

Project Name and Number
Invitations to Bidder

[Pick the date]

Contract Documents for

*Add Short Project Description – Project Name and Number
Town of XXXX, VT*

VT Agency of Transportation 2011 Standard Specifications for
Construction shall apply to this contract.

Owner:

*Town of XXXX
XXXX Town Office
Address
XXXX, VT 05XXX*

Add Date Here

Bid Set No. _____

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- Project Permits
- Right of Way and Utility Clearance

Instructions for use of this document

- 1. All items that show up as red must be modified to fit the particular details of a given project. All other text should remain exactly as provided.**
- 2. If, for any reason, it is proposed to remove any language, this should be indicated as a strikethrough and the proposed changes reviewed with the VTrans Project Supervisor.**
- 3. If any language is added to these documents, it should be highlighted and reviewed with the VTrans Project Supervisor.**

Note: Remove all of these instructions in draft versions of these documents.

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INVITATION TO BID

Project Name and Number (i.e. Town of xx STP xxxx (xx))

Sealed bids from pre-qualified contractors shall be accepted until **time**, prevailing time on **day and date** at **location** for construction of the project hereinafter described. Bid opening will occur immediately after the bid submittal deadline. The time of receiving and opening bids may be postponed due to emergencies or unforeseen conditions.

Sealed BIDS shall be marked in the lower left hand corner: Bid Documents: **Project Name and Number**.

Each BID must be accompanied by a certified check payable to the **Town of xx (or Local Project Sponsor)** for five percent (5%) of the total amount of the BID. A BID bond may be used in lieu of a certified check.

PREQUALIFICATION OF CONTRACTORS: All bidders on this project shall be on the Agency of Transportation's prequalified list under the category (ies) **xx** or shall have submitted a complete prequalification application to the Agency of Transportation, Contract Administration, a minimum of 10 working days prior to the bid opening. For information contact Jon Winter at 802-828-2643.

All bidders shall be on the current VTRANS Contract Administration pre-qualified list "Contractors List of **xxxx** Category". **(Choose one or more from list below and delete remaining categories)**

Airports; Bike and/or Pedestrian Path; Bridge Construction; Bridge Membrane/Paving; Bridge Painting; Bridge Rehabilitation; Building Construction; Building Demolition; Concrete Work; Covered Bridge Construction/Timber; Covered Bridge Rehabilitation/Timber; Crack Sealing/Pavement Maintenance; Curb and Sidewalk; Directional Drilling; Drainage (Culverts and Underdrains); Foundations; Guardrail, Fencing and Signs; Hazardous Material Removal; Landscaping; Park and Ride Lot; Pavement Marking; Railroad Bridge Rehabilitation; Railroad Signals; Railroad/Highway Crossing; Railroads; Roads and Highway Construction; Roadway Safety; Surface Rehabilitation – BCP; Tank Removal/Replacement; Traffic Signals and Lighting

LOCATION: Beginning at a point on US Route 2 (Portland Street) in downtown St. Johnsbury, at a point approximately 300 ft East of US Route 5. PROVIDE PROJECT SPECIFIC DESCRIPTION - USE FROM TITLE SHEET OF PROJECT PLANS.

TYPE OF CONSTRUCTION: Work to be performed under this project includes: **The replacement of bridge bearings, repair of existing substructure concrete surfaces, replacement and repair of stair treads, landings, railings and footings.**

CONTRACT COMPLETION DATE: The Contract shall be completed on or before **date**.

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OBTAINING PLANS: Plans may be obtained from the **Town of xx, xx Main Street, , TOWN OF XX, VT 05xxx. Phone: 802-xxx-xxx at a cost of \$xx** per set made payable to **Town of xx**. Plans are not returnable.

ENGINEERS ESTIMATE: For this Proposal the Engineers Estimate falls between **\$500,000 and \$1,000,000. (Choose a range from the table in Section 108.12 of Standard Specifications for Construction).**

PLANS, SPECIFICATIONS AND PROPOSAL MAY BE SEEN AT THE OFFICE OF:

1. **Town of xx, xx Main Street, Town of xx, VT 05xxx.**
2. **Consultants name and address.(optional)**
3. **Works in Progress, Inc. 20 Farrell Street, South Burlington, Vermont 05403-6112. (optional)**
4. **Reprographics of New England, 450 Weaver Street, Winooski Vermont 05404.(optional)**

PREBID CONFERENCE: A non-mandatory pre-bid conference will be held for the project on **date and time** at **location**. **NOTE: A PRE-BID CONFERENCE IS NOT REQUIRED AND MAY BE OMITTED COMPLETELY**

STANDARD SPECIFICATIONS: This contract is governed by the Vermont Agency of Transportation ("VTrans") 2011 Standard Specifications for Construction. **QUESTIONS:** During the advertisement phase of this project all questions shall be addressed solely to **Municipal Project Manager, address and telephone number.**

EQUAL EMPLOYMENT OPPORTUNITY (EEO) CERTIFICATION: 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. Generally only contracts and subcontracts of \$10,000 or under are exempt as set forth in 41 CFR 60-1.5. See Appendix A for Contractors EEO Certification Form (CA-109).

NON-COLLUSION AFFIDAVIT: All bidders are required to execute a sworn statement, certifying that the bidder 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 such contract. See Appendix B for Debarment and Non-Collusion Affidavit (CA-91). This affidavit must be submitted with the bid.

DEBARMENT AFFIDAVIT: All bidders are required to execute a sworn statement, certifying that the bidder has not within the last three (3) years been, suspended, debarred, voluntarily excluded or determined ineligible by any Federal or State Agency; does not have a proposed suspension, debarment, voluntary exclusion or ineligibility determination pending; and has not been indicted, convicted or had civil judgment

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rendered against (it, him, her, them) by a court having jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. See Appendix B for Debarment and Non-Collusion Affidavit (CA-91). This affidavit must be submitted with the bid.

NON-DISCRIMINATION IN FEDERALLY ASSISTED CONTRACTS: The **Municipality name** hereby notifies all bidders that it will ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the basis of race, color, religion, sex or national origin for an award. This is consistent with the Town's requirement to comply with provisions of Title VI.

DAVIS BACON WAGE REQUIREMENTS: Bidders agree to abide by the Davis Bacon Wage Rate Schedule, which are appended to these Contract Documents. ***(add this section IF Davis Bacon Rates apply to this project, otherwise delete) Current wage rates can be obtained from the AOT web site.***

BUY AMERICA REQUIREMENTS: Buy America requirements of 23 CFR 635.410 are applicable to all Federal-aid construction projects. All steel or iron products permanently incorporated into Federal-aid projects, shall be products that have been entirely manufactured within the United States. All manufacturing processes of the steel or iron material, in a product, must occur within the United States to be considered of domestic origin. This includes process such as rolling, extruding, machining, bending, grinding, and drilling. The action of applying a coating to a material is deemed a manufacturing process subject to Buy America. Coating includes epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of the material.

This requirement does not prevent a minimal use of foreign materials, provided the cost of foreign materials used does not exceed 0.1 percent of the total Contract price or \$2,500, whichever is greater. The cost of foreign steel or iron is defined as its value delivered to the project.

INSTRUCTIONS TO BIDDERS
Project Name and Number

1. Bid Preparation and Submission

- a. Bidders are expected to examine the specifications, drawings, all instructions and, the construction site. Failure to do so will be at the bidders' risk.
- b. All bids must be submitted on the forms provided by the municipality. Bidders shall furnish all the information required by the solicitation. Bids must be signed and the bidders name typed or printed on the bid sheet and each continuation sheet which requires the entry of information by the bidder. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of the agent's authority. (Bidders should retain a copy of their bid for their own records.)
- c. All bids shall be sealed in an envelope which shall be clearly marked with the words "Bid Document," the Invitation to Bid number, any project or other identifying number, the bidder's name, and the date and time for receipt of bids.
- d. This solicitation requires bidding on all items, failure to do so will disqualify the bid.
- e. Unless expressly authorized elsewhere in this solicitation, alternate bids will not be considered.
- f. Unless expressly authorized elsewhere in this solicitation, bids submitted by telegraph, facsimile (fax) machines, or electronically via the internet or email will not be considered.
- g. All blank spaces under the page(s) headed "Bid Form" must be filled in with ink or typewriter in both words and figures indicating the unit price for each respective bid item. The bid total shall also be entered in words and figures.
- h. In case of a discrepancy between a unit price written in words and one entered in figures, the price written in words shall govern.
- i. In case of a discrepancy between the bid total written in words and that entered as a figure, the adjusted figure shall govern.
- j. The estimated quantities are not guaranteed and can be adjusted as needed during the project, but are given as a basis for the comparison of bids.

- k. Electronic Bids are not permitted for Local Transportation Projects at this time.

2. Explanation and Interpretation to Prospective Bidders

- a. Any prospective bidder desiring an explanation or interpretation of the solicitation, specification, drawings, etc., must request it at least 10 days before the scheduled time for bid opening. Requests may be oral or written. Oral requests must be confirmed in writing. The only oral clarifications that will be provided will be those clearly related to solicitation procedures, i.e., not substantive technical information. No other oral explanation or interpretation will be provided. Any information given to a prospective bidder concerning this solicitation will be furnished promptly to all other prospective bidders as a written addendum to the solicitation, if that information is necessary in submitting bids, or if lack of it would be prejudicial to other prospective bidders.
- b. Any information obtained by, or provided to, a bidder other than by formal addendum to the solicitation shall not constitute a change to the solicitation.

3. Addendum to Invitation for Bids

- a. If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.
- b. Bidders shall acknowledge receipt of any addendum to this solicitation by identifying the addendum number and date on the bid form. Bids which fail to acknowledge the bidders receipt of any addendum will result in the rejection of the bid if the addendum (addenda) contained information which substantively changed the municipality's requirements.
- c. Addenda will be on file in the offices of the Municipality at least 5 days before the bid opening.

