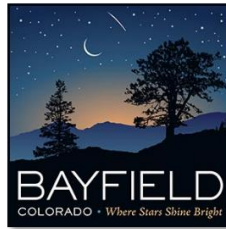


Bayfield Shared Use Path Improvements Project



PROJECT MANUAL

**TOWN OF BAYFIELD
1199 BAYFIELD PARKWAY
(PO Box 80)
BAYFIELD, COLORADO 81122**

March 2024

Pre-Bid Meeting: March 13, 2024

Bid Due Date: March 25, 2024 (2:00 PM Town's Clock)

Award Date: Tentative

Notice to proceed: Issued not less than 14 days prior to selected start date

Construction Start Date: May 1 through June 1, 2024 (floating start)

Substantial Construction Completion Date: 90 working days from start date

Project Directory

Civil Engineer

KLJ Engineering

Dean L. Cooper, PE

1601 Riverfront Drive, Suite 204

Grand Junction, CO 81501

970-450-7473 (office)/970-209-2986 (cell)

dean.cooper@kljeng.com

Surveyor

KLJ

Eric Hearon PLS

P.O. Box 20784

Cheyenne, WY 82001

307-638-2931 (office)/701-713-0362 (cell)

eric.hearon@kljeng.com

Town of Bayfield Administrator

Katie Sickles

1199 Bayfield Parkway (PO Box 80)

Bayfield, CO 81122

970-884-9544, Ext 101

ksickles@bayfieldgov.org

Town of Bayfield Public Works Director

Jeremy Schultz

905 Community Lane

Bayfield, CO 81122

970-769-3499

jschulz@bayfieldgov.org

Town of Bayfield Construction Inspector/Owner's Representative

TBD

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List of Drawing Sheets

The contractor shall always keep a set of 11"x17" color drawings on site along with a set of 22"x34" black & white drawings on site.

<u>SHEET NO.</u>	<u>INDEX OF SHEETS</u>
001	COVER SHEET
002	STANDARDS PLANS LIST
003-004	GENERAL NOTES
005	LEGEND
006	SUMMARY OF APPROXIMATE QUANTITIES
007	SURVEY TABULATIONS
008	SURVEY CONTROL
009	TYPICAL SECTION
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019-24	ALIGNMENT PLANS
025-030	EROSION CONTROL PLANS
031-038	STORMWATER MANAGEMENT PLANS
039	TRAFFIC CONTROL EXAMPLE

Advertisement For Bids

Separate sealed BIDS for the construction of the **Bayfield Shared Use Path Improvements Project** will be received at **Bayfield Town Hall, 1199 Bayfield Parkway, Bayfield, CO 81122**, until 2:00pm (Town's Clock), on March 25, 2024, at which time they will be publicly opened and read aloud. No determination of award will be made at that time.

This project removes existing 10 ft wide x 4475 ft. long asphalt surfaced shared use path and replaces it with new 10 ft wide x 6" thick concrete surfacing and detectable warnings. Project includes stormwater management, erosion control, and traffic control.

Traffic control will be the responsibility of the contractor. Traffic control plans will be required for submittal and approval. The contractor will be required to submit a phasing plan and work with the Town and the Owner's Representative (OR) to determine a plan with the least impact to businesses in the project area. Access to businesses shall remain open for the duration of the project. Public Notification will be handled by the Town of Bayfield, but the awarded contractor should expect to be present in meetings with business owners to communicate the phasing plan prior to beginning work and shall meet weekly to update the OR of the proposed work for that week.

Contractor shall be responsible to obtain and manage a Stormwater Permit for Construction Related Discharges through Colorado Department of Public Health and Environment.

The Town of Bayfield may award a contract to the lowest responsible bid, based on the following criteria: (1) The ability, capacity and skill of the bidder to perform the contract or furnish the supplies required; (2) whether the bidder can perform the contract or furnish the supplies promptly or within the time specified, without delay or interference; (3) the character, integrity, reputation, judgment, experience and efficiency of the bidder; (4) the quality of performance on previous contracts.

A Bid Bond in the amount of 5% of bid price is required to be submitted with the bid.

Performance and Payment Bonds, each in the amount of 100% of bid, will also be required as a condition of issuance of notice to proceed to the successful Bidder. Bid Award and Notice to Proceed will be April 2024. Construction Start date is floating between May 1 and June 1, 2024. Substantial construction completion shall be no later than 90 working days from the Bidder's selected start date.

A PREFERENCE FOR LOCAL CONTRACTORS WILL NOT BE APPLIED BY THE OWNER WHEN SELECTING A CONTRACTOR.

An **optional** pre-bid meeting and project walk through will be held at 10:00 am June 9, 2024, beginning at the Pine River Library located at 395 Bayfield Center Drive, Bayfield, CO 81122.

Digital copies of the Contract Documents may be downloaded from the Town's web site at <https://www.bayfieldgov.org> , <https://www.bidnetdirect.com/colorado>, and [Western Colorado Contractors Association](#)

Contact Katie Sickles, 970-884-9544, Ext 101 ksickles@bayfieldgov.org or Nicol Killian, 970-884-9544, Ext 103 nkillian@bayfieldgov.org for questions or issues with downloading the documentation.

Instructions to Bidders

1.0 Defined Terms

The term Owner shall mean Town of Bayfield, Colorado. The abbreviation CDOT shall mean Colorado Department of Transportation. The term “Bidder” means one who submits a Bid directly to Owner, as distinct from a sub-bidder, who submits a Bid to a Bidder. The term “Successful Bidder” means the lowest, qualified, responsible, and responsive Bidder to whom Owner (on the basis of Owner’s evaluation as hereinafter provided) makes an award. The term “Bidding Documents” includes the Advertisement for Bids, Instructions to Bidders, the Bid Form, the Contract Documents (including all Addenda issued prior to receipt of Bids), and other forms required herein.

2.0 Copies of Bidding Documents

2.1 Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents. CDOT Standard Specifications for Road and Bridge 2023 edition. In case of conflict, CDOT Specifications shall govern.

2.2 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids on the work and do not confer a license or grant for any other use.

3.0 Qualifications of Bidders

The Owner may make such investigations as he deems necessary to determine the ability of the Bidder to perform the work, and to demonstrate qualifications to perform the Work. Each Bidder must be prepared to submit within five days of Owner's request, written evidence such as financial data, previous experience, and evidence of authority to conduct business in the jurisdiction where the Project is located. Each Bid must contain evidence of Bidder's qualification to do business in the state where the Project is located or covenant to obtain such qualification prior to award of the contract. The Owner reserves the right to reject any Bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the Owner that such Bidder is properly qualified to carry out the obligations of the Contract and to complete the work contemplated therein.

4.0 Examination of Contract Documents and Site

4.1 It is the responsibility of each Bidder before submitting a Bid, to (a) examine the Contract Documents thoroughly, (b) visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the work, (c) consider federal, state and local laws and regulations that may affect cost, progress, performance or furnishing of the work, (d) study and carefully correlate Bidder’s observations with the Contract Documents, and (e) notify Engineer of all conflicts, errors or discrepancies in the Contract Documents.

4.2 Excavations are not anticipated to exceed 24 inches in depth. Therefore, a subsurface utility engineering investigation was not performed for this project. Information and data reflected in the Contract documents with respect to existing Underground Facilities is based on above ground observations of visible features. Owner and Engineer do not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the contract documents.

4.3 Before submitting a Bid, each Bidder will, at Bidder’s own expense, make or obtain any additional examinations, investigations, explorations, tests, and studies and obtain any additional

information and data which pertain to the physical conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the work and which Bidder deems necessary to determine its Bid for performing and furnishing the work in accordance with the time, price and other terms and conditions of the Contract Documents.

4.4 On request, in advance, Owner will provide each Bidder access to the site to conduct such explorations and tests as each Bidder deems necessary for submission of a Bid. Bidder shall fill and patch all holes, clean up, and restore the site to its former condition upon completion of such exploration.

4.5 The lands upon which the work is to be performed, rights-of-way, and easements for access thereto and other lands designated for use by Contractor in performing the work, are identified in the Contract Documents. All additional lands, and access thereto, required for temporary construction facilities or storage of materials and equipment, are to be provided by Contractor.

4.6 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Section 4, that without exception the Bid is premised upon performing and furnishing the work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of performance and furnishing of the work.

5.0 Interpretations and Addenda

5.1 All questions about the meaning or intent of the Contract Documents are to be directed to Owner. Interpretations or clarifications considered necessary by Owner in response to such questions will be issued by Addenda and posted to the Town of Bayfield's bid web site, BidNet Direct, and WCCA. Bidders shall be responsible to check these sites regularly for such Addenda and other instruction. Owner will not be responsible to any Bidder for Bidder's failure to check these sites or to obtain issued addenda. Questions received after the designated question period will not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

5.2 Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner or Engineer and in accordance with the Contract Documents.

6.0 Conditions of Work

Each Bidder must inform himself fully of the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful Bidder of his obligation to furnish all material and labor necessary to carry out the provisions of his Contract. Insofar as possible, the Contractor, in carrying out his work, must employ such methods or means as will not cause any interruption of or interference with the work of any other Contractor or danger to the public.

7.0 Substitute or "Or-Equal" Items

The Contract, if awarded, will be on the basis of materials and equipment described in the drawings or specified in the specifications, without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the drawings or specified in the Specifications that substitute or "or-equal" items of materials or equipment may be furnished or used by Contractor if acceptable to

Engineer, application for such acceptance will not be considered by Engineer until after the effective date of the Agreement. The procedure for submission of any such application by Contractor and consideration by Engineer is set forth in the General Conditions and may be supplemented by the Supplementary Conditions.

8.0 Subcontracts

The Bidder is specifically advised that any person, firm, or other party to whom it is proposed to award a subcontract under this Contract must be acceptable to the Owner. The bidder shall submit, with their bid, a completed list of subcontractors they propose to use on this contract.

9.0 Bid Form

9.1 The Bid Form is included with the Bidding Documents.

9.2 All blanks on the Bid Form must be completed manually in ink, by typewriter, or electronically and printed. NOTE: The PDF is offered for your convenience only.

9.3 Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.

9.4 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

9.5 All names must be typed or printed below the signature.

9.6 The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).

9.7 The address, email, and telephone number for communications regarding the Bid must be shown.

10.0 Submission of Bids

Bids shall be submitted at the time and place indicated in the Advertisement For Bids and shall be enclosed in an opaque sealed envelope, marked with the project title (and, if applicable, the designated portion of the project for which the Bid is submitted) and name and address of the Bidder and accompanied by the required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it. Any submission received after the advertised Bid Opening date and time (Owner's clock) shall be returned unopened to the sender.

11.0 Modification and Withdrawal of Bids

11.1 Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.

11.2 If, within twenty-four (24) hours after Bids are opened, any Bidder files a duly signed, written notice with Owner and Engineer and promptly thereafter demonstrates to the reasonable satisfaction of Owner and Engineer that there was a material and substantial mistake in the presentation of its Bid, that Bidder may withdraw its Bid.

12.0 Bids to Remain Valid Subject to Acceptance

All Bids will remain valid subject to acceptance by Owner for the period of sixty (60) days after the day of bid opening, but OWNER may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

13.0 Award of Contract

13.1 Owner reserves the right to reject any and all Bids, to waive any and all informalities, and to negotiate Contract terms with the Successful Bidder, and the right to disregard all nonconforming, non-responsible, unbalanced or conditional Bids. Also, Owner reserves the right to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the project to make an award to that Bidder, whether because the bid is not reasonable, or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner.

13.2 In evaluation of Bids, Owner will consider the qualifications of the Bidders, whether the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

13.3 Owner may consider the qualifications and experience of subcontractors, suppliers and other persons and organizations proposed for those portions of the work as to which the identity or subcontractors, suppliers, and other persons and organizations may be submitted as provided in the Supplementary Conditions. Owner also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the work when such data is required to be submitted prior to the Notice of Award.

13.4 Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications, and financial ability of Bidders, proposed subcontractors, suppliers and other persons and organizations to perform and furnish the work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

13.5 If Owner chooses to award a contract, it will be awarded to the lowest responsible Bidder whose evaluation by Owner indicates to Owner that the award will be in the best interests of the Project.

13.6 When the Successful Bidder delivers the executed Independent Contractor Agreement to Town of Bayfield, it shall be accompanied by the required Contract Security.

13.7 If the Contract is to be awarded, Owner will give the successful Bidder a Notice of Award is anticipated within thirty (60) days after the date of the Bid opening.

14.0 Laws and Regulations

The Bidders' attention is directed to the fact that all applicable State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the Project shall apply to the Contract throughout, and they will be deemed to be included in the Contract the same as though herein written out in full.

15.0 Complete Prices

All lump sum, alternate, and unit prices must include all required Contract Line Items necessary to complete the work, including, but not limited to the following (as required): all permits, insurance, and taxes (except those that are tax exempt); supervision; layout and survey as needed; protection of all surrounding materials; lifting/hoisting; equipment and personnel; off-site management and administrative assistance; trash disposal to a separate dumpster; miscellaneous equipment; mobilization; as-built drawings; fuel, watchmen, flagmen, and site security; scheduling; small tools; drawings and printing expenses and mailing costs.

15.1 On bid items to be paid as lump sum that may extend beyond a single pay estimate, a schedule of values shall be submitted to OWNER a minimum of 10 days prior to commencement of work. Adequate detail shall be given to allow a value to be placed on work completed during any given pay estimate.

16.0 Permits, Fees, Taxes

The cost of all permits and fees associated with the work is considered incidental to the work. No additional payment will be made to the successful BIDDER. Town of Bayfield has Tax Exemption, a copy of which will be provided to the Contractor.

17.0 Authorities

Work shall be completed as per these specifications and accepted by the Town of Bayfield and CDOT before final payment is requested of the Owner.

18.0 Subsurface Investigations

A subsurface geotechnical investigation was not performed for this project.

19.0 Completion of Work

Work shall be completed as per CDOT Standard Specifications for Road and Bridge Construction 2023 Edition, and as modified by these specifications, and accepted by the Owner and CDOT before final payment is requested of the Owner.

****Contractor shall provide a weekly estimate of progress to the Town of Bayfield representative to verify quantities and that they shall stay within the contracted price. The Town shall not pay for work above the contract price without a written change order approved by Owner prior to commencing any work on said change order.**

20.0 Bid Bond

Bid security shall be made payable to the Owner in the amount of 5% of the bidder's maximum bid price in the form of a certified check or a bid bond, using the form herein, issued by a surety meeting the requirements of the Supplementary General Conditions. The bid security of the successful bidder will be retained until such bidder has executed the agreement and furnished the required contract security whereupon it will be returned; if the successful bidder fails to execute and deliver the agreement and furnish the required contract security within ten (10) days of the Notice of Award, the Owner may annul Notice of award and the bid security of that bidder will be forfeited. Owner will return bid bonds or checks of unsuccessful bidder within or by 60 days after the bid submittal date.

21.0 Payment Bond

Payment Bond form is found in Agreement Documents section of this package.

22.0 Performance Bond

Performance Bond form is found in Agreement Documents section of this package.

23.0 Scope of Work

This project removes existing 10 ft wide x 4475 ft. long asphalt surfaced shared use path and replaces it with new 10 ft wide x 6" thick concrete surfacing and detectable warnings. Project includes stormwater management, erosion control, and traffic control.

Traffic control will be the responsibility of the contractor. Traffic control plans will be required for submittal and approval. The contractor will be required to submit a phasing plan and work with the Town and the Owner's Representative (OR) to determine a plan with the least impact to businesses in the project area. Access to businesses shall remain open for the duration of the project. Public Notification will be handled by the Town of Bayfield, but the awarded contractor should expect to be present in meetings with business owners to communicate the phasing plan prior to beginning work and shall meet weekly to update the OR of the proposed work for that week.

Contractor shall be responsible to obtain and manage a Stormwater Permit for Construction Related Discharges through Colorado Department of Public Health and Environment.

End of Instructions to Bidders Section

Required Bid Documents

Bids shall be submitted at the time and place indicated in the Invitation to Bid and shall be enclosed in an opaque sealed envelope, marked with the project title (and, if applicable, the designated portion of the project for which the Bid is submitted) and name and address of the Bidder and accompanied by the required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it. Any submission received after the advertised Bid Opening shall be returned unopened to the sender. Required Bid Documents are in the Bid Submittal Checklist Below

- _____ **Bid Form (3 Pages)**
- _____ **Bid Schedule**
- _____ **List of Material Suppliers and Subcontractors**
- _____ **Bid Bond**
- _____ **CDOT Form 606 Anti-Collusion Affidavit**
- _____ **CDOT Form 1414 Anticipated DBE Participation Plan**

**TOWN OF BAYFIELD
Bid Form - Page 1**

**FOR CONSTRUCTION OF:
Bayfield Shared Use Path Improvements Project**

DATE: _____

OWNER: Town of Bayfield
1199 Bayfield Parkway
Bayfield, CO 81122
Attn: Katie Sickles

BIDDER: Name of Bidder _____

Address of Bidder _____

Phone Number _____

Email Address _____

Contact Name _____

THE UNDERSIGNED BIDDER, having familiarized himself with the Work required by the Contract Documents, the site and conditions where the Work is to be performed, local labor conditions, and all laws, regulations, and other factors affecting performance of the Work, and having satisfied himself of the expense and difficulties attending performance of the Work,

HEREBY PROPOSES and agrees, if this Bid is accepted, to enter into Agreement with the Owner to perform all work, including the assumption of all obligations, duties, and responsibilities necessary to the successful completion of the contract and the furnishing of all materials and equipment required to be incorporated in and form a permanent part of the Work; tools, equipment, supplies, transportation, facilities, labor, superintendence, and services required to perform the Work; and bonds, insurance, submittals; and all fees as indicated or specified in the Contract Documents to be performed or furnished by BIDDER for the amount identified and detailed in the BID SCHEDULE and further totaled below (“Bid Proposal Amount”):

_____ Dollars (written)

\$ _____ (numeric)

TOWN OF BAYFIELD
Bid Form – Page 2

DOCUMENTS AND ADDENDA:

The BIDDER submits that he has carefully examined the site of the proposed work and the existing conditions, as well as the drawings and specifications. Also, he has thoroughly reviewed the proposal form, Instructions to Bidders, required forms, the Specifications and Drawings, and all other contract documents, and acknowledges that the following addenda covering revisions to the drawings and/or specifications, and the cost, if any, of such revisions has been included in the Total Bid Price.

Addendum No. _____ Dated _____

Addendum No. _____ Dated _____

Addendum No. _____ Dated _____

CHANGES TO THE WORK:

BIDDER agrees to perform all the SCOPE of WORK for the Total Base Bid price identified in the “Bid Proposal Amount.” If circumstances arise during construction of this project which dictate a change in quantity, then the pricing for that particular portion of the job will be adjusted up or down with the BIDDER’S Schedule of Values (as included in the Contract Documents) to the revised quantity required by the construction circumstances of these plans. Final payment will be based upon count or measurement of items in place upon completion of the project at the units of measure and unit prices, with the exception of lump sum items.

