

SECTION 200
SPECIAL PROVISIONS

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(OCTOBER 24, 2023)

**PRIME CONTRACTOR TO PERFORM 35% MINIMUM OF TOTAL
CONTRACT COST**

Note that for this project, the prime contractor is required to perform a minimum of 35 percent of the total cost of this contract. This is in accordance with the "108.01 Subletting of Contract" portion of the "Section 100 General Provisions" which states:

"3. The Cuyahoga County Department of Public Works may reduce the 50 percent amount by insertion of a contract provision in the Special Provisions of the Cuyahoga County Engineer Specification Booklet. However, in no event shall the Contractor perform less than 35 percent of the total contract cost."

CUYAHOGA COUNTY'S SPECIAL LPA PROVISIONS

Engineer / District Construction	representative of the Cuyahoga County Director of Public Works acting within the scope of his/her authority for the purposes of construction
Administrator (DCA) or Engineer	engineering and administration of the contract.
Laboratory	- means any laboratory designated by the County.

Replace the last two sentences of Provision No. 5, PREQUALIFICATION, with the following:

Although subcontractor disclosure is not required as part of the Bid, the subcontractor qualification requirements specified in Section 108.01 (Subletting of Contract) of the Cuyahoga County Engineer's General Provisions shall apply. For this project, the "prime" contractor must perform no less than 35 percent of the total original contract price.

Be Advised that Provision No. 6, AS PER PLAN DESIGNATION is in effect for this Project.

DAMAGE CLAIMS AND LIABILITY INSURANCE

In addition to the requirements of Section 107.12 of the Cuyahoga County Engineer's General Provisions, the Contractor shall protect and indemnify the Ohio Department of Transportation from all claims and liability resulting from negligence or willful violations of the Contractor.

RECORD RETENTION

As the County, Ohio Department of Transportation (ODOT) or the United States government may legitimately request from time to time, the Contractor agrees to make available for inspection and/or reproduction by the County, ODOT or the United States government, all records, books, and documents of every kind and description that relate to this Contract.

DATA, PATENTS AND COPYRIGHTS: PUBLIC USE

Any designs, specifications, processes, devices or other intellectual properties specifically devised for the Contract by the Contractor/sub-contractor(s) shall become the property of the County, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to the Ohio Department of Transportation (ODOT) and the Federal Highway Administration (FHWA) with an unrestricted right to reproduce, distribute, modify, maintain, and use. The Contractor(s) shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices, or other intellectual properties, and in providing them to the Contract shall relinquish any such protections should they exist.

The Contractor(s) shall not utilize any copyrighted, patented or similarly protected design, specification, process, device, or other intellectual property unless the Contractor(s) have provided for such use by suitable legal agreement with the owner of such copyright, patent, or similar protection. Contractor(s) making use of such protected items for the Contract shall indemnify and save harmless the County and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by reason of infringement, at any time during the prosecution or after the completion of work on the Contract.

CUYAHOGA COUNTY'S SPECIAL LPA PROVISIONS

ODOT AS OBLIGEE ON BOND

In addition to the County, ODOT shall be named as an obligee in the Bidder's performance and payment bond as per "ODOT's LPA Template – Required Contract Provisions", Provision No. 27.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENT

DBE PARTICIPATION GOALS (SUBCONTRACTS, MATERIALS, SUPPLIES) HAVE BEEN SET ON THIS PROJECT FOR THOSE CERTIFIED AS DBE'S PURSUANT TO TITLE 23, U.S.C. SECTION 140 (C) AND 49 CFR, PART 26, AND WHERE APPLICABLE QUALIFIED TO BID WITH ODOT UNDER CHAPTER 5525 OF THE ORC.

The DBE Goal for this Project (PID No. 118968) is 7 %.

**ODOT's LPA Template (ODOT Spec Book and LPA Spec Book)
Required Contract Provisions.**

1. ODOT'S 2023 CONSTRUCTION AND MATERIAL SPECIFICATIONS (C&MS) AND ITS SUPPLEMENTS

ODOT's Construction and Material Specifications (C&MS) and its supplements are hereby incorporated by reference, in their entirety, as if rewritten herein. **The incorporation of this document by reference does not interfere with the order of precedence set forth in Section 105.04 of the C&MS Manual.**

In accordance with the Locally Administrated Transportation Projects Manual of Procedures (LATPM), when bidding this project, the contractor should replace the terms "the department", "the engineer", "the DCE" and "the DCA" with the term "the Local Public Agency (LPA)." Furthermore, nothing in this document is intended to alter the LPA's adherence to Ohio Revised Code, local ordinance or other applicable requirements which are properly established.

2. PN 100 FOR LPA PROJECTS

See "Section 100 Cuyahoga County Engineer 2023 General Provisions (Revised June 2023) (Replaces Section 100 of the 2023 ODOT Construction and Material Specifications)" in the Specification Booklet portion of the Bid Package.

3. PN 133 – 10/20/2023 – Products Made in the United States

The requirements of this note replace the domestic material requirements in 106.09 of the Construction & Material Specifications.

This note is automatically inserted into all projects that have federal funding in the construction phase or any prior phase. If there was federal participation in environmental studies, right of way acquisition, preliminary engineering or other phase defined in the environmental document, this note should be included in the proposal.

Furnish products that are made in the United States according to the applicable provisions of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, which includes the Build America, Buy America Act Pub. L. 117-58, §§ 70901-52.

A. Federal Requirements. All steel or iron products incorporated permanently into the Work must be made of steel or iron produced in the United States and all subsequent manufacturing must be performed in the United States. Manufacturing is any process that modifies the chemical content; physical shape or size; or final finish of a product. Manufacturing begins with the initial melting and mixing and continues through the bending and coating stages. If a domestic product is taken out of the United States for any process, it becomes a foreign source material.

All construction materials must be manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

"Construction materials" includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:

- Non-ferrous metals;

- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Fiber optic cable (including drop cable);
- Optical fiber;
- Lumber;
- Engineered wood; and
- Drywall.

To provide clarity to item, product, and material manufacturers and processors, we note that 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. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

All manufactured products used in the project are not required to be produced in the United States.

B. Exceptions. The Director may grant specific written permission to use non-domestic steel or iron products in any type of construction in accordance with 23 CFR 635.410(b)(4). The Director may grant such exceptions under the following condition:

- The cost of products to be used does not exceed 0.1 percent of the total Contract cost, or \$2,500, whichever is greater. The cost is the value of the product as delivered to the project.

The Director may grant specific written permission to use non-domestic construction materials and manufactured products in any type of construction in accordance with 2 CFR Part 184. The Director may grant such exceptions under the following conditions:

- The total value of the non-compliant products is no more than the lesser of \$1,000,000 or 5% of total applicable costs for the project; or
 - applicable costs are defined as the cost of materials (including the cost of any manufactured products) used in the project that are subject to a domestic preference requirement
 - the actual cost of the materials, not the anticipated cost of those materials.
- The total amount of the Federal funding applied to the project, through awards or subawards, is below \$500,000;

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

C. Proof of Domestic Origin. Furnish certification to the Engineer showing the domestic origin of all products covered by this section before they are incorporated into the Work. The Daily Source Report form itself is not acceptable certification of domestic origin. Non-domestic product(s) incorporated into the Work does not relieve the Contractor of any responsibility to correct the Work up to and including removal and replacement of the non-domestic product(s). Products without a traceable domestic origin will be treated as a non-domestic product.

4. CERTIFICATION AGAINST DEBARMENT AND SUSPENSION

The bidder hereby certifies by signing this proposal that, except as noted below, under penalty of perjury and under other such penalties as the laws of this state and the United States of America provide, that the

company or any person associated therewith in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds is **not** currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency; that the company or any person associated therewith in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds has **not** been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three (3) years; that the company or any person associated therewith in the capacity of owner, partner, director, manager, auditor, or any position involving the administration of federal funds does **not** have a proposed debarment pending; that the company or any person associated therewith in the capacity of owner, partner, director, officer, principal investigator has **not** been indicted, convicted, or had a civil judgment rendered against the company or themselves by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

If there are exceptions to any of the above clauses, please include a statement with the bid package detailing these exceptions.