4. Responsibility of Prospective Contractor

- a. All prospective contractors shall be pre-qualified under the appropriate work category by the Vermont Agency of Transportation, Contract Administration. For this project a current annual prequalification is necessary. The contact for pre-qualification is Jon Winter, Tel: (802) 828 2643. Please note that applications for pre-qualification must be made at least 10 working days prior to the bid opening.

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- b. The VERMONT AGENCY OF TRANSPORTATION "POLICIES AND PROCEDURES FOR PREQUALIFICATION, BIDDING, AND AWARD OF CONTRACTS", latest edition, Sections 1-6 and 9 are hereby incorporated in these specifications and the contract by reference. Sections 1 through 6 shall not be subject to the changes to the definitions in the Special Provisions.
- c. The Method of Measurement and Basis of Payment for all contract items shall follow the Vermont Agency of Transportation's ("VTrans") 2011 Standard Specification for Construction, unless modified in these Contract Documents.
- d. If a bidder submits a unit bid price of zero for a contract bid item, the bid will be declared informal.
- e. A bidder may submit a unit bid price that is obviously below the cost of the item. If the Municipality awards and enters into a contract with a Bidder that has submitted a unit bid price that is obviously below cost, the contractor shall be obligated to perform the work under such item as indicated in the contract documents and/or as directed by the Engineer.
- f. When "Optional Bid Items" are indicated in the proposal bidders shall bid on only one pay item in each group of options, leaving the other pay items in the group without a bid price. If a bidder enters more than one unit price bid in a group of options, only the lowest total price will be considered as the basis of calculation for determining the low bidder and used in the contract.
- g. When "Alternate Bid Items" are indicated in the Proposal bidders must bid on all pay items in each set of "Alternate Bid Items". Failure to bid on all of the "Alternate Bid Items" in the proposal may result in rejection of the bid.
- h. When the schedule of items for a contract contains one or more pay items which have a quantity of one (1) and a unit price and total price entered, the Municipality has set a unit price in the event that such item is used. If such item is determined to be needed by the Engineer, the work will be performed by the contractor according to the contract documents at the unit price listed.
- i. When it is indicated in the contract documents that payment or costs of work and/or materials are incidental to one or more other contract items (but not to specific other items), such costs shall be included by the bidder in the price bid for all other contract items.

5. Errors and/or Inconsistencies in Contract Documents

- a. By submitting a bid, a prospective bidder/contractor certifies that it shall assert no claim, cause of action, litigation, or defense against the Municipality unless notice was provided to the Municipality in writing of any error or

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- inconsistency discovered in the plans, proposal, specifications, and/or contract documents immediately upon discovery of such error or inconsistency.
- b. By submitting a bid, a prospective bidder/contractor certifies that it shall assert no claim, cause of action, litigation, or defense against the Municipality unless notice was provided to the Municipality in writing of any error or inconsistency found in the plans, proposal, specifications, and/or contract documents immediately upon discovery of such error or inconsistency.

6. Availability of Lands for Work, Etc.

- a. The lands upon which the Work is to be performed, rights of way and easement for access thereto and other lands designated for use by the contractor in performing the Work are identified in the contract documents. All additional lands and access thereto required for temporary construction facilities, construction equipment or storage of materials and equipment to be incorporated in the work are to be obtained and paid for by the Contractor. Easements for permanent structures or permanent changes in the existing facilities are to be obtained and paid for by the Municipality unless otherwise provided for in the contract documents.

7. Familiarity with Laws, Ordinances and Regulations

- a. By submitting a bid an entity certifies that it is familiar with all Federal, State and local laws, ordinances and regulations which affect in any way the materials, equipment, haul roads used in or upon the work, the conduct of the work, and the persons engaged or employed in the performance of the work to be performed pursuant to the contract.
- b. By submitting a bid an entity certifies that it shall forthwith report in writing to the Municipality any provision in the plans, proposal, specifications or proposed contract that the bidder/contractor believes is in conflict with or inconsistent with any Federal, State or local law, ordinance, or regulation.
- c. By submitting a bid a prospective Bidder certifies that if, during its investigation of the work in the process of preparing its bid, it discovers or encounters subsurface or latent physical conditions at a project site differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, it shall notify in writing the Municipality of the specific differing conditions immediately upon discovering or encountering the differing site conditions.

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- d. An entity further certifies that if it fails to notify the Municipality of any differing site conditions as described above, it shall waive any and all rights that it might have to additional compensation from the Municipality for additional work as a result of the differing site conditions and that it shall not bring a claim for additional compensation because of differing site conditions.
- e. By submitting a bid a prospective bidder/contractor certifies that no claim or defense of ignorance or misunderstanding concerning Federal, State or local laws, ordinances and/or regulations will be employed by a bidder/contractor or considered by the Municipality in claims, litigation, alternative dispute resolution procedures, or other matters concerning the contract for which the bid is submitted.

8. Late Submissions, Modifications, and Withdrawal of Bids

- a. Any bid received at the place designated in the solicitation after the exact time specified for receipt will not be considered.
- b. Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a.) of this provision.
- c. The only acceptable evidence to establish the time of receipt at the Municipality is the time/date stamp of the Municipality on the proposal wrapper, or other documentary evidence of receipt maintained by the municipality.
- d. Bids may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before the exact time set for opening of bids: provided that written confirmation of telegraphic or facsimile withdrawals over the signature of the bidder is mailed and postmarked prior to the specified bid opening time. A bid may be withdrawn in person by a bidder or its authorized agent if , before the exact time set for opening of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

9. Bid Opening

All bids received by the date and time specified in the solicitation will be publicly opened and total bid amounts read aloud. The time and place of opening will be as specified in the solicitation. Bidders and other interested persons may be present. In the event of unforeseen circumstances (severe weather, etc.) the Municipality reserves the right to postpone the reading of the bids for that contract. All bids for a contract will be opened at the same time and location at a later date.

10. Protests

- a. This Section sets forth the exclusive protest remedies available with respect to this solicitation. Each Bidder, by submitting its bid, expressly recognizes the limitation on its rights to protest contained herein, expressly waives all other rights and remedies and agrees that the decision on any protest, as provided herein, shall be final and conclusive unless wholly arbitrary. These provisions are included in this solicitation expressly in consideration for such waiver and agreement by the Bidders. Such waiver and agreement by each Bidder are also consideration to each other Bidder for making the same waiver and agreement.
- b. A Bidder may protest any determination regarding the proposed award of a Contract by filing a notice of protest by hand delivery or courier to the **Municipal Legislative Body**. Such notice shall be provided: (a) no earlier than the day of **Town Name** issuance of the Notice of Award; and (b) no later than five (5) business days after **Town Name** issuance of the Notice of Award. The notice of protest shall specifically state the grounds of the protest.
- c. Within seven (7) calendar days of the notice of protest the protesting Bidder must file with the Municipality a detailed statement of the grounds, legal authorities and facts, including all documents and evidentiary statements, in support of the protest. Evidentiary statements, if any, shall be submitted under penalty of perjury. The protesting Bidder shall have the burden of proving its protest by clear and convincing evidence.
- d. Failure to file a notice of protest or a detailed statement within the applicable period shall constitute an unconditional waiver of the right to protest the evaluation or qualified process and decisions there under.
- e. Unless otherwise required by law, no evidentiary hearing or oral argument shall be provided, except the **Municipal Legislative Body**, in its sole discretion, may decide to permit a hearing or argument if it determines that such hearing or argument is necessary for the protection of the public interest. The **Municipal Legislative Body** shall issue a written decision regarding the protest within thirty (30) calendar days after it receives the detailed statement of protest. Such decision shall be final and conclusive.
- f. If the **Municipal Legislative Body** concludes that the Bidder submitting the protest has established a basis for protest, the **Municipal Legislative Body** will determine what remedial steps, if any, are necessary or appropriate to address the issues raised in the protest. Such steps may include, without limitation, withdrawing or revising the decisions, issuing a new solicitation or taking other appropriate actions.

11. Rejection of Proposals

- a. The Municipality may declare a Proposal “Informal” and hence rejected if the proposal shows any alteration of form, omissions or additions not called for in the proposal, lacks proper signatures, is a conditional bid, has alternate bids unless required in the proposal, has irregularities of any kind, has changes to the printed content, is submitted on a form not furnished by the Municipality, is incomplete, fails to acknowledge receipt of one or more addendums, or includes a clause in which the bidder reserves a right to accept or reject the contract award.
- b. The Municipality may reject a proposal at the time of bid opening or following analysis to confirm the proposal.
- c. The Municipality may reject any or all proposals, waive any or all technicalities, and/or advertise for new proposals if the municipality, in consultation with VTrans, determines that the best interests of the Municipality, or the awarding authority, will be served.
- d. The Municipality will reject a proposal submitted without a completed Debarment and Non-Collusion Affidavit.
- e. The Municipality will reject a proposal submitted without a signed Contractors Equal Employment Certification Form.
- f. The Municipality will reject a proposal submitted without a Bid Bond.
- g. The Municipality will reject bids which fail to acknowledge the bidder’s receipt of any addendum if the addendum (addenda) contained information which substantively changed the municipality’s requirements.
- h. The Municipality will decide whether any bid prices are unbalanced above or below a reasonable cost analysis value as determined by its Municipal Project Manager. Proposals in which bid prices are unbalanced, mathematically and/or materially, may be rejected at the sole discretion of the Municipality. For purposes of this subsection “mathematically unbalanced bid” and “materially unbalanced bid” shall have the same meaning as in 23 CFR Part 635 – Construction and Maintenance.
- i. Prospective bidders may be disqualified for various reasons including (a) Submission of more than one proposal for the same work by an entity under the same or different names, (b) Evidence of collusion among bidders, or (c) Any other cause for suspension or debarment as detailed in the Agency’s policy and Procedures on Debarment, Code of Vermont Rules (CVR), Volume 8A, 14 010 004, pages 1-10.