For changes not covered by a contract unit price, BIDDER proposes that all such changes ordered to the work which increases the Scope of Work shall be priced in advance of the work and such unit prices will be approved by the Owner prior to commencement of work.

PERFORMANCE AND LABOR & MATERIAL PAYMENT BONDS:

By signing and submitting this Bid Proposal, the BIDDER certifies that upon demand, Performance and Labor & Material Payment Bonds can be furnished in amounts sufficient to cover the total proposed cost of work.

TIME OF COMMENCEMENT, COMPLETION, AND DAMAGES:

The BIDDER agrees that, if awarded the Contract, the Work will be substantially complete, ready for occupancy by Owner, according to the schedule submitted by BIDDER of within the indicated construction durations specified within the Contract Documents except for delays caused by Acts of God, neglect of the Owner or the Representative of the Owner or other causes beyond the BIDDER’S control, and allows for no time due to labor disputes or strikes. Weather (unless severe) is not considered as an excuse for delay of the work.

TOWN OF BAYFIELD
Bid Form - Page 3

Time is expressly declared to be of the essence in completion of the Work covered by the Contract Documents. Where additional time is allowed under the Agreement for the Completion of the work, the new time limits shall be of the essence of the Agreement.

GENERAL AGREEMENTS:

The BIDDER agrees to the following:

The BIDDER has had an opportunity to examine the Site of the work and has examined the Contract Documents therefore.

The BIDDER has carefully prepared the bid proposal upon the basis thereof and has carefully examined and checked the Bid Proposal and the materials, equipment and labor required thereunder, the cost thereof, and figures therefore, and hereby states that the amount or amounts set forth in the Bid Proposal is, or are, correct and that no mistake or error has occurred in the Bid Proposal or in the BIDDER's computations upon which the Bid Proposal is based and the BIDDER agrees that no claim for reformation, modification, rescission or correction of the Bid Proposal will be made after the scheduled closing time for the receipt of Bid Proposals.

The BIDDER understands that the Owner reserves the right to reject any or all Bids for any or no reason and to waive any informality in the bidding.

The BIDDER understands that this Bid shall not be withdrawn for a period of 60 calendar days after the scheduled closing time for receiving bids.

The BIDDER understands that unless a bid item is included on the "Bid Schedule", no separate payment shall be made for items required to complete the work in accordance with the contract. If included on the bid schedule, then work under the item will be paid at the unit or units given and shall include all necessary work complete and in place.

In preparing the Bid Proposal, the BIDDER has verified and is reasonably assured of the availability of all labor, materials, and products in this document.

The BIDDER has carefully reviewed the Bid Documents in their entirety and has agreed to meet these requirements.

TOWN OF BAYFIELD
Bid Schedule

Contract Item No.	Contract Item Long Description	Unit	Estimated Quantity	Unit Price	Extended Price
202-00200	Removal of Sidewalk	SY	4949		
203-00000	Unclassified Excavation	CY	1850		
203-01587	Potholing	HOUR	20		
208-00002	Erosion Log Type 1 (12 Inch)	LF	3666		
208-00075	Prefabricated Vehicle Tracking Pad	EACH	1		
208-00146	Pre-fabricated Concrete Washout	EACH	1		
208-00106	Sweeping (Sediment Removal)	HOUR	80		
208-00207	Erosion Control Management	DAY	22		
210-04050	Adjust Valve Box	EACH	1		
212-01200	Landscape Restoration	LS	1		
240-00000	Wildlife Biologist	HOUR	10		
250-00010	Environmental Health and Safety Management	LS	1		
304-06000	Aggregate Base Course (Class 6)	TON	1542		
304-09014	Aggregate Base Course (Special)	TON	659		
403-00721	Hot Mix Asphalt (Patching)(Asphalt)	SY	198		
607-11525	Fence (Plastic)	LF	150		
608-00015	Detectable Warnings	SY	120		
608-00006	Concrete Sidewalk (6 Inches)	SY	4972		
614-00026	Sign Panel (Class 1) (Install Only)	LF	6		
625-00000	Construction Surveying	LS	1		
626-00000	Mobilization	LS	1		
630-00000	Flagging	HOUR	10		
630-00012	Traffic Control Management	DAY	107		
630-80340	Pedestrian Barricade (ADA)	LF	100		

Contract Item No.	Contract Item Long Description	Unit	Estimated Quantity	Unit Price	Extended Price
630-80341	Construction Traffic Sign (Panel Size A)	EACH	4		
630-80380	Traffic Cone	EACH	50		
700-70010	F/A Minor Contract Revisions	FA	1	-	\$20,000
700-70023	F/A On-The-Job Trainee	FA	1	-	\$3,200
700-70380	F/A Erosion Control	FA	1	-	\$10,000

The bidder hereby certifies that the only person or parties interested in this bid are those names herein and that no other bidder or prospective bidder has been given any information concerning this bid.

Signature: _____

Date: _____

TOTAL BID PRICE _____
 (Sum of all Extended Price)

Total Bid Price in Words _____

Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____

as Principal, and _____

held and firmly bound unto _____

in the penal sum of _____

for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed this _____ day of _____, 2024. The condition of the above obligation is such that whereas the Principal has submitted to the **TOWN OF BAYFIELD, COLORADO**, a certain BID, attached hereto and hereby made a part hereof to enter into a contract in writing, for the Rifle Gateway Improvement Project

NOW, THEREFORE,

- [a] If said Bid shall be rejected, or
- [b] If said Bid shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said Bid) and shall furnish a Bond for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said Bid, then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its Bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Principal (L.S.)

Surety

By: _____

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.

**COLORADO DEPARTMENT OF TRANSPORTATION
ANTI-COLLUSION AFFIDAVIT**

PROJECT NO.

LOCATION

I hereby attest that I am the person responsible within my firm for the final decision as to the price(s) and amount of this bid or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on his or her behalf and on behalf of my firm.

I further attest that:

1. The price(s) and amount of this bid have been arrived at independently, without consultation, communication or agreement for the purpose or with the effect of restricting competition with any other firm or person who is a bidder or potential prime bidder.
- 2A. Neither the price(s) nor the amount of this bid have been disclosed to any other firm or person who is a bidder or potential prime bidder on this project, and will not be so disclosed prior to bid opening.
- 2B. Neither the prices nor the amount of the bid of any other firm or person who is a bidder or potential prime bidder on this project have been disclosed to me or my firm.
- 3A. No attempt has been made to solicit, cause or induce any firm or person who is a bidder or potential prime bidder to refrain from bidding on this project, or to submit a bid higher than the bid of this firm, or any intentionally high or non-competitive bid or other form of complementary bid.
- 3B. No agreement has been promised or solicited for any other firm or person who is a bidder or potential prime bidder on this project to submit an intentionally high, noncompetitive or other form of complementary bid on this project.
4. The bid of my firm is made in good faith and not pursuant to any consultation, communication, agreement or discussion with, or inducement or solicitation by or from any firm or person to submit any intentionally high, noncompetitive or other form of complementary bid.
5. My firm has not offered or entered into a subcontract or agreement regarding the purchase or sale of materials or services from any firm or person, or offered, promised or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for an agreement or promise by any firm or person to refrain from bidding or to submit any intentionally high, noncompetitive or other form of complementary bid or agreeing or promising to do so on this project.
6. My firm has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value by any firm or person, whether in connection with this or any other project, in consideration for my firm's submitting any intentionally high, noncompetitive or other form of complementary bid, or agreeing or promising to do so, on this project.
7. I have made a diligent inquiry of all members, officers, employees, and agents of my firm with responsibilities relating to the preparation, approval or submission of my firm's bid on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, or other conduct inconsistent with any of the statements and representations made in this affidavit.
8. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as a fraudulent concealment from the Colorado Department of Transportation, of the true facts relating to submission of bids for this contract.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Contractor's firm or company name	By	Date
	Title	
2nd contractor's firm or company name. (If joint venture.)	By	Date
	Title	

Sworn to before me this _____ day of, _____ 20____

Notary Public	
My commission expires	
NOTE: This document must be signed in ink.	

ANTICIPATED DBE PARTICIPATION PLAN

Bidder:		Project Name:	Bayfield Shared Use Path Imp.
Bidder Contact:		Subaccount #:	23709 / 24004
Bidder Phone:		Bid Submission Date:	
Bidder Email:		DBE Contract Goal:	zero (0%)
Preferred Contact Method:		Region:	3

DBE Commitments			
DBE Firm Name	Work to Be Performed	Commitment Amount	Eligible Participation
Total Eligible Participation			
Total Bid Amount			
Total Eligible Participation Percentage			
Bidder Signature			

COMMITMENTS LISTED ON THIS FORM SHALL BE BINDING ON THE BIDDER UPON CONTRACT AWARD. IF THE DBE GOAL IS ZERO, DBE COMMITMENTS ARE OPTIONAL AND THE BIDDER IS NOT REQUIRED TO LIST ANY DBE COMMITMENTS ON THIS FORM. This section must

be signed by an individual with the authority to bind the Bidder. By signing this form, as an authorized representative of the Bidder, you declare under penalty of perjury in the second degree and any other applicable state or federal laws that the statements made in this document are true and complete to the best your knowledge. Further, you attest that you understand the following:

CDOT shall not award a contract (or provide its concurrence to award a Local Agency Project) until it has been determined that commitments are sufficient to meet the DBE contract goal or else good faith efforts have been made to meet the goal despite falling short. Once your bid has been submitted, commitments may not be modified or terminated without the approval of CDOT. If selected as the lowest apparent bidder, you shall submit a Form 1415 for each commitment listed above. If you have not met the contract goal, you will also be required to submit documentation of all good faith efforts to meet the contract goal. It is your responsibility to ensure that the selected DBEs are certified for the work to be performed and that their eligible participation has been properly counted. Please review your project's DBE requirements for additional information and instructions on calculating eligible participation.

Name	Title	Signature	Date

**SAMPLE - Independent Contractor Agreement Between
The TOWN OF BAYFIELD and _____**

This contract is entered into on _____, 2024 (the "effective date"), between the TOWN OF BAYFIELD ("TOWN"), a political subdivision of the State of Colorado, whose address is 1199 Bayfield Parkway PO box 80 Bayfield Co.81122 _____, and _____ ("CONTRACTOR"), whose address is _____.

Purpose

The purpose of this contract is to describe the independent contractor agreement by which CONTRACTOR will perform construction services for the TOWN.

Term and Conditions

The term for this contract is 12 months, commencing upon mutual execution of this contract and ending 12 months thereafter, unless terminated by either party prior to that time. It may be extended at any time by mutual written consent.

Additional Documentation

CONTRACTOR shall complete within 15 days of the effective date of this contract documentation regarding:
a) certification of compliance with prohibition of employ or contract of illegal aliens, b) proof of carrying professional liability insurance, c) provision of worker's compensation and
d) a W9 form. CONTRACTOR's Federal employer I.D. number or social security number is _____

CONTRACTOR shall maintain professional liability insurance and worker's compensation insurance and all required business licenses during the length of the contract.

Consideration

For performance of services set forth in Attachment A, TOWN will pay CONTRACTOR at the rates provided in Attachment A, but not to exceed amount of \$ _____ \$X,XXX,XXX.XXX during the contract period, with all payment contingent upon TOWN appropriation. Said payment is the full compensation to CONTRACTOR which shall bear all expenses incurred to accomplish the scope of work except as provided in Attachment A

Submission of a monthly payment request shall be accompanied by CONTRACTOR's monthly progress report for the previous month summarizing activities & accomplishments and total hours of activity.

Payments shall be made from TOWN to CONTRACTOR within 30 days of receiving a monthly invoice.

Compensation shall be paid in the trade or business name of CONTRACTOR. CONTRACTOR shall be solely responsible for any payroll, withholding, or other taxes, and any of its insurance requirements. THE PARTIES HERETO UNDERSTAND THAT CONTRACTOR IS NOT ENTITLED TO WORKER'S COMPENSATION BENEFITS OR UNEMPLOYMENT COMPENSATION BENEFITS AND IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED PURSUANT TO THIS AGREEMENT.

Description of Work

This project removes existing 10 ft wide x 4475 ft. long asphalt surfaced shared use path and replaces it

with new 10 ft wide x 6" thick concrete surfacing and detectable warnings. Project includes stormwater management, erosion control, and traffic control.

Traffic control will be the responsibility of the contractor. Traffic control plans will be required for submittal and approval. The contractor will be required to submit a phasing plan and work with the Town and the Owner's Representative (OR) to determine a plan with the least impact to businesses in the project area. Access to businesses shall remain open for the duration of the project. Public Notification will be handled by the Town of Bayfield, but the awarded contractor should expect to be present in meetings with business owners to communicate the phasing plan prior to beginning work and shall meet weekly to update the OR of the proposed work for that week.

Contractor shall be responsible to obtain and manage a Stormwater Permit for Construction Related Discharges through Colorado Department of Public Health and Environment.

CONTRACTOR warrants that the quality of its Services under this Agreement shall conform to the level of professional quality performed by experts regularly rendering this type of service. It shall be a condition of this Agreement that CONTRACTOR shall be responsible for meeting the program expectations of TOWN pursuant to Scope of Work above, and the terms, requirements, and specifications established herein, in the performance of services hereunder to the satisfaction of the TOWN. CONTRACTOR warrants that it has all the skills, experience, and professional licenses necessary to perform the services specified in this Agreement. CONTRACTOR warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the services specified in this Agreement.

Independent Contractor/ Not An Employee

It is understood through this contract that CONTRACTOR is contracting with TOWN to provide specific services and this contract should in no way be interpreted that CONTRACTOR is an employee of the TOWN.

CONTRACTOR shall perform said services in its own way in the pursuit of its independent calling and not as an employee of TOWN, and shall be solely responsible for the means and methods and the proper performance of the services in compliance with the terms, requirements, and specifications of this Agreement. CONTRACTOR and any persons employed or retained by CONTRACTOR for the performance of services hereunder shall be independent contractors and not employees or agents of the TOWN. CONTRACTOR shall not be under the control of TOWN or its employees as to the means or manner by which such result is to be accomplished. It shall be a condition of this Agreement that CONTRACTOR shall be responsible for meeting the program expectations of TOWN, and the terms, requirements, and specifications established herein, in the performance of services hereunder to the satisfaction of the TOWN.

CONTRACTOR shall have no claim against the TOWN hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. CONTRACTOR shall be solely responsible for meeting all applicable withholding, tax, and insurance requirements.

Ownership of Work Product

TOWN shall be the owner of all products either constructed and/or developed during the project, and of all work product performed by CONTRACTOR under the terms of this agreement. Subsequent use of such information by CONTRACTOR shall require the advance written approval of the TOWN.

In the event of termination, all finished and unfinished work product(s) prepared by CONTRACTOR pursuant to this Agreement shall become the sole property of the TOWN, provided CONTRACTOR is

compensated in accordance with this Agreement for all work performed in accordance with this Agreement up to the effective date of termination. CONTRACTOR shall not be liable with respect to the TOWN'S subsequent use of any incomplete work product, provided CONTRACTOR has notified the TOWN in writing of the incomplete status of such work product.

Equal Employment Opportunity

- A. CONTRACTOR will not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, age, sex (gender), religion, creed, or physical or mental disability. CONTRACTOR may adhere to lawful equal opportunity guidelines in selecting employees, provided that no person is illegally discriminated against on any of the preceding bases. This provision shall govern, but shall not be limited to, recruitment, employment, promotion, demotion, and transfer, and advertising therefor; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship. CONTRACTOR shall post, in all places conspicuous to employees and applicants for employment, notices provided by the State of Colorado setting forth the provisions of this nondiscrimination clause.
- B. All solicitations and advertisements for employees placed by or on behalf of CONTRACTOR, shall state that CONTRACTOR is an equal opportunity employer.
- C. CONTRACTOR shall cause the foregoing provisions to be inserted in all subcontracts for any work contemplated by this Agreement or deemed necessary by CONTRACTOR, so that such provisions are binding upon each sub-Consultant.
- D. CONTRACTOR shall keep such records and submit such reports concerning the racial and ethnic origin of employees and of applicants for employment as the U.S., the State of Colorado, the TOWN, or their respective agencies may require.
- E. CONTRACTOR shall comply with such rules, regulations and guidelines as the United States, the State of Colorado, the TOWN, or their respective agencies may issue to implement these requirements.

Records

CONTRACTOR shall maintain records that indicate the date, time, and nature of the services rendered under this agreement. CONTRACTOR shall make available for inspection by the TOWN all records, books of account, memoranda, and other documents pertaining to the TOWN upon reasonable request. TOWN, or a duly authorized representative from TOWN shall until three (3) years after final payment under this agreement have access to and the right to examine any of CONTRACTOR's books, documents, papers, or other records involving transactions related to this contract agreement. Additionally:

a) The TOWN may, at reasonable times and places, audit the books and records of any contractor who has submitted all cost or pricing data pursuant to the Policy to the extent that such books, documents, papers, and records are relevant to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books, documents, papers, and records that are pertinent to such cost or pricing data for three (3) years from the date of final payment under the contract.

b) The TOWN shall be entitled to audit the books and records of any contractor or subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books, documents, papers and records are relevant to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date

of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract.

c) If a contract is being funded in whole or in part by assistance from a federal agency, then the contractor or subcontractor at any tier are required to maintain for three (3) years from the date of the final payment, or as required by the grantor, all books, documents, papers, and records pertinent to the contract; and to provide to the TOWN, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.

Insurance

Contractor shall procure and maintain, and shall cause any Subcontractor of the Contractor to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to Owner. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor pursuant to the Contract Documents. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

Commercial General Liability insurance with minimum combined single limits of TWO MILLION DOLLARS (\$2,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision. The Town of Bayfield and CDOT shall be named as additional insured on insurance certificates.

Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than TWO MILLION DOLLARS (\$2,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate with respect to each of Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the Contractor has no owned automobiles, the requirements of this Paragraph shall be met by each employee of the Contractor providing services to the Owner under this contract. The Town of Bayfield and CDOT shall be named as additional insured on insurance certificates.

Worker's Compensation: CONTRACTOR shall secure, maintain and provide verification of all necessary Worker's Compensation insurance as may be required by law to provide coverage for CONTRACTOR's employees hereunder.

Conflict of Interest

CONTRACTOR warrants that it presently has no interest and shall not acquire any interest – direct or indirect – which would conflict in any manner or degree with the performance of services required under this Agreement.

CONTRACTOR shall disclose any potential conflicts of interest with the project regarding other employment, contracts or representation related to telecommunications services.

The TOWN may immediately terminate this contract if it determines that there is a conflict of interest with the project.