Exceptions will not necessarily result in denial of award but will be considered in determining bidder responsibility. For any exception noted, indicate below to whom it applies, initiating agency and dates of action. Providing false information may result in criminal prosecution or administrative sanctions. Execution of this proposal on the signature portion thereof shall also constitute signature of this certification as permitted by Title 28 United States Code, Section 1746.

5. PREQUALIFICATION

Only prequalified contractors are eligible to submit bids for this project. Prequalification status must be in force **at the time of bid, at the time of award, and through the life of the construction contract**. For work types that ODOT does not prequalify, the LPA must still select a qualified contractor. Subcontractors are not subject to the prequalification requirement. The “prime” contractor must perform no less than 30 percent of the total original contract price.

6. PN 033 - 4/18/2008- AS PER PLAN DESIGNATION

(Not required by FHWA, but strongly suggested if As Per Plan is used by the LPA)

The “As Per Plan” designation is sometimes added to item descriptions in the proposal to assist contractors with easily identifying standard items that have been altered by plan notes.

The “As Per Plan” designation has proven to be a very useful tool for the contractors. However, its use was never intended to relieve the contractors of their responsibility to read, bid, and construct all items in accordance with all governing plan notes. Therefore, the absence of an “As Per Plan” designation on some item descriptions in the proposal for which there are clear and controlling plan notes does not relieve the contractors of the responsibility to read, bid, and construct those particular items in accordance with the governing plan notes.

Be advised that the item descriptions in the bidding proposal must be read or interpreted with the governing plan notes and the Construction and Material Specification Manual. A claim based upon an “order of precedence” basis will be denied. In the event that a conflict, either real or perceived, exists between the item description and the governing plan note, the contractors are to request clarification through the pre-bid process.

7. FEDERALLY REQUIRED EQUAL EMPLOYMENT OPPORTUNITY (EEO) CERTIFICATION FORM

The bidder hereby certifies that he or she **has**, **has not**, participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that he or she **has**, **has not**, filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements. **The bidder must circle the appropriate "has" or "has not" above.**

8. PN 017 - 10/15/2004 - FEDERALLY REQUIRED EEO CERTIFICATION CLAUSE

The Federally Required EEO Certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7 (b) (1)) and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7 (b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

9. PN 026 - 10/15/2004 - CERTIFICATION OF NON-SEGREGATED FACILITIES

- A. Certification of Non-segregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities (for a Federal-aid highway construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause).
- B. Bidders are cautioned as follows: By signing this bid, the bidder has agreed to the provisions of the "Certification of Non-segregated Facilities" in this proposal. This certification provides that the bidder does not maintain or provide for his or her employees' facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the bidder will not maintain such segregated facilities.
- C. Bidders receiving Federal-aid highway construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, will be required to provide for the forwarding of the following notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

"Notice to Prospective Subcontractors and Material Suppliers of Requirement for Certification of Non-segregated Facilities" -

- A. A Certification of Non-segregated Facilities as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, which is included in the proposal, or attached hereto, must be submitted by each subcontractor and material supplier prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the Equal Opportunity clause.

- B. Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the "Certification of Non-segregated Facilities" in the subcontract or material supply agreement. This certification provides that the subcontractor or material supplier does not maintain or provide for his or her employees facilities which are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.
- C. Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

10. PN 003 - 10/15/2004 - TITLE VI RELATED STATUTES NON-DISCRIMINATION STATEMENT

The LPA, under Title VI of the Civil Rights Act and related statutes, ensures that no person within the LPA shall on the grounds of race, color, national origin, sex, disability, or age be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity it administers.

11. CERTIFICATION OF COMPLIANCE WITH AFFIRMATIVE ACTION PROGRAMS

In accordance with Ohio Revised Code §9.47, before any Contract is awarded, the LPA will require the Bidder to furnish a valid Certificate of Compliance with Affirmative Action Programs, issued by the State EEO Coordinator dated prior to the date fixed for the opening of bids.

12. PN 020- 10/21/2022- NOTICE OF REQUIREMENT OF AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY AND WORKFORCE DIVERSITY REQUIREMENTS ON ALL FEDERALLY FUNDED PROJECTS (CLOSE MONITORING AND ENFORCEMENT CURRENTLY APPLIES TO PROJECT AMOUNT GREATER THAN \$10M ONLY).¹ PLEASE NOTE THAT ODOT MAY REQUEST INFORMATION AT ANY TIME FOR PROJECTS UNDER \$10M, AS NEEDED.

The bidder's attention is called to the affirmative action obligations required by the specifications set forth in 23 CFR Part 230, 41 CFR Part 60, Executive Order 11246, Section 503, and the affirmative action provisions of Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) of 1974.

WORKFORCE UTILITATION GOALS

- **Census Availability Percentages for minority and female workers** by craft per county (applicable to project):
<http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/CensusForAllCounties.xlsx>

¹ All Federally Funded projects greater than \$10K are required to meet the workforce requirements; however close monitoring and enforcement will only be performed on projects over \$10M. ODOT will regularly track hiring progress using quarterly workforce utilization reports that will be provided to district and contractor staff quarterly along with submission of Good Faith Efforts at the end of a project. GFEs are only requested in the event of a shortfall in female and minority workforce percentages.

<http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/CensusForAllCounties.pdf>

- **Statewide utilization obligations/ goals for minority workers** by county (applicable to each project). See table below.
- **Statewide utilization obligation/ goal for female workers is 6.9%** and applies the same for each county.

Source: US Department of Labor’s, Office of Federal Contract Compliance Programs, Technical Assistance Guide for Construction Contractors (pp. 125 – 128)
[Construction Contractors Technical Assistance Guide \(dol.gov\)](https://www.dol.gov/eis/whd/contractors/technical-assistance-guide)

059 Huntington, WV:	
SMSA Counties:	
3400 Huntington - Ashland, WV-KY-OH _____	2.9
OH Lawrence.	
Non-SMSA Counties _____	2.5
OH Gallia.	
062 Parkersburg, WV:	
SMSA Counties:	
6020 Parkersburg-Marietta, WV-OH _____	1.1
OH Washington.	
063 Wheeling - Steubenville - Weirton, WV-OH:	
SMSA Counties:	
8080 Steubenville - Weirton, OH-WV _____	4.3
OH Jefferson.	
9000 Wheeling, WV-OH _____	2.4
OH Belmont.	
Non-SMSA Counties _____	3.0
OH Harrison; OH Monroe.	
064 Youngstown-Warren, OH:	
SMSA Counties:	
9320 Youngstown - Warren, OH _____	9.4
OH Mahoning; OH Trumbull.	
Non-SMSA Counties _____	6.7
OH Columbiana; PA Lawrence; PA Mercer.	
065 Cleveland, OH:	
SMSA Counties:	
0080 Akron, OH _____	7.8
OH Portage; OH Summit.	
1320 Canton, OH _____	6.1
OH Carroll; OH Stark.	
1680 Cleveland, OH _____	16.1
OH Cuyahoga; OH Geauga; OH Lake; OH Medina.	
4440 Lorain-Elyria, OH _____	9.3
OH Lorain.	
4800 Mansfield, OH _____	6.3
OH Richland.	
Non-SMSA Counties: _____	11.3
OH Ashland; OH Ashtabula; OH Coshocton; OH Crawford; OH Erie; OH Holmes; OH Huron; OH Tuscarawas; OH Wayne.	
066 Columbus, OH:	
SMSA Counties:	
1840 Columbus, OH _____	10.6
OH Delaware; OH Fairfield; Franklin; OH Madison; OH Pickaway.	

