

**Bidding Requirements, Contract Forms and Conditions of the Contract
SUPPLEMENTAL GENERAL CONDITIONS - STANDARD FEDERAL-AID
ASSURANCES**

1.1. Section 00810A

Federal-aid assurances and contract provisions

NOTE: All documents referenced in Section 00810A are to be completed, signed and submitted post bid.

**CERTIFICATION OF INTEREST IN OTHER BID
PROPOSALS FOR THIS WORK**

By signing this proposal, the bidding firm and the signer certify that the following information, as indicated by checking "Yes" or "No", below, is true, accurate, and complete.

A. Quotation(s) have been issued in this firm's name to other firm(s) interested in this work for consideration for performing a portion of this work.

_____ YES

_____ NO

B. If this proposal is the low bid, the bidder agrees to provide the following information prior to award of the contract.

1. Identify firms which bid as a prime contractor and from which the bidder received quotations for work on this project.
2. Identify all the firms which bid as a prime contractor to which the bidder gave quotations for work on this project.

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secure to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity or this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number, the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

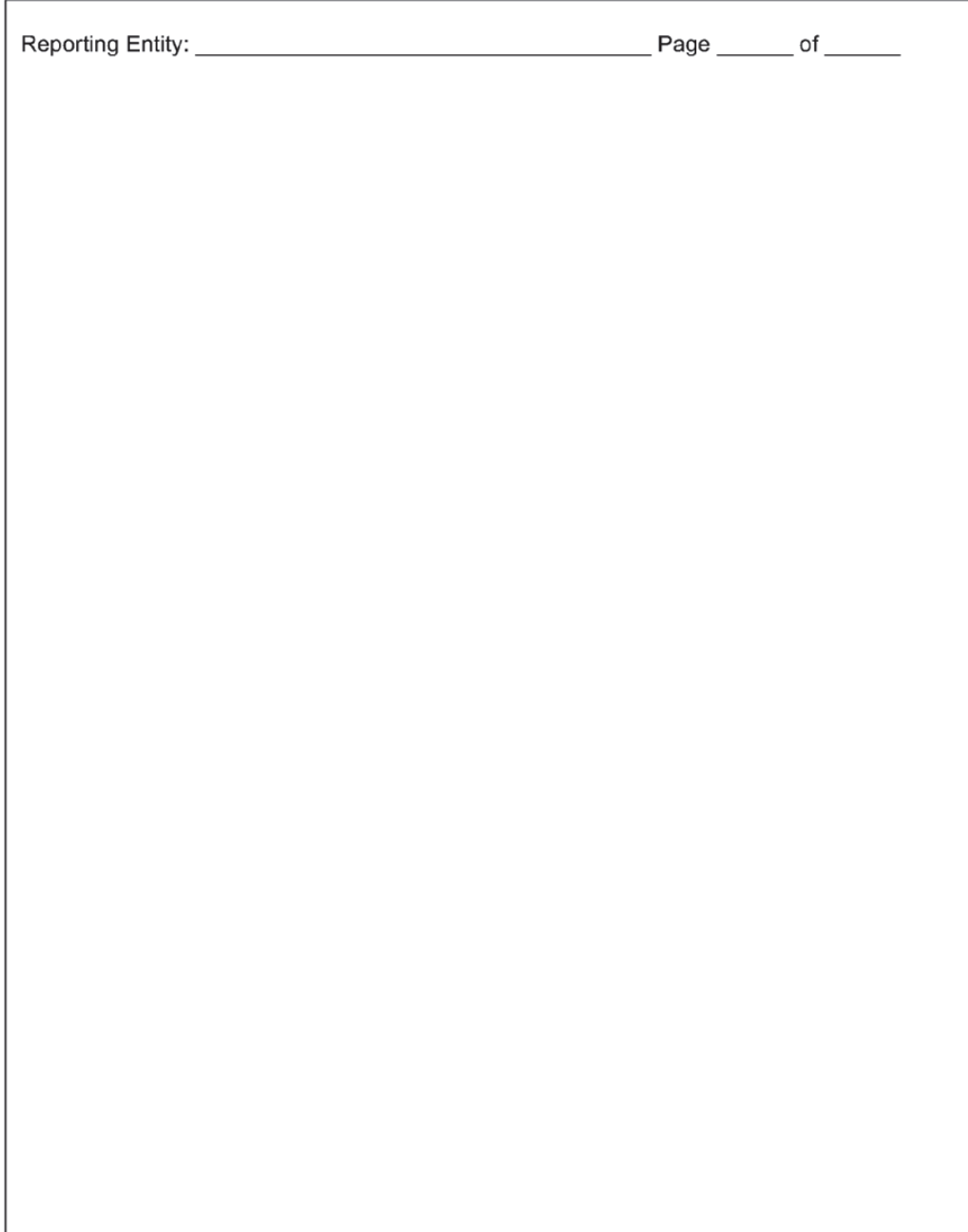
DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB

0348-0046

CONTINUATION SHEET

Reporting Entity: _____ Page _____ of _____



Authorized for Local Reproduction
Standard Form - LLL-A

CONTRACTORS ASSURANCE

(Subcontracts - Federal Aid Projects)

By signing this proposal, the contractor is giving assurances that all subcontract agreements will incorporate the Standard Specification and Special Provisions, Payment Provisions for Subcontractors, all subcontract agreements exceeding \$2,000 will incorporate the applicable Wage Determination Decision, and all subcontract agreements will incorporate the following:

- Special Provision "Certification of Nondiscrimination in Employment"
- Special Provision "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)"
- Special Provision "Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)"
- Form FHWA 1273 "Required Contract Provisions Federal-aid Construction Contracts" (Form FHWA 1273 must also be physically attached to subcontracts and purchase orders of \$10,000 or more)
- Conditions of the Contract Title VI Assurances Appendix A – Section 00631
- Special Provision Disadvantaged Business Enterprise in Federal-Aid Contracts

CHILD SUPPORT STATEMENT

Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

BUSINESS OWNERSHIP

State of Texas Child Support Business Ownership Form

County: _____

Project Name: _____

TxDOT CSJ: _____

LG Project Number: _____

Business Entity Submitting Bid: _____

Section 231.006, Family Code, requires a bid for a contract paid from state funds to include the names and social security number of individuals owning 25% or more of the business entity submitting the bid.

- 1. In the spaces below please provide the names and social security number of individuals owning 25% or more of the business.

Name	Social Security Number
_____	_____
_____	_____
_____	_____
_____	_____

- 2. Please check the box below if no individual owns 25% or more of the business.

() No individual own 25% or more of the business.

Except as provided by Section 231.302(d), Family Code, a social security number is confidential and may be disclosed only for the purpose of responding to a request for information from an agency operating under the provisions of Part A and D to Title IV of the Federal Social Security Act (42 USC Section 601-617 and 651-699).

Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

The information collected on this form will be maintained by _____. With few exceptions, you are entitled on request to be informed about the information collected about you. Under Sections 552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under Section 559.004 of the Government Code, you are also entitled to have information about you corrected that you believe is incorrect.

Signature

Date

Printed Name

IF THIS PROJECT IS A JOINT VENTURE,
ALL PARTIES TO THE JOINT VENTURE MUST PROVIDE A COMPLETED FORM.

Non-Collusion Affidavit

The undersigned, as bidder, declares that the only person or parties interested in this proposal as principals are those named herein; that the Contractor has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for the above-captioned highway work.

The undersigned affirms the truth and accuracy of this certification.

Legal Firm Name

Signature

Address: _____

Before me, the undersigned authority a Notary Public on this day personally appeared _____ who, being by me duly sworn, upon oath says that he/she is qualified and authorized to make this affidavit for and on behalf of _____ County(s), Texas, and is fully cognizant of the facts herein set out and affirms to the truth and accuracy of the certification made herein by signing above.

Subscribed and sworn to before me by the said (1) _____

this _____ day of _____, 20____, to certify which witness my hand and seal of office.

Notary Public in and for

_____ County, Texas

DIFFERING SITE CONDITIONS

Reference 23 CFR 635.109. During the progress of the work, differing subsurface or latent physical conditions may be encountered at the site. The two types of differing site conditions are defined as:

- those that differ materially from those indicated in the Contract and
- unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract.

Notify the Engineer in writing when differing site conditions are encountered. The Engineer will notify the Contractor when the OWNER discovers differing site conditions. Unless directed otherwise, suspend work on the affected items and leave the site undisturbed. The Engineer will investigate the conditions and determine whether differing site conditions exist. If the differing site conditions cause an increase or decrease in the cost or number of working days specified for the performance of the Contract, the Engineer will make adjustments, excluding the loss of anticipated profits, in accordance with the Contract. Additional compensation will be made only if the required written notice has been provided.

Special Provision to Item 006

Control of Materials



Item 6, "Control of Materials" of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Section 1.1, "Buy America," The section is removed and replaced by the following:

Comply with the latest provisions of Build America, Buy America Act (BABA Act) of the Bipartisan Infrastructure Law which restricts funds being made available from Federal financial assistance programs unless all the iron products, steel products, manufactured products, and construction materials used in the project are produced in the United States. Use steel or iron products, manufactured products, or construction materials produced in the United States except when:

- a waiver exists exempting the material from Buy America compliance,
- the cost of materials, including delivery, does not exceed 0.1% of the total Contract cost or \$2,500, whichever is greater,
- the Contract contains an alternate item for a foreign source product and the Contract is awarded based on the alternate item, or
- the materials are temporarily installed.

For construction materials submit a notarized original of TxDOT Construction Material Buy America Certification Form (Department Form 2806) with the proper attachments for verification of compliance. Form 2806 is not required for materials classified as manufactured products.

Construction Materials are classified as 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)
- Lumber, or
- Drywall.

Details shown on the plans provide additional clarification on Buy America requirements for this project. Refer to the Buy America Material Classification Sheet for clarification on material categorization, located at: <https://www.txdot.gov/business/resources/materials/buy-america-material-classification-sheet.html>.

For steel or iron materials submit a notarized original of the FORM D-9-USA-1 (Department Form 1818) with the proper attachments for verification of compliance. For steel or iron materials the manufacturing process includes any process that modifies the chemical content, physical shape or size, or final finish of a product. The manufacturing process begins with initial melting and mixing and continues through fabrication (cutting, drilling, welding, bending, etc.) and coating (paint, galvanizing, epoxy, etc.).