Confidentiality

Any confidential information provided to or developed by CONTRACTOR in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by CONTRACTOR without the prior written approval of the TOWN. CONTRACTOR acknowledges that during the engagement, it will have access to and become acquainted with various information or data owned or licensed by the TOWN and/or used by the TOWN in connection with the operation of its affairs, including, without limitation, the TOWN's business, processes, methods, lists, accounts and procedures. CONTRACTOR agrees that it will not disclose any of the aforesaid, directly or indirectly, or use any of them in any manner, either during the term of this Agreement or at any time thereafter, except as required in the course of its engagement with the TOWN. All files, records, documents, blueprints, specifications, information, letters, notes, lists, notebooks, and similar items relating to the business of the TOWN, whether prepared by CONTRACTOR or otherwise coming into its possession, shall remain the exclusive property of the TOWN. CONTRACTOR shall not retain any copies of the foregoing without the TOWN's prior written permission. Upon the expiration or earlier termination of this Agreement, or whenever requested by the TOWN, CONTRACTOR shall immediately deliver to the TOWN all such files, records, documents, specifications, information, and other items in its possession or under its control.

CONTRACTOR shall execute and comply with additional non-disclosure agreements as necessary to implement the project and as requested by the TOWN board.

Indemnification and Release

CONTRACTOR agrees to indemnify and hold harmless the TOWN, and its officers and its employees, from and against any and all liability, claims, demands, and expenses, including court costs and attorney fees, on account of any injury, loss, or damage, which arise out of or are in any manner connected with the services to be provided under this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, or other fault of CONTRACTOR, any subcontractor of CONTRACTOR, or any officer, employee, or agent of CONTRACTOR .

CONTRACTOR waives and releases the TOWN, and its officers and its employees, from any and all liability, claims, demands, and expenses, including court costs and attorney fees, on account of any injury, loss, or damage which Contractor may suffer and which arise out of or are in any manner connected with the services to be provided under this Agreement.

Termination

Either party may terminate this Agreement, without cause, upon providing 30 days written notice to terminate the contract.

In addition, TOWN, may immediately terminate this contract if CONTRACTOR:

- (1) Fails to begin the work within the time specified in the Contract;
- (2) Fails to perform the work with sufficient workers and equipment or with sufficient materials to assure the prompt completion of said work;
- (3) Fails to perform the work in accordance with contract requirements or refuses to remove and replace rejected materials or unacceptable work;
- (4) Discontinues the work;
- (5) Fails to resume work which has been discontinued within a reasonable time after notice to do so;
- (6) Becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency;
- (7) Allows any final judgment to remain unsatisfied for a period of ten (10) days;

- (8) Fails to comply with contract requirements regarding minimum wage payments;
- (9) Is a party to fraud; or,
- (10) For any other cause whatsoever, fails to carry on the work in an acceptable manner.

Additionally, TOWN may immediately terminate this contract if it determines that there is a conflict of interest with the project.

TOWN's approval of any services or any payment hereunder shall not in any way relieve CONTRACTOR of the responsibility for the accuracy and completeness of the services, or for compliance with the terms, requirements, and specifications applicable thereto; and no such approval shall constitute a waiver of any rights of TOWN under this Agreement, or of any cause of action arising out of or in any way connected with this Agreement.

Miscellaneous

CONTRACTOR shall receive and securely maintain personal data on its contractors necessary for the purposes of administration and reporting. The data will be held for one year beyond the duration of this contract to answer any required and appropriate question relating to you as contractor.

CONTRACTOR, at all times, agrees to observe all applicable Federal and State Laws, TOWN rules and regulations issued pursuant thereto, which in any manner affect or govern the services contemplated under this Agreement.

CONTRACTOR shall advise TOWN of any duties or responsibilities on this contract that are sub-contracted to other parties and shall remain responsible for the quality, timeliness and completeness of all contract duties. Notwithstanding, no portion of this contract shall be subcontracted without TOWN prior written approval. CONTRACTOR shall be solely responsible for the compensation, insurance, taxes, withholding, and all clerical detail pertaining to such assistance.

CONTRACTOR and any of its officers, employees or contractors do not have the authority to obligate the TOWN to contracts or expenditures.

It is understood and agreed that TOWN's performance shall be subject to appropriation of funds by its governing body, and payment of such funds into the treasury of such party.

This Agreement may be amended only by the mutual written agreement of the parties.

This Agreement shall not be assigned by either party without the written consent of the other party.

This Agreement contains all agreements, understandings, and arrangements between the parties, and no other such agreements, understandings, and arrangements exist.

This Agreement shall be governed by the laws of the State of Colorado and applicable federal law. Nothing in this Agreement shall be construed as a waiver of TOWN's governmental immunity.

In the event this contract is litigated, TOWN shall be entitled to all litigation expenses, collections fees, witness fees, court costs and attorney fees if it prevails. Venue and jurisdiction for any claim shall be in the La Plata County District Court.

It is expressly understood and agreed that the enforcement of the terms and conditions of this agreement and all rights of action relating to such enforcement, shall be strictly reserved to the parties. Nothing contained in this agreement shall give or allow any claim or right of action whatsoever by any other third

person. It is the express intention of the parties that any other person or entity, receiving services or benefits under this agreement shall be deemed an incidental beneficiary only

If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

Acknowledgment

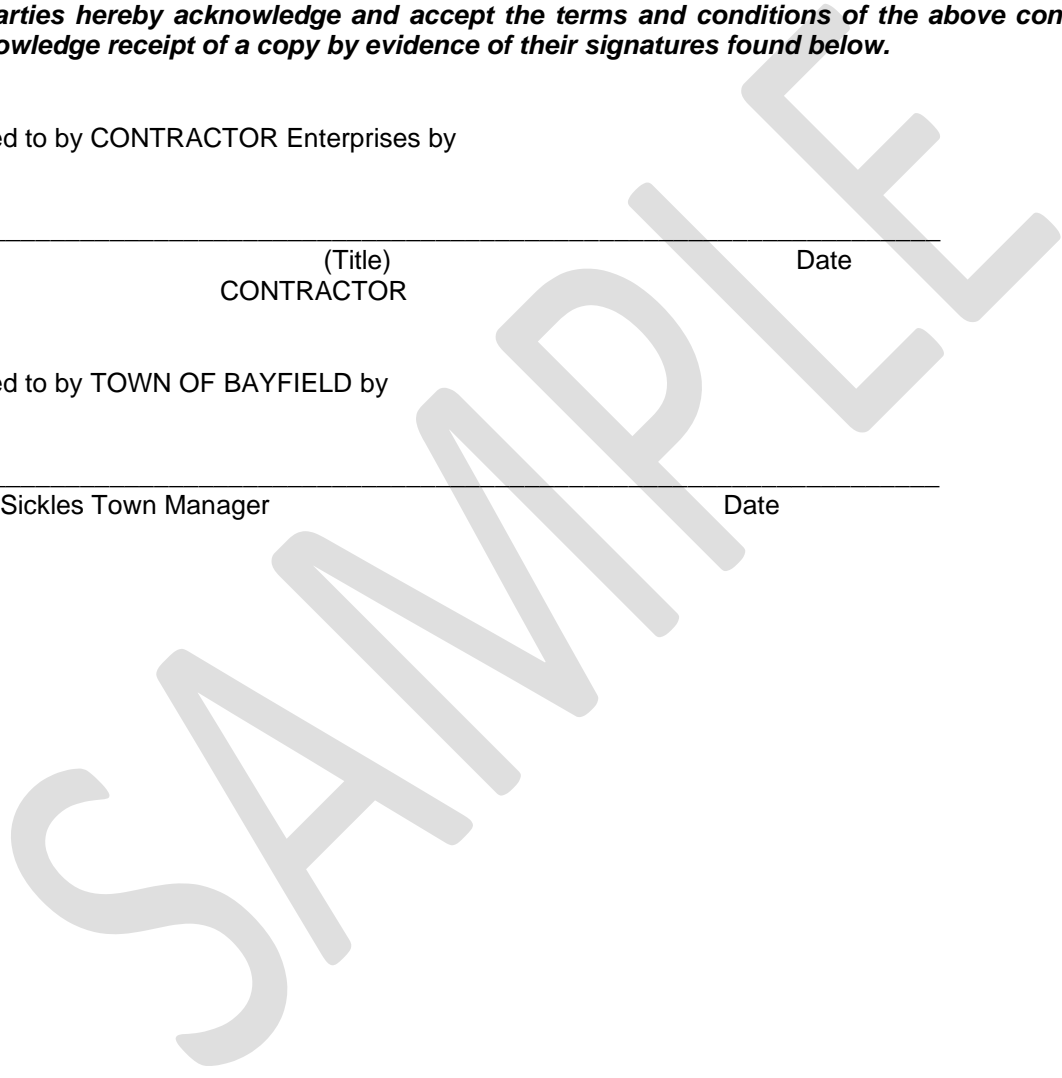
All parties hereby acknowledge and accept the terms and conditions of the above contract and acknowledge receipt of a copy by evidence of their signatures found below.

Agreed to by CONTRACTOR Enterprises by

(Title) Date
CONTRACTOR

Agreed to by TOWN OF BAYFIELD by

Katie Sickles Town Manager Date



Performance Bond Form

KNOW ALL MEN BY THESE PRESENTS that

Name of Contractor

Address of Contractor

a

Corporation, Partnership or Individual

Hereinafter called Principal, 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.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____, _____, 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 during the one-year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall full 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.

Performance Bond Form

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 terms of the contract or to the WORK to be performed hereunder 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.

IN WITNESS WHEREOF, this instrument is executed in _____
(number of copies)

counterparts, each one of which shall be deemed an original, this ____ day of _____, _____.

Principal (signature)

By: _____
Type/print

Address

ATTEST:

(Principal) Secretary

Address

(SEAL)

Witness as to Principal

Address

SURETY: _____

By: _____
Attorney-in-Fact

Address

ATTEST:

Witness as to Surety

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 WORK is located.

Payment Bond Form

KNOW ALL MEN BY THESE PRESENTS that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal,
(Corporation, Partnership, 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.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a
certain contract with the OWNER, dated the _____ day of _____, 2024, 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 or 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 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 there under 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.

IN WITNESS WHEREOF, this instrument is executed in _____
(number)

counterparts, each one of which shall be deemed an original, this _____ day of _____, _____.

Principal

ATTEST:

(Principal) Secretary By: _____ (s)

(Address)

Witness as to Principal:

(Address)

(Surety)

By: _____
(Attorney-In-Fact)

(Address)

ATTEST:

Witness as to Surety

(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 WORK is located.

Notice of Award

Dated

TO: _____
Bidder

OWNER'S PROJECT NO. _____

PROJECT: _____

CONTRACT FOR: _____

You are notified that your Bid dated _____, 2024, for the above Contract has been considered. You are the apparent successful Bidder and have been awarded a contract for CONSTRUCTION SERVICES AS PER PLANS DATED _____.

Contract Price of your Contract is _____ Dollars (_____).

Three copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

You must comply with the following conditions precedent within fifteen days of the date of this Notice of Award, that is by _____, 2024.

1. You must deliver to the OWNER three fully executed counterparts of the Agreement, including all the Contract Documents, Performance and Payment Bonds. Each of the Contract Documents must bear your signature on the cover.
2. You must deliver with the executed Agreement the Contract Security (Bonds)
3. You must deliver with the executed Agreement, proof of insurance coverage as specified in the General Conditions (section 2.32) and Supplementary General Conditions (paragraph 2.00). Failure to comply with these conditions within the time specified will entitle OWNER to consider your bid abandoned, to annul this Notice of Award and to declare your Bid Security forfeited. Within ten days after you comply with those conditions, OWNER will return to you one fully signed counterpart of the Agreement with the Contract Documents attached.

Town of Bayfield
Owner

By: _____
Authorized Signature

Town Administrator
Title

Notice to Proceed

To: _____

Date: _____

Project: _____

You are hereby notified to commence WORK in
accordance with the Agreement dated _____, 2024, on or
before _____, 2024.

By:

Owner

Title:

ACCEPTANCE OF NOTICE Receipt of the above NOTICE TO PROCEED is hereby
acknowledged

By _____

this the _____ day of _____, 2024.

By: _____

Title: _____

COLORADO
DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISIONS
BAYFIELD SHARED USE PATH (SUP) IMPROVEMENTS PROJECT

PROJECT SPECIAL PROVISIONS

<u>Name</u>	<u>Date</u>	<u>Page No.</u>
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STANDARD SPECIAL PROVISIONS

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Minimum Wages, Colorado, <i>U.S. Department of Labor General Decision Number CO20240012, Highway Construction for Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, La Plata, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, and San Miguel counties.</i>	(January 5, 2024)	8
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Notice To Bidders

The Proposal guaranty shall be a certified check, cashier's check or bid bond in the amount of 5 percent of the Contractor's total bid.

Pursuant to subsections 102.04 and 102.05, it is recommended that bidders on this project review the work site and plan details with an authorized Department representative. Prospective bidders shall contact one of the following listed authorized Department representatives at least 12 hours in advance of the time they wish to go over the project.

Bayfield Town Manager	Katie Sickles Office Phone: 970-884-9511 Ext 101 Email: KSickles@bayfieldgov.org
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Resident Engineer -	Bridget McDougall Office Phone: 970-692-7839 Cell Phone: 970-692-7839
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Project Engineer -	TBD
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The above referenced individuals are the only representatives of the Department with authority to provide any information, clarification, or interpretation regarding the plans, specifications, and any other contract documents or requirements.

An optional pre bid conference will be held on Wednesday March 13, 2024, beginning at 10:00 AM at Pine River Library at 395 Bayfield Center Drive, Bayfield CO 81122. Bids will be accepted only from pre-qualified bidders who attend the mandatory pre-bid conference.

Addenda, and Questions received from bidders along with Town of Bayfield responses, will be posted to the Town of Bayfield web site at <https://www.bayfieldgov.org>; <https://www.bidnetdirect.com/Colorado> and Western Colorado Contractors Association, as they become available.

All questions shall be directed to the Bayfield Town Manager in writing via email no later than 7:00 A.M. Monday March 18. Final questions and answers will be posted to the Town's bid solicitation website no later than 5:00 PM Wednesday March 20.

Questions and answers shall be used for reference only and shall not be considered part of the Contract documents.

Commencement and Completion of Work (Floating Start Date)

The Contractor shall select the date that contract time begins for this project, subject to the following conditions:

- (a) The earliest date shall be May 1, 2024.
- (b) The latest date shall be June 1, 2024.
- (c) The Contractor shall notify the Engineer, in writing, at least 30 days before the proposed beginning date. If the earlier date, as stated above, follows the award date by less than 30 days, the Contractor's written notice to the Engineer shall be at least 10 days before the proposed beginning date.
- (d) The date that contract time begins shall be subject to the Town of Bayfield's approval. A different date may be authorized in writing by the Town in the "Notice to Proceed."

The Contractor shall complete all work 90 working days per the "Notice to Proceed."

If materials stockpiling begins before the beginning date, contract time will not be charged for the stockpiling effort. Stockpiling of materials before the beginning date is subject to the Engineer's approval. If such approval is given, stockpiled material will be paid for per Sections 109 and 626.

Disadvantaged Business Enterprise (DBE) Contract Goal

This is a federally-assisted construction project. As described in the CDOT DBE Standard Special Provision, the Bidder shall make good faith efforts to meet the following contract goal:

Zero (0) Percent DBE participation.

On The Job Training Contract Goal

The Department has determined that On the Job Training shall be provided to trainees with the goal of developing full journey workers in the types of trade or classification involved. The contract goal for On the Job Trainees working in an approved training plan in this Contract has been established as follows:

Minimum number of total On the Job Training required **320 hours**

Work Sheet: 102ppod
03-23-2017 (Re-issued 07-03-17)
Revised 9-8-2022
Advanced ADA 4.20.23

Revision of Section 102 Project Plans and Other Data

Revise Section 102 of the Standard Specifications for this project as follows:

Subsection 102.05 shall include the following:

After the proposals have been opened, the low responsible bidder may obtain electronic plans and special provisions from the Town of Bayfield (web link or contact information to be provided at time of bid publication). Also, if they are available for the project, the low responsible bidder may also obtain cross sections, major structure plan sheets, and computer output data.

SECTION 240 PROTECTION OF MIGRATORY BIRDS BIOLOGICAL WORK PERFORMED BY THE CONTRACTOR'S BIOLOGIST

Add Section 240 to the Standard Specifications for this project as follows:

DESCRIPTION

240.01 This work consists of protecting migratory birds during construction.

MATERIALS AND CONSTRUCTION REQUIREMENTS

240.02 The Contractor shall schedule clearing and grubbing operations and work on structures to avoid taking (pursue, hunt, take, capture, or kill; attempt to take, capture, kill or possess) migratory birds protected by the Migratory Bird Treaty Act (MBTA). The Contractor shall retain a qualified wildlife biologist for this project. The wildlife biologist shall have a minimum of three years' experience conducting migratory bird surveys and implementing the requirements of the MBTA. The Contractor shall submit documentation of the biologist's education and experience to the Engineer for acceptance. A biologist with less experience may be used by the Contractor subject to the approval of the Engineer based on review of the biologist's qualifications.

The wildlife biologist shall record the location of each protected nest, bird species, the protection method used, and the date installed. A copy of these records shall be submitted to the Engineer.

(a) *Vegetation Removal.* When possible, vegetation shall be cleared before the time when active nests are present. Vegetation removal activities shall be timed to avoid the migratory bird breeding season which begins on April 1 and runs to August 31. All areas scheduled for clearing and grubbing between April 1 and August 31 shall first be surveyed within the work limits for active migratory bird nests. The Contractor's wildlife biologist shall also survey for active migratory bird nests within 50 feet outside work limits. Contractor personnel shall enter areas outside CDOT right of way only if a written, signed document granting permission to enter the property has been obtained from the property owner. The Contractor shall document all denials of permission to enter property. The Contractor shall avoid all active migratory bird nests. The Contractor shall avoid the area within 50 feet of the active nests or the area within the distance recommended by the biologist until all nests within that area have become inactive. Inactive nest removal and other necessary measures shall be incorporated into the work as follows:

1. **Tree and Shrub Removal or Trimming.** Tree and shrub removal or trimming shall occur before April 1 or after August 31 if possible. If tree and shrub removal or trimming will occur between April 1 and August 31, a survey for active nests shall be conducted by the wildlife biologist within the seven days immediately before the beginning of work in each area of tree and shrub removal or trimming. The survey shall be conducted for each phase of tree and shrub removal or trimming.

If an active nest containing eggs or young birds is found, the tree or shrub containing the active nest shall remain undisturbed and protected until the nest becomes inactive. The nest shall be protected by placing fence (plastic) a minimum distance of 50 feet from each nest to be undisturbed. This buffer dimension may be changed if

SECTION 240 PROTECTION OF MIGRATORY BIRDS BIOLOGICAL WORK PERFORMED BY THE CONTRACTOR'S BIOLOGIST

determined appropriate by the wildlife biologist and approved by the Engineer. Work shall not proceed within the fenced buffer area until the young have fledged or the nests have become inactive.