Non-SMSA Counties	7.3
OH Athens; OH Fayette; OH Guernsey; OH Hocking; OH Jackson; OH Knox; OH Licking; OH Marion; OH Meigs; OH Morgan; OH Morrow; OH Muskingum; OH Noble; OH Perry; OH Pike; OH Ross; OH Scioto; OH Union; OH Vinton.	
067 Cincinnati, OH:	
SMSA Counties:	
1640 Cincinnati, OH-KY-IN	11.0
OH Clermont; OH Hamilton; OH Warren.	
3200 Hamilton - Middletown, OH	5.0
OH Butler.	
Non-SMSA Counties	9.2
OH Adams; OH Brown; OH Clinton; OH Highland.	
068 Dayton, OH:	
SMSA Counties:	
2000 Dayton, OH	11.5
OH Greene; OH Miami; OH Montgomery; OH Preble.	
7960 Springfield, OH	7.8
OH Champaign; OH Clark.	
Non-SMSA Counties	9.9
OH Darke; OH Logan; OH Shelby.	
069 Lima, OH:	
SMSA Counties:	
4320 Lima, OH	4.4
OH Allen; OH Auglaize; OH Putnam; OH Van Wert.	
Non-SMSA Counties	3.5
OH Hardin; OH Mercer.	
070 Toledo, OH:	
SMSA Counties:	
8400 Toledo, OH-MI	8.8
OH Fulton; OH Lucas; OH Ottawa; OH Wood.	
Non-SMSA Counties	7.3
OH Hancock; OH Henry; OH Sandusky; OH Seneca; OH Wyandot.	
076 Fort Wayne, IN:	
Non-SMSA Counties	4.4
OH Defiance; OH Paulding; OH Williams.	

The New Hire Definition for the purposes of on-the-job training and workforce utilization is as follows:

An individual who has a break in service (not on an employer's payroll) for a period of twelve (12) months or longer and the person affected is not a salaried employee but belongs to a union craft. Individuals compensated for training or incidental work which does not cause a break in unemployment compensation, i.e., paid by voucher check or petty cash, are considered new hires if the individual's break in service is twelve (12) months or longer.

The time frame for a new hire shall be associated with the first project worked for that contractor regardless of whether it is public or private. When reporting a newly hired employee, the contractor shall identify that employee as a new hire on that specific project only. Subsequent work, barring a break in service of twelve (12) months or more, would not qualify the employee as a new hire for that contractor.

Compliance: The contractor's compliance shall be based on the implementation of affirmative action obligations required by the specifications set forth in 23 CFR Part 230, and its good faith efforts to meet these obligations. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and females on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the affirmative action obligations shall be a violation of the contract and regulations in 23 CFR Part 230. The good faith efforts put forth by the contractor will be measured against the total work hours performed.

Under FHWA, ODOT is the authority tasked with ensuring that the contractor adheres to the aforementioned regulations. In addition to complying with the Required Contract Provisions, the contractor shall provide immediate written notification to ODOT when referral practices of the union(s) with which the contractor has a collective bargaining agreement impede the company's efforts to meet its equal opportunity obligations.

The U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), administers and enforces equal employment opportunity laws that apply to Federal government contractors and subcontractors supplying goods and services, including construction, to the Federal Government under 41 CFR Part 60, Executive Order 11246, Section 503, and the affirmative action provisions of VEVRAA. The OFCCP monitors compliance with these laws primarily through compliance evaluations, during which a compliance officer examines the contractor's affirmative action efforts and employment practices. Under Executive Order 11246, the OFCCP may perform contract compliance reviews on contractors involved with federally funded ODOT projects.

Requirements for affirmative action obligations governing OFCCP contract compliance reviews are those listed in the Federal Register for the Economic Area.

[Federal Register :: Government Contractors, Affirmative Action Requirements](#) (2000)
[Federal Register :: RIN 1250-AA10](#) (2020 updates)

ADDITIONAL REQUIREMENTS FOR ODOT PROJECTS WITH STATE FUNDING

The Ohio Department of Development (ODOD), Minority Business Division, is responsible for ensuring state contractors implement and adhere to the State of Ohio's affirmative action program pursuant to [Ohio Administrative Code \(OAC\) 123:2: Chapters 123:2-3-01 through 123:2-3-07](#). Specifically, this unit's responsibilities includes the issuance of certificates of compliance under [ORC 9.47](#) and [153.08](#), conducting project site visits, and compliance reviews (desk audits) to ensure contractors utilize minorities and women in the construction trades, and maintain a working environment free of discrimination, harassment, and intimidation. The ODOD may perform contract compliance reviews on contractors involved with state or state assisted projects. Requirements for affirmative action obligations governing ODOD contract compliance reviews are those listed in OAC 123:2-3-02, for the Metropolitan Statistical Area in which a project is located.

All prime and subcontractors regardless on the number of employees or the state contract amount are required to submit monthly utilization reports (Input Form 29) to the Ohio Department of Development covering the contractor's total workforce within the state of Ohio (private sector and public sector projects). The reports must be filed electronically by the 10th of each month, beginning with the contract award and continuing until the contractor or subcontractor completes performance of the contract, as set forth in OAC 123:2-9-01.

I-29 monthly reports must be submitted via the Ohio Business Gateway portal: <https://ohio.gov/wps/portal/gov/site/business/resources/ohio-business-gateway> / [Ohio Business Gateway | Ohio.gov](#) | [Official Website of the State of Ohio](#)

Steps to Submit the I-29 Form:

1. Visit [Ohio Business Gateway](#)

2. Log in using username and password (OH|ID)
3. Ensure "Minority Business Development Division" is among available service areas
4. Ensure "Input 29" is among available transactions
5. Select "Input 29" and complete the form
6. Click "File" button on the Summary page to see a confirmation page
7. Submit supporting documentation (if required) to: Dev-eod.bccu@development.ohio.gov

I-29 reports are used by ODOT to create monthly utilization work hour reports to monitor adherence to on-the-job training requirements and workforce diversity requirements. Prime contractors and subcontractors shall provide monthly utilization work hour reports for the contractor's or subcontractor's total workforce within the state of Ohio to the compliance officer of the contracting agency (ODOT). A contractor's or subcontractor's failure to submit a monthly utilization work hour report shall be a basis for invoking any of the sanctions set forth in rule 123:2-7-01 of the Ohio Administrative Code.

13. PN 059 - 10/15/2004 - 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 for this initial contact is not satisfactory, the process described in 2.) and 3.) should be followed.

Regarding any other matter not yet ready for the formal process described within this section, initial contact should be made with the Branch of Construction Wage Determinations. Write to:

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

- 2.) If the answer to the question in 1.) is yes, 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, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requester 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, D. C. 20210

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

14. PN 061 –10/22/2012- WAGE SCALE ON ALL FEDERAL-AID PROJECTS

The wage rates for this project were determined by the Secretary of Labor in accordance with Federal-Aid requirements. The LPA must formally incorporate them into the contract documents.

Contractors shall use only the classifications and wage rates set forth in the United States Department of Labor (USDOL) wage decision found at the website noted below on payrolls submitted to the ODOT District Office. Additionally, please note that the wage modification in effect at the time of the project sale date shall be used by all contractors.

This USDOL wage decision may be viewed by accessing the United States Department of Labor (USDOL) website at:

<https://sam.gov/content/wage-determinations>

This contract requires the payment of the total of the basic hourly rates plus the fringe benefits payments for each classification in accordance with the following regulations which by reference are made part of this contract:

- 1) The U.S. Department of Labor Regulations, Title 29, Subtitle A, Part 5, Sections 5.5, 5.31, and 5.32, most recent revision at contract execution.
- 2) The portions of Form FHWA-1273 (most recent revision at contract execution) relating to Payment of Predetermined Minimum Wage and Statements and Payrolls. (Form FHWA-1273 shall be physically incorporated in all contracts, subcontracts, and lower-tier subcontracts.)