Construction Materials Buy America Certification

Per Statewide Special Provision SP 006-030 "Control of Materials", Form 2806 must be completed to certify compliance with Build America, Buy America Act (BABA Act). Construction Materials are classified as 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)
- Lumber, or
- Drywall.

The material(s) provided by the listed producer/fabricator and order number below are made in the United States and meet the requirements of the BABA Act.

CSJ: Area Engineer:

Prime Contractor:

Subcontractor:

Item Code:

Producer/Fabricator:

Order Number:

Material:

This is to certify that the material(s) are in conformance with the governing specification(s) and that at least the final manufacturing processes and the immediately preceding manufacturing stage for the construction material occurred in the United States of America. Alterations to this document by any agency other than the Prime Contractor will void the certification.

Submit documentation to support this certificate of compliance for the specified material(s), as requested by the Engineer.

Prime Contractor Representative Name:

Prime Contractor Representative Signature:

Date:

Subscribed and sworn to before me this day of ,

Notary Public

My Commission expires:

Item Code	Description	Iron/Steel	Construction Material	Manufactured Product.	Notes
0100	Preparing Right of Way	n/a			
0103	Disposal of Wells	n/a			
0104	Removing Concrete	n/a			
0105	Removing Treated and Untreated Base and Asphalt Pavement	n/a			
0106	Obliterate Abandoned Road	n/a			
0110	Excavation	n/a			
0112	Subgrade Widening	n/a			
0132	Embankment	n/a		■ Geogrid	
0134	Backfilling Pavement Edges	n/a	■ Backfill Material (exempt) ■ Emulsified Asphalt (Exempt)	■ Fertilizer	
0150	Blading	n/a			
0152	Road Grader Work	n/a			
0154	Scraper Work	n/a			
0156	Bulldozer Work	n/a			
0158	Specialized Excavation Work	n/a			
0160	Topsoil			■ Topsoil	
0161	Compost			■ Compost	
0162	Sodding for Erosion Control		■ Emulsified Asphalt: Refer to Item 0300 "Asphalts, Oils, and Emulsions" in the Non-Pay Items tab. (exempt)	■ Fertilizer ■ Sod	
0164	Seeding for Erosion Control		■ Emulsified Asphalt: Refer to Item 0300 "Asphalts, Oils, and Emulsions" in the Non-Pay Items tab. (exempt)	■ Fertilizer ■ Soil Retention Blankets ■ Cellulose Fiber ■ Seed	
0166	Fertilizer			■ Fertilizer	
0168	Vegetative Watering	n/a			
0169	Soil Retention Blankets	n/a		■ Soil Retention Blankets	
0170	Irrigation System		■ PVC pipe	■ all other parts	
0180	Wildflower Seeding			■ Seed	
0192	Landscape Planting			■ Plants ■ Compost ■ Fertilizer ■ Mulch	
0193	Landscape Establishment			■ Plants ■ Compost ■ Fertilizer ■ Mulch	
0204	Sprinkling	n/a			
0210	Rolling	n/a			
0216	Proof Rolling	n/a			
0247	Flexible Base		■ Flex Base (exempt)	■ Geogrid	

Item Code	Description	Iron/Steel	Construction Material	Manufactured Product.	Notes
0251	Reworking Base Courses		<ul style="list-style-type: none"> ■ Base Course (exempt) 		
0260	Lime Treatment (Road Mixed)		<ul style="list-style-type: none"> ■ Existing Material or Subgrade (exempt) ■ Lime (exempt, additive) ■ Flex Base (New) (exempt) ■ Asphalt (for curing) (exempt) 	■ Geogrid	
0263	Lime Treatment (Plant-Mixed)		<ul style="list-style-type: none"> ■ Lime (exempt) ■ Flex Base (New) (exempt) ■ Asphalt (for curing) (exempt) 	■ Geogrid	
0265	Fly Ash or Lime-Fly Ash Treatment (Road-Mixed)		<ul style="list-style-type: none"> ■ Existing Material or Subgrade: (exempt) ■ Fly Ash (exempt) ■ Lime (exempt) ■ Flex Base (New) (exempt) ■ Asphalt (for curing) (exempt) 	■ Geogrid	
0275	Cement Treatment (Road-Mixed)		<ul style="list-style-type: none"> ■ Existing Material or Subgrade: (exempt) ■ Cement (exempt) ■ Flex Base (New) (exempt) ■ Asphalt (for curing) (exempt) 	■ Geogrid	
0276	Cement Treatment (Plant-Mixed)		<ul style="list-style-type: none"> ■ Existing Material or Subgrade: (exempt) ■ Cement (exempt) ■ Flex Base (New) (exempt) ■ Asphalt (for curing) (exempt) 	■ Geogrid	
0292	Asphalt Treatment (Plant-Mixed)		<ul style="list-style-type: none"> ■ Aggregate, RAP, Complete Mix and Roadway (exempt) ■ Lime (exempt) ■ RAS (exempt) ■ Asphalt (exempt) 		
0305	Salvaging, Hauling, and Stockpiling Reclaimable		n/a		
0310	Prime Coat		■ Asphalt (exempt)		
0314	Emulsified Asphalt Treatment		■ Asphalt (exempt)		
0315	Fog Seal		■ Asphalt (exempt)		
0316	Seal Coat		<ul style="list-style-type: none"> ■ Asphalt (exempt) ■ Aggregate, Asphalt Content (exempt) ■ Precoating Asphalt (exempt) 	■ Synthetic Lightweight Aggregate (exempt)	
0330	Limestone Rock Asphalt Pavement		<ul style="list-style-type: none"> ■ Aggregate (exempt) ■ Complete Mix: (exempt) ■ Asphalt Tack: (exempt) ■ Additives: Refer to Item 0301 "Asphalt Antistripping Agents" in the Non-Pay Items tab. (exempt) 	■ Fluxing Material - (exempt)	
0334	Hot-Mix Cold-Laid Asphalt Concrete Pavement		<ul style="list-style-type: none"> ■ Aggregate: (exempt) ■ Complete Mix: (exempt) ■ Binder Material: Asphalt, Primer, Asphalt Tack: Refer to Item 0300 "Asphalts, Oils, and Emulsions" in the Non-Pay Items tab. (exempt) ■ Additives: Refer to Item 0301 "Asphalt Antistripping Agents" in the Non-Pay Items tab. (exempt) 		
0340	Dense Graded Hot-Mix Asphalt (Small Quantity)	Discontinued. Refer to item 341.	Discontinued. Refer to item 341.	Discontinued. Refer to item 341.	

Item Code	Description	Iron/Steel	Construction Material	Manufactured Product.	Notes
0341	Dense Graded Hot-Mix Asphalt		<ul style="list-style-type: none"> ■ Aggregate (exempt) ■ RAS (exempt) ■ RAP and Complete Mix (exempt) ■ Asphalt and Asphalt Tack: Refer to Item 0300 "Asphalts, Oils, and Emulsions" in the Non-Pay Items tab. (exempt) ■ Additives: Refer to Item 0301 "Asphalt Antistripping Agents" in the Non-Pay Items tab. (exempt) ■ Warm Mix Asphalt: When used or required, verify additive or process is on the Material Producer List for "Warm Mix Asphalt." (exempt) 		
0342	Permeable Friction Course		(exempt)		
0344	Superpave Mixtures		<ul style="list-style-type: none"> ■ Aggregate (exempt) ■ RAS (exempt) ■ RAP and Complete Mix (exempt) ■ Asphalt and Asphalt Tack: Refer to Item 0300 "Asphalts, Oils, and Emulsions" in the Non-Pay Items tab. (exempt) ■ Additives: Refer to Item 0301 "Asphalt Antistripping Agents" in the Non-Pay Items tab. (exempt) ■ Warm Mix Asphalt: When used or required, verify additive or process is on the Material Producer List for "Warm Mix Asphalt." (exempt) 		
0346	Stone-Matrix Asphalt		<ul style="list-style-type: none"> ■ Aggregate (exempt) ■ RAS (exempt) ■ RAP and Complete Mix (exempt) ■ Asphalt and Asphalt Tack: Refer to Item 0300 "Asphalts, Oils, and Emulsions" in the Non-Pay Items tab. (exempt) ■ Additives: Refer to Item 0301 "Asphalt Antistripping Agents" in the Non-Pay Items tab. (exempt) ■ Warm Mix Asphalt: When used or required, verify additive or process is on the Material Producer List for "Warm Mix Asphalt." (exempt) 		
0347	Thin Overlay Mixtures		<ul style="list-style-type: none"> ■ Aggregate (exempt) ■ RAS (exempt) ■ RAP and Complete Mix (exempt) ■ Asphalt and Asphalt Tack: Refer to Item 0300 "Asphalts, Oils, and Emulsions" in the Non-Pay Items tab. (exempt) ■ Additives: Refer to Item 0301 "Asphalt Antistripping Agents" in the Non-Pay Items tab. (exempt) ■ Warm Mix Asphalt: When used or required, verify additive or process is on the Material Producer List for "Warm Mix Asphalt." (exempt) 		
0350	Microsurfacing		<ul style="list-style-type: none"> ■ Aggregate (exempt) ■ Emulsion: Refer to Item 0300 "Asphalts, Oils, and Emulsions" in the Non-Pay Items tab. (exempt) ■ Lime (exempt) ■ Cement: (exempt) ■ Complete Mix: (exempt) 		