If the fence is knocked down or destroyed by the Contractor, the Engineer will suspend the work, wholly or in part, until the fence is satisfactorily repaired at the Contractor's expense. Time lost due to such suspension will not be considered a basis for adjustment of time charges but will be charged as contract time.

2. *Grasses and Other Vegetation Management.* Due to the potential for encountering ground nesting birds' habitat, if work occurs between April 1 and August 31, the area shall be surveyed by a wildlife biologist within the seven days immediately before ground disturbing activities.

The undisturbed ground cover to 50 feet beyond the planned disturbance, or to the right of way line, whichever is less, shall be maintained at a height of 6 inches or less beginning April 1 and continuing until August 31 or until the end of ground disturbance work, whichever comes first.

If birds establish a nest within the survey area, an appropriate buffer of 50 feet will be established around the nest by the Contractor's biologist. This buffer dimension may be changed if determined appropriate by the Contractor's biologist and approved by the Engineer. The Contractor shall install fence (plastic) at the perimeter of the buffer. Work shall not proceed within the buffer until the young have fledged or the nests have become inactive.

If the fence is knocked down or destroyed by the Contractor, the Engineer will suspend the work, wholly or in part, until the fence is satisfactorily repaired at the Contractor's expense. Time lost due to such suspension will not be considered a basis for adjustment of time charges but will be charged as contract time.

The wildlife biologist shall conduct raptor nest surveys within 0.5 mile of the construction site before the start of construction and before each construction phase. This survey can be done with binoculars. If construction activities are located within the Colorado Division of Wildlife (CDOW) recommended buffer zone for specific raptors, "NO WORK" zones shall be established around active sites during construction according to the CDOW standards or as recommended by the wildlife biologist in consultation with the CDOW. The "NO WORK" zone shall be marked with either fencing or signing. Work shall not proceed within a "NO WORK" zone until the wildlife biologist has determined that the young have fledged, or the nest is unoccupied.

SECTION 240 PROTECTION OF MIGRATORY BIRDS BIOLOGICAL WORK PERFORMED BY THE CONTRACTOR'S BIOLOGIST

If an active nest become established, i.e., there are eggs or young in the nest, all work that could result in abandonment or destruction of the nest shall be avoided until the young have fledged or the nest is unoccupied as determined by the wildlife biologist and approved by the Engineer. The Contractor shall prevent construction activity from displacing birds after they have laid their eggs and before the young have fledged.

If the project continues into the following spring, this cycle shall be repeated. When work on the structure is complete, the Contractor shall remove and properly dispose of netting used on the structure.

- (b) *Taking of a Migratory Bird.* The taking of a migratory bird shall be reported to the Engineer. The Contractor shall be responsible for all penalties levied by the U. S. Fish and Wildlife Service (USFWS) for the taking of a migratory bird.

METHOD OF MEASUREMENT

240.03 Wildlife Biologist will be measured by the actual authorized number of hours a wildlife biologist is on site performing the required tasks.

BASIS OF PAYMENT

240.04 The accepted quantities measured as provided above will be paid for at the contract unit price for each of the pay items listed below that appear in the bid schedule.

Payment will be made under:

Pay Item	Pay Unit
Wildlife Biologist	Hour

Payment for Wildlife Biologist will be full compensation for all work and materials required to complete the item, including wildlife biologist, wildlife survey, and documentation (record of nest location and protection method)

Clearing and grubbing will be measured and paid for per Section 201. Mowing will not be measured and paid for separately but shall be included in the work.

Removal and trimming of trees will be measured and paid for per Section 202.

Fence (Plastic) will be measured and paid for per Section 607.

REVISION OF SECTION 304 AGGREGATE BASE COURSE

Revise Section 304 of the Standard Specifications for this project as follows:

Subsection 304.02 shall include the following:

Materials for the base course shall be Aggregate Base Course (Class 6) as shown in subsection 703.03

The aggregate base course (Class 6) must meet the gradation requirements and have a resistance value of at least 78 when tested by the Hveem Stabilometer method.

REVISION OF SECTION 304 AGGREGATE BASE COURSE (SPECIAL)

Section 304 of the Standard Specifications is hereby revised for this project as follows: Subsection 304.02 shall include the following:

Acceptable shoulder gravel alternatives are:

- (1) 100 percent asphalt millings that are well graded and a product from an asphalt milling machine.
- (2) 100 percent Aggregate Base Course (Class 6).
- (3) Any combination of #1 and #2 above.

Milled asphalt material used shall be 100 percent passing the 37.5 mm (1-1/2 inch) sieve. The material shall not contain clay balls, organic matter, or other deleterious material.

Subsection 304.06 shall include the following:

Aggregate Base Course (Special) shall be compacted with rollers or wheel-rolled with equipment in a manner and to the extent deemed acceptable by the Engineer.

Subsection 304.07 shall include the following:

The accepted quantities of Aggregate Base Course (Special) will be paid by the delivered Ton compacted in place as approved by the Engineer. Separate measurement will not be made.

Subsection 304.08 shall include the following: Payment will be made under:

Pay Item	Pay Unit
Aggregate Base Course (Special)	Ton

Preparation of the shoulder subgrade will not be measured and paid for separately, but shall be included in the above pay item.

REVISION OF SECTIONS 401 AND 403 HOT MIX ASPHALT (PATCHING) (ASPHALT)

Sections 401 and 403 of the Standard Specifications are hereby revised for this project as follows: Delete subsection 401.02(a) Mix Design and replace with the following:

A pre-approved CDOT mix design (Form 43) issued within the last 24 months shall be submitted to the Engineer for the Hot Mix Asphalt (HMA). The submitted mix must be approved in writing by the Engineer prior to use on the project. The mix design asphalt cement binder grade shall be PG 58-28. The HMA mix design shall conform to the gradation requirements for Hot Mix Asphalt (grading SX).

The HMA may contain reclaimed asphalt pavement, per the aforementioned pre-approved CDOT mix design.

A minimum of one percent hydrated lime by mass (weight) of the combined aggregate shall be added to the aggregate for all hot mix asphalt.

Subsection 401.02(b) shall include the following:

HMA samples shall be taken at the location specified in Method B of CP-41. Sampling must be coordinated by the Contractor with the Project Engineer and Region Materials Staff two weeks prior to the beginning of paving operations. The HMA delivered and placed on the project will be sampled and tested per subsection 106.05(f) and evaluated per subsections 105.05 for acceptance except that maximum Pay Factor (PF) for any element shall be no greater than 1.000.

Subsection 401.16 shall include the following:

The Contractor shall prepare a quality control plan outlining the steps taken to minimize segregation of HMA. This plan shall be submitted to the Engineer and approved prior to beginning the paving operations. When the Engineer determines that segregation is unacceptable, the paving shall stop and the cause of segregation shall be corrected before paving operations will be allowed to resume.

Delete subsection 403.01 paragraph three. Delete subsection 403.03 paragraph two.

Delete subsection 403.05 and replace with the following:

403.05 The accepted quantities of hot mix asphalt will be paid for in accordance with subsection 401.22, at the contract unit price per SY for the bituminous mixture.

Payment will be made under:

Pay Item	Pay Unit
Hot Mix Asphalt (Patching) (Asphalt)	SY

Aggregate, additives, hydrated lime, and all other work necessary to complete each hot mix asphalt item will not be paid for separately, but shall be included in the unit price bid. Asphalt cement used in Hot Mix Asphalt (Patching) (Asphalt) will not be measured and paid for separately, but shall be included in the work.

Sawing, excavation, preparation, and tack coat of areas to be patched will not be measured and paid for separately, but shall be included in the work.

FORCE ACCOUNT ITEMS

DESCRIPTION

This special provision contains the Town of Bayfield estimate for force account items included in the Contract. The estimated amounts marked with an asterisk will be added to the total bid to determine the amount of the performance and payment bonds. Force Account work shall be performed as directed by the Engineer.

BASIS OF PAYMENT

Payment will be made in accordance with subsection 109.04. Payment will constitute full compensation for all work necessary to complete the item.

Force account work valued at \$5,000 or less, that must be performed by a licensed journeyman in order to comply with federal, state, or local codes, may be paid for after receipt of an itemized statement endorsed by the Contractor.

<u>Force Account Item</u>	<u>Quantity</u>	<u>Estimated</u>	<u>Amount</u>
F/A Minor Contract Revisions	F.A.		\$ 20,000
F/A On-the-Job Trainee	F.A.		\$ 3,200
F/A Erosion Control	F.A.		\$ 10,000

TRAFFIC CONTROL PLAN - GENERAL

The key elements of the Contractor's method of handling traffic (MHT) are outlined in subsection 630.10(a).

The components of the TCP for this project are included in the following:

- (1) Subsection 104.04 and Section 630 of the specifications.
- (2) Schedule of Construction Traffic Control Devices.
- (6) Other: Improvement Plans, Sheet 039 Traffic Control Example

Unless otherwise approved by the Engineer, the Contractor's equipment shall follow normal and legal traffic movements. The Contractor's ingress and egress of the work area shall be accomplished with as little disruption to traffic as possible. Traffic control devices shall be removed by picking up the devices in a reverse sequence to that used for installation. This may require moving backwards through the work zone. When located behind barrier or at other locations shown on approved traffic control plans, equipment may operate in a direction opposite to adjacent traffic.

CDOT may have entered into operating agreements with one or more law enforcement organizations for cooperative activities. Under such agreements, at the sole discretion of CDOT, law enforcement personnel may enter the work zone for enforcement purposes and may participate in the Contractor's traffic control activities. The responsibility under the Contract for all traffic control resides with the Contractor and any such participation by law enforcement personnel in Contractor traffic control activities will be referenced in either the Special Provisions or General Notes of the plans depending on whether the Contractor is to hire local law enforcement or if CDOT is contracting with Colorado State Patrol for uniformed traffic control. Nothing in this Contract is intended to create an entitlement, on the part of the Contractor, to the services or participation of the law enforcement organization.

Special Traffic Control Plan requirements for this project are as follows:

During the construction of this project, traffic shall use the present traveled roadway unless identified on the plans or approved by the Engineer.

The Contractor shall not have construction equipment or materials in the lanes open to traffic at any time, unless approved by the Engineer.

During the resurfacing or patching work, only one lane may be closed to traffic at any time unless approved by the Engineer. Traffic shall not be delayed for more than 5 minutes or as directed by the Engineer.

The Contractor shall not perform any work requiring lane closure on the roadway between the hours of 1700 and 0700 or as directed.

TRAFFIC CONTROL PLAN - GENERAL

At least one week before starting construction, the Contractor shall notify the Town of Bayfield of the date the Contractor intends to start construction.

All costs incidental to the foregoing requirements shall be included in the original contract prices for the project.

UTILITIES

No utility relocation or construction conflicts anticipated for this project. Area utilities include:

UTILITY	CONTACT/EMAIL	PHONE/FAX/CELL
Lumen 1035 E 2 nd Ave. Durango, CO 81301	Mike Gardner Mike.gardner@Lumen.com Guy O’nan Guy.onan1@Lumen.com	(970) 382-1365 (cell) (970) 903-3214 (cell)
La Plata Electric 45 Stewart St. Durango CO 81303	Toby Allred Tallred@lpea.coop	(970) 749-0663 (cell)
Blackhills Energy 2183 E. Main St. Montrose CO 81401	Johnny Holzmeister John.holzmeister@blackhillscorp.com	(970) 596-2417 (cell)
Town of Bayfield Public Works 905 Community Lane Bayfield CO 81122	Jeremy Schulz Jschulz@bayfieldgov.org	(970) 769-3499 (cell)
Schroeder Ditch	Paul Black	970-946-6935 (cell)

The work described in these plans and specifications may require coordination between the Contractor and the utility companies in accordance with subsection 105.11 of the Standard Specifications in conducting their respective operations as necessary.

The work listed below will be performed by the Contractor in accordance with the plans and specifications, and as directed by the Engineer. The Contractor shall keep the utility company(s) advised of any work being done to their facility, so that the utility company(s) can coordinate inspections for final acceptance of the work with the Engineer.

FOR:

All Utility Companies

The Contractor will contact each utility company a minimum of two (2) business days, unless otherwise noted, prior to working in the utility company’s area so that the utility company can provide an inspector and/or complete any necessary adjustments or relocations.

If a need for utility work by either the Contractor or a Utility Company arises, the following

shall apply:

The Contractor shall be responsible for coordinating the adjustment of utilities on this project. The Contractor shall keep each utility company advised of any work being performed in the vicinity of their facilities so that each utility company can coordinate any needed locates, adjustments or inspections. The Contractor shall provide the appropriate utility company ample notice, but not less than two (2) working days, prior to commencing activities in the vicinity of their facilities. If needed, or as directed by the Project Engineer, the Contractor shall provide traffic control for utility work to be coordinated with the project's construction, in accordance with an approved Method of Handling Traffic (MHT). Any additional work performed by the Contractor on behalf of the impacted utility company shall not be paid for by the State, but shall be paid by the utility company requiring the work, unless otherwise provided herein, or agreed to in writing by the Project Engineer.

Insofar as the work involved for this project is not likely to encounter any utility conflicts, the design **did not** include a survey of existing utilities. **It is the intent of this project to protect the existing buried utilities in place during construction operations.** The Contractor shall be responsible for verifying the location of all utilities in close proximity to any required excavation work for the purpose of identifying conflicts not otherwise addressed in the plans and specifications. The Contractor shall be responsible for potholing and verifying the location of all utilities in close proximity to any required excavation work in advance for the purpose of identifying conflicts not addressed in the plans and specifications as well as for the purpose of determining the extent of the conflict, and whether relocation or adjustment is required. This work will be paid for by contract bid item - Potholing. The Contractor shall share its potholing information with the impacted utilities in advance so that the utilities can coordinate the relocation work and accommodate the Contractor's work schedule. To the extent practicable, the Contractor shall be required to work around and protect existing utilities in place for the purpose of maintaining service. Close coordination with the utility owners will be required in making a determination of whether or not existing facilities can be protected in place. Damage to existing utilities resulting from construction operations wherein the utility has elected to leave its facility in place and the Contractor has expressed concern over protecting the same in place shall be the utility owner's responsibility. The Contractor shall be responsible for coordinating the relocation work with the impacted utility in the event it cannot adjust or modify the layout to avoid the conflict. Any required relocation work performed by the impacted utility will be at no cost to the project unless otherwise directed by the Project Engineer.

The work listed below will be performed by the utility owners or their agents:

All Utility Companies

Where applicable, each utility company shall relocate and adjust their facilities and appurtenances to avoid construction conflicts at no cost to the project.

No utility relocation or construction conflicts anticipated for this project.

GENERAL:

The Contractor shall comply with Article 1.5 of Title 9, CRS ("Excavation Requirements") when excavation or grading is planned in the area of underground utility facilities. The Contractor shall notify all affected utilities at least two (2) business days prior to commencing such operations. The Contractor shall contact the Utility Notification Center of Colorado (UNCC) to have locations of UNCC registered lines marked by member companies. Calls originating outside the Denver area must use 1-800-922-1987. All other underground facilities shall be located by contacting the respective company or owner. Utility service laterals shall also be located prior to beginning any excavating or grading.

In accordance with Article 9-1.5-103(c), Colorado Revised Statutes, as amended, the **Engineer of Record** certifies that it has not performed QL B subsurface utility engineering design work as the type of work associated with this project is not likely to encounter any utility conflicts and there are no known utility conflicts anticipated for the completion of the project work. No utility survey was performed and no utility plan sheets were developed for this project. Information pertaining to existing utility facilities and facility ownership within the limits of the project work was obtained from existing written records and/or verbal recollections - Quality Level D.

The contractor shall cooperate with the utility owners in their relocation operations as provided in subsection 105.11 of the Standard Specifications for Road and Bridge Construction.

No guarantee is made that utility conflicts will be resolved prior to construction activities and any delays resulting from utility relocation work shall be dealt with in accordance with subsection 108.08 of the Standard Specifications for Road and Bridge Construction as amended.

All costs incidental to the foregoing requirements will not be paid for separately but shall be included in the work.

January 8, 2024

1
Revision Of Sections
101 - Definitions
106 - Control of Materials

Revise Section 101 of the Standard Specifications as follows:

Delete and replace the following definitions in subsection 101.02:

Subcontractor. An individual, firm, corporation, or other legal entity at any tier to whom the Contractor sublets part of the Contract. A subcontractor shall include an individual, firm, corporation, or other legal entity who meets one or both of the following criteria:

- (a) Establishes a fabricating process or facility exclusively for the use of the Project, whether on or off the site of work per 29 CFR 5.2 Site of Work (1)(i)(ii)(iii).
- (b) Performs work that is incorporated within the Project limits.

Supplier: An individual, firm, or corporation who meets all of the following criteria:

- (a) Sells manufactured materials as a broker, distributor, dealer, manufacturer, or wholesaler who may or may not deliver the materials to the site of work.
- (b) The manufacturing of the materials, articles, supplies, or equipment used for the contract that is being supplied shall come from a facility or facilities that:
 - (1) Is not located on, nor does itself constitute, the project or contract's primary construction site or secondary construction site as defined in 29 CFR 5.2; and
 - (2) Either was established before opening of bids on the contract, or is not dedicated exclusively, or nearly so, to the performance of the contract.
- (c) The supplier's only obligations for activity on the contract is the delivery of materials, articles, supplies, or equipment, which may include pickup of the same in addition to, but not exclusive of, delivery, and which may also include activities incidental to such delivery and pickup, such as loading, unloading, or waiting for materials to be loaded or unloaded; and
- (d) If an entity, in addition to being engaged in the activities specified in paragraph (c) of this definition, also engages in other construction, prosecution, completion, or repair on the site of the work, then this entity is not a supplier but a contractor.

2
Revision Of Sections
101 - Definitions
106 - Control of Materials

Revise Section 106 of the Standard Specifications as follows:

Delete and replace subsection 106.01 with the following:

106.01 Source of Supply and Quality Requirements. All materials used shall meet all quality requirements of the Contract. The Contractor shall comply with the requirements of the special notice to contractors contained in the Department's Field Materials Manual, including notifying the Engineer of the proposed sources of materials at least two weeks before delivery.

When alternative materials are permitted for an item in the Contract, the Contractor shall state at the Pre-construction Conference the material that will be furnished for that item.

Reference in the Contract to a particular product or to the product of a specific manufacturer, followed by the phrase "or approved equal", is intended only to establish a standard of quality, durability, and design, and shall not be construed as limiting competition. Products of other manufacturers will be acceptable provided such products are equal to that specified.

All rental equipment companies and all entities who meet the Supplier definition, as outlined in 101.02, in which the written agreement exceeds \$10,000, shall have the following requirements for the Contract:

- (a) Rental equipment companies and Suppliers shall create an account in the B2GNow software system.
- (b) The Contractor shall submit a completed Form 1425 in the B2GNow software system at such time that the \$10,000 amount is known to be exceeded and/or before the following occurs on the Contract:
 - the Supplier's upper tier begins work, or
 - rental equipment is being used, or
 - incorporating materials into the Contract

Failure to comply with the requirements of this subsection shall be grounds for withholding of progress payments.