The failure to pay prevailing wages to all laborers and mechanics employed on this project shall be considered a breach of contract. Such a failure may result in the termination of the contract and debarment.

The contractor and all subcontractors shall pay all wages and fringe benefits by company funds transfer or legal tender. All payroll records and company funds transfer transactions or legal tender transactions shall be maintained for at least three (3) years after final acceptance as defined in Section 109.12 of the ODOT C&MS. The contractor's and all subcontractor's payroll records and canceled pay checks shall be made available for inspection by the Department and the U.S. Department of Labor, upon request, anytime during the life of the contract, and for three (3) years thereafter by the U.S. Department of Labor. Additionally, the contractor and all subcontractors shall permit such representatives to interview any employees during working hours while the employee is on the job.

The wage and fringe rates determined for this project shall be posted by the contractor in a prominent and accessible place on the project, field office, or equipment yard where they can be easily read by the workers.

The contractor and all subcontractors shall submit to the District Construction Office certified payrolls each week beginning three (3) weeks after the start of work. These payrolls shall be on a Form WH-347 or equivalent and shall show the following:

- 1) Employee name, address, classification, and hours worked.
- 2) The basic hourly and overtime rate paid, total pay, and the manner in which fringe benefit payments have been irrevocably made.
- 3) The project number and pay week dates.
- 4) Original signature of a company officer on the certification statement.

Additionally, a copy of the "Apprentice Certification" obtained from the Ohio State Apprenticeship Council must accompany all certified payrolls submitted for all apprentices working on this project.

Please be aware it is ultimately the responsibility of the contractor to ensure all laws relating to prevailing wages in the USDOL Regulations, Title 29, parts 1 and 5, are strictly adhered to by all subcontractors on the project.

If the contractor or any subcontractor fails to comply with any of the provisions contained in this proposal note, the Department may terminate the contract, debar the contractor or subcontractor, and/or withhold or suspend pay estimates after written notice and a reasonable opportunity to comply has been provided.

The applicable wage and fringe rates for this project are to be incorporated in their entirety as an attachment to the executed contract.

15. LIMITATION ON USE OF CONTRACT FUNDS FOR LOBBYING

- A. The prospective bidder certifies, by signing and submitting this bid proposal, to the best of his or her knowledge and belief that:
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any 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.
 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any 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.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. The prospective bidder also agrees by submitting his or her bid proposal that he or she shall require the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such subcontractors shall certify and disclose accordingly.

16. PN 045 - 10/15/2004 - NON -COLLUSION AFFIDAVIT

In accordance with Title 23 USC, Section 112 and ORC, Chapter 1331 et. seq; and Sections 2921.11 and 2921.13, the bidder hereby states, under penalty of perjury and under other such penalties as the law provides, that he/she or his/her agents or employees have not entered, either directly or indirectly, into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal. Execution of this proposal on the signature portion thereof shall also constitute signature of this Non-Collusion Affidavit as permitted by title 28 USC, Section 1746.

REPORTING BID RIGGING

To report bid rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of the USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially, and caller anonymity will be respected.

17. PN 014 - 10/15/2004 - DRUG-FREE WORKPLACE

The prime contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace. The prime contractor shall make a good faith effort to ensure that all its employees while working on this project will not purchase, transfer, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way.

The prime contractor shall also require this contractual obligation be placed in all subcontractor and materialman contracts it enters into and further requires all subcontractors and materialmen place the same contractual obligations in each of their lower-tier contracts.

18. PN 034 - 05/25/2011 – DRUG FREE SAFETY PROGRAM

During the life of this project, the contractor and all its subcontractors who provide labor on the project site must be enrolled in and remain in good standing in the Ohio Bureau of Worker's Compensation (OBWC) Drug-Free Safety Program (DFSP) or a comparable program approved by the OBWC.

In addition to being enrolled in and in good standing in an OBWC-approved DFSP or a comparable Drug Free Workplace Program (DFWP) approved by the OBWC, the LPA requires each contractor and subcontractor that provides labor to subject its employees who perform labor on the project site to random drug testing of five (5) percent of its employees. The random drug testing percentage must also include the on-site supervisors of the contractors and subcontractors. Upon request, the contractor and subcontractor shall provide evidence of required testing to the LPA.

Each subcontractor shall require all lower-tier subcontractors who provide labor on the project site with whom the subcontractor is in contract for the work to be enrolled in and be in good standing in the OBWC DFSP or an OBWC-approved DFWP prior to a lower-tier subcontractor providing labor at the site.

The LPA will declare a bid non-responsive and ineligible for award if the contractor is not enrolled in and in good standing in the OBWC's DFSP Discount Program or a similar program approved by the OBWC within eight (8) days of the bid opening. Furthermore, the LPA will deny all requests to sublet when the subcontractor does not comply with the provisions of this proposal note.

Failure of the contractor to require a subcontractor to be enrolled in and be in good standing in the OBWC DFSP or an OBWC-approved DFWP prior to the time the subcontractor provides labor at the site shall result in the contractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that contractor or the subcontractor who was not enrolled in a program for future contracts with the State for five (5) years after the date of the breach.

19. OHIO WORKERS' COMPENSATION COVERAGE

The contractor must secure and maintain valid Ohio workers' compensation coverage until the project has been finally accepted by ODOT. A certificate of coverage evidencing valid workers' compensation coverage must be submitted to the LPA before the contract will be executed by the LPA.

The contractor must immediately notify the LPA in writing if it or any subcontractor fails or refuses to renew their workers' compensation coverage. Furthermore, the contractor must notify the LPA in writing if its or any of its subcontractor's workers' compensation policies are canceled, terminated, or lapse.

The failure to maintain valid workers' compensation coverage shall be considered a breach of contract which may result in the contractor or subcontractor being removed from the project, withholding of pay estimates, and/or termination of the contract.

20. PN 038 - 10/15/2004 - UNRESOLVED FINDING FOR RECOVERY

The contractor affirmatively represents to the LPA that it is not subject to a finding for recovery under ORC §9.24, or that it has taken the appropriate remedial steps required under §9.24 or otherwise qualifies under that section. The contractor agrees that if this representation is deemed to be false, the contract shall be void ab initio as between the parties to this contract, and any funds paid by the state hereunder shall be immediately repaid to the LPA, or an action for recovery may be immediately commenced by the LPA and/or for recovery of said funds.

21. PN 039 - 10/15/2004 - ASSIGNMENT OF ANTITRUST CLAIMS IN STATE CONTRACT LANGUAGE

The contractor should recognize that in actual economic practice, overcharges resulting from antitrust violations are usually borne by ODOT and/or the LPA. As consideration for the Award of the Contract and intent to be legally bound, the contractor acting herein by and through the person signing this contract on behalf of the contractor as a duly authorized agent, hereby assigns, sells, conveys, and transfers to ODOT and/or the LPA any and all right, title, and interest to any and all claims and causes of action the contractor now has or hereafter requires under state or federal antitrust laws provided the claims or causes of action related to the goods or services are the subject to the contract. In addition, the contractor warrants and represents that it will require all of its subcontractors and first-tier suppliers to assign all federal and state antitrust claims and causes of action to ODOT and/or the LPA. The provisions of this article shall become effective at the time the LPA executes this contract without further acknowledgment by any of the parties.

All contracting entities shall assign their rights and responsibilities to ODOT and/or the LPA for all antitrust claims and causes of action regarding subcontractors.

22. PN 024 – 04/21/2006 – US ARMY CORPS OF ENGINEERS AND OHIO ENVIRONMENTAL PROTECTION AGENCY PERMITS

The above referenced permits are incorporated and made a part of this contract as special provisions incorporated herein. Therefore, in the event the contractor or its agents refuse or fail to adhere to the requirements of the US Army Corps of Engineers 404 Permit and/or the Ohio Environmental Protection Agency's 401 Water Quality Certification and an assessment or fine is made or levied against ODOT and/or the LPA, the contractor shall reimburse the Department within thirty (30) calendar days of the notice of assessment or fine, or the Department may withhold the amount of the fine from the contractor's next pay estimate. All money collected or withheld from the contractor shall be delivered to the permitting agencies issuing the assessment or fine.