12. Contract Award

- a. The municipality will evaluate bids in response to this solicitation without discussions and will award a contract to the lowest responsive and responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the municipality considering only price and any price related factors specified in the solicitation.
- b. Opened proposals will be considered and submitted bids confirmed on the basis of the summation of the products of the quantities shown in each proposal's Schedule of Items multiplied by the unit prices bid. In the event of a discrepancy between the written bid amount and the alpha numeric figure, the written amount shall govern. In the event of a discrepancy between a unit price and the calculated extension, the product based on the unit price bid and the mathematically correct summation of the products shall govern.
- c. The municipality may reject any and all bids, waive any or all technicalities, and/or advertise for new proposals if the municipality, in consultation with VTrans, determines that the best interests of the municipality will be served.
- d. The municipality may reject any bid as nonresponsive if it is materially unbalanced as to the prices for the various items of work to be performed. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.
- e. A written award shall be furnished to the successful bidder within the period for acceptance specified in the bid and shall result in a binding contract without further action by either party.
- f. Prior to signing a construction contract, the successful bidder must submit a current Certificate of Good Standing from the Vermont Secretary of State's office.

13. Bid Guarantee

- a. All bids must be accompanied by a negotiable bid guarantee which shall not be less than five percent (5%) of the amount of the bid. The bid guarantee may be a certified check, bank draft, U.S. Government Bonds at par value, or a bid bond secured by a surety company acceptable to the U.S. Government and authorized to do business in the State of Vermont. Certified checks and bank drafts must be made payable to the order of the municipality. The bid guarantee shall insure the execution of the contract and the furnishing of a

method of assurance of completion by the successful bidder as required by the solicitation. Failure to submit a bid guarantee with the bid shall result in rejection of the bid. Proposal guarantees of the two lowest bidders that have submitted proposals that comply with all the provisions required to render them formal will be retained until the contract and bonds have been signed by all parties. Bid guarantees submitted by the remaining unsuccessful bidders will be returned as soon as practicable after bid opening. Should no award be made within thirty-one calendar days following the opening of bids, thirty-two if the thirty-first day is a state holiday, all proposals may be rejected and all guarantees may be returned.

14. Contract Bonds

- a. A successful bidder entering into a contract for any portion of the work included in a proposal shall provide the Town sufficient surety in the form of; 1) a labor and materials bond, and 2) a compliance bond, both as required by 19 V.S.A. Section 10(8) and (9).
- b. Each bond shall be in a sum equal to one hundred percent (100%) of the contract awarded.
- c. The labor and materials bond shall guarantee the payment in full of all bills and accounts for materials and labor used in the work as well as other obligations incurred in carrying out the terms of the contract.
- d. The compliance bond shall guarantee the faithful performance and completion of the work to be done under the contract as well as compliance with all provisions of the contract.
- e. The form of the bond shall be that provided by the Municipality, and the surety shall be acceptable to the State. The bonds shall be procured from an insurance company registered and licensed to do business in the State of Vermont.

15. Signing the Contract

- a. The entity to which the Contract has been awarded shall sign the contract documents and return them the Municipality within 30 calendar days from the date of the Notice of Award. No contract shall be considered effective until it has been fully executed by all parties.
- b. Failure to comply with any of the requirements of these provisions relative to signing the contract or failure to furnish the required surety within fifteen (15) calendar days after notice of award shall be just cause for the annulment of the award or of the contract and/or forfeiture of the proposal guarantee/bid bond. Further, if the award or the contract is annulled, or if the contract is not

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- awarded due to in(action) of the lowest responsible bidder that has submitted a proposal that complies with all the provisions required to make it formal, the proposal guaranty accompanying the proposal shall become the property of the Municipality, not as a penalty but as liquidated damages.
- c. If the award or the contract is annulled, the Municipality may award the contract to the next lowest responsible bidder that has submitted a proposal that complies with all the provisions required to make it formal or advertise a new request for bids for the contract(s).
 - d. Failure by the contractor to sign the contract within the time provided by this Subsection shall not be reason for an extension of the contract completion date.

16. Taxes and Insurance Requirements

Taxes and insurance for this project shall be in conformance with Section 103 of the VTrans 2011 Standard Specifications for Construction.. For this project the following limits for Commercial Liability and Automobile coverage apply:

Commercial Liability:

\$1,500,000	Each Occurrence
\$2,000,000	General Aggregate applying, in total, to this project only
\$2,000,000	Products/completed Operations Aggregate
\$250,000	Fire Damage Legal Liability

Automobile Liability:

Bodily Injury	\$1,000,000	Each Person
	\$1,000,000	Each Occurrence
Property Damage	\$500,000	Each Occurrence
	OR	
Combined Single Limit	\$1,500,000	Each Occurrence

17. Prompt Pay Compliance

- a. Vermont's Prompt Pay Statute requires payment from primes to subs within 7 days of primes receiving payment. Vermont State Statutes Annotated, Title 9, §4003 provides: "Notwithstanding any contrary agreement, when a subcontractor has performed in accordance with the provisions of its contract, a contractor shall pay a subcontractor, and each subcontractor shall in turn pay its subcontractors, the full or proportional amount received for each such subcontractor's work and materials based on work completed or service provided under the subcontractor, seven days after receipt of each progress or final payment or seven days after receipt of the subcontractor's invoice, whichever is later."

18. Preconstruction Conference

- a. After award of a contract under this solicitation and prior to the start of work, the successful bidder will be required to attend a preconstruction conference with representatives of the Municipality, Design and/or Resident Engineer, Municipal Project Manager (MPM), and the VTrans Project Supervisor, and other interested parties convened by the Municipality's engineer/representative. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract. The municipality will provide the successful bidder with the date, time and place of the conference. Note: If the specific material testing and certification requirements are not included elsewhere in the contract documents, they will be provided by the Design Consultant to the contractor at the preconstruction conference

19. Waste Borrow and Staging Areas

- a. The opening and use of offsite waste, borrow and staging areas shall follow the provisions of Section 105.25 of the VTrans Standard Specifications for Construction, 2011 Edition.
- b. The Contractor and/or property owner shall obtain all necessary permits and clearances prior to using off site waste, borrow or staging areas. In addition all off site waste borrow and staging areas must be reviewed and approved by the VTrans Environmental Section prior to use. Application should be made at least 21 calendar days prior to planned utilization. No work will be performed at offsite waste borrow or staging areas without written approval of the Engineer. The forms for either documenting an exempt site or applying for review of a site may be found on the VTrans web site at:
http://vtransengineering.vermont.gov/sections/environmental/off_site_activity.

20. DBE Requirements

- a. There are to be no mandatory Contract goals for DBE compliance on this project.

21. Contaminated Soils

- a. If contaminated soils are encountered during the course of construction, the Contractor is directed to contact: Mr. Andy Shively, Hazardous Material and Waste Coordinator, of the Vermont Agency of Transportation at (802) 828-2797.

22. Contract Documents

The following documents are included in this proposal and are effective for this contract. Proposal holders are reminded to check the contents of this proposal against the following index. In the event that you suspect or determine the proposal is incomplete, notify **name and telephone number for Municipal Project Manager**.

- Invitation for Bids
- Instruction to Bidders
- Bid Proposal Form
- Special Provisions
- VTrans 2011 Standard Specifications for Construction
- Contractors EEO Certification Form CA-109 – Appendix A
- Debarment & Non-Collusion Affidavit CA-91 – Appendix B
- Required Contract Provisions for Federal-Aid Construction, FHWA Form 1273 – Appendix C
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- Certification of Federal Aid Contracts CA-163 – Appendix E
- Vermont Minimum Labor & Truck Rates – Appendix F
- Vermont Agency of Transportation Contractor Workforce Reporting Requirements CA-26A – Appendix G
- Disadvantaged Business Enterprise (DBE) Policy Contract Requirements – Appendix H
- General Special Provisions for All Projects dated xx, xx, xxx CHECK FOR LATEST VERSION ON VTRANS WEB SITE.
- Example Performance and Payment Bond Forms – Appendix J
- Project Change Order Form – Appendix K
- Work Zone Safety and Mobility Guidance Document – Appendix L
- US Department of Labor Davis-Bacon Rates
- Materials Record & Certification Package
- Project Permits
- Environmental Permits
- Right of Way and Utility Clearance

BID FORM

Common Name of Project
Project Name and Number

Proposal of _____
(hereinafter called Bidder), organized and existing under the laws of the State of _____ doing business as _____

(a corporation, a partnership, of an individual)

To the **Town of xxx**, Vermont (hereinafter called Owner)

The Bidder represents that this bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation. The bidder has not directly or indirectly induced or solicited any other bidder to submit a false bid. Bidder has not solicited or induced any person, firm or corporation to refrain from bidding and the bidder has not sought by collusion to obtain for himself any advantage over any other bidder or Owner.

It is essential that all forms that require signature as part of the final Bid Submission be signed or the Bid itself will be invalid:

- Contractors EEO Certification Form CA-109 – Appendix A
- Debarment & Non-Collusion Affidavit CA-91 – Appendix B

The undersigned bidder proposed and agrees, if this bid is accepted, to enter into an agreement with Owner to furnish all materials and to complete all work as specified or indicated in the Contract Documents for the contract price and within the contract time indicated in this bid and in accordance with the Contract Documents.

Bidder hereby agrees to commence Work under this contract on the date of issuance of the Notice to Proceed and that the Final Completion date for this contract is **INSERT DATE**.