January 8, 2024

1

Revision of Sections 101 and 106
Buy America and Build America, Buy America Requirements for Projects
Containing \$500,000 or More in Federal-Aid Highway Funding

Sections 101 and 106 of the Standard Specifications shall be revised as follows:

Add the following to Subsection 101.02:

Build America, Buy America (BABA) Requirements: Division G, title IX, subtitle A, parts I-II, sections 70901 through 70927 of the Infrastructure Investment and Jobs Act (Pub. L. 117-58) and 2 CFR Parts 184 and 200. The “domestic content procurement preference” set forth in section 70914 of the Build America, Buy America Act, requires that all construction materials and manufactured products incorporated into the project are produced in the United States.

Buy America (BA) Requirements: FHWA Buy America statutory provisions are in 23 U.S.C.313 and the regulatory provisions are in 23 CFR 635.410, which requires that all of the steel and iron incorporated into the project is produced in the United States. For other policy and guidance links, see the FHWA Construction Program Guide.

Buy America Preferences for Infrastructure Projects: Requirements for federal-aid funded highway projects as outlined and encompassed in 2 CFR Part 184.

Component: An article, material, or supply, whether manufactured or unmanufactured, incorporated directly into: (i) a manufactured product; or, where applicable, (ii) an iron or steel product.

Construction Material: Includes an article, material, or supply that consist of only one of the following items listed means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2). To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

(1) The listed items are:

- i. Non-ferrous metals;
- ii. Plastic and polymer-based products (including polyvinylchloride [PVC], composite building materials, and polymers used in fiber optic cables);
- iii. Glass (including optic glass);
- iv. Fiber optic cable (including drop cable);
- v. Optical fiber;
- vi. Lumber;
- vii. Engineered wood; and
- viii. Drywall.

January 8, 2024

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Revision of Sections 101 and 106
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- (2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

Cost of Components for Manufactured Products: In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

- (i) or components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (ii) or components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (i) of this section, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

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

Iron or Steel Product: Articles, materials, or supplies that consists wholly or predominantly of iron or steel or a combination of both. Typical iron and steel products subject to Buy America preferences include, but is not limited to, structural and reinforcing steel incorporated into pavements, bridges, and buildings (such as maintenance facilities); steel rail; and other equipment.

Manufactured Product:

- (1) Articles, materials, or supplies that have been:
 - i. Processed into a specific form and shape; or
 - ii. Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

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- (2) If an item is classified as an iron or steel product, a construction material, or a section 70917(c) material under the definitions set forth in this section, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under paragraph (1) of this definition may include components that are construction materials, iron or steel products, or section 70917(c) materials.

Manufacturer: The entity that performs the final manufacturing process that produces a manufactured product.

Predominantly of iron or steel or a combination of both: Means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

Produced in the United States:

- (1) Steel or Iron Products: All manufacturing processes, from the initial melting/smelting stage through the application of coatings, occurred in the United States.
- (2) Manufactured Products:
- i. The product was manufactured in the United States; and
 - ii. The cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product.
- (3) Construction materials: All manufacturing processes for the construction material occurred in the United States per 106.11(f) of this specification.

Section 70917(c) Materials: Cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. See section 70917(c) of the Build America, Buy America Act.

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Delete Section 106.11 of the Standard Specifications and replace with the following:

106.11 Buy America (BA) and Build America, Buy America (BABA) Requirements

- (a) *Contractual Documents.* This specification shall be used in conjunction with the applicable version of the Special Notice to Contractors Section of the CDOT Field Materials Manual (FMM), and the requirements therein, in effect at the time of bidding. The Special Notice to Contractors Section of the FMM, and the requirements therein, shall be considered a contractual document when this specification is included.
- (b) *Categorization of articles, materials, and supplies.*
- (1) An article, material, or supply should only be classified into one of the following categories:
 - i. Iron or steel products;
 - ii. Manufactured products;
 - iii. Construction materials; or
 - iv. Section 70917(c) materials.
 - (2) An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed in paragraph (b)(1) of this section. The classification of an article, material, or supply as falling into one of the categories listed in paragraph (b)(1) must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.
 - (3) An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified.
- (c) *Steel or Iron Products.* All manufacturing processes, including the application of a coating, for all steel or iron products permanently incorporated in the work shall have occurred in the United States of America. All manufacturing processes include the processes that change the raw ore or scrap metal into a finished steel or iron product.

The Contractor shall obtain and maintain on file Buy America certifications that every process from either the original smelting or melting operation, including

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the application of a coating, performed on steel or iron products either has or has not been carried out in the United States of America. These Buy America certifications apply to every steel and iron product that requires pre-inspection, pretesting, certified test results, or a certificate of compliance. Shipping invoices, bar lists, and mill test reports shall accompany the Buy America certifications. These Buy America certifications shall be obtained from each supplier, distributor, fabricator, and manufacturer that has handled each steel or iron product. These Buy America certifications shall create a chain of custody trail for every supplier, distributor, fabricator, and manufacturer that handled the steel or iron product and shall include certified mill test reports with heat numbers from either the original smelting or melting operation. Prior to the permanent incorporation or payment for the steel or iron products, the Contractor shall also provide a copy of these certifications to the Project Engineer. The Contractor shall allow the State, FHWA, and their representatives access to the Buy America certifications including supporting documentation upon request. The lack of these certifications will be justification for rejection of the steel or iron product.

Before the permanent incorporation into the project and before payment for steel or iron products, the Contractor shall also provide the following for every iron or steel product that is delivered:

- (i) *Contractor Compliance Certification.* The compliance certification document shall certify in writing that the Contractor has received and reviewed the Buy America certifications and supplied them to the Project Engineer; the certification(s) and supporting documentation is on file and complies with the Buy America requirements; and when requested, the Contractor has submitted the required documentation to FHWA or other CDOT representatives.
- (ii) *Monthly Summary of Buy America Certifications.* The Contractor shall also maintain a document that summarizes the date and quantity of all steel and iron material delivered to the project. This summary document shall include the pay item, quantity of material delivered to the project, delivered cost of the pay item, and the quantity of material installed by the monthly progress payment cutoff date. The summary document shall reconcile the pay item for the material delivered to the project to the Buy America certifications. The summary document shall also include the delivered cost of all foreign steel or iron delivered and permanently incorporated into the project, if applicable. The Contractor shall also submit a summary document for each month that no steel or iron products

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are incorporated into or delivered to the project. The Contractor shall submit the summary document to the Engineer by the monthly progress payment cutoff date.

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

This requirement will not prevent a minimal use of foreign steel or iron, provided the total cost, including delivery to the project, of all such steel and iron products does not exceed 1/10 of one percent (i.e., 0.1%) of the total contract cost or \$2,500, whichever is greater. When there is foreign steel or iron permanently incorporated into the project, the Contractor shall provide documentation of the project delivered cost of that foreign steel or iron to the Project Engineer.

- (d) *Manufactured Products.* The FHWA's 1983 Buy America Final Rule, (see <https://www.fhwa.dot.gov/construction/contracts/831125.cfm>) waive the application of Build America, Buy America requirements for manufactured products that do not include steel and iron components. However, Buy America requirements apply to steel or iron components of manufactured products (i.e. steel wire mesh or steel reinforcing components of precast reinforced concrete products).

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- (e) *Glass Beads for Pavement Marking.* All post-consumer and industrial glass beads for pavement marking shall have been manufactured from North American glass waste streams in the United States of America. The bead manufacturer shall submit a COC in accordance with subsection 106.12 confirming that North American glass waste streams were used in the manufacture of the glass beads.
- (f) *Construction Materials.* Build America, Buy America (BABA) requirements apply to the following construction materials incorporated into infrastructure projects. Each listed construction material is followed by material-specific manufacturing process criteria that is necessary to be considered “produced in the United States.”
1. Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States;
 2. Plastic and polymer-based products (including polyvinylchloride [PVC], composite building materials, and polymers used in fiber optic cables). All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States;
 3. Glass (including optic glass). All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States. See section 106.11(d) of the CDOT Specifications for additional requirements related to glass beads for pavement marking;
 4. Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others;
 5. Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States;
 6. Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States;
 7. Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States; and
 8. Drywall. All manufacturing processes, from initial blending of mined or

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synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

Except as specifically provided, only a single standard under paragraph (f) of this section should be applied to a single construction material.

Before the permanent incorporation into the project and before payment for all eligible construction materials, the Contractor shall obtain a certification from each supplier, distributor, fabricator, and manufacturer that has handled the construction material and submit it to the Project Engineer. This certification shall identify that every material-specific manufacturing process as listed above either has or has not been carried out in the United States of America and shall attest specifically to Build America, Buy America compliance.

In the case that eligible construction materials are permanently incorporated into the project, the Contractor shall maintain and submit on a monthly basis, CDOT Form #1600, Contractor's Certificate of Compliance summarizing the Item Description, CDOT Bid Item Number, Manufacturer Name, Date, and Quantity Received, Date and Quantity Installed, Bid Item Unit, and delivered cost of all eligible construction materials. The completed Form #1600(s) shall be kept in the project files and shall be submitted as part of the material final documentation package.

In the case that no eligible construction materials are permanently incorporated into the project, the Contractor shall maintain and submit on a monthly basis, CDOT Form #1610, Non-Applicable Projects: Build America, Buy America (BABA), certifying that no construction materials subject to Build America, Buy America requirements as defined in this section will be permanently incorporated into the project. The completed Form #1610(s) shall be kept in the project files and shall be submitted as part of the material final documentation package.

Form #1600 or Form #1610 does not relieve the Contractor of providing the necessary Build America, Buy America supplier certifications prior to permanent incorporation into the project or before payment for the material. The Contractor shall allow the State, FHWA, and their representatives access to the Buy America and Build America, Buy America certifications and supporting documentation upon request. The lack of these certifications will be justification for rejection of the construction material.

- (i) This requirement will not prevent a minimal use of foreign construction

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materials, provided the total cost of non-compliant materials, including delivery to the project, of all such construction materials does not exceed \$1,000,000 or five percent of the total applicable project costs, whichever is lesser. Total applicable project costs are defined as the cost of materials (including the cost of any manufactured products) used in the project that are subject to Buy America and/or Build America, Buy America requirements. When there are foreign construction materials permanently incorporated into the project, the Contractor shall provide documentation of the project delivered cost of the non-compliant materials to the Project Engineer before permanent incorporation or payment. Form #1600 shall be used to track the total applicable project cost of all materials subject to Buy America and/or Build America, Buy America requirements. The foreign construction material minimal use threshold percentage of five percent shall not be exceeded in any given month.

- (g) Section 70917(c) materials including cement and cementitious materials; aggregates such as stone, sand, or gravel; and aggregate binding agents or additives are not subject to Build America, Buy America requirements.
- (h) *Project Level Waivers*. The Federal Highway Administration is responsible for processing and approving all waivers, including waivers requested by recipients and on behalf of subrecipients. More information on Buy America waivers can be found in the Field Materials Manual Special Notice to Contractors.

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

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

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

1
Revision of Section 105
Construction Drawings

Section 105 of the Standard Specifications is hereby revised for this project as follows:

Delete subsection 105.02(f).

October 1, 2023

1
Revision of Section 105
Control Of Work

Revise Section 105 of the Standard Specifications as follows:

Revise Paragraphs 4, 5 and 6 of Subsection 105.20 as follows:

If damage occurs to an existing structure through improper maintenance per 105.19, the Contractor shall submit a repair procedure to the Engineer to repair the defect(s).

The repair categories and requirements are defined as follows:

- a) *“In-kind” repairs*. In-kind repairs are repairs where the As-Built or Advertised plans are utilized to replace or repair damaged components with identical dimensions and materials used plans and where no plan modifications are made. In-kind repair procedures shall be reviewed and accepted by the Engineer before any repair. The use of approved repair grouts or doweled reinforcing with epoxy adhesive is permitted in in-kind repairs. Doweled reinforcing shall meet or exceed the strength requirements of the original design.
- b) *“Modified repairs”*. Modified repairs are those which deviate in dimensions and/or materials from the As-Built or Advertised plans or where plans are not available. Modified repair procedure submittals shall include calculations, independent design calculations, shop drawings, and/or working drawings per 105.02, and any other applicable section of the specifications for the needed repair. The Contractor’s Engineer shall electronically seal Modified repair submittals.

Damage to new structures or modified structures, shall be repaired per the contract documents.

The Engineer of Record shall be notified and review all corresponding submittals before any repairs.

1
Revision of Section 105
Dispute Review Board And
Claims For Unresolved Disputes

October 1, 2023

Revise Section 105 of the Standard Specifications as follows:

Delete and replace Section 105.23 (i) with the following:

- (i) *Dispute Review Board Recommendation.* The DRB shall issue a Recommendation per the following procedures:
1. The DRB shall not make a recommendation on the dispute at the meeting. Before the closure of the hearing, the DRB members and the Contractor and CDOT together will discuss the time needed for analysis and review of the dispute and the issuance of the DRB's recommendation. The maximum time shall be 30 days unless otherwise agreed to by both parties.
 2. After the meeting has been closed, the DRB shall prepare a written Recommendation signed by each member of the DRB. In the case of a three member DRB where one member dissents, that member shall prepare a written dissent and sign it. The DRB's recommendation shall include the following:
 - (a) A summary of the issues and factual evidence presented by the Contractor and CDOT concerning the dispute.
 - (b) Recommendations concerning the validity of the dispute.
 - (c) Recommendations concerning the value of the dispute as to cost impacts if the dispute is determined to be valid.
 - (d) The contractual and factual bases supporting the recommendation(s) made including an explanation as to why each and every position was accepted or rejected.
 - (e) Detailed and supportable calculations which support any recommendation(s).
 3. The chairperson shall transmit the signed Recommendation and any supporting documents to both parties.

105.24 Claims for Unresolved Disputes delete and replace with the following:

105.24 Claims for Unresolved Disputes. The Contractor may file a claim only if the disputes resolution process described in subsections 105.22 and 105.23 has been exhausted without resolution of the dispute. Other methods of nonbinding dispute resolution, exclusive of litigation, can be used if agreed to by both parties.

This subsection applies to any unresolved dispute or set of disputes between CDOT and the Contractor with an aggregate value of more than \$15,000. Unresolved disputes with an aggregate value of more than \$15,000 from subcontractors, materials suppliers or any other entity not a party to the Contract shall be submitted through the Contractor per this subsection as a pass-through claim. Review of a pass-through claim does not create privity of Contract between CDOT and any other entity.

Subsections 105.22, 105.23 and 105.24 provide both contractual alternative dispute resolution processes and constitute remedy- granting provisions pursuant to Colorado Revised Statutes (CRS)

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which must be exhausted in their entirety.

Litigation proceedings must commence within 180-calendar days of the Chief Engineer's decision, absent written agreement otherwise by both parties.

The venue for all unresolved disputes with an aggregate value \$15,000 or less shall be the County Court for the City and County of Denver.

Non-binding Forms of alternative dispute resolution such as Mediation are available upon mutual agreement of the parties for all claims submitted per this subsection.

The cost of the non-binding ADR process shall be shared equally by both parties with each party bearing its own preparation costs. The type of nonbinding ADR process shall be agreed upon by the parties and shall be conducted within the State of Colorado at a mutually acceptable location. Participation in a nonbinding ADR process does not in any way waive the requirement that litigation proceedings must commence within 180-calendar days of the Chief Engineer's decision, absent written agreement otherwise by both parties.

(a) Notice of Intent to File a Claim. Within 30 days after rejection of the Dispute Resolution Board's Recommendation issued per subsection 105.23, the Contractor shall provide the Region Transportation Director (RTD) with a written notice of intent to file a claim. The Contractor shall also send a copy of this notice to the Resident Engineer. For the purpose of this subsection, Region Transportation Director shall mean the Region Transportation Director or the Region Transportation Director's designated representative. CDOT will acknowledge in writing receipt of Notice of Intent within seven days.

(b) Claim Package Submission. Within 60 days after submitting the notice of intent to file a claim, the Contractor shall submit to the RTD five copies of a complete claim package representing the final position the Contractor wishes to have considered. All claims shall be in writing and in sufficient detail to enable the RTD to ascertain the basis and amount of claim. The claim package shall include all documents supporting the claim, regardless of whether such documents were provided previously to CDOT.

If requested by the Contractor, the 60-day period may be extended by the RTD in writing before final acceptance. At a minimum, the following information shall accompany each claim:

1. A claim certification containing the following language, as appropriate:

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A. For a direct claim by the Contractor:

CONTRACTOR'S CLAIM CERTIFICATION

Under penalty of law for perjury or falsification, the undersigned, (name) _____, (title) _____, of (company) _____, hereby certifies that the claim of \$___ for extra compensation and _____ Days additional time, made for work on this Contract is true to the best of my knowledge and belief and supported under the Contract between the parties.

This claim package contains all available documents that support the claims made and I understand that no additional information, other than for clarification and data supporting previously submitted documentation, may be presented by me.

Dated _____/s/ __

Subscribed and sworn before me this day of

NOTARY PUBLIC

My Commission Expires: _____

B. For a pass-through claim:

PASS-THROUGH CLAIM CERTIFICATION

Under penalty of law for perjury or falsification, the undersigned, (name) _____, (title) _____, of (company) _____, hereby certifies that the claim of \$___ for extra compensation and _____ Days additional time, made for work on this Project is true to the best of my knowledge and belief and supported under the Contract between the parties.

This claim package contains all available documents that support the claims made and I understand that no additional information, other than for clarification and data supporting previously submitted documentation, may be presented by me.

—
Dated _____/s/ __

Subscribed and sworn before me this day of _

NOTARY PUBLIC

My Commission Expires: _____

Dated _____/s

The Contractor certifies that the claim being passed through to CDOT is passed through in good faith and is accurate and complete to the best of my knowledge and belief.

—
Dated _____/s/ __

Subscribed and sworn before me this day
of_

NOTARY PUBLIC

My Commission Expires: _____

2. A detailed factual statement of the claim for additional compensation, time, or both,

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providing all necessary dates, locations, and items of work affected by the claim. The Contractor's detailed factual statement shall expressly describe the basis of the claim and factual evidence supporting the claim. This requirement is not satisfied by simply incorporating into the claim package other documents that describe the basis of the claim and supporting factual evidence.