These fines are not to be construed as a penalty but are liquidated damages to recover costs assessed

against the Department due to the contractor's refusal or failure to comply with the permits.

23. PN 007 – 1/31/2021- DBE TRUCKING

Title 49 CFR Section 26.55(d)(4)(5)(6) governs trucking operations.

The Disadvantaged Business Enterprise (DBE) trucking firm must be able to quote and negotiate its own prices. The DBE trucking firm must also provide a quote for each project on which the firm is to be utilized toward the project DBE goal.

The DBE will be responsible for the management and supervision of their trucking operation on each contract. A DBE is not performing a Commercially Useful Function (CUF) if the contract exists for the purpose of creating the appearance of DBE participation.

The DBE must own and operate at least one fully licensed, insured, and operational truck used on the contract.

The DBE receives credit for the total value of the transportation services the DBE provides on the contract using trucks the DBE owns, insures, and operates using drivers it employs (not 1099/independent contractors).

The DBE may lease trucks on a long-term basis (a year or more) and receive full DBE credit as long as employees of the DBE operate the truck.

A lease must indicate the DBE has exclusive use of and control over the truck, including responsibility of maintenance and insurance. This does not preclude the leased truck from working for others during the term of the lease with the DBE's consent as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the DBE's name and identification number as well.

The DBE must carry a copy of the lease agreement in the leased truck when working onsite.

Truck Monitoring:

Credit for expenditures with DBEs for materials or supplies toward the DBE goal is described as follows:

1. A DBE firm may be a regular dealer in bulk items such as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementation of a regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
2. When the materials or supplies are obtained from a DBE Materials and Supplies Vendor (MSV) manufacturer the prime contractor may receive credit for 100 percent of the cost of the materials or supplies toward the DBE goal. For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
3. When the materials or supplies are purchased from a DBE MSV regular dealer or supplier, the prime contractor may receive credit for up to 60 percent of the cost of the materials or supplies toward the DBE goal. For purposes of this section, a regular dealer or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

Historically, 60% of the cost of materials and supplies purchased from a DBE MSV (100% from a

DBE MSV manufacturer) would normally be counted toward DBE goals. Effective September 1, 2018:

- Prime contractors must obtain information about the method of procurement for each item to be procured from a DBE MSV. The DBE Affirmation Form has been modified to accommodate this information.
- To be eligible to receive 100% credit toward DBE goals for a materials and supplies subcontract:
 - The DBE MSV must be certified with the correct (manufacturer) NAICS code for the item
 - The DBE MSV must be certified with the correct descriptor for the item
 - The role the DBE MSV will play on the specific procurement in question must be consistent with the manufacture of the item, as indicated by the information provided by the DBE MSV
- To be eligible to receive 60% credit toward DBE goals for a materials and supplies subcontract:
 - The DBE MSV must be certified with the correct (wholesale or retail) NAICS code for the item
 - The DBE MSV must be certified with the correct descriptor for the item
 - The role the DBE MSV will play on the specific procurement in question must be consistent with the regular sale or lease of the item, as indicated by the information provided by the DBE MSV
 - The item must not be drop-shipped
- The above scenario applies to both bulk items (petroleum products, steel, cement, gravel, stone, asphalt, and others that ODOT may consider to be bulk items) and non-bulk items. For bulk items, there is an additional scenario whereby a contract with a DBE MSV could receive 60% credit. To be eligible to receive 60% credit toward DBE goals for a bulk item materials and supplies subcontract:
 - The DBE MSV must be certified with the correct (wholesale or retail and trucking) NAICS codes for the item
 - The DBE MSV must be certified with the correct descriptor for the item
 - The role the DBE MSV will play on the specific procurement in question must be consistent with the regular sale or lease of the item, as indicated by the information provided by the DBE MSV
 - The DBE MSV must deliver the bulk item from a non-DBE vendor to the prime contractor using distribution equipment that it both owns [or for which it has a long-term (1 year or more) lease] and operates with its regular (not ad hoc) employees
- If not eligible for 100% or 60% credit, an item may still be eligible for credit toward DBE goals, but only for the fee or commission the DBE MSV receives for its services, and only if the following additional criteria are met:
 - The DBE MSV must be certified with NAICS code 425120 Wholesale Trade Agents and Brokers
 - The DBE MSV must convincingly explain how the prime contractor benefits by transacting business with it rather than directly with the non-DBE vendor from which the DBE MSV is re-selling
- The usual good faith efforts process applies.
- All credit toward DBE goals is conditional. Actual credit will be determined based upon invoices, receipts, and/or transportation documents/bills of lading, which must be submitted to ODOT as they are received throughout the course of the project.

DBE TRUCKING DISCLOSURE AFFIDAVIT

In order to ensure the prime contractors are monitoring DBE trucking/hauling operations on projects with federal funding, prime contractors must complete the DBE Trucking Disclosure Affidavits Section (“Affidavit”) when completing and submitting the Prompt Payment Spreadsheet for reimbursement. The Affidavit will be completed by the prime contractor on the Prompt Payment Spreadsheet and, once submitted, will be routed to the project’s SharePoint site. This information will be used to affirm DBE and non-DBE trucking utilized by each DBE firm performing those duties during the previous month. The LPA and ODOT will monitor trucking with the following requirements for all Local-let projects:

- Prime contractors will be required to provide a master list of all anticipated DBE trucking firms to the District Construction Monitor (DCM) at the time of the Pre-Construction Meeting.
 - If no DBE trucking is anticipated on a project, the prime contractor will check the box “No Anticipated DBE Trucking Affidavit” on the first submittal of the Prompt Payment Spreadsheet. If DBE trucking/hauling does occur, the prime contractor must notify the LPA within seven (7) days of the DBE trucking activity. The prime contractor will then complete the Affidavits as required below on each Prompt Payment Spreadsheet.
- Prime contractors will be required to complete the Affidavit disclosing the DBE trucking operations during the previous month when completing the new Prompt Payment Spreadsheet. The prime contractor will complete the Trucking Affidavit section on the Prompt Payment Spreadsheet on each reimbursement submittal. The prime contractor will select one of the following options on the Trucking Affidavit section of the form.
 - The DBE firm performed trucking by utilizing their own equipment and workforce and/or work was subcontracted to another DBE (i.e., only trucking that can be counted for DBE participation was utilized).
 - No other information is required. The prime contractor will sign and submit the Affidavit.
 - The DBE firm utilized DBE & Non-DBE trucking.
 - If selected, the prime contractor will provide a list of non-DBE trucking that was utilized (i.e., not all trucking will earn DBE credit).
 - No trucking was performed.
 - No other information is required. The prime contractor will sign and submit the Affidavit.
- The DCM will perform a check of the Affidavit when reviewing the Prompt Payment Spreadsheet when submitted for reimbursement. The LPA and/or Compliance Managers will follow up on any red flags. For example, if the LPA compares information collected during the CUF process with the affidavit and sees any discrepancies. ([Prompt Payment, DBE Trucking and CUF | Ohio Department of Transportation](#))
- Trucking will continue to be monitored at project sites by construction field staff and the LPAs.

SANCTIONS AND ADMINISTRATIVE REMEDIES

Failure by the prime contractor to follow the DBE Trucking Disclosure Affidavit requirements may result in the issuance of sanctions as follows:

- 1st Level Occurrence: The Department will issue a Letter of Reprimand to the contractor (applies if there is a failure to submit the Affidavits and/or the Affidavits are not submitted timely; if the prime contractor completes the No Anticipated DBE Trucking Affidavit, utilizes DBE trucking, and does not notify the LPA within seven (7) days of the activity).