Bidder acknowledges receipt of the following Addenda:

Project Name and Number
Bid Form

[Pick the date]

[NOTE: The items listed below are only provided as an example of the recommended bid form format and must be changed to be project specific. Unit prices must be provided both in figures and in words. REMOVE THIS TEXT IN THE FINAL BID FORM]

Bidder agrees to perform all the Work described in the Contract Documents for the following schedule of prices. Unqualified bids will not be accepted.

VTrans ITEM #	ITEM	UNIT	QUANTITY	UNIT PRICE	TOTAL PRICE
201.10	Clearing and Grubbing	LS	1	\$ _____	\$ _____
	Unit Price in Words _____				
201.31	Thinning and Trimming for Signs				
		EA	4	\$ _____	\$ _____
	Unit Price in Words _____				
203.15	Common Excavation	CY	600	\$ _____	\$ _____
	Unit Price in Words _____				
203.28	Excavation of Surfaces and Pavements				
		CY	30	\$ _____	\$ _____
	Unit Price in Words _____				
203.32	Granular Borrow	CY	150	\$ _____	\$ _____
	Unit Price in Words _____				

ETC... ETC...

Total Base Bid \$ _____

Total Base Bid Written _____

The lowest responsive and responsible bidder will be determined by the Total Base Bid.

The above unit prices shall include all labor, materials, removal, overhead, profit, insurance, etc. to cover the finished work of the several kinds called for on the drawings and specifications.

Project Name and Number
Bid Form

[Pick the date]

THE ABOVE PROPOSAL IS HEREBY RESPECTFULLY SUBMITTED BY:

Contractor

By

Title

Business Address

City

State

Date

ATTEST _____

LS = lump sum

EA = each

SY = square yard

SF = square feet

CWT = hundredweight

GAL = gallon

HR = hour

LU = lump unit

CY = cubic yard

LF = linear foot

TON = ton

MGAL = thousand gallons

LB = pound

SPECIAL PROVISIONS

[The following special provisions, as a minimum, are to be included in all locally managed projects using the VTrans Construction Specifications. Additional project-specific special provisions must be added as necessary. REMOVE THIS TEXT IN THE FINAL BID DOCUMENTS.]

In case of discrepancy, precedence of the Contract Documents will follow be determined by Section 105.05 of the latest edition of the VTrans Standard Specifications for Construction.

STANDARD SPECIFICATIONS. The provisions of the most current VTrans STANDARD SPECIFICATIONS FOR CONSTRUCTION, as modified herein, shall apply to this Contract.

CONTRACT COMPLETION DATE. This Contract shall be completed on or before **INSERT DATE.**

UTILITIES. The Contractor is advised to use caution when working around aerial or underground utilities to protect the facilities from damage.

Employees or agents of utility companies are to be allowed free and full access within the project limits with the tools, materials, and equipment necessary to install, operate, maintain, place, replace, relocate, and remove their facilities.

There will be no extra compensation paid to the Contractor for any inconvenience caused by working around and with utilities.

Act No. 86 of 1987 (30 VSA Chapter 86) (“Dig Safe”) requires that notice be given prior to making an excavation. It is suggested that the Permit Holder or his/her contractor telephone 1-888-344-7233 at least 48 hours before, and not more than 30 days before, beginning any excavation at any location.

Should the Contractor desire additional adjustments of the utility facilities for his/her convenience, proper arrangements shall be made in conformance with Subsection 105.07 of the Standard Specifications for Construction.

NOTICE TO BIDDERS. All temporary construction signs shall meet the following requirements:

- A. All sign stands and post installation shall be National Cooperative Highway Research Program Report (NCHRP) 350 compliant.

Project Name and Number

[Pick the date]

Special Provisions

- B. As a minimum, roll up sign material shall have ASTM D 4956-01 Type VI fluorescent orange retroreflective sheeting.
- C. All post-mounted signs and solid substrate portable signs shall have ASTM D 4956-01 Type VII, Type VIII, or Type IX fluorescent orange retroreflective sheeting.
- D. All retroreflective sheeting on traffic cones, barricades, and drums shall be at a minimum ASTM Type III sheeting.
- E. All stationary signs shall be mounted on two 3 lb/ft flanged channel posts or 2 inch square steel inserted in 2 ¼" galvanized square steel anchors. No sign posts shall extend over the top edge of sign installed on said posts.
- F. Prior to placing temporary work zone signs on the project, the Contractor must furnish for the Engineer's approval a detail for temporary work zone signs on steel posts showing stubs projecting a maximum of 4 inches above ground level and bolts for sign post.
- G. Construction signs shall be installed so as to not interfere with nor obstruct the view of existing traffic control devices, stopping sight distance, and corner sight distance from drives and town highways.
- H. Speed zones, if used, should be a maximum of 10 mph below existing posted speeds. Temporary speed limit certificates must be approved by the *Municipalities governing body. (i.e. Town of St. Johnsbury Selectboard)*

NOTICE TO BIDDERS. All retroreflective sheeting on permanent signs (signs to remain after the project is completed) shall be at a minimum ASTM Type III sheeting, unless otherwise shown on the Plans.

HIGHWAY PARKING RESTRICTIONS. Only such trucks and equipment as are necessary for the construction of this project will be permitted to stop or park on the shoulders or right-of-way of the highway. All trucks or equipment so stopped or parked shall be at least 4 feet from the edge of the thru traffic lanes. Parking or stopping on the traveled portion of the roadway will not be permitted unless authorized by the Engineer to meet field conditions.

Private automobiles or workers will not be permitted to stop or park on the shoulders or right-of-way of the highway.

Project Name and Number

[Pick the date]

Special Provisions

Each of the Contractor's trucks or equipment used for the construction of this project and permitted to park or stop as provided above shall be equipped with flashing light signals on the front and rear and the signals shall be operating at all times when parked or stopped on the highway unless otherwise authorized by the Engineer.

The flashing light signals shall be visibly distinct from and physically separate from the hazard warning system required by Federal and State motor vehicle laws and regulations. At least one of these flashing light signals shall be visible to traffic approaching from any angle at all times.

Qualified traffic control personnel shall be employed whenever the Contractor's vehicles or equipment (including that which belongs to the individual workers) enter or leave the traffic flow. All movement, in or out of the traffic flow, shall be with the flow of traffic.

SECTION 101 – DEFINITIONS

101.02, DEFINITIONS, are hereby modified by deleting the existing following definitions and replacing as follows:

ACTUAL COMPLETION DATE – Date noted in the Completion and Acceptance memorandum on which designated responsible Municipal personnel have reviewed the project and determined that all Contract work is complete and all Contract requirements have been met, generally considered to be the last day the Contractor performed physical work on any contract item.

AGENCY – Wherever the word Agency appears on the plans, in any specification, or in the contract, it shall be read as, and shall mean; the **Municipality Name/Project Sponsor Name**, except when referenced to documents or publications.

BOARD – Wherever the term Board or Transportation Board appears on the plans, in any specification, or in the contract, it shall be read as, and shall mean; the Transportation Board of the State of Vermont or its successor.

CALENDAR DAY – Any day shown on the calendar, beginning and ending at midnight.

CHANGE ORDER – A document recommended by the Engineer, signed by the Contractor and the Municipality, and approved by the Agency of Transportation authorizing changes in the plans or quantities or both, establishing the basis of payment and time adjustments for the Work affected by the changes.

CHIEF OF CONTRACT ADMINISTRATION – Wherever the term Chief of Contract administration appears on the plans, in any specification, or in the contract, it shall be read as, and shall mean, the Municipal Project Manager.

Project Name and Number

[Pick the date]

Special Provisions

CONSTRUCTION ENGINEER – Wherever the term Construction Engineer appears on the plans, in any specification, or in the contract, it shall be read as, and shall mean; the Municipal Project Manager and/or Full Time Employee in Responsible Charge.

COMPLETION – Completion of the project occurs when the Contractor has completed all work required by the Contract and has satisfactorily executed and delivered to the Engineer all documents, certificates and proofs of compliance required by the contract.

CONTRACT – The written agreement between the Municipality and a contractor setting out the obligations of the parties to the contract for the performance of the work described therein.

CONTRACT BOND(S) – The approved forms of security signed and furnished by the contractor and the contractor's surety or sureties, guaranteeing signatures on the contract, performance of and compliance with the contract, and the payment of all legal debts pertaining to the construction of the contracted project.

CONTRACTOR(S) – An entity that has Annual Prequalification status and/or an entity that has a contract with the Municipality to perform construction work, including but not limited to an individual, partnership, firm, organization, association, corporation, or joint venture; a representative, trustee, or receiver of a contractor appointed by any court of competent jurisdiction.

DIRECTOR OF PROJECT DEVELOPMENT – Wherever the terms Director of Project Development, director of Engineering and Construction, Director of Construction and Maintenance, Director, or Chief Engineer appear on the plans, in any specification, or in the Contract, they shall be read as and shall mean; the Chief Engineer of the Agency of Transportation.

DIRECTOR OF PROGRAM DEVELOPMENT – Wherever the term Director of Program Development appears on the plans, in any specification, or in the contract it shall read as , and shall mean; The Chief Engineer of the Agency of Transportation.

ENGINEER – Wherever the term Engineer appears on the plans, in any specification, or in the contract, it shall be read as, and shall mean; the Resident Engineer (RE).

FINAL ACCEPTANCE DATE – Wherever the term Final Acceptance Date appears on the plans, in any specification, or in the Contract, it shall mean the date that the Municipality signs the Final Completion Certificate.

Project Name and Number

[Pick the date]

Special Provisions

GENERAL SPECIAL PROVISIONS – Approved additions and revisions to the Standard Specifications for Construction.