3. The date on which facts were discovered which gave rise to the claim.
4. The name, title, and activity of all known CDOT, Consultant, and other individuals who may be knowledgeable about facts giving rise to such claim.
5. The name, title, and activity of all known Contractor, subcontractor, supplier and other individuals who may be knowledgeable about facts giving rise to such claim.
6. The specific provisions of the Contract, which support the claim and a statement of the reasons why such provisions support the claim.
7. If the claim relates to a decision of the Project Engineer, which the Contract leaves to the Project Engineer's discretion, the Contractor shall set out in detail all facts supporting its position relating to the decision of the Project Engineer.
8. The identification of any documents and the substance of all oral communications that support the claim.
9. Copies of all known documents that support the claim.
10. The Dispute Review Board Recommendation.
11. If an extension of contract time is sought, the documents required by subsection 108.08(d).
12. If additional compensation is sought, the exact amount sought and a breakdown of that amount into the following categories:
 - A. These categories represent the only costs that, if applicable, are recoverable by the Contractor. All other costs or categories of costs are not recoverable:
 - (1) Actual wages and benefits, including FICA, paid for additional labor.
 - (2) Costs for additional bond, insurance, and tax.
 - (3) Increased costs for materials.
 - (4) Equipment costs calculated per subsection 109.04(c) for Contractor owned equipment and based on certified invoice costs for rented equipment.
 - (5) Costs of extended job site overhead (only applies if the dispute also includes a time extension).
 - (6) Salaried employees assigned to the project (only applies if the dispute also includes a time extension or if the dispute required salaried employee(s) to be added to the Project).
 - (7) Claims from subcontractors and suppliers at any level (the same level of detail as specified is required for all such claims).

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- (8) An additional 16 percent will be added to the total of items (1) through (7) as compensation for items for which no specific allowance is provided, including profit and home office overhead.
- (9) Interest shall be paid per CRS 5-12-102 beginning from the date of the Notice of Intent to File Claim.

B. In adjustment for the costs as allowed above, the Department will have no liability for the following items of damages or expense:

- (1) Profit in excess of that provided in 12.A.(8) above.
- (2) Loss of Profit.
- (3) Additional cost of labor inefficiencies in excess of that provided in A. above.
- (4) Home office overhead in excess of that provided in A. above.
- (5) Consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities, and insolvency.
- (6) Indirect costs or expenses of any nature in excess of that provided in A. above.
- (7) Attorney's fees, claim preparation fees, and expert fees.

(c) *Region Transportation Director Decision.* When the Contractor properly files a claim, the RTD will review the claim and render a written decision to the Contractor to either affirm or deny the claim, in whole or in part, per the following procedure.

The RTD may consolidate all related claims on a project and issue one decision, provided that consolidation does not extend the time period within which the RTD is to render a decision. Consolidation of unrelated claims will not be made.

The RTD will render a written decision to the Contractor within 90 days after the receipt of the claim package or receipt of the audit whichever is later. In rendering the decision, the RTD: (1) will review the information in the Contractor's claim; (2) will conduct a hearing if requested by either party; and (3) may consider any other information available in rendering a decision.

The RTD will assemble and maintain a claim record comprised of all information physically submitted by the Contractor in support of the claim and all other discoverable information considered by the RTD in reaching a decision. Once the RTD assembles the claim record, the submission and consideration of additional information, other than for clarification and data supporting previously submitted documentation, at any subsequent level of review by anyone, will not be permitted.

The RTD will provide a copy of the claim record and the written decision to the Contractor describing the information considered by the RTD in reaching a decision and the basis for that decision. If the RTD fails to render a written decision within the 60-day period, or within any extended time period as agreed to by both parties, the Contractor shall either: (1) accept this as a denial of the claim, or (2) appeal the claim to the Chief Engineer, as described in this subsection.

If the Contractor accepts the RTD decision, the provisions of the decision shall be

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implemented per subsections 108.08, 109.04, 109.05, or 109.10 and the claim is resolved.

If the Contractor disagrees with the RTD decision, the Contractor shall either: (1) accept the RTD decision as final, or (2) file a written appeal to the Chief Engineer within 30 days from the receipt of the RTD decision. The Contractor hereby agrees that if a written appeal is not properly filed, the RTD decision is final.

- (d) *Chief Engineer Decision.* When a claim is appealed, the RTD will provide the claim record to the Chief Engineer. Within 15 days of the appeal either party may submit a written request for a hearing with the Chief Engineer or duly authorized Headquarters delegates. The Chief Engineer or a duly authorized Headquarters delegate will review the claim and render a decision to affirm, overrule, or modify the RTD decision per the following.

The Chief Engineer will render a written decision within 60 days after receiving the written appeal. The Chief Engineer will not consider any information that was not previously made a part of the claim record, other than clarification and data supporting previously submitted documentation.

The Contractor shall have 30 days to accept or reject the Chief Engineer's decision. The Contractor shall notify the Chief Engineer of its acceptance or rejection in writing.

If the Contractor accepts the Chief Engineer's decision, the provisions of the decision will be implemented per subsections 108.08, 109.04, 109.05, or 109.10 and the claim is resolved.

If the Contractor disagrees with the Chief Engineer's decision, the Contractor shall either (1) pursue an alternative dispute resolution process per this specification or (2) initiate litigation per subsection 105.24(f).

If the Chief Engineer does not issue a decision as required, the Contractor may immediately initiate litigation per subsection 105.24(f).

For the convenience of the parties to the Contract it is mutually agreed by the parties that any merit binding or De Novo litigation shall be brought within 180-calendar days from the date of the Chief Engineer's decision. The parties understand and agree that the Contractor's failure to bring suit within the time period provided, shall be a complete bar to any such claims or causes of action.

- (e) *De Novo Litigation* If the Contractor disagrees with the Chief Engineer's decision, the Contractor may initiate de novo litigation to finally resolve the claim that the Contractor submitted to CDOT. Such litigation shall be strictly limited to those claims that were previously submitted and decided in the contractual dispute and claims processes outlined. This does not preclude the joining in one litigation of multiple claims from the same project provided that each claim has gone through the dispute and claim process specified in subsections 105.22 through 105.24. The parties may agree, in writing, at any time, to pursue some other form of alternative dispute resolution.

Any offer made by the Contractor or the Department at any stage of the claims process, as set forth in this subsection, shall be deemed an offer of settlement pursuant to Colorado Rule of Evidence 408 and therefore inadmissible in any litigation.

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If the Contractor selected litigation, then de novo litigation shall proceed per the Colorado Rules of Civil Procedure and the proper venue is the Colorado State District Court in and for the City and County of Denver.

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**REVISION OF SECTIONS OF 105
 DISPUTE REVIEW BOARD AND
 CLAIMS FOR UNRESOLVED DISPUTES**

Figure 105-1 DISPUTES AND CLAIMS FLOW CHART
 (Note: If an audit is to be performed, durations in this flow chart are extended accordingly)

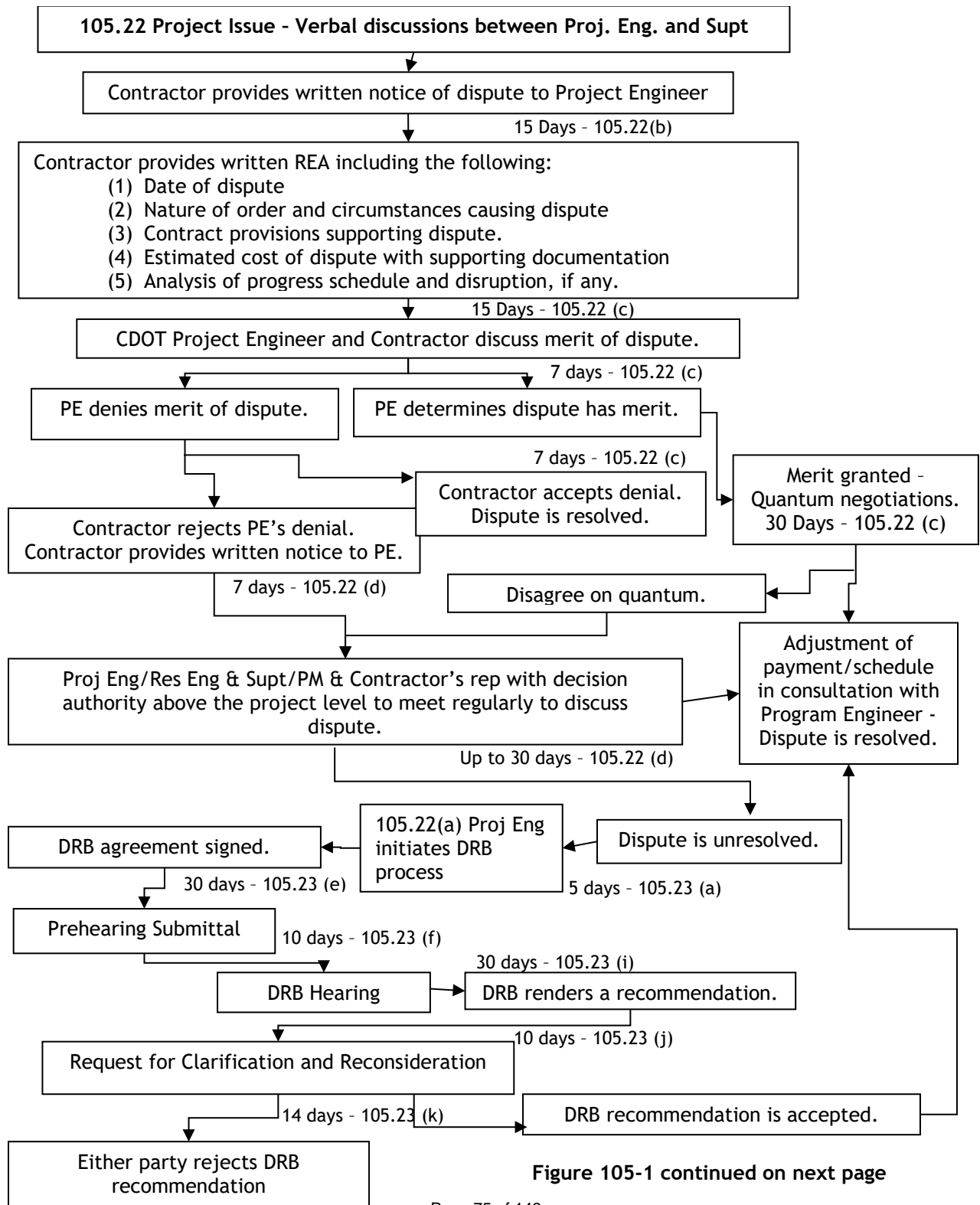
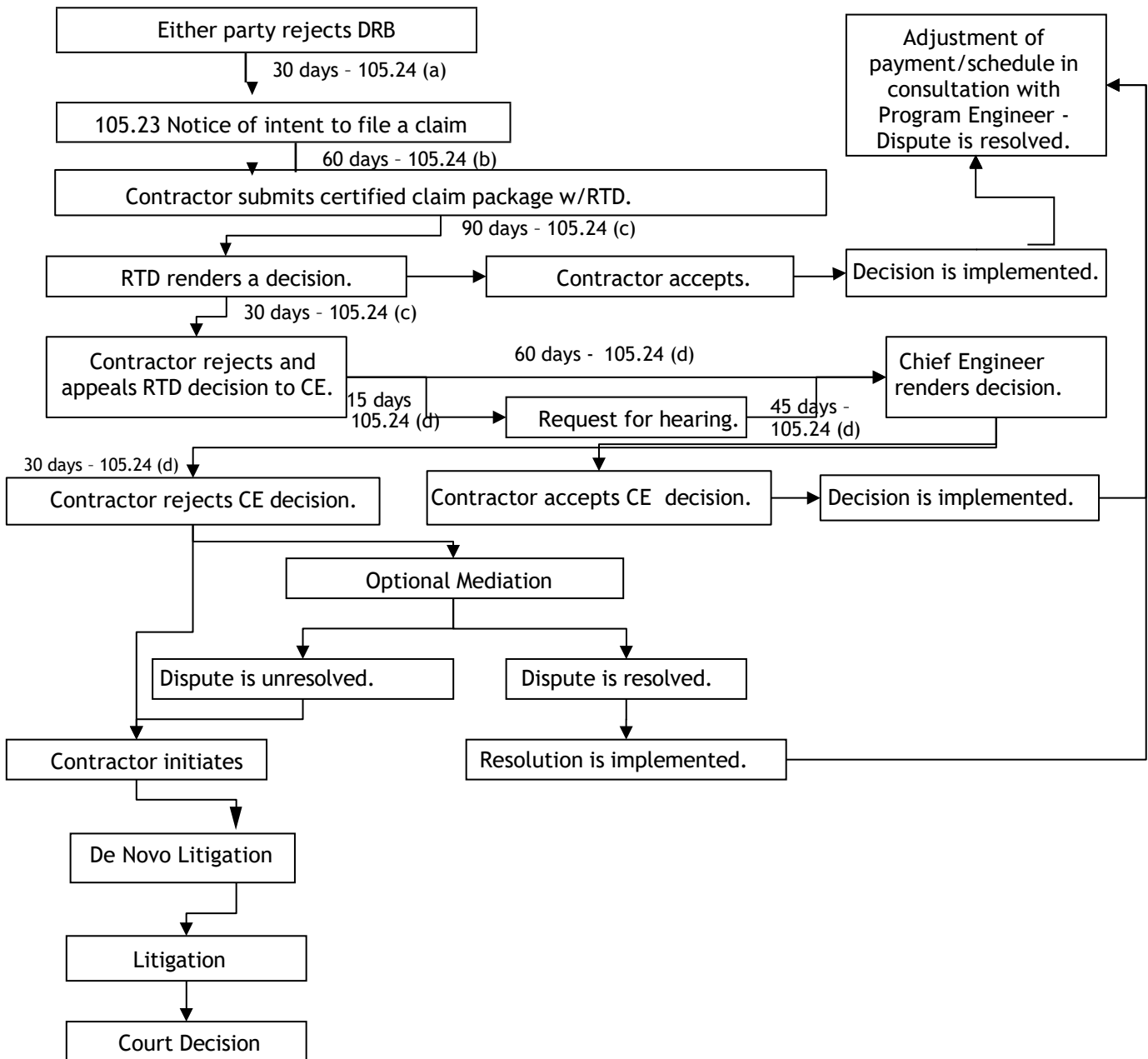


Figure 105-1 continued on next page

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**REVISION OF SECTIONS OF 105
 DISPUTE REVIEW BOARD AND
 CLAIMS FOR UNRESOLVED DISPUTES**

**Figure 105-1
 (continued)**



January 8, 2024

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Revision Of Section 105
E-Signature

Revise Section 105 of the Standard Specifications as follows:

Add the following to Subsection 105.08:

105.08 Document Management and Professional Engineer and Professional Land Surveyor Electronic Seals. Where the specifications require the Contractor to submit or return documents either in writing or the format is not specified, an electronic file is preferred. The Contractor shall submit the schedule native file, video recordings, photographs, image files, and other media formats in their native file formats. When the document format is not specified, the contractor shall submit electronic documents in PDF. When a submittal requires multiple copies, one electronic document shall satisfy the requirement.

Where a signature is needed, an electronic signature is acceptable. An original signature is a signature signed in ink. Where original signatures or original documents are required a scan shall satisfy the requirement.

The Department will issue Contract Modification Orders (Form 90) and Form 105s that authorize additional work for signature via AdobeSign.

CDOT forms and records shall be signed with an electronic signature that includes the signer's name, date, and time the document was signed, in addition to locking the appropriate portions after signing. This guidance does not change the approval process or the content requirements for Buy America, COC, and CTR documentation, rather it allows the documentation to either be all electronically signed or a Scanned Original Wet Signature.

An electronic seal is when a Contractor's Engineer, a Professional Engineer or a Professional Land Surveyor affix their electronic signature and seal to plans or documents prepared under their responsible charge or control. The electronic seal needs to meet State of Colorado Architects, Professional Engineers, and Professional Land Surveyors Rules and Regulations, 4 CCR 730-1 requirements, lock the document after signature and shall have a non-expiring transaction identification number that can be used to view the final locked and signed document online.

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Revision of Section 401 Reclaimed Asphalt Pavement

Revise Section 401 of the Standard Specifications for this project as follows:

Subsection 401.02(b) shall include the following:

Reclaimed Asphalt Pavement (RAP) is allowed in hot mix asphalt (HMA) up to a maximum binder replacement of 23 percent for all lifts, provided all specifications for HMA are met. Fine Aggregate Angularity requirements shall apply only to the virgin fraction of the fine aggregate. The RAP shall not contain clay balls, vegetable matter, or other deleterious substances, and must meet the uniformity requirements as outlined below.

HMA Project Verification Testing for asphalt content and gradation will be performed at the frequencies listed in the Field Materials Manual per CP-L 5120.

The Contractor shall have an approved mix design for the amount of RAP to be used. The AC content of the RAP utilized in the Contractor RAP mix design shall be the average AC content determined per 1B or 1C, below, or alternatively, a minimum of five samples of the Contractors RAP stockpile may be sampled and the average AC content of the RAP be determined using AASHTO T-164, Method A or B, or per 1C below. The Contractor shall determine the total binder replaced by the binder in the RAP pursuant to the following equation:

$$\text{Total Binder Replaced} = (A \times B) \times 100/E$$

Where:

A = RAP % Binder Content *

B = RAP % in Mix *

E = Total Effective Binder Content *

* In decimal format (2% is 0.02)

The Total Binder Replaced by the binder in the RAP shall not exceed 23 percent of the effective binder content of either the mix design or the produced mix.

The use of RAP shall be controlled per subsections 105.05 and 106.05. If the Contractor elects to use RAP, the following additional conditions shall apply:

1. The Contractor shall have an approved Process Control (PC) Plan that details how the RAP will be processed and controlled. The PC plan shall address the following:
 - A. RAP Processing Techniques. This requires a schematic diagram and narrative that explains the processing (crushing, screening, and rejecting) and stockpile operation for this specific project.
 - B. Control of RAP Asphalt Binder Content (AASHTO T-164, Method A or B). RAP Asphalt Binder Content may also be determined per CP-L 5120, provided a RAP AC content correction factor is determined through correlation testing with AASHTO T-164, Method A or B. The correction factor shall be determined by performing correlation testing on the first five samples of the RAP AC content, then at a frequency of one for every five AC content tests thereafter. The correction factor shall be determined by calculating the average difference in AC content between CP-L 5120 and AASHTO T-164, Method A or B, and applying the correction to the AC content determined per CP-L 5120 :

Frequency: 1/1000 tons of processed RAP material (minimum five tests)

2 Revision of Section 401 Reclaimed Asphalt Pavement

- C. Alternative Control of RAP Binder Content. The Contractor may propose a RAP asphalt content correction factor to be used in conjunction with CP-L 5120. The proposed CP-L 5120 RAP asphalt content correction factor shall be used with all RAP asphalt contents tested for the mixture design and quality control sampling and testing. The methodology of the proposed CP-L 5120 RAP asphalt content correction factor shall be outlined in detail in the approved RAP PC Plan. At a minimum, the proposed CP-L 5120 correction factor shall identify the principal source locations of the RAP aggregate, gradation of the material tested, and specific ignition oven serial number used in all the RAP asphalt content testing. The RAP source locations, material gradation, and specific equipment used shall substantiate the CP-L 5120 asphalt content correction factor used for the testing. The substantiation must be from data gathered from historical information or specific asphalt content correction data obtained from tests performed on similar virgin aggregate sources, virgin material gradations, and the specific equipment used.
 - D. Control of RAP Gradation (CP31 or AASHTO T-30):
 Frequency: 1/1000 tons of processed RAP material (minimum three tests)
 - E. Process Control Charts shall be maintained for binder content and each screen listed in subsection 401.02(b), during addition of any RAP material to the stockpile. The Contractor shall maintain separate control charts for each RAP stockpile. The control charts shall be displayed and shall be made available, along with RAP AC extraction testing laboratory reports, to the Engineer upon request.
2. The processed RAP must be 100 percent passing the 31.5 mm (1 1/4 inch) sieve. The aggregate obtained from the processed RAP shall be 100 percent passing the 25.0 mm (1 inch) sieve. The aggregate and binder obtained from the processed RAP shall be uniform in all the measured parameters per the following:

Uniformity*

Parameter	Standard Deviation
Binder Content	0.5
Percent Passing 19 mm (3/4")	4.0
Percent Passing 12.5 mm (1/2")	4.0
Percent Passing 9.5 mm (3/8")	4.0
Percent Passing 4.75 mm (#4)	4.0
Percent Passing 2.36 mm (#8)	4.0
Percent Passing 600 μm (#30)	3.0
Percent Passing 75 μm (#200)	1.5

*Uniformity is the Maximum allowable Standard Deviation of test results of processed RAP.