Item Code	Description	Iron/Steel	Construction Material	Manufactured Product.	Notes
0351	Flexible Pavement Structure Repair		exempt (aggregate)		
0354	Planing and Texturing Pavement		n/a		
0356	Fabric Underseal			■ Fabric	
0358	Hot In-Place Recycling of Asphalt Concrete Surface		<ul style="list-style-type: none"> ■ Aggregate (exempt) ■ RAS (exempt) ■ RAP and Complete Mix (exempt) ■ Asphalt and Asphalt Tack: Refer to Item 0300 "Asphalts, Oils, and Emulsions" in the Non-Pay Items tab. (exempt) ■ Additives: Refer to Item 0301 "Asphalt Antistripping Agents" in the Non-Pay Items tab. (exempt) ■ Warm Mix Asphalt: When used or required, verify additive or process is on the Material Producer List for "Warm Mix Asphalt." (exempt) ■ Asphalt and Recycling Agent: Refer to Item 0300 "Asphalts, Oils, and Emulsions" in the Non-Pay Items tab. (exempt) ■ Roadway Mix (exempt) 		
0360	Concrete Pavement	<ul style="list-style-type: none"> ■ Reinforcing Steel: Refer to item 0440 "Reinforcement for Concrete" in the Non-Pay Items tab. ■ Multi-piece Tie Bars: 	<ul style="list-style-type: none"> ■ Hydraulic Cement Concrete: Refer to Item 0421 "Hydraulic Cement Concrete" in the Non-Pay Items tab.(exempt) ■ Asphalt (for curing): Refer to Item 0300 "Asphalts, Oils, and Emulsions" in the Non-Pay Items tab. (exempt) 	<ul style="list-style-type: none"> ■ Sealants: Verify the Manufacturer is on the Material Producer List for "Joint Sealers" or for "Crack Sealer (Rubber Asphalt)." ■ Epoxy 	
0361	Repair of Concrete Pavement	<ul style="list-style-type: none"> ■ Reinforcing Steel: Refer to item 0440 "Reinforcement for Concrete" in the Non-Pay Items tab. ■ Multi-piece Tie Bars: 	<ul style="list-style-type: none"> ■ Hydraulic Cement Concrete: Refer to Item 0421 "Hydraulic Cement Concrete" in the Non-Pay Items tab. (exempt) ■ Asphalt (for curing): Refer to Item 0300 "Asphalts, Oils, and Emulsions" in the Non-Pay Items tab. (exempt) 	<ul style="list-style-type: none"> ■ Sealants: Verify the Manufacturer is on the Material Producer List for "Joint Sealers" or for "Crack Sealer (Rubber Asphalt)." ■ Epoxy (exempt) 	
0400	Excavation and Backfill for Structures		n/a		
0401	Flowable Backfill		<ul style="list-style-type: none"> ■ Hydraulic Cement Concrete: Refer to Item 0421 "Hydraulic Cement Concrete" in the Non-Pay Items tab. (exempt) 		
0402	Trench Excavation Protection		(exempt)		
0403	Temporary Special Shoring		(exempt)		
0405	Foundation Test Load		na		
0406	Timber Piling		■ - Treated/Untreated Lumber		
0407	Steel Piling	■ - Steel Piling			
0409	Prestressed Concrete Piling	■ - Reinforcing Steel	■ - Concrete (exempt)		
0410	Soil Nail Anchors	<ul style="list-style-type: none"> ■ - Anchor Rods: ■ - Reinforcing Steel ■ - Bar Coupler 	<ul style="list-style-type: none"> ■ - Hydraulic Cement Concrete (exempt) ■ - Pneumatically Placed Concrete (exempt) 		
0411	Rock Nail Anchors	<ul style="list-style-type: none"> ■ - Anchor Rods ■ - Reinforcing Steel ■ - Bar Couplers 	<ul style="list-style-type: none"> ■ - Hydraulic Cement Concrete (exempt) ■ - Pneumatically Placed Concrete (exempt) 		

Item Code	Description	Iron/Steel	Construction Material	Manufactured Product.	Notes
0416	Drilled Shaft Foundations	<ul style="list-style-type: none"> ■ Reinforcing Steel ■ Permanent Steel Casing 	<ul style="list-style-type: none"> ■ Hydraulic Cement Concrete (exempt) 		
0420	Concrete Substructures	<ul style="list-style-type: none"> ■ Reinforcing Steel ■ Mechanical Couplers: 	<ul style="list-style-type: none"> ■ Hydraulic Cement Concrete (exempt) 	<ul style="list-style-type: none"> ■ Expansion Joint Material: ■ Evaporation Retardants (exempt) ■ Epoxies and Adhesives: ■ Waterstop: ■ Curing Compound 	
421	Hydraulic Cement Concrete		<ul style="list-style-type: none"> ■ Concrete (exempt) 		

Item Code	Description	Iron/Steel	Construction Material	Manufactured Product.	Notes
0422	Concrete Superstructures	Mechanical Couplers: Reinforcing Steel	■ Hydraulic Cement Concrete (exempt)	<ul style="list-style-type: none"> ■ Expansion Joint Material ■ Waterstop ■ Evaporation Retardants ■ Curing Compound: ■ Epoxies and Adhesives: 	
0423	Retaining Walls	<ul style="list-style-type: none"> ■ Steel Earth Reinforcements ■ Reinforcing Steel 	<ul style="list-style-type: none"> ■ Concrete (exempt) ■ Pipe Underdrains 	<ul style="list-style-type: none"> ■ Expansion Joint Material ■ Waterstop ■ Evaporation Retardants ■ Curing Compound ■ Epoxies and Adhesives ■ Waterproofing ■ Filter Material ■ Filter Fabric 	
0425	Precast Prestressed Concrete Structural Members	■ Reinforcing Steel	■ Hydraulic Cement Concrete (exempt)	■ Bearing Pads:	
0427	Surface Finishes for Concrete			Concrete Surface Finishes	
0428	Penetrating Concrete Surface Treatment			Concrete Surface Treatment	
0429	Concrete Structure Repair	<ul style="list-style-type: none"> ■ Mechanical Couplers: ■ Reinforcing Steel 	■ Hydraulic Cement Concrete (exempt)	<ul style="list-style-type: none"> ■ Expansion Joint Material ■ Waterstop ■ Evaporation Retardants ■ Curing Compound: ■ Epoxies and Adhesives 	

Item Code	Description	Iron/Steel	Construction Material	Manufactured Product.	Notes
0431	Pneumatically Placed Concrete	<ul style="list-style-type: none"> ■ Reinforcing Steel 	<ul style="list-style-type: none"> ■ Hydraulic Cement Concrete (exempt) 	<ul style="list-style-type: none"> ■ - Expansion Joint Material ■ - Waterstop ■ - Evaporation Retardant ■ - Curing Compound: ■ - Epoxies and Adhesives 	
0432	Rip Rap	<ul style="list-style-type: none"> ■ - Mechanical Couplers: 	<ul style="list-style-type: none"> ■ Stone Riprap (exempt) ■ Hydraulic Cement Concrete (exempt) 	<ul style="list-style-type: none"> ■ - Expansion Joint Material: Verify the producer is on the Material Producer List for "Joint Sealers." ■ - Waterstop: Obtain Manufacturer's Certification. ■ - Evaporation Retardants: Verify the producer is on the Material Producer List for "Concrete Evaporation Retardants." ■ - Curing Compound: ■ Filter Fabric 	
0434	Bridge Bearings	<ul style="list-style-type: none"> ■ Structural Steel: ■ Miscellaneous Steel: ■ Steel Anchorage: ■ Galvanizing: 		<ul style="list-style-type: none"> ■ Elastomeric Pads: ■ High Load Multi-Rotational (HLMR) Bearings: ■ Sliding Elastomeric Bearings: ■ Paint: 	
0438	Cleaning and Sealing Joints			<ul style="list-style-type: none"> ■ Primers and Backer Rods ■ Sealants 	
0439	Bridge Deck Overlays	<ul style="list-style-type: none"> ■ Reinforcing Steel: 	<ul style="list-style-type: none"> ■ Hydraulic Cement Concrete (exempt) ■ Polymer Resin Materials 	<ul style="list-style-type: none"> ■ Penetrating Concrete Surface Treatment 	
0442	Metal for Structures	<ul style="list-style-type: none"> ■ Bridge Members: ■ Structural Steel: ■ Miscellaneous Steel: ■ Steel Fasteners: ■ Welding Electrodes ■ Galvanizing: 		<ul style="list-style-type: none"> ■ Paint 	
0446	Field Cleaning and Painting Steel			<ul style="list-style-type: none"> ■ paint 	
0450	Railing	<ul style="list-style-type: none"> ■ Reinforcing Steel: ■ Metal Rail: ■ Steel Fasteners ■ Galvanizing 	<ul style="list-style-type: none"> ■ Concrete (exempt) 	<ul style="list-style-type: none"> - paint ■ Cast-In-Place Concrete Rail: <ul style="list-style-type: none"> ▪ Expansion Joint Material: ▪ Waterstop ▪ Evaporation Retardants ▪ Curing Compound: ▪ Epoxies and Adhesives: 	
0451	Retrofit Railing	<ul style="list-style-type: none"> ■ Reinforcing Steel ■ Metal Rail: ■ Steel Fasteners ■ Galvanizing 	<ul style="list-style-type: none"> ■ Concrete (exempt) 	<ul style="list-style-type: none"> ■ Cast-In-Place Concrete Rail: - Concrete Substructures: <ul style="list-style-type: none"> ▪ Expansion Joint Material ▪ Waterstop ▪ Evaporation Retardants ▪ Curing Compound ▪ Epoxies and Adhesives ■ Field Cleaning and Painting Steel: <ul style="list-style-type: none"> - Paint 	

Item Code	Description	Iron/Steel	Construction Material	Manufactured Product.	Notes
0454	Bridge Expansion Joints	<ul style="list-style-type: none"> ■ Steel: ■ Galvanizing 		<ul style="list-style-type: none"> ■ Elastomeric Concrete ■ Joint Sealants and Fillers ■ Paint 	
0458	Waterproofing Membranes for Structures		<ul style="list-style-type: none"> - Asphaltic Primer - (Exempt) - Asphalt for mopping above ground - (Exempt) - Asphalt for mopping below ground- (Exempt) <ul style="list-style-type: none"> - Cold Asphalt Base Emulsion- (Exempt) - Ethylene-Propylene-Diene Terpolymer Sheetting (EPDM) - Butyl-Rubber Membrane Sheetting - Self-Adhering Polyethylene 	<ul style="list-style-type: none"> - Asphalt Plank - Asphalt Mat - Asphaltic Panels - Plastic Cement - Treated Cotton Fabric - Coal-Tar Modified Urethane - Rubberized Asphalt with Preformed Board Membrane - Rubberized Asphalt with Plastic Film 	
0459	Gabions & Gabion Mattresses	■ Wire, Connectors, Stiffeners:	<ul style="list-style-type: none"> ■ Stone - (exempt) ■ Filter Material (exempt) 	■ Filter Fabric	
0460	Corrugated Metal Pipe	■ CMP			
0461	Structural Plate Structures	<ul style="list-style-type: none"> ■ Concrete Substructures: <ul style="list-style-type: none"> - Mechanical Couplers: ■ Reinforcing Steel: Refer to item 0440, "Reinforcement for Concrete" in the Non-Pay Items tab. ■ Miscellaneous Steel: ■ Galvanizing: Refer to item 0445 "Galvanizing" in the Non-Pay Items tab. ■ Structural Bolting: Refer to item 0447 "Structural Bolting" in the Non-Pay Items tab. 	<ul style="list-style-type: none"> ■ Concrete Substructures: ■ Hydraulic Cement Concrete (exempt) 	<ul style="list-style-type: none"> ■ Concrete Substructures: <ul style="list-style-type: none"> - Expansion Joint Material - Waterstop - Evaporation Retardants - Curing Compound - Epoxies and Adhesives 	
0462	Concrete Box Culverts and Drains	■ Reinforcing Steel	■ Concrete (exempt)	<ul style="list-style-type: none"> ■ Pre-Cast Box ■ Cast-In-Place Box: <ul style="list-style-type: none"> - Concrete Substructures: <ul style="list-style-type: none"> ▪ Expansion Joint Material ▪ Waterstop ▪ Evaporation Retardants ▪ Curing Compound ▪ Epoxies and Adhesives ■ Jointing Material 	