- 2nd Level Occurrence: The Department may withhold an estimate in the amount due to the DBE trucking firm the Affidavit was not submitted for (applies if there is a failure to submit the Affidavits and/or the Affidavits are not submitted timely; if the prime contractor completes the No Anticipated DBE Trucking Affidavit, utilizes DBE trucking and does not notify the LPA within seven (7) days of the activity).
- 3rd Level Occurrence: If a pattern of not submitting the Affidavit(s) persists or the contractor has falsified, misrepresented, or withheld information; ODOT can pursue other remedies available by law including suspension, revocation, and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- The contractor's past project practices,
- The magnitude and the type of offense,
- The degree of the contractor's culpability,
- Any steps taken to rectify,
- The contractor's record of performance on other projects, and
- The number of times the contractor has been previously sanctioned by ODOT.

DBE MSV DIRECTORY - <http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/DBE-Directory.aspx>
(select MSV only)

DBE AFFIRMATION FORM - The new DBE Affirmation Form is now available at
[DBE Affirmation Form - Projects Sold on or after 9/1/18 | Ohio Department of Transportation.](#)

Opening Prompt Payment (PP) Spreadsheet (Trucking Affidavit Section on PP Spreadsheet) through GoFormz:

1. Obtain a MyODOT account
 - a. Click [Link](#)
 - b. Click "Request an Account."
 - c. Review instructions under "Request an Account."
 - d. Go to <http://myodot.dot.state.oh.us/> to complete account application.
2. Getting GoFormz Access
 - a. Email GoFormz.Help@dot.ohio.gov put Create GoFormz Account in the subject line
 - b. Login for GoFormz will be emailed back
 - c. Click www.goformz.com

Additional guidance can be found at [GoFormzEndUserGuide.docx](#)

24. PN 013 – 10/20/23 DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION PLAN AND GOOD FAITH EFFORTS – LPA Projects

DEFINITION OF *DAYS*

Unless otherwise noted, *days* means calendar days, but in computing any period of time described in this proposal note, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal or State holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal or State holiday. See <https://www.opm.gov/policy-data-oversight/pay-leave/federal-holidays> for a list of Federal holidays. State holidays are those designated in division (A) of section 124.19 of the Revised Code (<https://codes.ohio.gov/ohio-revised-code/section-124.19>), with modifications as designated in the first two sentences of division (B)(4) of section 124.18 of the Revised

Code (<https://codes.ohio.gov/ohio-revised-code/section-124.18>). (State holidays are generally the same as Federal holidays.)

DBE UTILIZATION PLAN

The bidder's DBE Utilization Plan **must be submitted by the bidder prior to bid opening at https://odot.formstack.com/forms/dbe_copy**. By submitting a DBE Utilization Plan, the Bidder affirms it will be using the DBE firms identified in the Utilization Plan to meet the DBE contract goal. The Bidder further affirms it will not deviate from the Utilization Plan without ODOT's prior written consent.

Unless the bidder is a certified DBE firm, **a bid opened without a DBE Utilization Plan submitted prior to bid opening will be deemed unresponsive.**

The DBE Utilization Plan shall include the following information:

1. The names of the certified DBE firms(s) that will be used to meet the DBE goal
2. A description of the work each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract
3. Whether the DBE firms(s) being used to meet the goal will be utilized as a subcontractor, regular dealer, manufacturer, consultant, or other capacity
4. The dollar amount of the participation of each DBE firm used to meet the DBE goal.

PROJECTS AWARDED ON ALTERNATES

In the event the project is awarded on alternates, which increases or decreases the total dollar amount of the bid, a revision to the DBE Utilization Plan and DBE Affirmation Form(s) shall be submitted and approved by the Office of Business & Economic Opportunity within five (5) days after the notification of the alternates.

DBE AFFIRMATION

The Apparent Low Bidder (ALB) shall ensure the DBE firms being utilized to meet the DBE goal affirm their participation in the bid within five (5) days after the bid opening to ODOT. The contract dollar amount(s) and/or DBE firm(s) included in the ALB's DBE Utilization Plan must match the contract dollar amount(s) and/or DBE firm(s) included on the DBE Affirmation Form(s). If the contract dollar amount(s) and/or DBE firm(s) do not match, the ALB shall utilize the Request for Consent to Terminate/Reduce a DBE Commitment form located at [DBE Commitment Reduction or Termination Form | Ohio Department of Transportation](#) and submit for review and approval by the Office of Business & Economic Opportunity within five (5) days of the bid opening.

The ALB shall utilize the DBE Affirmation Form located at [DBE Affirmation Form - Projects Sold on or after 9/1/18 | Ohio Department of Transportation](#). The DBE Affirmation Form will be utilized as written confirmation from each listed DBE firm that it is participating in the contract in the type and amount of work provided in the bidder's DBE Utilization Plan. The ALB shall submit a separate DBE Affirmation Form for each DBE it is utilizing for the DBE goal as well as their Good Faith Efforts package if they were not able to attain the DBE Goal via DBE participation.

All other bidders shall submit a DBE Affirmation Form(s) if notified the information is required in order for ODOT to complete its assessment. Bidders shall have five (5) days from the date of notification to submit all required DBE Affirmation Forms to ODOT. Notification will be by email.

In the event a DBE firm fails to confirm the information contained in the DBE Affirmation Form within five (5) days of bid opening, the ALB shall submit a Request for Consent to Terminate/Reduce a DBE Commitment form, as set forth herein. The Request for Consent to Terminate/Reduce a DBE Commitment form shall be submitted within five (5) days after bid opening in order for the ALB to still be considered for

contract award. The ALB shall include as its reason for termination the DBE firm's failure to provide a timely affirmation and should include all efforts the ALB made to obtain the affirmation from the DBE firm and shall attach proof of these efforts, if available. If the ALB intends to replace the DBE Firm, it shall include the replacement firm's information on the form. In the event the ALB is unable to affirm a DBE firm included in its original DBE Utilization Plan at bid submission and it results in a goal shortfall, Good Faith Efforts (GFE's) must be submitted by the fifth day after bid opening. All GFE documentation submitted for consideration should demonstrate the efforts the bidder made prior to the time of bid submission to secure sufficient DBE participation on the project to meet the DBE goal although the bidder was unable to do so. A DBE firm's failure to timely confirm information contained in the DBE Affirmation Form will be considered as good cause to terminate the DBE firm and will also be considered a part of the ALB's Good Faith Efforts in meeting the goal.

DBE BIDDERS

In the event the Bidder is a certified DBE firm, the Bidder is not required to complete a DBE Utilization Plan as set forth above and would not need to submit a DBE Affirmation Form for the work it is planning to self-perform in order to meet the goal.

JOINT VENTURES

If the bidder is a Joint Venture, the Joint Venture will only be considered a Certified DBE firm if the Joint Venture itself has been certified. The Joint Venture may, however, utilize a Certified DBE firm that is also a partner in the Joint Venture as part of its DBE Utilization Plan. The Certified DBE Firm/Joint Venture Partner, however, does not need to submit a DBE Affirmation Form for any work the Certified DBE Firm/Joint Venture Partner is going to perform to meet the goal. ODOT will consider submission of the Joint Venture's bid as the Certified DBE Firm/Joint Venture Partner's confirmation that it is participating in the contract.

GOOD FAITH EFFORTS (GFE's)

If the DBE contract goal established by ODOT is not met, the ALB shall demonstrate it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

If the ALB does not meet the goal at bid time, the ALB shall submit its Good Faith Efforts (GFE's) documentation within five (5) days of the bid opening. Submission of DBE affirmation(s) with additional participation sufficient to meet the DBE contract goal does not cure the ALB's failure to meet the goal at bid time or eliminate the ALB's responsibility of submitting GFE's within five (5) days of the bid opening.