- 3. If RAP millings generated are incorporated in the same project, per CPL 5145 the Contractor shall pave with a virgin mix design until sufficient amount of processed RAP has been stockpiled and tested to allow full production of a RAP HMA mix.

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Revision of Section 601
Structural Concrete

Revise Section 601 of the Standard Specifications as follows:

Revise Section 601.02 by deleting all references to Concrete Class G, as shown:

601.01 This work consists of furnishing and placing hydraulic cement concrete in accordance with these specifications and in conformity with the lines, grades and dimensions as shown on the plans or established.

This work includes preparing concrete surfaces designated in the Contract and applying an approved colored Structural Concrete Coating to them.

601.02 Classification. The classes of concrete shown in Table 601-1 shall be used when specified in the Contract.

Table 601-1
CONCRETE FIELD REQUIREMENTS

Concrete Class	Required Field Compressive Strength (psi)	Air Content: % Range (Total)	Slump#	Maximum Water/Cementitious Material Ratio:
B	4500 at 28 days	5 - 8	+/- 2" of Form 1373 Slump	w/cm on Form 1373
BZ	4000 at 28 days	N/A*	6" - 9"	w/cm on Form 1373
D	4500 at 28 days	5 - 8	+/- 2" of Form 1373 Slump	w/cm on Form 1373
DT	4500 at 28 days	5 - 8	+/- 2" of Form 1373 Slump	w/cm on Form 1373
PS (Girders)	8500 at 28 days	N/A*	9" maximum	0.45
PS (Deck Panels)	6000 at 28 days	N/A*	9" maximum	0.45
P	4500 at 28 days	4 - 8	+/- 2" of Form 1373 Slump	w/cm on Form 1373
S35	5000 at 28 days	5 - 8	+/- 2" of Form 1373 Slump	w/cm on Form 1373
S40	5800 at 28 days	5 - 8	+/- 2" of Form 1373 Slump	w/cm on Form 1373
S50	7250 at 28 days	5 - 8	+/- 2" of Form 1373 Slump	w/cm on Form 1373
Shotcrete	4500 at 28 days	7-10 †	N/A	0.45

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**Revision of Section 601
Structural Concrete**

Table 601-1 Notes:

* 5 - 8% when specified.

Slump shall be a maximum of 9.0 inches for all classes of concrete. Concrete may have a slump above 9.0 inches when designed as Self Consolidating Concrete (SCC). The requirements for slump flow, blocking assessment, and segregation shall apply.

◀ Prior to pumping for wet process.

Class B concrete is an air entrained concrete for general use. Class D or P concrete may be substituted for Class B concrete. Additional requirements are:

- (1) The coarse aggregate shall have a nominal maximum size of 1½ inches or smaller.
- (2) Class B Concrete for Slope and Ditch Paving shall be macro-fiber reinforced.

Class BZ concrete is concrete for drilled shafts. Additional requirements are:

- (1) Entrained air is not required unless specified in the Contract. When entrained air is specified in the Contract, the air content shall be 5 to 8 percent.
- (2) Slump shall be a minimum of 6 inches and a maximum of 9 inches. A minimum slump of 6 inches shall be maintained during the anticipated pour period. The use of retarders and hydration stabilizers are allowed to extend the slump life of the concrete. When the Contractor elects to use SCC, the slump requirement for Class BZ Concrete does not apply.
- (3) The coarse aggregate size shall be AASHTO M43 size #8 unless otherwise approved by the Engineer.
- (4) The mix shall either have a permeability not exceeding 2,500 coulombs at an age of not more than 56 days when tested in accordance with ASTM C1202, or have a surface resistivity of at least 12 kΩ-cm at 28 days using AASHTO T358.
- (5) The unrestrained shrinkage shall not exceed 0.050 percent at 28 days when tested by CP-L 4103.

Class D concrete is a denser general use concrete. Additional requirements are:

- (1) The mix shall either have a permeability not exceeding 2,500 coulombs at an age of not more than 56 days when tested in accordance with ASTM C1202, or have a surface resistivity of at least 12 kΩ-cm at 28 days using AASHTO T358.

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Revision of Section 601
Structural Concrete

- (2) The unrestrained shrinkage shall not exceed 0.050 percent at 28 days when tested by CP-L 4103.
- (3) The mix may use an optimized gradation (OG) with a nominal maximum aggregate size of at least $\frac{3}{4}$ inch.
- (4) The mix shall have a nominal maximum aggregate size of at least $\frac{3}{4}$ inch if an OG is not used.
- (5) When used in slip forming, an edge slump less than 6 mm (0.25 in.) and less than 30 percent surface voids (ranking of 2 or less) is required. The box test is described in CP 63.
- (6) Class D Concrete for sidewalks on bridge decks and bridge rail shall be macro-fiber reinforced.

Class DT concrete is used for bridge deck resurfacing. Additional requirements are:

- (1) The concrete mix shall consist of a minimum 50 percent AASHTO M 43 size No. 7 or No. 8 coarse aggregate by weight of total aggregate.
- (2) The mix shall either have a permeability not exceeding 2,500 coulombs at an age of not more than 56 days when tested in accordance with ASTM C1202 or have a surface resistivity of at least 12 k Ω -cm at 28 days using AASHTO T358.
- (3) The unrestrained shrinkage shall not exceed 0.050 percent at 28 days when tested by CP-L 4103.

Class P concrete is used in pavements. Additional requirements are:

- (1) The Required Field Flexural Strength shall be 650 psi.
- (2) The concrete mix shall consist of a minimum 55 percent AASHTO M 43 sizes No. 57, No. 6, No. 67, No. 357, or No. 467 coarse aggregate by weight of total aggregate.
- (3) The mix may use an OG with a nominal maximum aggregate size of at least $\frac{3}{4}$ inch.
- (4) ASTM C150 Type III and ASTM C1157 Type HE cements may be used for early opening.
- (5) The mix shall either have a permeability not exceeding 2,500 coulombs at an age of not more than 56 days when tested in accordance with ASTM C1202, or have a surface resistivity of at least 12 k Ω -cm at 28 days using AASHTO T358.
- (6) The unrestrained shrinkage shall not exceed 0.050 percent at 28 days when tested by CP-L 4103.

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- (7) When concrete is to be placed using a paver, an edge slump less than 6 mm (0.25 in.) and less than 30 percent surface voids (ranking of 2 or less) is required. The box test is described in CP 63.
- (8) A minimum of 20 percent Class F fly ash or 30 percent Slag cement by weight shall be used to replace any ASTM C150 cement, any ASTM C1157 cement, or ASTM C595 Type IL cement. ASTM C595 Type IT(MS), IT(HS), IP(MS) or IP(HS) cements may be used without cement substitutions. Class C fly ash may be used if the calcium oxychloride is determined to be less than 15 g CaOXY/100 g cementitious paste as determined in accordance with AASHTO T 365 for Class 0 Sulfate Exposure.

Class PS Class PS concrete is used for prestressed concrete members. Requirements for Class PS concrete are specified in subsection 618.11. ASTM C150 Type III and ASTM C1157 Type HE cements may be used.

Class S35, S40, and S50 concretes are dense high strength concretes. Additional requirements are:

- (1) The concrete mix shall be made with AASHTO M 43 sizes No. 57, No. 6, No. 67, No. 7 or No. 8 course aggregate.
- (2) When placed in a bridge deck, the mix shall have a nominal maximum aggregate size of at least 3/4 inch.
- (3) The mixes may use an OG with a nominal maximum aggregate size of at least 3/4 inch.
- (4) For S35 and S40 concretes, the unrestrained shrinkage shall not exceed 0.050 percent at 28 days when tested by CP-L 4103.
- (5) For S50 concretes, the unrestrained shrinkage shall not exceed 0.040 percent at 28 days when tested by CP-L 4103.
- (6) For S35 and S40 concretes, the mix shall either have a permeability not exceeding 2,000 coulombs at an age of not more than 56 days when tested in accordance with ASTM C1202, or have a surface resistivity of at least 14 kΩ-cm at 28 days using AASHTO T358.
- (7) For S50 concrete, the mix shall either have a permeability not exceeding 1,500 coulombs at an age of not more than 56 days when tested in accordance with ASTM C1202, or have a surface resistivity of at least 18 kΩ-cm at 28 days using AASHTO T358.

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Class Shotcrete concrete is used for shotcrete applications. Additional requirements are:

- (1) The required air content prior to the pump for wet process applications shall be 7-10 percent.
- (2) Additional requirements are listed in subsection 641.02.

The Contractor may design Class B, Class BZ, Class D, Class PS, Class S35, Class S40, and Class S50 concrete to be Self Consolidating Concrete (SCC) with the following requirements:

- (1) SCC shall have a slump flow of 20 to 26 inches when tested in accordance with ASTM C1611 using an inverted slump cone.
- (2) SCC shall have a maximum blocking assessment of 2.0 inches when tested in accordance with ASTM C1621.
- (3) SCC shall have a maximum static segregation of 10 percent when tested in accordance with ASTM C1610.

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**AFFIRMATIVE ACTION REQUIREMENTS
EQUAL EMPLOYMENT OPPORTUNITY**

A. AFFIRMATIVE ACTION REQUIREMENTS

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. The Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract 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:

Goals and Timetable for Minority Utilization

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Timetable - Until Further Notice			
Economic Area	Standard Metropolitan Statistical Area (SMSA)	Counties Involved	Goal
157 (Denver)	2080 Denver-Boulder	Adams, Arapahoe, Boulder, Denver, Douglas, Gilpin, Jefferson.....	13.8%
	2670 Fort Collins	Larimer.....	6.9%
	3060 Greeley	Weld.....	13.1%
	Non SMSA Counties	Cheyenne, Clear Creek, Elbert, Grand, Kit Carson, Logan, Morgan, Park, Phillips, Sedgwick, Summit, Washington & Yuma.....	12.8%
158 (Colo. Spgs. - Pueblo)	1720 Colorado Springs	El Paso, Teller.....	10.9%
	6560 Pueblo	Pueblo.....	27.5%
	Non SMSA Counties	Alamosa, Baca, Bent, Chaffee, Conejos, Costilla, Crowley, Custer, Fremont, Huerfano, Kiowa, Lake, Las Animas, Lincoln, Mineral, Otero, Prowers, Rio Grande, Saguache.....	19.0%
159 (Grand Junction)	Non SMSA	Archuleta, Delta, Dolores, Eagle, Garfield, Gunnison, Hinsdale, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, San Juan, San Miguel	10.2%
156 (Cheyenne - Casper WY)	Non SMSA	Jackson County, Colorado.....	7.5%
GOALS AND TIMETABLES FOR FEMALE UTILIZATION			
Until Further Notice.....			6.9% --
Statewide			

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 regulations in 41 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 meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length

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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 Par 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 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
4. As used in this specification, and in the contract resulting from this solicitation, the "covered area" is the county or counties shown on the Invitation for Bids and on the plans. In cases where the work is in two or more counties covered by differing percentage goals, the highest percentage will govern.

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**AFFIRMATIVE ACTION REQUIREMENTS
EQUAL EMPLOYMENT OPPORTUNITY**

B. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

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.
 - d. “Minority” includes;
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
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 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 a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) 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

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**AFFIRMATIVE ACTION REQUIREMENTS
EQUAL EMPLOYMENT OPPORTUNITY**

Contractor or Subcontractor 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 Subcontractor toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any office of Federal Contract Compliance Programs Office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting 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 minorities 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 nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
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

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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 union have employment opportunities available, and maintain a record of the organization's 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 of community organization and of what action was taken with respect to each 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 notification to the Director when the union with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- 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 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 Contractor's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

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- g. Review, at least annually, the Contractor'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 onsite supervisory personnel such as Superintendents, General Foreman, 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, specifically including minority and female news media, and providing written notification to and discussing the Contractors and Subcontractors with whom the Contractor does or 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 notification 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 at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc. such opportunities.
- 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 the Contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and Contractor's activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

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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 application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

C. SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES.

1. *General.*
 - a. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract Provisions (Form FHWA 1273 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract provisions.
 - b. The Contractor will work with the State highway agencies and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.

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c. The Contractor and all his/her subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The Contractor will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

2. *Equal Employment Opportunity Policy.* The Contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program;

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, or national origin. 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.

3. *Equal Employment Opportunity Officer.* The Contractor will designate and make known to the State highway agency contracting officers and equal employment opportunity officer (herein after referred to as the EEO Officer) who will have the responsibility for an must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

4. *Dissemination of Policy.*

a. 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 equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity 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;

(1) 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 equal employment opportunity policy and its

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- implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
- (2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the Contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the Contractor.
 - (3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the Contractor's procedures for locating and hiring minority group employees.
- b. In order to make the Contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the Contractor will take the following actions:
- (1) Notices and posters setting forth the Contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - (2) The Contractor's equal employment opportunity 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.

5. Recruitment.

- a. When advertising for employees, the Contractor will include in all advertisements for employees the notation; "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- b. 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 minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the Contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the Contractor for employment consideration.

In the event the Contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the Contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the Contractor to do the same, such implementation violates Executive Order 11246, as amended.)

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c. The Contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. 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, or national origin. 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 Contract will promptly investigate all complaints of alleged discrimination made to the Contractor in connection with his 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 his avenues of appeal.

7. Training and Promotion.

a. The Contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

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. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

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- 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 minority group and women employees and will encourage eligible employees to apply for such training and promotion.

8. *Unions.* If the Contractor relies in whole or in part upon unions as a source of employees, the Contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women with the unions, and to effect referrals by such unions of minority and female employees. 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 best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- b. The Contractor will use best efforts to incorporate an equal employment opportunity 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, or national origin.
- 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 State highway department 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 minority and women 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 or national origin; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the Contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) 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 State highway agency.

9. *Subcontracting.*

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- a. The Contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from State highway agency personnel.
- b. The Contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

10. Records and Reports.

- a. The Contractor will keep such records as are necessary to determine compliance with the Contractor's equal employment opportunity obligations. The records kept by the Contractor will be designed to indicate:
 - (1) The number of minority and nonminority group members and women employed in each work classification on the project.
 - (2) The Progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force).
 - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and
 - (4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.
- b. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State highway agency and the Federal Highway Administration.
- c. The Contractors will submit an annual report to the State highway 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 PR 1391.

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**CERTIFIED PAYROLL REQUIREMENTS
FOR CONSTRUCTION CONTRACTS**

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

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

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

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

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1. Definitions.

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

- A. *CDOT Form 1414 Anticipated DBE Participation Plan*. Document that lists all of the bidder's DBE Commitments and submitted with the bid.
- B. *CDOT Form 1415 Commitment Confirmation*. Document confirming the bidder's Commitments and submitted post-bid.
- C. *CDOT Form 1416 Good Faith Effort Report*. Document that details the actions taken to meet the Contract Goal.
- D. *CDOT Form 1417 Approved DBE Participation Plan*. Document that lists the bidder's approved Commitments at the time of Contract award.
- E. *CDOT Form 1432 Commercially Useful Function Questionnaire*. Document that records and verifies each DBE's CUF for Eligible Participation.
- F. *Commitment*. A portion of the Contract, identified by dollar amount and work area, designated by the bidder or Contractor for participation by a particular DBE. Commitments are initially submitted to CDOT via Form 1414 and/or Form 1415.
- G. *Commercially Useful Function (CUF)*. Responsibility for the execution of the work and carrying out such responsibilities by actually performing, managing and supervising the work per Section 8 of this special provision.
- H. *Contract Goal*. The percentage of the Contract designated by CDOT for DBE participation as specified by the Project Special Provision *Disadvantaged Business Enterprise (DBE) Contract Goal*. For determining whether the Contract Goal was met before award, the Contract Goal will be based upon the proposal amount excluding force account items. In the event a Contract Modification Order increases the amount of the Contract, as described in Section 6 of this special provision, the Contract Goal shall be based on the Total Earnings Amount.
- I. *DBE Program Manual*. The manual maintained by the Civil Rights & Business Resource Center (CRBRC) detailing CDOT's policies and procedures for administering the DBE program.
- J. *Disadvantaged Business Enterprise (DBE)*. A Colorado-certified Disadvantaged Business Enterprise listed on the Colorado Unified Certification Program (UCP) DBE Directory.
- K. *Eligible Participation*. Work by a DBE which counts as valid DBE participation on the Contract and may be used towards fulfillment of a Commitment.
- L. *Good Faith Efforts*. All necessary and reasonable steps to meet the Contract Goal

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which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if not fully successful. Good Faith Efforts are evaluated before award and throughout performance of the Contract. For guidance on Good Faith Efforts, see Section 4 of this special provision below.

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

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can compete fairly for DOT-assisted contracts. When a Contract Goal for DBE participation is set pursuant to the U.S. Department of Transportation's DBE Program, the apparent low responsible bidder must show that they have committed to DBE participation sufficient to meet the Contract Goal or has otherwise made Good Faith Efforts to do so in order to be awarded the Contract.

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

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

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

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

The Contractor, subrecipients of DOT-assistance through CDOT, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as CDOT deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

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

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Contract. For additional guidance on making Good Faith Efforts see 49 CFR Part 26 Appendix A.

- (a) *Bidding Requirements*. When a Contract Goal is established, the Contract may not be awarded until the apparent low responsible bidder has demonstrated Good Faith Efforts to meet the Contract Goal by either
- Documenting sufficient Commitments to meet the Contract Goal, or
 - Documenting adequate Good Faith Efforts to meet the Contract Goal even though they did not obtain enough Commitments to do so.