Item Code	Description	Iron/Steel	Construction Material	Manufactured Product.	Notes
0464	Reinforced Concrete Pipe	■ reinforcing steel	■concrete (exempt)	■ Jointing Material	
0465	Junction Boxes, Manholes, and Inlets	■Reinforcing steel ■ Steel Frame, Grate, Ring and Cover Castings: ■ Galvanizing	■ Concrete (exempt)	■ Pre-Cast Box, manhole, and inlet ■ Cast-In-Place Box: - Concrete Substructures: ▪ Expansion Joint Material: ▪ Waterstop ▪ Evaporation Retardants ▪ Curing Compound ▪ Epoxies and Adhesives:	
0466	Headwalls and Wingwalls	■ Reinforcing Steel	- Hydraulic Cement Concrete: Refer to Item 0421, "Hydraulic Cement Concrete" in the Non-Pay Items tab. (exempt)	■ Cast-In-Place: - Concrete Substructures: ▪ Expansion Joint Material ▪ Waterstop ▪ Evaporation Retardants ▪ Curing Compound: ▪ Epoxies and Adhesives:	
0467	Safety End Treatment	■ Reinforcing Steel ■ Pipe Runners, Plates, Angles, Bolts and Nuts	- Hydraulic Cement Concrete: Refer to Item 0421, "Hydraulic Cement Concrete" in the Non-Pay Items tab. (exempt)	■ Cast-In-Place Safety End Treatment: - Concrete Substructures: ▪ Expansion Joint Material: ▪ Waterstop: ▪ Evaporation Retardants: ▪ Curing Compound: ▪ Epoxies and Adhesives: ■ Jointing Material	
0471	Frames, Grates, Rings, and Covers	■frames, greates, rings, and covers Galvanizing			
0472	Removing and Re-laying Culvert	n/a			
0474	Linear Drains	■ - reinforcing steel ■ - Grates and Frames ■ - slotted drain corrugated Metal Pipe	■ -concrete (exempt)	■ - Sealer ■- curing compound ■- epoxies and adhesives ■- jointing material	
0476	Jacking, Boring or Tunneling Pipe or Box	■ - CMP ■- precast/cast in place steel	■ - concrete (exempt)	■ - Sealer ■- curing compound ■- epoxies and adhesives ■- jointing material	

Item Code	Description	Iron/Steel	Construction Material	Manufactured Product.	Notes
0479	Adjusting Manholes and Inlets	<ul style="list-style-type: none"> ■ - Pre-Cast/ Cast-In-Place Box: ■ - Mechanical Couplers: ■ - Reinforcing Steel: ■ - Steel Frame, Grate, Ring and Cover Castings: ■ - Galvanizing: Refer to item 0445 "Galvanizing" in the Non-Pay Items tab. 	<ul style="list-style-type: none"> ■ - Concrete (exempt) 	<ul style="list-style-type: none"> ■ - Expansion Joint Material: ■ - Waterstop: Obtain Manufacturer's Certification. ■ - Evaporation Retardants: ■ - Curing Compound: ■ - Epoxies and Adhesives 	
0480	Cleaning Existing Culverts	n/a			
0481	Pipe for Drains	<ul style="list-style-type: none"> ■ - RCP 	<ul style="list-style-type: none"> ■ - PVC ■ - PVC resin (exempt) 		
0483	Concrete Bridge Deck Surfacing	n/a			
0491	Timber for Structures		<ul style="list-style-type: none"> ■ - Untreated Timber: ■ - Treated Timber: 	<ul style="list-style-type: none"> ■ - Structural Glued Laminated Timber: 	
0495	Raising Existing Structures			<ul style="list-style-type: none"> ■ - Elastomeric Pads: 	
0496	Removing Structures	n/a			
0497	Sale of Salvageable Material	n/a			
0499	Adjusting Steel Shoes	<ul style="list-style-type: none"> ■ New Shoes, Anchor Bolts, or Other Steel Components: - Galvanizing: Refer to item 0445 "Galvanizing" in the Non-Pay Items tab. 			
0500	Mobilization	n/a			
0502	Barricades, Signs and Traffic Handling	n/a			
0504	Field Office and Laboratory	n/a			
0506	Temporary Erosion, Sedimentation and Environmental Controls	<ul style="list-style-type: none"> ■ (exempt) - must be temporary 	<ul style="list-style-type: none"> ■ (exempt) - must be temporary 	<ul style="list-style-type: none"> ■ (exempt) 	
0508	Constructing Detours	Refer to specific items as listed Exempt if Temporary	Refer to specific items as listed Exempt if Temporary	Refer to specific items as listed Exempt if Temporary	
0510	One-Way Traffic Control	n/a			

Item Code	Description	Iron/Steel	Construction Material	Manufactured Product.	Notes
0512	Portable Traffic Barrier	<ul style="list-style-type: none"> ■ Reinforcing Steel ■ Steel pins ■ Steel Joint Connectors 	<ul style="list-style-type: none"> ■ Concrete (exempt) 	<ul style="list-style-type: none"> ▪ Expansion Joint Material ▪ Waterstop ▪ Evaporation Retardants ▪ Curing Compound ▪ Epoxies and Adhesives: 	
0514	Permanent Concrete Traffic Barrier	<ul style="list-style-type: none"> ■ Reinforcing Steel 	<ul style="list-style-type: none"> ■ Concrete (exempt) 	<ul style="list-style-type: none"> ▪ Expansion Joint Material ▪ Waterstop ▪ Evaporation Retardants ▪ Curing Compound ▪ Epoxies and Adhesives: 	
0528	Colored Textured Concrete and Landscape Pavers	<ul style="list-style-type: none"> ■ Colored Textured Concrete: - Reinforcing Steel 	<ul style="list-style-type: none"> ■ Colored Textured Concrete: - Hydraulic Cement Concrete (exempt) ■ Flexible Base - (exempt) 	<ul style="list-style-type: none"> ■ Colored Textured Concrete: ▪ Expansion Joint Material ▪ Waterstop ▪ Evaporation Retardants ▪ Curing Compound ▪ Epoxies and Adhesive ■ Landscape Pavers 	
0529	Concrete Curb, Gutter and Combined Curb and Gutter	<ul style="list-style-type: none"> ■ Reinforcing Steel 	<ul style="list-style-type: none"> ■ Hydraulic Cement Concrete (exempt) 	<ul style="list-style-type: none"> - Expansion Joint Material - Waterstop - Evaporation Retardants - Curing Compound: - Epoxies and Adhesives: 	
0530	Intersections, Driveways and Turnouts	Refer to specific items as used to construct.			
0531	Sidewalks	<ul style="list-style-type: none"> ■ Reinforcing Steel 	<ul style="list-style-type: none"> ■ Hydraulic Cement Concrete (exempt) 	<ul style="list-style-type: none"> - Expansion Joint Material - Waterstop - Evaporation Retardants - Curing Compound: - Epoxies and Adhesives: 	
0533	Milled Rumble Strips	n/a			
0536	Concrete Medians and Directional Islands	<ul style="list-style-type: none"> ■ Reinforcing Steel 	<ul style="list-style-type: none"> ■ Hydraulic Cement Concrete (exempt) 	<ul style="list-style-type: none"> - Expansion Joint Material - Waterstop - Evaporation Retardants - Curing Compound: - Epoxies and Adhesives: 	
0538	Right Of Way Markers	<ul style="list-style-type: none"> ■ Reinforcing Steel 	<ul style="list-style-type: none"> ■ Hydraulic Cement Concrete (exempt) 		
0540	Metal Beam Guard Fence	<ul style="list-style-type: none"> ■ Rail Elements: ■ Steel Posts and Hardware ■ Terminal Anchor Posts ■ Galvanizing 	<ul style="list-style-type: none"> ■ Wood Posts and Blockouts: ■ mow strip - Hydraulic Cement Concrete (exempt) ■ Composite Material Blocks and Posts: 		
0542	Removing Metal Beam Guard Fence	n/a			
0543	Cable Barrier System	<ul style="list-style-type: none"> ■ Cable Barrier ■ Cable Barrier post ■ Reinforcing Steel 	<ul style="list-style-type: none"> ■ Hydraulic Cement Concrete (exempt) 		
0544	Guardrail End Treatments	<ul style="list-style-type: none"> ■ Guardrail End Treatments 	<ul style="list-style-type: none"> ■ mow strip - Hydraulic Cement Concrete (exempt) 		
0545	Crash Cushion Attenuators	<ul style="list-style-type: none"> ■ Crash Cushion Attenuators 	<ul style="list-style-type: none"> ■ Hydraulic Cement (exempt) 		
0550	Chain Link Fence	<ul style="list-style-type: none"> ■ Chain link Fence ■ Galvanizing 	<ul style="list-style-type: none"> ■ Hydraulic Cement Concrete (exempt) 		

