaid wages and liquidated damages.

The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section. 29 CFR 5.5.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

### VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or

equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

### VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

### VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

### IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.326.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders

or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.326.

### X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

#### 1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

\* \* \* \* \*

### **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

### **3. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

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### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(b) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(c) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

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### **XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

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

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**XII. USE OF UNITED STATES-FLAG VESSELS:**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS** (23 CFR 633, Subpart B, Appendix B)

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.