MATERIALS AND RESEARCH ENGINEER – Whenever the term Materials and Research Engineer appears on the plans, in any specification, or in the Contract, it shall be read as, and shall mean; **the Design Consultant.**

PROPOSAL FORM – Whenever the term Proposal Form appears on the plans, in any specification, or in the Contract it shall be read as, and shall mean; the BID FORM unless specifically referenced otherwise in these Special Provisions.

REGIONAL CONSTRUCTION ENGINEER – Whenever the term Regional Construction Engineer appears on the plans, in any specification, or in the contract, it shall be read as, and shall mean; the **Director of Public Works OR Road Foreman OR other municipally appointed representative who is acting on behalf of the municipality responsible for administering and overseeing the construction contract.**

RESIDENT ENGINEER – An entity employed by the Municipality to perform supervisory duties including the oversight of testing services on the project.

SECRETARY – Wherever the term Secretary appears on the plans, in any specification, or in the contract it shall be read as, and shall mean; the **Municipal Project Manager OR Legislative Body of the Municipality.**

SPECIAL PROVISIONS – Additions and revisions to the Standard Specifications for Construction, Supplemental Specifications, General Special Provisions, Plans, or other documents that are part of a particular contract.

SPECIFICATIONS – The compilation of provisions and requirements for the performance of prescribed work including the Standard Specifications for Construction, Supplemental Specifications, General Special Provisions, Special Provisions, Plans, and other documents that are part of a particular contract.

STANDARD SPECIFICATIONS – The Vermont Agency of Transportation book entitled Standard Specifications For Construction and the specifications included therein, as approved for general and repetitive use and application in Agency/Municipal projects.

STATE – Wherever the term State appears on the plans, in any specification, or in the contract, it shall be read as, and shall mean; the **Legislative Body of the Municipality.**

SURETY – An individual or legal entity acceptable to the Town executing the bond or bonds furnished by the bidder or contractor.

Project Name and Number

[Pick the date]

Special Provisions

WORK – The furnishing of all labor, materials, equipment, and incidentals necessary or convenient to the successful completion of a project and the carrying out of all duties and obligations imposed by a contract.

WORKING DAY – A calendar day during which normal construction operations could proceed for a major part of the daylight hours, and specifically excluding Saturdays, Sundays, and those days of the standard work week on which holidays are celebrated.

ADD TO DEFINITION LIST IN 101.02, DEFINITIONS, the following definitions:

ADDENDUM (addenda) – Contract revisions developed after advertisement and before opening bids.

ADVERTISEMENT – A public announcement, inviting bids for work to be performed or materials to be furnished.

AGREEMENT – The written instrument which is evidence of the agreement between the Municipality and the Contractor.

AWARD – The formal acceptance by the Municipality of a proposal.

BID – The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

BID BOND – A proposal guarantee as outlined in the Instructions to Bidders for Contracts.

BIDDER – The individual, partnership, firm, corporation, or any combination thereof, or joint venture, submitting a Bid in accordance with the bidding requirements.

CONTRACT TIME – The time allowed for completion of the contract including authorized time extensions.

INCIDENTAL AND INCIDENTAL ITEM – These terms are used to indicate work for which no direct payment will be made. Such work is considered to be incidental to items having contract prices, and the bid prices submitted by the contractor shall be sufficient to absorb the cost of all work designated as incidental or as incidental items.

INVITATION FOR BIDS – An advertisement for receiving proposals for all work and/or materials on which bids are invited from prospective contractors.

Project Name and Number

[Pick the date]

Special Provisions

MUNICIPAL PROJECT MANAGER – A person or firm employed or appointed by the Municipality to provide administrative services for the project.

NOTICE OF AWARD – The written notice of the acceptance of the Bid from the Owner to the successful Bidder.

OWNER – Municipality or Local project sponsor's name.

PREQUALIFICATION:

Annual Prequalification – The Agency of Transportation process by which an entity is generally approved to bid on contracts advertised by the Local Project Sponsor. Depending on the project size annual prequalification may be the only prequalification necessary.

Contract Specific Prequalification – The process by which an entity is approved to bid on a specific contract determined by the Municipality to be of a size or scope to warrant more than an Annual Prequalification.

PREQUALIFICATION ADMINISTRATOR – An Agency of Transportation employee charged with administration of the prequalification process for the Prequalification Committee.

PROPOSAL – The offer of a bidder, on the prescribed form, to perform work and/or provide materials at the price quoted in the offer.

PROPOSAL FORM – The prescribed form on which the Municipality requires the Bid be submitted.

PROPOSAL GUARANTEE – The security furnished with a bid to ensure that the bidder will enter into a contract if the bidder's proposal is accepted by the Municipality.

SUBCONTRACTOR – An individual or legal entity to which the contractor sublets a part of the work included in the contract.

TESTING FIRM – An independent firm employed by the Municipality or Resident Engineer to perform all sampling and testing of materials as specified in the Contract Documents.

SECTION 105 CONTROL OF THE WORK

105.09 CONSTRUCTION STAKES, Part (a) Initial Layout, (b) Layout of Subgrade and (c) Permanent Marking Layout delete these paragraphs in their entirety and replace with the following:

Horizontal and vertical control information for the project is shown on the project plans or shall be based on existing conditions. The information is sufficient to enable the Contractor to stake the project. The Contractor shall perform all staking requirements for the proposed work. The Contractor will be responsible for the accuracy and preservation of the staking.

105.20 CLAIMS FOR ADJUSTMENT , (c) Claims Procedure; Delete the second, third and fourth sentence and replace with the following:

Claims must be evaluated first by the Engineer and then by the Municipal Project Manager. Should a claim be ruled in favor of the Contractor, it will be allowed, in whole or in part, and paid as provided in the Contract. Should a claim be denied in whole or in part by the Municipal Project Manager the Contractor may appeal to the governing body of the project sponsor. Should a claim be denied in whole or in part by the governing body of the project sponsor, the Contractor may appeal to the Chief Engineer.

(d) Claims Documentation Requirements; In the first sentence, replace Construction Engineer with Municipal Project Manager.

SECTION 106 – CONTROL OF MATERIAL

106.03 SAMPLES AND TESTS, Add the following two paragraphs to the beginning:

A qualified independent testing firm hired directly by the Municipality or indirectly by the Municipality through its Resident Engineer shall be responsible for all acceptance sampling and testing of materials and completed work.

The Contractor shall be responsible for their Quality Control. The cost of their Quality Control shall be considered incidental to the payment items in the bid. Any sampling, testing, retesting, and submission of reports and certifications by the Contractor as required by the contract documents and plans shall be considered incidental to the payment items in the bid.

Change the last word in the first paragraph from Agency to Municipality.

Delete the first sentence of the second paragraph and replace with the following:

Project Name and Number

[Pick the date]

Special Provisions

Samples will be taken and testing performed by qualified personnel of the testing firm in accordance with the requirements of the latest edition of the Vermont Agency of Transportation's Quality Assurance Program and Material Sampling Manual *for level 3. (Required level to be determined by VTrans)*

Modify the last sentence of the third paragraph to read as follows:

Copies of all test results shall be forwarded directly to the Resident Engineer and the Contractor by the testing firm.

The minimum sampling frequency will be in accordance with the following table: (adding the table here is optional since level 3 and the QAP are referenced above, but it can helpful to include it)

PLACE TABLE HERE

STATE OF VERMONT
AGENCY OF TRANSPORTATION
DEBARMENT AND NON-COLLUSION AFFIDAVIT

I, _____, representing
(Official Authorized to Sign Contracts)

_____ of _____,
(Individual, Partnership or Corporation) (City or State)

being duly sworn, depose and certify under the penalties of perjury under the laws of the State of Vermont and the United States that on behalf of the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation 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 submitted bid for the Vermont project:

(Project Name)

_____ project located on _____,
(Project Number) (Route or Highway)

bids opened at _____,
(Town or City)

Vermont on _____, 20 ____.
(Date)

I further depose and certify under the penalties of perjury under the laws of the State of Vermont and the United States that except as noted below said individual, partnership or corporation or any person associated therewith in any capacity is not currently, and has not been within the past three (3) years, suspended, debarred, voluntarily excluded or determined ineligible by any Federal or State Agency; does not have a proposed suspension, debarment, voluntary exclusion or ineligibility determination pending; and has not been indicted, convicted, or had a civil judgement rendered against (it, him, her, them) by a court having jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

Exceptions: ____ No ____ Yes. (If yes complete back of this form.)

Sworn to before me this

_____ day of _____, 20__

_____ L.S.
(Name of Individual, Partnership or Corporation)

_____ L.S.
(Signature of Official Authorized to Sign Contracts)

(Notary Public)

_____ L.S.
(Name of Individual Signing Affidavit)

(My commission expires _____)

_____ L.S.
(Title of Individual Signing Affidavit)

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted, indicate below to whom it applies, initiating agency, and dates of action. Providing false information may result in criminal prosecution or administration sanctions.

EXCEPTIONS:

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

- I. General
- II. Nondiscrimination
- III. Nonsegregated 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. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

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 (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).

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.

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). 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 bid proposal or request for proposal 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).

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.

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. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 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 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, 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 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, 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 230, 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 (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 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

APPENDIX C

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 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.

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, 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 who 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.

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, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure 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

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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. 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, 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, national origin, age or disability; making full efforts to obtain qualified and/or qualified 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 there under. 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, 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 and 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. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor 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 contracting agency deems appropriate.

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

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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 \$10,000 or more.

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, 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). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

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

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, Employment Standards Administration, 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 Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

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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

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

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 at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor 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 §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, 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 Regulations, 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.

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(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 section 1001 of title 18 and section 231 of title 31 of the United States Code.

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

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.

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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. 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.

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.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor 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

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.

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 of \$10 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.

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.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (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.

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VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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" 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:

(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.

2. 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. 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.

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

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 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.