Item Code	Description	Iron/Steel	Construction Material	Manufactured Product.	Notes
0552	Wire Fence	<ul style="list-style-type: none"> ■ Wire Fence ■ Steel Post 	<ul style="list-style-type: none"> ■ Wood Post 		
0556	Pipe Underdrains	<ul style="list-style-type: none"> ■ Pipe: <ul style="list-style-type: none"> - steel/iron 	<ul style="list-style-type: none"> ■ Pipe: <ul style="list-style-type: none"> - PVC ■ Riprap (exempt) ■ Filter Material (exempt) 	<ul style="list-style-type: none"> ■ Filter Fabric 	
0560	Mailbox Assemblies	<ul style="list-style-type: none"> ■ - iron/steel items 		<ul style="list-style-type: none"> ■ - mailbox assembly (if not iron or steel) 	
0585	Ride Quality for Pavement Surfaces	n/a			
0610	Roadway Illumination Assemblies	<ul style="list-style-type: none"> ■ Galvanizing: Refer to item 0445 "Galvanizing" in the Non-Pay Items tab. ■ Poles & Luminair arms <ul style="list-style-type: none"> - Steel/Iron ■ Anchor Bolts ■ T-Bases (if iron or steel) 	<ul style="list-style-type: none"> ■ Poles & luminair arms (if not steel or iron) ■ T-Bases (If not iron or steel) ■ Electrical Conductor -bare 	<ul style="list-style-type: none"> ■ Paint ■ Lighting Fixtures ■ Electrical Conductors- insulated 	
0613	High Mast Illumination Poles	<ul style="list-style-type: none"> ■ Galvanizing: Refer to item 0445 "Galvanizing" in the Non-Pay Items tab. ■ Poles: <ul style="list-style-type: none"> - steel/iron ■ Anchor Bolts: ■ Conduit 		<ul style="list-style-type: none"> ■ Duct Cable: 	
0614	High Mast Illumination Assemblies	<ul style="list-style-type: none"> ■ Galvanizing ■ Illumination Ring: <ul style="list-style-type: none"> - any steel or iron 	<ul style="list-style-type: none"> ■ Electrical Conductors- bare 	<ul style="list-style-type: none"> ■ Paint ■ Lighting Fixtures ■ Electrical Conductors- insulated 	
0617	Temporary Roadway Illumination	n/a			
0618	Conduit	<ul style="list-style-type: none"> ■ Conduit (iron/steel) 	<ul style="list-style-type: none"> ■ Conduit (PVC) 	<ul style="list-style-type: none"> ■ Duct Cable 	
0620	Electrical Conductors		<ul style="list-style-type: none"> ■ Electrical Conductor -bare 	<ul style="list-style-type: none"> ■ Electirical Conductors - Insulated 	
0621	Tray Cable			<ul style="list-style-type: none"> ■ Tray Cable 	
0622	Duct Cable			<ul style="list-style-type: none"> ■ Duct Cable 	
0624	Ground Boxes		<ul style="list-style-type: none"> ■ Cast in Place Box (exempt) 	<ul style="list-style-type: none"> ▪ Expansion Joint Material ▪ Waterstop ▪ Evaporation Retardants ▪ Curing Compound: ▪ Epoxies and Adhesives: ▪ Pre-cast Polymer Concrete Ground Boxes 	
0625	Zinc-Coated Steel Wire Strand	<ul style="list-style-type: none"> ■ Wire Strands 			

Item Code	Description	Iron/Steel	Construction Material	Manufactured Product.	Notes
0627	Treated Timber Poles		■ Timber		
0628	Electrical Services				
0636	Aluminum Signs			■ Aluminum Signs	
0644	Small Roadside Sign Supports and Assemblies	<ul style="list-style-type: none"> ■ Triangular Slip Base - iron/steel ■ Posts: - post - Galvanizing: 	<ul style="list-style-type: none"> ■ Triangular Slip Base - If non iron/steel 	■ Signs:	
0647	Large Roadside Sign Supports and Assemblies	<ul style="list-style-type: none"> ■ Supports: - iron/steel - Galvanizing 			
0650	Overhead Sign Supports	<ul style="list-style-type: none"> ■ Supports: - iron/steel - Galvanizing ■ Anchor Bolts. ■ Galvanizing: 	<ul style="list-style-type: none"> ■ Conduit: - PVC 	■ Duct Cable:	
0654	Sign Walkways	<ul style="list-style-type: none"> ■ Galvanizing ■ Walkway 			
0658	Delineator and Object Marker Assemblies	■ Wing Channel	<ul style="list-style-type: none"> ■ Flexible Posts: ■ Thin Wall Tubing 	<ul style="list-style-type: none"> ■ Barrier Reflectors: ■ Ty 1, 3, and 4 Object Markers 	
0662	Work Zone Pavement Markings	n/a (temporary)			
0666	Reflectorized Pavement Markings		■ Glass Traffic Beads	<ul style="list-style-type: none"> ■ Traffic Paint ■ Thermoplastic Pavement Markings: ■ Multi-Polymer Pavement Markings 	
0668	Prefabricated Pavement Markings			■ Prefabricated Pavement Markings	
0672	Raised Pavement Markers			<ul style="list-style-type: none"> ■ Markers ■ Adhesives 	
0677	Eliminating Existing Pavement Markings and Markers	n/a			
0678	Pavement Surface Preparation for Markings	n/a			
0680	Installation of Highway Traffic Signals			<ul style="list-style-type: none"> ■ Controller Assemblies (cabinet and all electrical components) ■ Signs: 	
0681	Temporary Traffic Signals	n/a			
0682	Vehicle and Pedestrian Signal Heads			■ Vehicle and Pedestrian Signal Heads	
0684	Traffic Signal Cables			■ Traffic Signal Cables	
0685	Roadside Flashing Beacon Assemblies	<ul style="list-style-type: none"> ■ Steel Posts: - Galvanizing ■ Anchor Bolts 		■ - Traffic Signal	

Item Code	Description	Iron/Steel	Construction Material	Manufactured Product.	Notes
0686	Traffic Signal Pole Assemblies (Steel)	<ul style="list-style-type: none"> ■ Poles: <ul style="list-style-type: none"> - iron/steel ■ Anchor Bolts: Refer to Item 0449 "Anchor Bolts" in the Non-Pay Items tab. ■ Thermoplastic Pavement Markings: ■ Galvanizing 			
0687	Pedestal Pole Assemblies	<ul style="list-style-type: none"> ■ Galvanizing ■ Pole assembly: ■ Pedestal Pole Base: 			
0688	Pedestrian Detectors and Vehicle Loop Detectors	<ul style="list-style-type: none"> ■ Ground Boxes: <ul style="list-style-type: none"> - Cast-In-Place Box: <ul style="list-style-type: none"> - Mechanical Couplers: <ul style="list-style-type: none"> ■ Reinforcing Steel: Refer to item 0440, "Reinforcement for Concrete" in the Non-Pay Items tab. 	<ul style="list-style-type: none"> ■ Conduit: <ul style="list-style-type: none"> - PVC ■ Ground Boxes: <ul style="list-style-type: none"> ■ Cast in Place Box (exempt) 	<ul style="list-style-type: none"> ■ Ground Boxes <ul style="list-style-type: none"> - Cast-In-Place Box: <ul style="list-style-type: none"> ■ Concrete Substructures: <ul style="list-style-type: none"> - Expansion Joint Material: - Waterstop - Evaporation Retardants - Curing Compound: - Epoxies and Adhesives ■ Vehicle and Pedestrian Signal Heads ■ Traffic Signal Cables 	
0690	Maintenance of Traffic Signals			dependent on material being used for repair.	
0700	Pothole Repair		<ul style="list-style-type: none"> ■ Asphalts, Oils and Emulsions: Refer to Item 0300 "Asphalts, Oils, and Emulsions" in the Non-Pay Items tab. (exempt) ■ Limestone Rock Asphalt Pavement: (exempt) ■ Hot-Mix Cold-Laid Asphalt Concrete Pavement (exempt) <ul style="list-style-type: none"> - Binder Material: Asphalt, Primer, Asphalt Tack: Refer to Item 0300 "Asphalts, Oils, and Emulsions" in the Non-Pay Items tab. (exempt) ■ Hot Mix Asphalt: (exempt) <ul style="list-style-type: none"> - RAS (exempt) - RAP (exempt) - Warm Mix Asphalt: (exempt) ■ Asphaltic Concrete Patching Material (exempt) ■ Fiber Additives for Bituminous Mixtures (exempt) 		
0712	Cleaning and Sealing Joints and Cracks (Asphalt Concrete)		<ul style="list-style-type: none"> ■ Asphalts, Oils and Emulsions: Refer to Item 0300 "Asphalts, Oils, and Emulsions" in the Non-Pay Items tab. (exempt) 		
0713	Cleaning and Sealing Joints and Cracks (Concrete Pavement)			<ul style="list-style-type: none"> ■ Joint Sealants. 	
0720	Repair of Spalling in Concrete Pavement		<ul style="list-style-type: none"> ■ Rapid Set Concrete (exempt) ■ Polymeric Patching Material (exempt) 		
0721	Fiber Reinforced Polymer Patching Material		<ul style="list-style-type: none"> ■ Asphalts, Oils and Emulsions: Refer to Item 0300 "Asphalts, Oils, and Emulsions" in the Non-Pay Items tab. (exempt) 		
0730	Roadside Mowing	n/a			
0731	Herbicide Treatment			<ul style="list-style-type: none"> ■ Herbicide 	