The ALB shall demonstrate its GFE's by submitting the following information within five (5) days after the bid opening:

1. All written quotes received from certified DBE firms
2. All written (including email) communications between the ALB and DBE firms
3. All written solicitations to DBE firms, even if unsuccessful
4. Copies of each non-DBE quote when a non-DBE was selected over a DBE for work on the contract
5. Phone logs of communications with DBE firms

The ALB shall utilize the Pre-Bid GFE Template to document their GFE's. This template and supporting documentation shall be sent along with any DBE Affirmation Forms within five (5) days of bid opening. ODOT has provided Good Faith Efforts Guidance located at [Good Faith Efforts \(GFE\) for Contractors | Ohio Department of Transportation](#)

All other bidders shall submit documentation of GFE's if notified the information is required in order for ODOT to complete its bid assessment. Bidders shall have five (5) days from the date of notification to submit all required GFE documentation. Notification will be by email.

ODOT shall utilize the guidance set forth in 49 CFR §26.53 Appendix A in determining whether the bidder has made adequate good faith efforts to meet the goal.

ADMINISTRATIVE RECONSIDERATION

ODOT will review the GFE documentation and issue a written determination on whether adequate GFE's have been demonstrated prior to contract award. If ODOT determines the ALB has failed to demonstrate adequate GFE's to meet the goal, the ALB will have an opportunity for administrative reconsideration prior to the contract being awarded.

As part of this reconsideration, the ALB may provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. Such written documentation or argument must be provided to ODOT, attention to the Office of Chief Legal Counsel, 1980 West Broad Street, MS 1500, Columbus, Ohio 43223 (with copy to the Office of Contract Sales, MS 4110), within two (2) business days of ODOT's written determination that GFE's were not adequately demonstrated. The ALB may also include in their written documentation a request for an in-person meeting to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. ODOT's Office of Chief Legal Counsel will respond to the ALB within five (5) business days of receiving written documentation or holding the in-person meeting.

ODOT will send the ALB a written decision on reconsideration explaining the basis for finding that the ALB did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the United States Department of Transportation.

TERMINATION OR REPLACEMENT OF A DBE

By submitting a DBE Utilization Plan, the bidder is committing to use the DBE firms identified in the plan. The ALB/Awarded Contractor shall utilize the specific DBEs listed in the DBE Utilization Plan to perform the work and supply the materials for which each is listed unless the ALB/Awarded Contractor obtains written consent as provided in this paragraph. In order to request termination or substitution of a DBE firm, the ALB/Awarded Contractor shall utilize the Request for Consent to Terminate/Reduce a DBE Commitment form located at [DBE Commitment Reduction or Termination Form | Ohio Department of Transportation](#).

This termination/replacement procedure applies only to DBE firms or the amount of work being utilized to meet the goal.

Without ODOT's written consent to terminate/replace a DBE firm being utilized to meet the goal, the Awarded Contractor shall not be entitled to any payment for DBE listed work or material unless it is performed or supplied by the listed DBE.

GOOD CAUSE

ODOT may provide written consent to terminate a DBE only if it agrees, for reasons stated in a concurrence document, the ALB/Awarded Contractor has good cause to terminate the DBE firm.

For purposes of this section, good cause to terminate a DBE includes the following circumstances:

- 1) The listed DBE firm fails or refuses to provide the required DBE Affirmation Form or to execute a written contract
- 2) The listed DBE firm fails or refuses to perform the work of its subcontract in a manner consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE firm to perform its work on the subcontract results from the bad faith or discriminatory action of the awarded contractor

- 3) The listed DBE firm fails or refuses to meet the awarded contractor's reasonable, nondiscriminatory bond requirements.
- 4) The listed DBE firm becomes bankrupt, insolvent, or exhibits credit unworthiness
- 5) The listed DBE firm is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law
- 6) ODOT has determined the listed DBE firm is not a responsible contractor
- 7) The listed DBE firm voluntarily withdraws from the project and provides to the contractor written notice of its withdrawal
- 8) The listed DBE is ineligible to receive DBE credit for the type of work required
- 9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract; and
- 10) Other documented good cause that ODOT determines compels the termination of the DBE firm. Provided that good cause does not exist if the awarded contractor seeks to terminate a DBE it relied upon to obtain the contract so the awarded contractor can self-perform the work for which the DBE contractor was engaged or so the awarded contractor can substitute another DBE or non-DBE contractor after contract award.

REPLACEMENT

When a DBE firm is terminated or fails to complete its work on the contract for any reason, the Awarded Contractor must make GFEs to find another DBE firm to replace the original DBE. These GFEs shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. The GFEs shall be documented by the Awarded Contractor. If ODOT requests documentation under this provision, the Awarded Contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days if necessary, at the request of the contractor, and ODOT shall provide a written determination to the contractor stating whether GFEs have been demonstrated.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions and substitutions of DBE firms put forward by bidders in the DBE Utilization Plan.

ADDITION

In the event additional DBE participation is required for the project, the Awarded Contractor shall utilize the DBE Affirmation Form located at [DBE Affirmation Form - Projects Sold on or after 9/1/18 | Ohio Department of Transportation](#). The DBE Affirmation Form will be utilized as written confirmation from each DBE firm that it is participating in the contract in the kind and amount of work on the project.

WRITTEN NOTICE TO DBE

Before transmitting to ODOT its request to terminate and/or substitute a DBE firm, the ALB/Awarded Contractor must give notice in writing to the DBE firm with a copy to ODOT of its intent to request to terminate and/or substitute and the reason(s) for the request.

The ALB/Awarded Contractor must give the DBE five (5) days to respond to the notice, advising ODOT and the ALB/Awarded Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why ODOT should not approve the ALB/Awarded Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), ODOT may provide a response period shorter than five (5) days.

GOAL ATTAINMENT POST AWARD

The Awarded Contractor shall make available upon request a copy of all DBE subcontracts. The Awarded Contractor shall ensure that all subcontracts or agreements with DBEs require that the subcontract and all lower-tier subcontracts be performed in accordance with this Proposal Note.

Approval of a DBE Utilization Plan does not ensure approval of C-92 Requests to Sublet, nor does approval of a DBE Utilization Plan indicate the DBE goal has been met. ODOT will monitor goal attainment throughout the life of the project. It is the responsibility of the Awarded Contractor to advise ODOT of any changes to the DBE Utilization plan throughout the life of the project. The DBE goal of a project is stated as a percentage of the contract. In the event the contract amount increases or decreases, the actual dollar amount of the DBE goal for the project may increase or decrease accordingly.

SANCTIONS AND ADMINISTRATIVE REMEDIES

PRE-BID

Failure by the ALB to do any of the following shall result in the bid being rejected as non-responsive in accordance with ORC §5525.08:

1. Failure to submit a complete DBE Utilization Plan prior to bid opening
2. Failure to submit DBE Affirmation Form(s) and/or failure to submit Request for Consent to Terminate/Reduce a DBE Commitment form(s) as required by this Proposal Note; or
3. Failure to meet the goal and/or failure to demonstrate GFEs to meet the goal as required by this Proposal Note.

POST-BID

Failure by the Awarded Contractor to carry out the requirements of this Proposal Note, including the submission of adequate good faith efforts to meet the goal for a project, is a material breach of the contract and may result in the issuance of sanctions as follows:

- 1st Tier: Letter of Reprimand
- 2nd Tier: Damages equivalent to the DBE shortfall
- 3rd Tier: If a pattern of paying damages persists or the contractor has falsified, misrepresented, or withheld information, ODOT can pursue other remedies available by law including suspension, revocation, and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to, the following:

- the magnitude and the type of offense
- the degree of the contractor's culpability
- any steps taken to rectify
- the contractor's record of performance on other projects including, but not limited to:
 - annual DBE participation
 - annual DBE participation on projects without goals
 - the number of complaints ODOT has received regarding the contractor
 - the number of times the contractor has been previously sanctioned by ODOT

25. PN 031 - 6/27/2023 – PROMPT PAYMENT - LOCAL-LET CONSTRUCTION PROJECTS

The U.S. Department of Transportation's (USDOT's) rules related to Disadvantaged Business Enterprises are published in 49 CFR Part 26. Within 49 CFR Part 26, 49 CFR 26.29 lays out the prompt payment requirements that apply to ODOT (the Department), its subrecipients (LPA's), and, by extension, both prime contractors and subcontractors (including non-DBEs). The 49 CFR 26.29 requirements apply only to federally funded contracts (i.e., contracts with USDOT financial assistance). The prime contractor must

comply with this Proposal Note and the Department's prompt payment requirements as published in 107.21 of the C&MS.