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 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).

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 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:

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"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 1, 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

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

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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.

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.

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.

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.

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 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee 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 grantee or subgrantee 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.

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.

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. 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 Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

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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. 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) 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;

(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; 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.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. 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)

a. By signing and submitting this proposal, the prospective lower tier 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.

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 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 grantee or subgrantee 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 grantee or subgrantee 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.

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.

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 Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

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

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department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

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 is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall 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 20).

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.

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ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

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.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS
(EXECUTIVE ORDER 11246)

1. As used in these specifications:
 - a. "Covered Area" means the geographical area described in the solicitation from which this contract resulted.
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.
 - c. "Employer Identification Number" means the Federal Social Security Number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

A Minority Group Member is:

 - ...American Indian or Alaskan Native
consisting of all persons having origins in any of the original people of North American and who maintain cultural identification through tribal affiliations or community recognition.
 - ...Black
consisting of all persons having origins in any of the Black racial groups of Africa.
 - ...Asian or Pacific Islander
consisting of all persons having origins in any of the original people of the Far East, Southeast Asia, the Indian Sub-Continent or the Pacific Islands. This area includes China, India, Japan, Korea, the Philippines and Samoa.
 - ...Hispanic
consisting of all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin.
 - ...Cape Verde an
consisting of all persons having origins in the Cape Verde Islands.
 - ...Portuguese
consisting of all persons of Portuguese, Brazilian or other Portuguese culture or origin.
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000.00 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.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in the 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) shall 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 subcontract participating in an approved Plan is individually required to comply with its obligations under the 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 make good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in Paragraphs 7a through p of these specifications. The goals set for the Contractor in the solicitation from which this contract resulted are expressed as percentages in 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. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
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 minority or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the non-working 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.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity . The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:
 - a. 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 shall 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.
 - b. 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.

- c. 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 shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notifications to the Regional Director when the union or unions, with which the Contractor has a collective bargaining agreement, have 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.
- e. 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 Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under Paragraph 7b above.
- f. 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 is performed.
- g. 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, Supervisors etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, and providing written notification to, and discussing the Contractor's EEO policy with, other Contractors and subcontractors with whom the Contractor anticipates doing business.
- i. 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 prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notifications to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- j. 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.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation 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.
 - m. 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 Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. 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.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (Paragraph 7a through p). 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 Paragraph 7a through p 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, 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 shall not be a defense for the Contractor's non-compliance.
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 under-utilized).

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.
11. The Contractor shall not enter into any subcontract with any person for firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, terminations 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 shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall 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 shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall 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 shall 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 shall 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.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application or 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).

NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Economic Areas	Timetables	Goals for Minority participation for each trade (%)	Goals for Female Participation in each trade (%)
Entire State of Vermont:			
<u>Vermont</u> 003 Burlington, VT Non-SMSA Counties NH Coos; NH Grafton; NH Sullivan; VT Addison; VT Caledonia; VT Chittenden; VT Essex; VT Franklin; VT Grand Isle; VT Lamoille; VT Orange; VT Orleans; VT Rutland; VT Washington; VT Windsor	Indefinite	0.8	6.9
<u>Connecticut (Mass)</u> 006 Hartford - New Haven Springfield, CT-MA Non-SMSA Counties CT Litchfield; CT Windham; MA Franklin; NH Cheshire; VT Windham	Indefinite	5.9	
<u>New York</u> 007 Albany - Schenectady - Troy, NY Non-SMSA Counties NY Clinton; NY Columbia; NY Essex; NY Fulton; NY Greene; NY Hamilton; NY Schoharie; NY Warren; NY Washington; VT Bennington	Indefinite	2.6	

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 shall 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 regulation in CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a), 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 shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall 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.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten working days of award of any construction subcontract in excess of \$10,000.00 at any tier for construction work under the contract resulting from this solicitation. The notifications shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; and the geographical area in which the subcontract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any)

CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person or influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

APPENDIX F

CA101

Minimum Labor and Truck Rates
Under Title 19, Vermont Statutes
Annotated Section 18, as amended

April 3, 1997
Sheet 1 of 1

**STATE OF VERMONT
AGENCY OF TRANSPORTATION
MONTPELIER**

FOR OTHER THAN FEDERAL-AID. In accordance with the provisions of Title 19, VSA, Section 18, the following minimum rate for labor shall apply to this project:

The minimum wage for common labor will not be less than the State or Federal minimum wage, whichever is higher.

ON FEDERAL-AID PROJECTS ONLY.

The minimum rates for labor for Federal-Aid Projects shall be those set in the Wage Determination Decision of the U.S. Secretary of Labor for each project in accordance with the Federal-Aid Highway Act of 1956. When such wage rates are required they shall be included in the proposal. In the event these rates are lower than the Vermont rates, the Vermont rates shall prevail.

TRUCK RATES. In accordance with the provisions of Title 19, VSA, Section 18, the following minimum rates for trucks shall apply to this project:

<u>Trucks, not Including Driver Water Level Body Capacity</u>	<u>Minimum Rates Per YD per Hr.</u>
Trucks, Equipment Loaded	\$1.65

**VERMONT AGENCY OF TRANSPORTATION
CONTRACTOR WORKFORCE REPORTING REQUIREMENTS**

The Contractor/Subcontractor shall submit to the State Resident Engineer assigned to this project, monthly and cumulative workforce information, on reporting forms provided herein. The monthly and cumulative workforce information shall be listed by construction trade category with the percentage of minority and female project hours in each category indicated. Failure to provide this information to the Resident Engineer on a monthly basis will result in suspension of bi-weekly progress payments, or part thereof due under the contract, until such time as the Contractor or Subcontractor demonstrates compliance with these contract terms.

Note: In lieu of using the reporting forms provided herein, the Contractor may use U.S. Department of Labor form CC-257, "Monthly Employment Utilization Report".

State of Vermont
Agency of Transportation

March 2011
CA-110

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY
CONTRACT REQUIREMENTS**

Disadvantaged Business Enterprise (DBE) Policy. It shall be the policy of the Vermont Agency of Transportation (VTrans) to ensure nondiscriminatory opportunity for Disadvantaged Business Enterprises (DBEs) to participate in the performance of all contracts and subcontracts financed with Federal funds as specified by the regulations of the United States Department of Transportation (USDOT), Federal Highway Administration and as set forth below.

1. **Policy.** It is the policy of USDOT that DBEs as defined in 49 Code of Federal Regulation (CFR) Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, the DBE requirements of 49 CFR Part 26 and 23 CFR, Chapter 1, Part 230, Subpart b apply to this contract.
2. **DBE Obligation.** The State and its Contractors agree to ensure that DBEs as defined in 49 CFR Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. **Each subcontract the prime contractor signs with a subcontractor must include this assurance:** *The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-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 VTrans deems appropriate.*
3. **Sanctions for Noncompliance.** The Contractor is hereby advised that failure of the Contractor, or any Subcontractor performing work under this contract, to carry out the requirements set forth in paragraphs 1 and 2 above shall constitute a breach of contract and after the notification of the Vermont Agency of Transportation, Secretary of Transportation, may result in termination of this contract by the State or such remedy as the State deems necessary.
4. **Inclusion in Subcontracts.** The Contractor shall insert in each of its subcontracts this Disadvantaged Business Enterprise (DBE) Policy and also a clause requiring its subcontractors to include this same Policy in any lower tier subcontracts which they may enter into, together with a clause requiring the inclusion of the Policy in any further subcontract that may in turn be made. This Policy shall not be incorporated by reference.

Disadvantaged Business Enterprise (DBE) Program Goals. The Vermont Agency of Transportation (VTrans) is required to set an overall DBE goal for participation in all transportation related Federal-aid projects. The goal is determined following guidelines set forth in 49 CFR 26.45, and based on the availability of ready, willing and able DBEs who submitted bids and quotes for transportation related projects, compared as a percentage of all available contractors who submitted bids and quotes for transportation related projects during the same time period. The DBE goal may be adjusted to take into account other factors impacting DBE utilization, in an effort to narrowly tailor the overall DBE goal. The detailed goal setting methodology and current overall DBE goal may be viewed on the VTrans website at: <http://www.aot.state.vt.us/CivilRights/DBEGoals.htm> .

VTrans currently utilizes a race/gender neutral policy to fulfill its overall DBE goals, and relies on the voluntary participation of contractors to utilize certified DBEs on every project sufficient to obtain the Agency's overall DBE goal. In order for this practice to continue, contractors must be proactive and solicit bids and quotes from certified DBEs for use when submitting their own bids, and employ certified DBEs when participating on transportation related projects. Otherwise, VTrans may have to implement specified contract goals on projects to ensure the overall DBE goals are met. VTrans may include specific DBE contract goals in certain cases to ensure DBE participation, if failure to obtain the project DBE goal would negatively impact the Agency's overall DBE goal because of the size of the contract.

Disadvantaged Business Enterprise (DBE) Definition. A DBE is defined as a business that is owned and controlled by one or more socially and economically disadvantaged person(s). For the purposes of this definition:

- (1) "Socially and economically disadvantaged person" means an individual who is a citizen or lawful permanent resident of the United States and who is a Woman, Black, Hispanic, Portuguese, Native American, Asian American, or a member of another group, or an individual found to be disadvantaged by the Small Business Administration pursuant to Section 3 of the Small Business Act.
- (2) "Owned and controlled" means a business which is:
 - a. A sole proprietorship legitimately owned and controlled by an individual who is a disadvantaged person.
 - b. A partnership, joint venture or limited liability company in which at least 51% of the beneficial ownership interests legitimately is held by a disadvantaged person(s).
 - c. A corporation or other entity in which at least 51% of the voting interest and 51% of the beneficial ownership interests legitimately are held by a disadvantaged person(s).