Item Code	Description	Iron/Steel	Construction Material	Manufactured Product.	Notes
0734	Litter Removal	n/a			
0735	Debris Removal	n/a			
0738	Cleaning and Sweeping Highways	n/a			
0740	Graffiti Removal and Anti-Graffiti Coating			<ul style="list-style-type: none"> ■ Paint, Anti-Graffiti. ■ Surface Finishes for Concrete: <ul style="list-style-type: none"> - "Paints (Structural, High Corrosion Environment)." 	
0745	Picnic Area Maintenance	n/a			
0751	Landscape Maintenance			<ul style="list-style-type: none"> ■ Landscape Establishment: <ul style="list-style-type: none"> - Plants - Compost: - Fertilizer - Mulch 	
0752	Tree and Brush Removal	n/a			
0760	Cleaning and Resnaping Ditches	n/a			
0764	Pump Station and Drainage System Cleaning	n/a			
0770	Guard Fence Repair	<ul style="list-style-type: none"> ■ Metal Beam Guard Fence: <ul style="list-style-type: none"> - Rail Elements - Steel Posts and Hardware ■ Guard Rail End Treatments: ■ Galvanizing 	<ul style="list-style-type: none"> ■ Metal Beam Guard Fence: <ul style="list-style-type: none"> - Wood Posts and Blockouts: ■ Composite Material Blocks and Posts: 		
0771	Repair Cable Barrier System	<ul style="list-style-type: none"> ■ Cable Barrier (as needed) ■ Cable Barrier post (as needed) ■ Reinforcing Steel (as needed) 	<ul style="list-style-type: none"> ■ Hydraulic Cement Concrete as needed (exempt) 		
0772	Post and Cable Fence	<ul style="list-style-type: none"> ■ Cable 	<ul style="list-style-type: none"> ■ Wood Posts and Blockouts: ■ Hydraulic Cement Concrete: Refer to Item 0421, "Hydraulic Cement Concrete" in the Non-Pay Items tab. (exempt) 		
0774	Attenuator Repair	<ul style="list-style-type: none"> ■ Crash Cushion Attenuators As needed 	<ul style="list-style-type: none"> ■ Hydraulic Cement (exempt) 		
0776	Metal Rail Repair	<ul style="list-style-type: none"> ■ Metal Railing ■ Galvanizing 			
0778	Concrete Rail Repair	<ul style="list-style-type: none"> ■ Concrete Rail: <ul style="list-style-type: none"> ▪ Mechanical Couplers - Reinforcing Steel: Refer to item 0440, "Reinforcement for Concrete" in the Non-Pay Items tab. 	<ul style="list-style-type: none"> ■ Concrete Rail: <ul style="list-style-type: none"> - Hydraulic Cement Concrete: Refer to Item 0421, "Hydraulic Cement Concrete" in the Non-Pay Items tab. (exempt) 	<ul style="list-style-type: none"> ■ Concrete Rail: <ul style="list-style-type: none"> - Concrete Substructures: <ul style="list-style-type: none"> ▪ Expansion Joint Material: ▪ Waterstop: Obtain Manufacturer's Certification. ▪ Evaporation Retardants ▪ Curing Compound: ▪ Epoxies and Adhesives 	
0780	Concrete Crack Repair			<ul style="list-style-type: none"> ■ Epoxies and Adhesives 	

Item Code	Description	Iron/Steel	Construction Material	Manufactured Product.	Notes
0784	Steel Member Repair	<ul style="list-style-type: none"> ■ Metal for Structures: <ul style="list-style-type: none"> - Bridge Members - Structural Steel: - Miscellaneous Steel: - Steel Fasteners: - Welding Electrodes: - Galvanizing: Refer to item 0445 "Galvanizing" in the Non-Pay Items tab. 		<ul style="list-style-type: none"> Obtain material source verification documents for all material received. ■ Epoxy ■ Field Cleaning and Painting Steel: <ul style="list-style-type: none"> - "Paints (Structural, High Corrosion Environment)." 	
0785	Bridge Joint Repair or Replacement	<ul style="list-style-type: none"> ■ Concrete Structure Repair: <ul style="list-style-type: none"> - Concrete Substructures: <ul style="list-style-type: none"> ▪ Mechanical Couplers: - Reinforcing Steel: Refer to item 0440, "Reinforcement for Concrete" in the Non-Pay Items tab. ■ Anchor Bolts: Refer to Item 0449 "Anchor Bolts" in the Non-Pay Items tab. ■ Bridge Expansion Joints: <ul style="list-style-type: none"> - Steel - Steel Electrodes - Galvanizing: Refer to item 0445 "Galvanizing" in the Non-Pay Items tab. 	<ul style="list-style-type: none"> ■ Concrete Structure Repair: <ul style="list-style-type: none"> - Hydraulic Cement Concrete: Refer to Item 0421, "Hydraulic Cement Concrete" in the Non-Pay Items tab. (exempt) 	<ul style="list-style-type: none"> ■ Concrete Structure Repair: <ul style="list-style-type: none"> ▪ Expansion Joint Material ▪ Waterstop: ▪ Evaporation Retardants ▪ Curing Compound: ▪ Epoxies and Adhesives: ■ Bridge Expansion Joints: <ul style="list-style-type: none"> - Elastomeric Concrete: Verify the Manufacturer is on the Material Producer List for "Polymer Concrete." - Joint Sealants and Fillers: 	
0786	Carbon Fiber Reinforced Polymer (CFRP)			<ul style="list-style-type: none"> ■ Carbon Fiber Reinforced Polymer (CFRP) 	
0788	Concrete Beam Repair				
0789	Treatment for ASR-Affected Concrete			<ul style="list-style-type: none"> ■ Penetrating Concrete Surface Treatment ■ Silicone-Based Top Coat: <ul style="list-style-type: none"> - "Paint, Silicone Resin." ■ Caulk 	

PRISON PRODUCED MATERIALS

Reference 23 CFR 635.417. There are limitations on using materials produced by convict labor in a Federal-aid Highway project. Materials produced after July 1, 1991 by convict labor may only be incorporated in a Federal-aid highway construction project if:

- Such materials have been produced by convicts who are on parole, supervised release, or probation from a prison; or
- Such material has been produced in a qualified prison facility (e.g. prison industry, with the amount produced during any 12-month period) for use in Federal-aid projects, not exceeding the amount produced, for such use, during the 12-month period ending July 1, 1987. Texas does not have a qualified prison facility meeting the requirements of the regulation.

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

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

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

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

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

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

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

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

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

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

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

2. Withholding (29 CFR 5.5)

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

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

3. Payrolls and basic records (29 CFR 5.5)

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

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

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

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

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

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

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

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

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

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

4. Apprentices and trainees (29 CFR 5.5)

a. Apprentices (programs of the USDOL).

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

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

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

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

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Certification of eligibility (29 CFR 5.5)

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

3. Withholding for unpaid wages and liquidated damages.

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on longstanding 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 200.326.

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

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 contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers 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.

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

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

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

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

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

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

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.

**SPECIAL PROVISION
000---003
Certification of Nondiscrimination in Employment**

1. General. By signing this proposal, the Bidder certifies that Bidder has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, or if Bidder has not participated in a previous contract of this type, or if Bidder has had previous contract or subcontracts and has not filed, Bidder will file with the Joint Reporting Committee, the Director of the Office of Federal 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.

Note—The above 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.

**SPECIAL PROVISION
000---004
Notice of Requirement for Affirmative Action to Ensure Equal Employment
Opportunity (Executive Order 11246)**

1. General. In addition to the affirmative action requirements of the Special Provision titled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" as set forth elsewhere in this proposal, the Bidder's attention is directed to the specific requirements for utilization of minorities and females as set forth below.

2. Goals.

2.1. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.

2.2. The goals for minority and female participation expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area are as follows:

Goals for minority participation in each trade, %	Goals for female participation in each trade, %
See Table 1	6.9%

2.3. These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it will apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the

Contractor also is subject to the goals for both its federally involved and non-federally involved construction. The Contractor’s compliance with the Executive Order and the regulations in 41 CFR Part 60-4 will be based on its implementation of the Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision and its efforts to meet the goals. 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 must make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority and female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor’s goals will be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- 2.4.** A contractor or subcontractor will be considered in compliance with these provisions by participation in the Texas Highway-Heavy Branch, AGC, Statewide Training and Affirmative Action Plan. Provided that each contractor or subcontractor participating in this plan must individually comply with the equal opportunity clause set forth in 41 CFR 60-1.4 and must make a good faith effort to achieve the goals set forth for each participating trade in the plan in which it has employees. The overall good performance of other contractors and subcontractors toward a goal in an approved plan does not excuse any covered contractor’s or subcontractor’s failure to make good faith efforts to achieve the goals contained in these provisions. Contractors or subcontractors participating in the plan must be able to demonstrate their participation and document their compliance with the provisions of this Plan.

- 3. Subcontracting.** The Contractor must provide written notification to the Department within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation pending concurrence of the Department in the award. The notification shall list the names, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

- 4. Covered Area.** As used in this special provision, and in the contract resulting from this solicitation, the geographical area covered by these goals for female participation is the State of Texas. The geographical area covered by these goals for other minorities are the counties in the State of Texas as indicated in Table 1.

- 5. Reports.** The Contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the Contractor as to the specific reporting requirements that he will be expected to fulfill.

**Table 1
Goals for Minority Participation**

County	Participation, %	County	Participation, %
Anderson	22.5	Bell	16.4
Andrews	18.9	Bexar	47.8
Angelina	22.5	Blanco	24.2
Aransas	44.2	Borden	19.5
Archer	11.0	Bosque	18.6
Armstrong	11.0	Bowie	19.7
Atascosa	49.4	Brazoria	27.3
Austin	27.4	Brazos	23.7
Bailey	19.5	Brewster	49.0
Bandera	49.4	Briscoe	11.0
Bastrop	24.2	Brooks	44.2
Baylor	11.0	Brown	10.9
Bee	44.2	Burleson	27.4

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County	Participation, %	County	Participation, %
Burnet	24.2	GilesPie	49.4
Caldwell	24.2	Glasscock	18.9
Calhoun	27.4	Goliad	27.4
Callahan	11.6	Gonzales	49.4
Cameron	71.0	Gray	11.0
Camp	20.2	Grayson	9.4
Carson	11.0	Gregg	22.8
Cass	20.2	Grimes	27.4
Castro	11.0	Guadalupe	47.8
Chambers	27.4	Hale	19.5
Cherokee	22.5	Hall	11.0
Childress	11.0	Hamilton	18.6
Clay	12.4	Hansford	11.0
Cochran	19.5	Hardeman	11.0
Coke	20.0	Hardin	22.6
Coleman	10.9	Harris	27.3
Collin	18.2	Harrison	22.8
Collingsworth	11.0	Hartley	11.0
Colorado	27.4	Haskell	10.9
Comal	47.8	Hays	24.1
Comanche	10.9	Hemphill	11.0
Concho	20.0	Henderson	22.5
Cooke	17.2	Hidalgo	72.8
Coryell	16.4	Hill	18.6
Cottle	11.0	Hockley	19.5
Crane	18.9	Hood	18.2
Crockett	20.0	Hopkins	17.2
Crosby	19.5	Houston	22.5
Culberson	49.0	Howard	18.9
Dallam	11.0	Hudspeth	49.0
Dallas	18.2	Hunt	17.2
Dawson	19.5	Hutchinson	11.0
Deaf Smith	11.0	Irion	20.0
Delta	17.2	Jack	17.2
Denton	18.2	Jackson	27.4
DeWitt	27.4	Jasper	22.6
Dickens	19.5	Jeff Davis	49.0
Dimmit	49.4	Jefferson	22.6
Donley	11.0	Jim Hogg	49.4
Duval	44.2	Jim Wells	44.2
Eastland	10.9	Johnson	18.2
Ector	15.1	Jones	11.6
Edwards	49.4	Karnes	49.4
Ellis	18.2	Kaufman	18.2
El Paso	57.8	Kendall	49.4
Erath	17.2	Kenedy	44.2
Falls	18.6	Kent	10.9
Fannin	17.2	Kerr	49.4
Fayette	27.4	Kimble	20.0
Fisher	10.9	King	19.5
Floyd	19.5	Kinney	49.4
Foard	11.0	Kleberg	44.2
Fort Bend	27.3	Knox	10.9
Franklin	17.2	Lamar	20.2
Freestone	18.6	Lamb	19.5
Frio	49.4	Lampasas	18.6
Gaines	19.5	LaSalle	49.4
Galveston	28.9	Lavaca	27.4
Garza	19.5	Lee	24.2