Second-tier subcontract means a subcontract awarded directly by the subcontractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a contractor's general and administrative expenses or indirect costs.

The Department will monitor payments made by prime contractors and subcontractors for compliance with this Proposal Note, C&MS 107.21 and, where applicable, 49 CFR 26.29. To facilitate this monitoring, the Department requires both prime **and** subcontractors to report their payments to all subcontractors/second-tier subcontractors with the submission of each invoice. The payment data reported must include any retainage withheld (*when allowable under the Department's [Retainage Policy dated 4/14/21](#)*) and any previously withheld retainage released. All such reporting must take place through a web-based submission on GoFormz. Please note: submission through GoFormz is required for all Local-let projects. Invoices will not be approved and processed for payment unless this reporting form has been submitted and received by the Department.

The prime/subcontractor must report the following information:

- The name of the payee
- The dollar amount of the payment to the payee
- The date the payee was paid
- The amount of retainage withheld (if any)

Ohio's 10-day prompt payment requirement is based on the payer's payment issuance date and NOT the payee's payment receipt date.

The prime/subcontractor must sign each reported payment and submit to ODOT via the GoFormz website.

The second-tier subcontractor is responsible for completing the affirmation of payment form in GoFormz.

The prime is responsible for ensuring that all subcontractors and second-tier subcontractors are correctly completing all prompt payment forms via the GoFormz website.

If the prime or subcontractor(s) fail to submit the aforementioned documentation with each invoice, they will be determined to be non-compliant and invoices will not be processed for payment.

Payees must verify each payment reported by the payer within thirty (30) days of the payment being signed by the payer. This verification must include:

- Whether the payment was received, and if so, whether it was or was not as expected
- The dollar amount of the payment received
- The date the payment was received

The prime contractor shall fully complete the last prompt payment form upon receipt of final payment.

SANCTIONS AND ADMINISTRATIVE REMEDIES

Failure by the prime contractor and/or subcontractor(s) to follow Prompt Payment requirements may result in the issuance of sanctions as follows:

1st Tier: Notice of Violation via a Letter of Reprimand

- 2nd Tier: If corrective actions are not taken within the specified three (3) business days, a pay estimate in the amount due to the subcontractor(s) that was not reported or paid may be withheld.
- 3rd Tier: If a pattern of paying damages persists or the contractor or subcontractor(s) has falsified, misrepresented, or withheld information, ODOT can pursue other remedies available by law including suspension, revocation, and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- the magnitude and the type of offense
- the degree of the contractor's or subcontractor's culpability
- any steps taken to rectify
- the contractor's or subcontractor's record of performance on other projects
- the number of times the contractor or subcontractor has been previously sanctioned by ODOT

26. WAIVER OF C&MS 614.03

ODOT's 2023 C&MS section 614.03, third paragraph, does not apply to any project which is not physically located on the National Highway System (NHS), and/or does not impact NHS traffic in any way.

27. ODOT AS OBLIGEE ON BOND

The contractor shall furnish a performance and payment bond in an amount at least equal to 100 percent of the estimate as security for the faithful performance of its contract. In addition to the project owner, ODOT shall be named as an obligee.

28. NON-DISCRIMINATION PROVISIONS

A. Compliance with Regulations: The contractor will comply with the regulations relative to nondiscrimination in Federally-assisted programs of the USDOT Title 49 CFR, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

In addition, the contractor will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as "ADA/504").

B. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, or disability, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate, either directly or indirectly, in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.

C. Solicitations for Contractors or Subcontractors, including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a contract or subcontract including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

D. Information and Reports: The contractor will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State or FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor will so certify to the State or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the LPA will impose such contract sanctions as it or State/FHWA may determine to be appropriate, including, but not limited to:

- (1) Withholding of payments to the contractor under the contract until the contractor complies, and/or
- (2) Cancellation, termination, or suspension of the contract, in whole or in part.

F. Incorporation of Provisions: The contractor will include the provisions of paragraphs (A) through (E) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor will take such action with respect to any subcontractor procurement as the LPA or State/FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the LPA/State to enter into such litigation to protect the interests of the LPA and the State. In addition, the LPA/State may request the United States to enter into such litigation to protect the interests of the United States.

29. PN 015 - 04/17/2020 - CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS

The required contract provisions for federal-aid construction contracts are hereby incorporated by reference as if rewritten herein. The current version of Form FHWA-1273 (available at <https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>) shall be physically incorporated in all contracts, subcontracts, and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreement for supplies or services related to a construction contract). The prime contractor shall be responsible for ensuring that the FHWA-1273 is physically incorporated into all lower-tier subcontracts.

SANCTIONS AND ADMINISTRATIVE REMEDIES

Failure by the prime contractor to include the provisions of FHWA-1273 in their contract or in their lower-tier subcontracts may result in the issuance of sanctions as follows:

1st Tier: Letter of Reprimand

2nd Tier: Damages equivalent to the daily liquidated damages amount found in C&MS section 108.07 for each incident of non-compliance

3rd Tier: If a pattern of paying damages persists or the contractor has falsified, misrepresented, or withheld information, the LPA can pursue other remedies available by law including suspension, revocation, and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- the magnitude and the type of offense
- the degree of the contractor's culpability
- any steps taken to rectify

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- the contractor's record of performance on other projects; and
- the number of times the contractor has been previously sanctioned by the LPA.

30. PN 032 – 01/31/2021 – C92s REQUIRED ON LOCAL-LET CONSTRUCTION PROJECTS

State and Federal law requires that all contractors and subcontractors participating on state or federally funded projects be evidenced in writing and in conformity with all applicable state and federal laws and regulations.

Effective immediately, all projects advertising after 2/1/2021 will require that a Request to Sublet (C92) form is completed for each subcontractor and DBE materials supplier working on the project prior to the start of work.

A template for this form may be found and submit via the GoFormz website located at www.goformz.com.

31. REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS (Electronic Form FHWA 1273 – October 23, 2023) (SEE NEXT PAGE)

**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.

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

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:

(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. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), 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 basic hourly 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. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. 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 must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. 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 classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must 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. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

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

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must 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 be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate 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 used in the area by the construction industry; and

(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) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) 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 will be sent by the contracting officer by email to DBAconformance@dol.gov. 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.

(4) 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 will, by email to DBAconformance@dol.gov, 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.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must 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.

d. *Fringe benefits not expressed as an hourly rate.* 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 may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* 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, in accordance with the criteria set forth in § 5.28, 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.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and 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.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements (1) Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; 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 [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section 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 [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must 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.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements (1) Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working 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](#); and

(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(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

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

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* 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. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access (1) Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, 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, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform 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 (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must 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, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must 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 this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. 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 journeyworkers 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 must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 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. a. By entering into this contract, the contractor certifies that neither it 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 [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

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 watchpersons 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 and interest from the date of the underpayment. 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 watchpersons 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.

* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, 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 that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

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 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 200.327.

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 200.327.

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 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 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 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 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).

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.

* * * * *

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

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

(1) 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;

(2) 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

(3) 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)

b. 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.

* * * * *

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 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.

**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.

BUY AMERICA CERTIFICATION

(Reference ODOT's LPA Template – Required Contract Provisions, Provision #3)

Special Provisions