The disadvantaged group owner(s) or stockholder(s) must possess control over management, interest in capital, and interest in earnings commensurate with percentage of ownership. Disadvantaged participation in a joint venture must also be based on the sharing of real earnings, as above. If the disadvantaged group ownership interests are real, substantial and continuing and not created solely to meet the requirements of the program, a firm is considered a bona fide DBE.

Certified DBE Directory. The current Vermont Unified Disadvantaged Business Enterprise (DBE) Directory is available online at: <http://www.aot.state.vt.us/CivilRights/DBEDirectory.htm>. This directory contains all currently certified DBEs available for work in Vermont, and is updated continuously. Only firms listed in this directory are eligible for DBE credit on Vermont Federal-aid projects. If you have questions about DBE certification, or do not have access to the Internet, please call the DBE Program Manager at (802) 828-5858 for assistance.

Counting DBE Participation Towards Project Goals. In order for payments made to DBE contractors to be counted toward DBE goals, the DBE contractors must perform a commercially useful function (CUF). The DBE must be responsible for execution of the work of the contract and must carry out its responsibilities by actually performing, managing, and supervising the work involved, consistent with standard industry practices.

This means that:

- The DBE must also be responsible for ordering its own materials and supplies, determining quantity and quality, negotiating price, installing (where applicable) and paying for the material itself;
- The DBE must perform work commensurate with the amount of its contract;
- The DBE's contribution cannot be that of an extra participant or a conduit through which funds are passed in order to obtain the appearance of DBE participation;
- The DBE must exercise responsibility for at least fifty percent of the total cost of its contract with its own workforce;
- None of the DBE's work can be subcontracted back to the prime contractor, nor can the DBE employ the prime's or other subcontractor's supervisors currently working on the project;
- The DBE's labor force must be separate and apart from that of the prime contractor or other subcontractors on the project. Transferring crews between primes, subcontractors, and DBE contractors is not acceptable;
- The DBE owner must hold necessary professional or craft license(s) or certification(s) for the type of work he/she performs on the project;
- The DBE may rent or lease, at competitive rates, equipment needed on the project from customary leasing sources or from other subcontractors on the project.

Allowable credit for payments made to DBEs for work performed. A contractor may take credit for payments made to a certified DBE that satisfies CUF requirements at the following rate:

- A DBE Prime Contractor: Count 100% of the value of the work performed by own forces, equipment and materials towards the DBE goals.
- An approved DBE subcontractor: Count 100% of the value of work performed by the DBE's own forces, equipment and materials, excluding the following:
 - The cost of materials/supplies purchased from a non-DBE Prime Contractor.
 - The value of work provided by non-DBE lower tier subcontractors, including non-DBE trucking to deliver asphalt to a DBE contractor.
- A DBE owner-operator of construction equipment: Count 100% of expenditures committed.
- A DBE manufacturer: Count 100% of expenditures committed. The manufacturer must be a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.
- A regular DBE dealer/supplier: Count 60% of expenditures committed. A regular dealer/supplier is defined as a firm that owns, operates, or maintains a store, warehouse or other establishment, in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. A person may be a 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 person both owns and operates distribution equipment for the products, by the means of a long term agreement, and not by a contract by contract basis.
- A DBE broker: Count for DBE credit only the fees or commissions charged for assistance in the procurement, and, fees and transportation charges for the delivery of materials or supplies required at the job site, but not the cost of materials procured. A broker is defined as any person(s) or firm who arranges or expedites transactions for materials or supplies, and does not take physical possession of the materials or supplies at their place of business for resale.
- A DBE renter of construction equipment to a contractor: Count 20% of expenditures committed, with or without operator.

- A bona fide DBE service provider: Count 100% of reasonable fees or commissions. Eligible services include professional, technical, consultant, or managerial, services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of the contract. Eligible services also include agencies providing bonding and insurance specifically required for the performance of the contract.
- A trucking, hauling or delivery operation: Count 100% of expenditures committed when trucks are owned, operated, licensed and insured by the DBE and used on the contract and, if applicable, includes the cost of the materials and supplies. 100% of expenditures committed when the DBE leases trucks from another DBE firm including an owner-operator. 100% of reasonable fees, or commissions, the DBE receives as a result of a lease arrangement for trucks from a non-DBE, including an owner-operator.
- Any combination of the above.

Removal of Approved DBE From Transportation Related Project. Contractors may not terminate for convenience, any approved DBE subcontractor and perform the work with their own forces, without prior written consent from the VTrans DBE Program Manager or VTrans Chief of Civil Rights.

Federal-aid projects which specify a DBE contract goal. The provisions of the Vermont Agency of Transportation Supplemental Specification – Disadvantaged Business Enterprise (DBE) Utilization (CA 160) shall apply to all VTrans Federal-aid projects which specify a DBE contract goal.

Compliance With Prompt Payment Statute. In accordance with Vermont’s Prompt Payment Act and VTrans Standard Specifications for Construction, Section 107.01(g), the Contractor shall fully comply with the provisions of 9 V.S.A. Chapter 102, also referred to as Act No. 74 of 1991 or the Prompt Payment Act, as amended.

Subcontractor Payments. In accordance with VTrans Standard Specifications for Construction, Section 107.01(h), on all federal-aid and state funded contracts, the Contractor, during the life of the Contract and on a monthly basis, shall submit electronically, a listing of payments to subcontractors on the form specified by the State and made available at: <http://apps.vtrans.vermont.gov/db/>. Electronic reports shall be filed with the Agency Office of Civil Rights by an authorized representative and received in the Agency Office of Civil Rights on or before the tenth working day after month end. Contractors without access to the internet shall obtain and submit manual reports to the Agency Office of Civil Rights. Manual reports shall be signed by an authorized representative, sent to the Agency Office of Civil Rights, and postmarked on or before the tenth working day after month end. There shall be no direct compensation allowed the Contractor for this work, but the cost thereof shall be included in the general cost of the work. In accordance with 9 V.S.A. Section 4003, notwithstanding any contrary agreement, payments made to subcontractors after seven days from receipt of a corresponding progress payment by the State to the Contractor, or seven days after receipt of a subcontractor's invoice, whichever is later, violate this agreement. Violations shall be reported to the Agency Office of Civil Rights for review. Failure to resolve disputes in a timely manner may result in a complaint made to the Agency Pre-qualification Committee. In this Committee's judgment, appropriate penalties may be involved for failure to comply with this specification. Penalties may include suspension, reduction or revocation of the Contractor's pre-qualification rating. This clause shall be included in the prime Contractor's Contract made with all of its subcontractors.

APPENDIX I

VERMONT AGENCY OF TRANSPORTATION

GENERAL SPECIAL PROVISIONS

FOR ALL PROJECTS

(INSERT THE MOST RECENT VERSION OF THE GENERAL
SPECIAL PROVISIONS FOUND ON THE VTRANS WEBSITE AT
THIS LINK: [http://vtranscontracts.vermont.gov/construction-
contracting](http://vtranscontracts.vermont.gov/construction-contracting))

Appendix J

COMPLIANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal,
(Corporation, Partnership or Individual)

and _____
(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

(Name of Owner)

(Address of Owner)

hereinafter called Owner, in the penal sum of _____ Dollars, \$(_____) in
lawful money of the United States, for the payment of which sum well and truly to be
made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these
presents.

Appendix J

The condition of this obligation is such that whereas, the Principal entered into a certain contract with the Owner, dated the _____ day of _____, 20___, a copy of which is hereto attached and made a part hereof for the construction of:

Now, therefore, if the principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety, and if they shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

Provided, further, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the Work to be performed thereunder or the Specifications accompanying the same shall in any wise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the Work or to the Specifications.

Provided, further, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

Appendix J

IN WITNESS WHEREOF, this instrument is executed in ____ counterparts, (No.)
each one of which shall be deemed an original, this the ____ day of
_____, 20__.

ATTEST:

Principal

(Principal Secretary)

(SEAL)

By: _____(s)

Address: _____

Witness as to Principal

Address

Surety

ATTEST:

By: _____
Attorney-in-Fact

Witness as to Surety

Address

Appendix J

Address

NOTE: Date of Bond must not be prior to date of Contract.

If Contractor is Partnership, all partners should execute Bond.

IMPORTANT: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570) as amended and be authorized to transact business in the State where the Project is located.

Appendix J

LABOR & MATERIAL BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal,
(Corporation, Partnership or Individual)

and

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

(Name of Owner)

(Address of Owner)

Hereinafter called Owner, in the penal sum of _____ Dollars, \$(_____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

Appendix J

The Condition of this obligation is such that whereas, the Principal entered into a certain contract with the Owner, dated the ____ day of _____, 20__, a copy of which is hereto attached and made a part hereof for the construction of:

Now, Therefore, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the Work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such Work and all insurance premiums on said Work, and for all labor performed in such Work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in force and effect.

Provided, further, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the Work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the Work or to the Specifications.

Provided, further, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

Appendix J

In Witness Whereof, this instrument is executed in ____ count (No.)
each one of which shall be deemed an original, this the ____ day of
_____, 20__.

ATTEST:

Principal

(Principal Secretary)

By: _____(s)

(SEAL)

Address: _____

Witness as to Principal

Address

Surety

ATTEST: By: _____
Attorney-in-Fact

Witness as to Surety Address

Address

Appendix J

NOTE: Date of Bond must not be prior to date of Contract.

If Contractor is Partnership, all partners should execute Bond.

IMPORTANT: Surety companies executing Bond must appear on the Treasury Department's most current list (Circular 570) as amended and be authorized to transact business in the State where the Project is located.