Supplemental General Conditions - Standard Federal-Aid Assurances / 00810A

County	Participation, %	County	Participation, %
Leon	27.4	San Patricio	41.7
Liberty	27.3	San Saba	20.0
Limestone	18.6	Schleicher	20.0
Lipscomb	11.0	Scurry	10.9
Live Oak	44.2	Shackelford	10.9
Llano	24.2	Shelby	22.5
Loving	18.9	Sherman	11.0
Lubbock	19.6	Smith	23.5
Lynn	19.5	Somervell	17.2
Madison	27.4	Starr	72.9
Marion	22.5	Stephens	10.9
Martin	18.9	Sterling	20.0
Mason	20.0	Stonewall	10.9
Matagorda	27.4	Sutton	20.0
Maverick	49.4	Swisher	11.0
McCulloch	20.0	Tarrant	18.2
McLennan	20.7	Taylor	11.6
McMullen	49.4	Terrell	20.0
Medina	49.4	Terry	19.5
Menard	20.0	Throckmorton	10.9
Midland	19.1	Titus	20.2
Milam	18.6	Tom Green	19.2
Mills	18.6	Travis	24.1
Mitchell	10.9	Trinity	27.4
Montague	17.2	Tyler	22.6
Montgomery	27.3	Upshur	22.5
Moore	11.0	Upton	18.9
Morris	20.2	Uvalde	49.4
Motley	19.5	Val Verde	49.4
Nacogdoches	22.5	Van Zandt	17.2
Navarro	17.2	Victoria	27.4
Newton	22.6	Walker	27.4
Nolan	10.9	Waller	27.3
Nueces	41.7	Ward	18.9
Ochiltree	11.0	Washington	27.4
Oldham	11.0	Webb	87.3
Orange	22.6	Wharton	27.4
Palo Pinto	17.2	Wheeler	11.0
Panola	22.5	Wichita	12.4
Parker	18.2	Wilbarger	11.0
Parmer	11.0	Willacy	72.9
Pecos	18.9	Williamson	24.1
Polk	27.4	Wilson	49.4
Potter	9.3	Winkler	18.9
Presidio	49.0	Wise	18.2
Randall	9.3	Wood	22.5
Rains	17.2	Yoakum	19.5
Reagan	20.0	Young	11.0
Real	49.4	Zapata	49.4
Red River	20.2	Zavala	49.4
Reeves	18.9		
Refugio	44.2		
Roberts	11.0		
Robertson	27.4		
Rockwall	18.2		
Runnels	20.0		
Rusk	22.5		
Sabine	22.6		
San Augustine	22.5		

**SPECIAL PROVISION
000---005**

**Standard Federal Equal Employment Opportunity Construction Contract
Specifications (Executive Order 11246)**

1. GENERAL

1.1. As used in these specifications:

- "Covered area" means the geographical area described in the solicitation from which this Contract resulted;
- "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- "Minority" includes:
 - Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).

1.2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it will physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.

1.3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) will be in accordance with that plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the equal employment opportunity (EEO) clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

1.4. The Contractor will implement the specific affirmative action standards provided in Section 1.7.1. through Section 1.7.16. of these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing Contracts in geographical areas where they do not have a Federal or federally assisted construction Contract will apply the minority and female goals established for the geographical area where the Contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or any Federal procurement contracting officer. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

1.5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women will excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

- 1.6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
- 1.7. The Contractor will take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications will be based upon its effort to achieve maximum results from its actions. The Contractor will document these efforts fully, and will implement affirmative action steps at least as extensive as the following:
 - 1.7.1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor will specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - 1.7.2. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - 1.7.3. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this will be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 - 1.7.4. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral Process has impeded the Contractor's efforts to meet its obligations.
 - 1.7.5. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the U.S. Department of Labor. The Contractor will provide notice of these programs to the sources compiled under 7b above.
 - 1.7.6. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and Collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
 - 1.7.7. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., before the initiation of construction work at any job site. A written record must be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
 - 1.7.8. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to

and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

- 1.7.9. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month before the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor will send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- 1.7.10. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
- 1.7.11. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- 1.7.12. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- 1.7.13. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- 1.7.14. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities will be provided to assure privacy between the sexes.
- 1.7.15. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- 1.7.16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 1.8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (Section 7.1. through Section 7.16.). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Section 7.1. through Section 7.16. of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation will not be a defense for the Contractor's noncompliance.
- 1.9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

- 1.10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- 1.11. The Contractor will not enter into any Subcontract with any person or firm debarred from Government Contracts pursuant to Executive Order 11246.
- 1.12. The Contractor will carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties will be in violation of these specifications and Executive Order 11246, as amended.
- 1.13. The Contractor, in fulfilling its obligations under these specifications, will implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director will proceed in accordance with 41 CFR 60-4.8.
- 1.14. The Contractor will designate a responsible official to monitor all employment-related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records must at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records must be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
- 1.15. Nothing herein provided will be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
- 1.16. In addition to the reporting requirements set forth elsewhere in this Contract, the Contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, will submit for every month of July during which work is performed, employment data as contained under Form PR 1391 (Appendix C to 23 CFR, Part 230), and in accordance with the included instructions.

SPECIAL PROVISION
000---394L
Disadvantaged Business Enterprise in Federal-Aid Contracts

1. Description. The purpose of this Special Provision is to carry out the U.S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT-assisted Contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT-assisted Contracts.

2. Disadvantaged Business Enterprise in Federal-Aid Contracts

2.1. Policy. It is the policy of the DOT and the Texas Department of Transportation (Department) that DBEs, as defined in 49 CFR Part 26, Subpart A, and the Department's DBE Program, will have the opportunity to participate in the performance of Contracts financed in whole or in part with federal funds. The DBE requirements of 49 CFR Part 26, and the Department's DBE Program, apply to this Contract as follows.

The Contractor will solicit DBEs through reasonable and available means, as defined in 49 CFR Part 26, Appendix A, and the Department's DBE Program, or show a good faith effort to meet the DBE goal for this Contract.

The Contractor, subrecipient, or subcontractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure 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.

The requirements of this Special Provision must be physically included in any subcontract.

By signing the Contract proposal, the Bidder is certifying that the DBE goal as stated in the proposal will be met by obtaining commitments from eligible DBEs or that the Bidder will provide acceptable evidence of good faith effort to meet the commitment.

2.2. Definitions.

2.2.1. Administrative Reconsideration. A process by which the low bidder may request reconsideration when the Department determines the good faith effort (GFE) requirements have not been met.

2.2.2. Commercially Useful Function (CUF). A CUF occurs when a DBE has the responsibility for the execution of the work and carrying out such responsibilities by actually performing, managing, and supervising the work.

2.2.3. Disadvantaged Business Enterprise (DBE). A for-profit small business certified through the Texas Unified Certification Program in accordance with 49 CFR Part 26, that is at least 51% owned by one or more socially and economically disadvantaged individuals, or in the case of a publicly owned business, in which is at least 51% of the stock is owned by one or more socially and economically disadvantaged individuals, and whose management and daily business operations are controlled by one or more of the individuals who own it.

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

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

- 2.2.6. **Federal-Aid Contract.** Any Contract between the Owner and a Contractor that is paid for in whole or in part with DOT financial assistance.
- 2.2.7. **Good Faith Effort.** All necessary and reasonable steps to achieve the contract goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if not fully successful. Good faith efforts are evaluated prior to award and throughout performance of the Contract. For guidance on good faith efforts, see 49 CFR Part 26, Appendix A.
- 2.2.8. **North American Industry Classification System (NAICS).** A designation that best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau website: <http://www.census.gov/eos/www/naics/>.
- 2.2.9. **Race-Conscious.** A measure or program that is focused specifically on assisting only DBEs, including women-owned businesses.
- 2.2.10. **Race-Neutral DBE Participation.** Any participation by a DBE through customary competitive procurement procedures.
- 2.2.11. **Texas Unified Certification Program (TUCP) Directory.** An online directory listing all DBEs currently certified by the TUCP. The Directory identifies DBE firms whose participation on a Contract may be counted toward achievement of the assigned DBE Contract goal.

2.3. Contractor's Responsibilities.

- 2.3.1. **DBE Liaison Officer.** Designate a DBE liaison officer who will administer the Contractor's DBE program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with DBEs.
- 2.3.2. **Compliance Tracking System (CTS).** This Contract is subject to Contract compliance tracking. Contractors and DBEs are required to provide any noted and requested Contract compliance-related data to the Owner. This includes, but is not limited to, commitments, payments, substitutions, and good faith efforts. Contractors and DBEs are responsible for responding by any noted response date or due date to any instructions or request for information by the Owner.
- 2.3.3. **Apparent Low Bidder.** The apparent low bidder must submit DBE commitments to satisfy the DBE goal or submit good faith effort Form 2603 and supporting documentation demonstrating why the goal could not be achieved, in whole or part, with their Bid. The means of transmittal and the risk of timely receipt of the information will be the bidder's responsibility and no extension of the 5-calendar-day timeframe will be allowed for any reason.
- 2.3.4. **DBE Contractor.** A DBE Contractor may receive credit toward the DBE goal for work performed by its own forces and work subcontracted to DBEs. In the event a DBE subcontracts to a non-DBE, that information must be reported monthly.
- 2.3.5. **DBE Committal.** Only those DBEs certified by the TUCP are eligible to be used for goal attainment. The Directory can be accessed at the following Internet address: <https://txdot.txdotcms.com/FrontEnd/VendorSearchPublic.asp?TN=txdot&XID=2340>.
A DBE must be certified on the day the commitment is considered and at time of subcontract execution. It is the Contractor's responsibility to ensure firms identified for participation are approved certified DBE firms.
The Bidder is responsible to ensure that all submittals are checked for accuracy. Any and all omissions, deletions, and/or errors that may affect the end result of the commitment package are the sole liabilities of the bidder.
Commitments in excess of the goal are considered race-neutral commitments.
- 2.3.6. **Good Faith Effort Requirements.** A Contractor who cannot meet the Contract goal, in whole or in part, must make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A.