APPENDIX K

CHANGE ORDER

Date: _____

Change Order No: _____

Name of Project: _____

Municipality: _____

Contractor: _____

The following changes are hereby made to the Contract:

Justifications:

Change to Contract Price: \$ _____

Original Contract Price: \$ _____

Current Contract Price adjusted by previous Change Order: \$ _____

The Contract Price due to this Change Order will be (increased) decreased by: \$ _____

New Adjusted Contract Price: \$ _____

Change to Contract Time: _____

The Contract Time will be (increased) decreased by _____ Calendar days

The date for completion of all work will be _____

APPROVALS

Contractor: _____

Construction Inspector: _____

Municipality: _____

VTrans Project Manager: _____

APPENDIX L –

Work Zone Safety and Mobility

Guidance Document

August 2007

WORK ZONE SAFETY & MOBILITY GUIDANCE DOCUMENT

August 2007



Prepared by:

Vermont Agency of Transportation



The following document was drafted in response to updates made to the work zone regulations at 23 CFR 630 Subpart J, published by the Federal Highway Administration. This document applies to all federal aid projects that have a pre-final contract administration/step submittal date after January 1, 2008.

Work Zone Safety and Mobility Vision

Current and future work zone safety and mobility issues mean that transportation practitioners need to minimize and manage the work zone impacts of transportation projects. In order to meet safety and mobility needs during highway maintenance and construction, and to meet the expectations of the traveling public, it is important to systematically analyze and assess the work zone impacts of projects and take appropriate action to manage these impacts.

The following has been adopted as the Vermont Agency of Transportation's (VTrans) work zone safety and mobility vision statement: *To provide optimum safety for workers and the traveling public while maintaining acceptable levels of mobility in an efficient environment for the contractors to complete the project work in accordance with their contracts.*

Work Zone Safety and Mobility Goals and Strategies

Goal: To provide a safe work zone for motorists, pedestrians, bicyclists (the traveling public) and construction personnel.

Strategy: Development of site-specific traffic control plans, while ensuring compliance with the Manual on Uniform Traffic Control Devices (MUTCD) and state design standards and specifications.

Goal: To minimize construction-related delays.

Strategy: Construction-related delays will be monitored. A change to the traffic management plan will be considered for construction-related delays greater than ten minutes.

Goal: To gain further knowledge of work zone procedures applicable to the State of Vermont.

Strategy: Summarize the work zone field evaluations to identify the effectiveness of implemented safety measures and to improve future Transportation Management Plans (TMP).

Goal: To ensure that the appropriate personnel have the necessary knowledge, skills, and abilities to design and/or implement a TMP.

Strategy: Management will be responsible for ensuring that their personnel has been provided appropriate training in accordance with their defined roles. Training to include but not limited to: flagger certification, NHI courses, AGC training, and the Vermont Local Roads Program courses.

Project Classification

The purpose of the Work Zone Safety and Mobility Guidance document is to allow VTrans to better anticipate the impacts associated with individual projects. Examples of impacts include internal project coordination, project scheduling and overall cost. Every federally funded project will require a TMP. The classification of the project will determine the complexity of the TMP. All transportation projects must be classified into one of three types of projects: significant, moderate, or minor projects. To accurately classify a project, several design characteristics must be analyzed to provide **guidance** in determining the appropriate project classification. The following characteristics should be evaluated when determining any project classification. These characteristics include but are not limited to:

- Project Location (Urban/Rural Setting)
- Primary Network (Interstate, Interchanges, Major State Roads, Major Intersections, NHS, Truck Network)
- Construction Duration (Months, Years)
- Access Management Category (Driveway Density, Business/Industry Density)
- Traffic Volumes (Average Annual Daily Traffic, Peak Hour Traffic, Existing Crash Rates, Car-Truck-Pedestrian-Bicycle Volumes)
- Proximity To Other Construction Projects
- Available Detour Routes

A project classification should be identified by the appropriate Project Manager¹, and confirmed by their respective Program Manager as early as the scoping process. This classification should be analyzed periodically throughout the design process to ensure that any design changes or site characteristic changes will not require a classification modification. Project classification is used to help identify the impacts associated with different types of transportation projects. This classification is used to determine what TMP should be applied to the project. The following definitions closely follow FHWA's Work Zone Self Assessment, http://www.ops.fhwa.dot.gov/wz/docs/wz-sa-docs/sa_guide_s4.htm.

¹ Please note that the position titles used in this document are typical Program Development Division titles. Applicable Operations Division titles as well as alternate VTrans Division titles may be substituted as necessary.

Significant Projects: Significant projects have a high level of public interest and will likely impact a large number of travelers. This impact must be analyzed individually and also in combination with concurrent active projects. It will have moderate to high user-cost impacts and the duration is usually moderate to long. These characteristics create work zone impacts that fall outside of the typical work zone safety and mobility thresholds. Examples of this work type may include: major corridor reconstruction, high impact intersection reconstruction, full closures on high volume facilities, major bridge reconstruction or repair, repaving projects that require long term lane closures, etc (e.g. Shelburne-South Burlington US 7 Reconstruction Project). It is important to note that significant projects are unique in that they have considerable impacts to the project area as well as the surrounding community.

Moderate Projects: Moderate projects have the potential to affect the level of public interest and may impact a modest number of commuters. These projects would include typical roadway, bridge, and paving projects.

Minor Projects: Minor projects have a minimal impact to the traveling public and a short duration. Typical projects within this category include sign installation, bridge inspection, pavement marking, and various maintenance activities.

Transportation Management Plans (TMPs)

TMPs are strategies/methodologies that will be implemented to ensure safe and mobile work zones within transportation projects. The project classification will determine the detail level required for the TMP. There are three major components of a TMP;

Temporary Traffic Control Plan (TTC): A TTC plan describes temporary traffic control measures to be used for facilitating road users through a work zone or an incident area. The TTC plan plays a vital role in providing continuity of reasonably safe and efficient road user flow and highway worker safety when a work zone, incident, or other event temporarily disrupts normal road user flow. The TTC plan shall be consistent with the provisions of the MUTCD and AASHTO Roadside Design Guide.

Transportation Operations Component (TO): The TO component shall include the identification of strategies to mitigate impacts of the work zone on the operation of the transportation system within the work zone impact area. The work zone impact area consists of the immediate work zone as well as affects to the surrounding roadways and communities. Examples of practices that may be used to satisfy the TO component may be found at http://www.ops.fhwa.dot.gov/wz/rule_guide/sec6.htm#sec63.

Public Information Component (PI): The PI component shall include communication strategies that seek to inform the general public of work zone impacts and the changing condition of the project. The general public may

include road users, area residences and businesses, and other public entities. Examples of communications strategies that may be used to satisfy the PI component may be found at http://www.ops.fhwa.dot.gov/wz/rule_guide/sec6.htm#sec63.

Significant Projects: The TMP for significant projects shall consist of a TTC, a TO, and a PI.

Moderate/Minor Projects: The TMP for moderate and minor projects shall consist of a TTC. A TO and a PI are not required, but may be applicable to certain projects as determined by the Project Manager.

Design Strategies

The development of a TMP is an iterative process that may vary significantly between projects. Work on a TMP should begin early in the project development process. There are numerous resources available to the designer to assist in the development of this plan: several of these are listed in the reference section of this document. The following outlines the key components of the TMP development process.

Preliminary Data Collection: As early as scoping, the project design team collects, analyzes, and documents all applicable project data.

Determine Project Classification: A project classification is determined based on the initial data that was collected. The project classification defines what components are required in the TMP.

Develop TMP: Work zone management strategies should be identified based on the project characteristics and used to develop all necessary aspects of the TMP. Applicable resources should be contacted during this step to obtain their input. This may include utilization of previous work zone feedback provided by the Construction Section. Plans and contract documents shall be based on standard specifications and include necessary pay items.

Update/Revise TMP: As a project progresses through all of the design stages the TMP should be re-evaluated to ensure that any project changes do not affect the TMP. It is possible that the project classification could change during the project design stages.

Finalize TMP: Ensure that the contract plans, special provisions, and estimate include all of the applicable elements of the TMP and allow the flexibility to develop or modify a TMP.

Roles and Responsibilities

- Step 1: A preliminary analysis will be performed by the *Design Team* to determine project classification. This preliminary analysis will be documented in the project's design file.
- Step 2: The *Project Manager* will have the responsibility of monitoring the project and proposed classification and informing the respective *Program Manager*.
- Step 3: The *Design Team* will develop a transportation management plan. The *Project Manager* will monitor the classification status. If there are significant changes, the project classification may be modified.
- Step 4: The *Construction Resident Engineer* will be responsible for identifying and documenting deficiencies in the TMP that compromise the effectiveness of the work zone and coordinating any improvements with the Contractor/State safety representative. Examples of data that may be included in the work zone documentation includes; crashes or other traffic incidents, traffic delay, traffic conflicts, and public comments. The *Project Manager* may assist in addressing any proposed modifications to the TMP during the construction process.
- Step 5: The *Regional Construction Engineer* will complete a work zone summary of TMP effectiveness based on the work zone documentation and any applicable work zone reviews performed by Traffic Operations.
- Step 6: The *Work Zone Safety and Mobility Committee* will consist of representatives from multiple sections within VTrans. This committee will review the work zone summary and will be responsible for updating the Work Zone Safety and Mobility Guidance document based on feedback from the year's construction projects. This committee will be responsible for sharing all applicable information throughout the Agency as well as with additional working groups and committees.

Application/Feedback

The Construction Engineer will submit a summary of TMP effectiveness and recommendations for improvements at the end of the construction season based on the work zone documentation provided by the Regional Engineers. The Work Zone Safety and Mobility Committee will meet annually to discuss these summaries. These summaries will serve to identify common TMP practices that are not working effectively, and will also assist in identifying TMP practices that are successful. The Work Zone Safety and Mobility Guidance document and supporting documentation will be revised to reflect the field evaluation summaries.

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