- 2.3.6.1. **Administrative Reconsideration.** If the Owner determines that the apparent low bidder has failed to satisfy the good faith efforts requirement, the Owner will notify the Bidder of the failure and will give the Bidder an opportunity for administrative reconsideration.

The Bidder must request an administrative reconsideration of that determination within 3 days of the date of receipt of the notice. The request must be submitted directly to the Owner.

If a reconsideration request is timely received, the reconsideration decision will be made by the Owner's DBE liaison officer or, if the DBE liaison officer took part in the original determination that the Bidder failed to satisfy the good faith effort requirements, an Owner employee who holds a senior leadership position and reports directly to the executive officer, and who did not take part in the original determination will act as an administrative hearing officer. The Bidder may provide written documentation or argument concerning whether the assigned DBE contract goal was met or whether adequate good faith efforts were made to meet the Contract goal.

The DBE liaison or other Owner employee making the reconsideration determination may request a meeting with the Bidder to discuss whether the goal commitments were met or whether adequate good faith efforts were made to obtain the commitments to meet the Contract goal.

The meeting must be held within 7 days of the date of the request submitted under this section. If the Bidder is unavailable to meet during the 7-day period, the reconsideration decision will be made on the written information provided by the Bidder.

The Owner will provide to the Bidder a written decision that explains the basis for finding that the Bidder did not meet the Contract goal or did not make adequate good faith efforts to meet the Contract goal, within 7 days of the date of the notice issued in this section.

The reconsideration decision is final and not subject to administrative appeal.

- 2.3.7. **Determination of DBE Participation.** The work performed by the DBE must be reasonably construed to be included in the work area and NAICS work code identified by the Contractor in the approved commitment.

Participation by a DBE on a Contract will not be counted toward DBE goals until the amount of the participation has been paid to the DBE.

Payments made to a DBE that was not on the original commitment may be counted toward the Contract goal if that DBE was certified as a DBE before the execution of the subcontract and has performed a Commercially Useful Function.

The total amount paid to the DBE for work performed with its own forces is counted toward the DBE goal. When a DBE subcontracts part of the work of its Contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the subcontractor is itself a DBE.

DBE Goal credit for the DBE subcontractors leasing of equipment or purchasing of supplies from the Contractor or its affiliates is not allowed. Project materials or supplies acquired from an affiliate of the Contractor cannot directly or indirectly (second or lower tier subcontractor) be used for DBE goal credit.

If a DBE firm is declared ineligible due to DBE decertification after the execution of the DBE's subcontract, the DBE firm may complete the work and the DBE firm's participation will be counted toward the Contract goal. If the DBE firm is decertified before the DBE firm has signed a subcontract, the Contractor is obligated to replace the ineligible DBE firm or demonstrate that it has made good faith efforts to do so.

The Contractor may count 100% of its expenditure to a DBE manufacturer. According to 49 CFR 26.55(e)(1)(i), a DBE 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.

The Contractor may count only 60% of its expenditure to a DBE regular dealer. According to 49 CFR 26.55(e)(2)(i), a DBE regular dealer 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. A firm may be a regular dealer in such bulk items 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 supplementing of regular dealers' own distribution equipment must be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. A long-term lease with a third-party transportation company is not eligible for 60% goal credit.

With respect to materials or supplies purchased from a DBE that is neither a manufacturer nor a regular dealer, the Contractor may count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site.

A Contractor may count toward its DBE goal a portion of the total value of the Contract amount paid to a DBE joint venture equal to the distinct, clearly defined portion of the work of the Contract performed by the DBE.

2.3.8. **Commercially Useful Function.** It is the Contractor's obligation to ensure that each DBE used on federal-assisted contracts performs a commercially useful function on the Contract.

The Owner will monitor performance during the Contract to ensure each DBE is performing a CUF.

Under the terms established in 49 CFR 26.55, a DBE performs a CUF when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.

With respect to material and supplies used on the Contract, a DBE must be responsible for negotiating price, determining quality and quantity, ordering the material, installing the material, if applicable, and paying for the material itself.

With respect to trucking, the DBE trucking firm must own and operate at least one fully licensed, insured, and operational truck used on the Contract. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the Contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.

A DBE does not perform a CUF when its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to obtain the appearance of DBE participation. The Owner will evaluate similar transactions involving non-DBEs in order to determine whether a DBE is an extra participant.

If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its Contract with its own work force, or the DBE subcontracts a greater portion of the work than would be expected on the basis of normal industry practice for the type of work involved, the Owner will presume that the DBE is not performing a CUF.

If the Owner determines that a DBE is not performing a CUF, no work performed by such DBE will count as eligible participation. The denial period of time may occur before or after a determination has been made by the Owner.

In case of the denial of credit for non-performance, the Contractor will be required to provide a substitute DBE to meet the Contract goal or provide an adequate good faith effort when applicable.

- 2.3.8.1. **Rebuttal of a Finding of No Commercially Useful Function.** Consistent with the provisions of 49 CFR 26.55(c)(4)&(5), before the Owner makes a final finding that no CUF has been performed by a DBE, the Owner will notify the DBE and provide the DBE the opportunity to provide rebuttal information.

CUF determinations are not subject to administrative appeal.

- 2.3.9. **Joint Check.** The use of joint checks between a Contractor and a DBE is allowed with Owner approval. To obtain approval, the Contractor must submit a completed Form 2178, "DBE Joint Check Approval," to the Owner.

The Owner will closely monitor the use of joint checks to ensure that such a practice does not erode the independence of the DBE nor inhibit the DBE's ability to perform a CUF. When joint checks are utilized, DBE credit toward the Contract goal will be allowed only when the subcontractor is performing a CUF in accordance with 49 CFR 26.55(c)(1).

Long-term or open-ended joint checking arrangements may be a basis for further scrutiny and may result in the lack of participation towards the Contract goal requirement if DBE independence cannot be established.

Joint checks will not be allowed simply for the convenience of the Contractor.

If the proper procedures are not followed or the Owner determines that the arrangements result in a lack of independence for the DBE involved, no credit for the DBE's participation as it relates to the material cost will be used toward the Contract goal requirement, and the Contractor will need to make up the difference elsewhere on the project.

- 2.3.10. **DBE Termination and Substitution.** No DBE named in the commitment submitted under Section 2.3.5. will be terminated for convenience, in whole or part, without the Owner's approval. This includes, but is not limited to, instances in which a Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

Unless consent is provided, the Contractor will not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The Contractor, prior to submitting its request to terminate, must first give written notice to the DBE of its intent to terminate and the reason for the termination. The Contractor will copy the Owner on the Notice of Intent to terminate.

The DBE has 5 calendar days to respond to the Contractor's notice and will advise the Contractor and the Owner of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Owner should not approve the prime Contractor's request for termination.

The Owner may provide a shorter response time if required in a particular case as a matter of public necessity.

The Owner will consider both the Contractor's request and DBE's stated position prior to approving the request. The Owner may provide a written approval only if it agrees, for reasons stated in its concurrence document, that the Contractor has good cause to terminate the DBE. If the Owner does not approve the request, the Contractor must continue to use the committed DBE firm in accordance with the Contract. For guidance on what good cause includes, see 49 CFR 26.53.

Good cause does not exist if the Contractor seeks to terminate, reduce, or substitute a DBE it relied upon to obtain the Contract so that the Contractor can self-perform the work for which the DBE firm was engaged.

When a DBE subcontractor is terminated, make good faith efforts to find, as a substitute for the original DBE, another DBE to perform, at least to the extent needed to meet the established Contract goal, the work that the original DBE was to have performed under the Contract.

Submit the completed Form 2228, "DBE Termination Substitution Request," within seven (7) days, which may be extended for an additional 7 days if necessary at the request of the Contractor. The Owner will provide a written determination to the Contractor stating whether or not good faith efforts have been demonstrated.

- 2.3.11. **Reports and Records.** By the 15th of each month and after work begins, report payments to meet the DBE goal and for DBE race-neutral participation on projects with or without goals. These payment reports will be required until all DBE subcontracting or material supply activity is completed. Negative payment reports are required when no activity has occurred in a monthly period.

Notify the Owner if payment to any DBE subcontractor is withheld or reduced.

Before receiving final payment from the Owner, the Contractor must indicate a final payment on the compliance tracking system. The final payment is a summary of all payments made to the DBEs on the project.

All records must be retained for a period of 3 years following completion of the Contract work, and must be available at reasonable times and places for inspection by authorized representatives of the Owner, Texas Department of Transportation or the DOT. Provide copies of subcontracts or agreements and other documentation upon request.

- 2.3.12. **Failure to Comply.** If the Owner determines the Contractor has failed to demonstrate good faith efforts to meet the assigned goal, the Contractor will be given an opportunity for reconsideration by the Owner.

A Contractor's failure to comply with the requirements of this Special Provision will constitute a material breach of this Contract. In such a case, the Owner reserves the right to terminate the Contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor; or to secure a refund, not as a penalty but as liquidated damages, to the Owner or such other remedy or remedies as the Owner deems appropriate.

- 2.3.13. **Investigations.** The Owner may conduct reviews or investigations of participants as necessary. All participants, including, but not limited to, DBEs and complainants using DBE Subcontractors to meet the Contract goal, are required to cooperate fully and promptly with compliance reviews, investigations, and other requests for information.

- 2.3.14. **Falsification and Misrepresentation.** If the Owner determines that a Contractor or subcontractor was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE participation or any other business arrangement determined by the Owner to be unallowable, or if the Contractor engages in repeated violations, falsification, or misrepresentation, the Owner may:

- refuse to count any fraudulent or misrepresented DBE participation;
- withhold progress payments to the Contractor commensurate with the violation;
- refer the matter to the Office of Inspector General of the US Department of Transportation for investigation; and/or
- seek any other available contractual remedy.