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

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

(2) *Utilization Plan*.

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

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like to be considered as evidence of their Good Faith Efforts. If a non-DBE was selected in lieu of a DBE, the apparent low responsible bidder shall include all quotes from the non-DBE and DBE firms.

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

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

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

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

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

When the total estimated Eligible Participation of the Commitments does not meet the Contract Goal, the Form 1416 and all supporting documentation will be evaluated per Appendix A of 49 CFR Part 26. The apparent low responsible bidder will be deemed to not have made Good Faith Efforts if a Commitment lists a DBE for a work area for which the DBE is not certified and the apparent low responsible bidder cannot establish a reasonable basis for the error. Commitments made after submission of the bid will only be considered for acceptance if the bidder demonstrates that (1) Good Faith Efforts were made before submission of the bid, and (2) there is reasonable justification for not obtaining sufficient Commitments before submission of the bid.

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

- (4) *Administrative Reconsideration.* The apparent low responsible bidder will be provided an opportunity to request administrative reconsideration if the CRBRC determines that the apparent low responsible bidder did not demonstrate Good Faith Efforts to meet the Contract Goal. The independent Administrative Reconsideration Official

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

(5) *Approval*. Upon a determination that the apparent low responsible bidder has demonstrated Good Faith Efforts to meet the Contract Goal, the apparent low responsible bidder will be issued Form 1417 or an approved UP in B2GNow (for CDOT advertised projects), documenting the approved Commitments on the Contract.

5. **Commitment Modifications**. The Contractor shall fulfill Commitments unless the Contractor obtains approval for Termination, Reduction, or Substitution. Unless approved, the Contractor will not be entitled to payment for the work or materials pertaining to an unapproved Termination, Reduction, or Substitution. During the performance of the Contract, the Contractor shall use Form 1420, *DBE Participation Plan Modification Request* to communicate all requests for Termination, Reduction,

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and/or Substitution. One Form 1420 may include multiple Commitment modification requests and must be submitted to CDOT at the time of the occurrence or, if that is not possible, within a reasonable time of the occurrence requiring Termination, Reduction, and/or Substitution. Failure by the Contractor to carry out the requirements of this section is a material breach of the Contract and may result in the termination of the Contract or other established remedies.

(a) *Good Cause Requirement.* Termination, Reduction, and/or Substitution will not be approved unless the Contractor has Good Cause to modify the Commitment. Good Cause includes, but is not limited to

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

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

(b) *Notice to the DBE.* The Contractor shall notify the DBE in writing of the Contractor's intent to Terminate, Reduce, or Substitute, and the underlying reason(s) before submitting the Form 1420 requesting the proposed Commitment modification. In the notice of intent, the Contractor shall provide

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the DBE at least five days to respond to the notice and inform the Contractor of the reasons, if any, why the DBE objects to the proposed Commitment modification. The Contractor is not required to provide the five days written notice in cases where the DBE in question has provided written notice they are withdrawing from their subcontract or purchase order. The notice period may be reduced if determined to be in the public interest by the project owner.

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

- (c) *Determination.* The Contractor will be notified in writing of the Good Cause determination and whether the modification request is approved or denied.

- (d) *Substitution Requirement.* When a Commitment is Terminated or Reduced (including when a DBE withdraws), the Contractor shall make Good Faith Efforts to find another DBE to Substitute for the original DBE. These Good Faith Efforts shall be directed at finding another DBE to perform at least the same amount, but not necessarily the same type, of work under the Contract as the participation that was Terminated or Reduced up to the Contract Goal. To make a Substitution, the Contractor may:
 - i. Make a new Commitment to any unperformed work on the Contract by providing a completed Form 1415, *Commitment Confirmation* for each new DBE Commitment;
 - ii. Increase the amount of an existing Commitment for any unperformed work on the Contract by submitting a revised Form 1415 for that Commitment; or
 - iii. Utilize any Race-Neutral Eligible Participation on the Contract performed before the Form 1420 submission as part of their Good Faith Efforts pursuant to this subsection by submitting a completed Form 1420.

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

- 6. **Contract Modification Orders.** When one or more Contract Modification Orders, as defined in CDOT's *Standard Specifications for Road and Bridge Construction*, adds new

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work items or increases the total dollar amount of the Contract, the Contractor is required to make Good Faith Efforts to obtain additional Eligible Participation sufficient to meet the Contract Goal on the Total Earnings Amount. Under this section, the Contractor may obtain additional Eligible Participation by:

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

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

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

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

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

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

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

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

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

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

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

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

- (d) *Payment Received for Work.* The DBE must receive payment, including the release of their retainage, in order for the work to count as Eligible Participation.
- (e) *Special Calculations for Suppliers.* When a DBE supplies goods or materials for a project, the DBE may be classified as a manufacturer, dealer or broker. The DBE's status as a manufacturer, dealer or broker is determined on a contract-by-contract basis, based upon the actual work performed, per 49 CFR Part 26.55(e). When a DBE is deemed to be acting as a manufacturer, 100 percent of the cost of the materials and/or supplies will count as Eligible Participation. When a DBE is deemed to be acting as a regular dealer (non-manufacturer supplier), only 60 percent of the cost of the materials and/or supplies will count as Eligible Participation. When a DBE is deemed to be acting as a broker, only the reasonable brokerage fee will count as Eligible Participation.
- (f) *Service Fees.* For a DBE firm providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, the fees and commissions charged by the DBE shall count as Eligible Participation, provided the fees are not excessive as compared with fees customarily allowed for similar services. In the case of DBE temporary employment placement agencies, only the placement fee for a temporary employee that will be specifically and exclusively used for work on the contract shall count as Eligible Participation; the hourly fee does not count as Eligible Participation unless the firm is also certified in the work to be performed.

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- (g) *Joint Venture Calculation.* When a DBE is a participant in a joint venture, the DBE must submit Form 893, *Information for Determining DBE Participation when a Joint Venture Includes a DBE*, to determine how much of the work performed by the joint venture may be considered Eligible Participation. To ensure sufficient time for review, Form 893 shall be submitted to CDOT no less than ten days before the submission of the bid or, if requested during the Contract, the point at which the DBE will begin work.
- (h) *Commercially Useful Function.* Upon a determination that a DBE has not performed a Commercially Useful Function (CUF) on the project, no participation by such DBE is Eligible Participation. DBE performance on the Contract will be monitored to ensure each DBE is performing a CUF. The DBE, Contractor, and any other involved third parties may also be subject to additional enforcement actions as described in Section 9 of this special provision.

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

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

A DBE does not perform a CUF when their role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of DBE participation. Similar transactions involving non-DBEs will be evaluated in order to determine whether a DBE is an extra participant. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of their contract or subcontract with their own work force, or the DBE subcontracts a greater portion of the work than would be expected on the basis of normal industry practice for the type of work involved, CDOT will presume the DBE is not performing a CUF. The DBE may present evidence to rebut this presumption.

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

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

8. Contract Finalization

- (a) *Form 1432.* In order to have work performed and/or supplies provided by a DBE on the Contract count as Eligible Participation, the Contractor must submit a Form 1432 for that DBE. The Form 1432 must be signed by the DBE, Contractor and Project Engineer. Work performed and/or supplies provided on the Contract by a DBE Commitment will not count as Eligible Participation without a corresponding Form 1432 and the Contractor may be subject to a payment reduction as described in subsection 8(b) of this special provision.

- (b) *Payment Reduction.* The Contractor's retainage will not be released until a determination is made as to whether the Contractor will be subject to a payment reduction. The Contractor will be subject to a payment reduction for any unapproved Termination, Reduction, and/or Substitution. Additionally, the Contractor will be subject to a payment reduction for any portion of a Commitment that was not fulfilled. The Contractor will not be subject to duplicate payment reductions for the same offense. The amount of the payment reduction may be adjusted if the Contractor demonstrates that a failure to fulfill a Commitment or otherwise meet their obligations under this special provision was due to circumstances outside of their control.

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

Participants shall not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by the DBE program or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the DBE program. Failure to comply with this paragraph shall be a ground for appropriate action against the party involved (with respect to recipients, a finding of noncompliance; with

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respect to DBE firms, denial of certification or removal of eligibility, and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

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

U.S. Dept. of Labor Davis Bacon Minimum Wages, Colorado
 Highway Construction, General Decision Number - CO20240012

Date: January 5, 2024

Decision Nos. CO20240012 dated January 5, 2024 supersedes Decision Nos. CO20230012 dated January 6, 2023.		Modifications			ID
		MOD Number	Date	Page Number(s)	
When work within a project is located in two or more counties and the minimum wages and fringe benefits are different for one or more job classifications, the higher minimum wages and fringe benefits shall apply throughout the project.					
General Decision No. CO20240012 applies to the following counties: Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, La Plata, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, and San Miguel counties.					
General Decision No. CO20240012 The wage and fringe benefits listed below reflect collectively bargained rates.					
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod	
1491	CARPENTER (Excludes Form Work)	26.50	10.32		
	POWER EQUIPMENT OPERATOR:				
	Drill Rig Caisson				
1492	Smaller than Watson 2500 and similar	33.14	14.20		
1493	Watson 2500 similar or larger	33.48	14.20		
	Mechanic				
1494	La Plata County	33.30	14.20		
General Decision No. CO20240012 The wage and fringe benefits listed below do not reflect collectively bargained rates.					
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod	
	CARPENTER:				
	Form Work Only				
1495	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	18.57	5.38		
1496	La Plata	18.60	5.38		
	CEMENT MASON/CONCRETE FINISHER:				
1497	Alamosa, Archuleta, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Mineral, Montezuma, Ouray, Rio Grande, Saguache, San Juan, San Miguel	17.67	2.85		

General Decision No. CO20240012				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	CEMENT MASON/CONCRETE FINISHER (con't.):			
1498	Chaffee	15.55	2.85	
1499	La Plata	18.99	2.85	
1500	Montrose	16.95	2.85	
1501	ELECTRICIAN	28.06	8.76	
1502	GUARDRAIL INSTALLER	12.78	3.31	
	HIGHWAY/PARKING LOT STRIPING:			
1503	Truck Driver (Line Striping Truck)	14.60	3.49	
1504	Painter	12.90	3.07	
	IRONWORKER:			
1505	Reinforcing (Excludes Guardrail Installation)	16.94	6.77	
1506	Structural (Excludes Guardrail Installation)	16.76	6.01	
	LABORER:			
	Asphalt Raker			
1507	Alamosa	17.53	3.75	
1508	Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, San Juan, San Miguel	16.43	3.42	
1509	La Plata	15.38	3.12	
	Common or General			
1510	Alamosa, Chaffee, Montezuma, Montrose	12.44	3.53	
1511	Archuleta, Conejos, Custer, Delta, Dolores, Gunnison, Hinsdale, Ouray, Rio Grande, Saguache, San Miguel	13.70	3.53	
1512	Fremont	15.19	3.00	
1513	La Plata	14.07	3.53	
1514	Mineral	14.84	3.53	
1515	San Juan	13.73	3.53	
1516	Concrete Saw (Hand Held)	16.00	6.14	

General Decision No. CO20240012				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	LABORER (con't):			
	Landscape and Irrigation			
1517	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	14.02	3.16	
1518	La Plata	13.54	3.16	
	Mason Tender - Cement/Concrete			
1519	Alamosa, Archuleta, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	14.59	3.10	
1520	Chaffee	12.44	3.10	
1521	La Plata	15.67	3.10	
	Traffic Control			
1522	Flagger	9.42	3.21	
1523	Sets Up/Moves Barrels, Cones, Installs signs, Arrow Boards and Place Stationary Flags, (Excludes Flaggers)	12.39	3.20	
1524	PAINTER (Spray Only)	17.54	3.52	
	POWER EQUIPMENT OPERATOR:			
	Asphalt Laydown			
1525	Alamosa, La Plata	22.67	8.72	
1526	Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	23.13	8.64	
1527	Asphalt Paver	22.67	8.72	
1528	Asphalt Plant	17.23	4.07	
	Asphalt Roller			
1529	Alamosa	21.67	8.22	
1530	Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Mineral, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	22.77	8.36	
1531	La Plata	22.68	7.30	
1532	Montezuma	22.67	8.72	
1533	Asphalt Spreader	22.67	8.72	

General Decision No. CO20240012				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't):			
	Backhoe/Trackhoe			
1534	Alamosa	21.03	3.75	
1535	Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	19.75	3.75	
1536	La Plata	19.79	5.13	
1537	Mineral	19.17	5.53	
1538	Montezuma	16.42	4.42	
	Bobcat/Skid Loader			
1539	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	18.20	4.54	
1540	La Plata	19.98	4.88	
1541	Mineral	17.94	4.62	
	Broom/Sweeper			
1542	Alamosa	20.67	9.22	
1543	Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, La Plata, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	21.70	9.22	
	Bulldozer			
1544	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	23.28	9.22	
1545	Fremont	23.67	9.22	
1546	La Plata	23.57	8.72	
1547	Chipper	22.04	8.26	
	Crane			
1548	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	25.01	8.22	
1549	La Plata	25.21	8.22	

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The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't.):			
1550	Drill	20.84	2.66	
1551	Forklift	18.30	5.01	
1552	Grade Checker	23.91	7.89	
	Grader/Blade			
1553	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	16.39	4.20	
1554	Fremont	19.68	3.37	
1555	La Plata	19.83	4.20	
1556	Guardrail/Post Driver	16.07	4.41	
	Loader (Front End)			
1557	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Gunnison, Hinsdale, Mineral, Montrose, Ouray, Rio Grande, Saguache, San Juan	23.38	8.22	
1558	Fremont	23.67	9.22	
1559	La Plata	23.36	7.09	
1560	Montezuma	22.82	8.72	
1561	San Miguel	23.82	9.22	
	Mechanic			
1562	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	16.74	4.20	
1563	Fremont	18.79	3.51	
	Oiler			
1564	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan,	22.97	7.88	
1565	Fremont	22.97	8.56	
1566	La Plata	24.08	5.49	
1567	San Miguel	22.97	9.22	

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The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't.):			
	Roller/Compactor (Dirt and Grade Compaction)			
1568	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	19.24	4.96	
1569	Fremont	16.52	5.28	
1570	La Plata	18.33	2.98	
1571	Rotomill	16.28	4.41	
1572	Scraper	17.62	2.96	
	Screed			
1573	Alamosa	20.33	6.81	
1574	Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	19.58	4.96	
1575	La Plata	17.86	2.75	
1576	Tractor	15.08	2.95	
	TRAFFIC SIGNALIZATION:			
1577	Groundsman	17.04	2.28	
	TRUCK DRIVER:			
	Distributor			
1578	Alamosa	18.40	4.51	
1579	Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, La Plata, Mineral, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	17.62	5.27	
1580	Montezuma	15.80	5.27	

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The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	TRUCK DRIVER (con't.):			
	Dump Truck			
1581	Alamosa	14.15	3.83	
1582	Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Gunnison, Hinsdale, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	16.56	4.03	
1583	Fremont	16.55	4.34	
1584	La Plata	16.90	3.83	
1585	Mineral	16.97	4.61	
1586	Lowboy Truck	17.25	5.84	
1587	Mechanic	17.79	3.51	
1588	Multi-Purpose Specialty & Hoisting Truck	14.60	3.49	
	Pickup and Pilot Car			
1589	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	14.04	3.49	
1590	La Plata	15.47	3.49	
	Semi Truck			
1591	Alamosa, Archuleta, Chaffee, Gunnison, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	19.42	5.41	
1592	Conejos, Custer, Delta, Dolores, Fremont, Hinsdale, La Plata	17.25	5.41	
	Water Truck			
1593	Alamosa	17.58	3.75	
1594	Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Gunnison, Hinsdale, Mineral, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	16.75	3.04	
1595	Fremont	16.15	3.14	
1596	La Plata	17.67	3.43	
1597	Montezuma	14.88	2.07	

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

U.S. Dept. of Labor Davis Bacon Minimum Wages, Colorado
Highway Construction, General Decision Number - CO20240012

Date: January 5, 2024

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

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

Wage Determination Appeals Process

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

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

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

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

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

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

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

Write to:

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

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

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

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

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

End of General Decision No. CO20240012

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On The Job Training

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

1. Goal Setting

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

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

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

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

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On The Job Training

2. Training Plan Options

CDOT accepts the following training programs:

- A. CDOT's pre-approved classifications utilization program (PAC-UP);
- B. A registered U.S. Department of Labor training program or apprenticeship program;
- C. Approved programs through workforce centers and through specific groups like Colorado Contractors Association (CCA) and Western Colorado Contractors Association (WCCA);
- D. A Contractor specific plan approved by CDOT and the Federal Highway Administration (FHWA).

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

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

3. Journey-Level Worker to Apprentice/Trainee Ratio

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

4. Trainee Selection

Two components must be considered when choosing a trainee:

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

The consideration to include women and minorities is based on the regulation; however, it will not be used to systematically deny any one person or group from the opportunity to be a part of the OJT program. CDOT may reject non-minority male trainees for entry

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into the program if it is determined that a Contractor failed to make sufficient good faith efforts (GFE) to hire minorities or female trainees and/or the Contractor failed to document or submit evidence of its GFE to do so. CDOT will consider a Contractor's documentation of all GFE on a case-by-case basis and will take into account the items listed in the goal setting section of this specification. For more information, please see Section 11 of this specification.

5. OJT Apprentice/Trainee Approval

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

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

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

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

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

6. Eligible Work Activities that Count Toward the Training Goal

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

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

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

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

7. Contractor Training and Trainee Monitoring

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

8. Wages

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

US DOL Apprenticeship Programs

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

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

Other Approved Programs

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

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

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

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

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

9. Contractor Reporting

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

10. Reimbursement to Contractors

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

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

11. OJT Good Faith Efforts (GFE)

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

A. If the Contractor does not meet its OJT project goal with the inclusion of some female and/or minority trainees, the Contractor may be requested to produce documentation of adequate good faith efforts taken to fill that position with a minority or female applicant. Good faith efforts are designed to achieve equal opportunity through positive, assertive, and continuous result-oriented measures. Good faith efforts should be taken as hiring opportunities arise.

B. If the Contractor does not meet its OJT project goal, the Contractor may submit a CDOT Form 1336, Waiver Request for Contract's OJT Hours. On the form, the Contractor shall outline and submit all good faith efforts made when it is believed that the required number of training hours will not be met. If GFE is not demonstrated and approved, The Contractor will be subject to payment reductions outlined in the Disincentive Section.

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

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12. Disincentive

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

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

October 23, 2023

Required Contract Provisions Federal-Aid Construction Contracts

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

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

Required Contract Provisions Federal-Aid Construction Contracts

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Assurances Required:

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

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

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

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

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

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

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

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

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

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

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

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

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

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

2. Withholding (29 CFR 5.5)

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

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

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

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

3. Records and certified payrolls (29 CFR 5.5)

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

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

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

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

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

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

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

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

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

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

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

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

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

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

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

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

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

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

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

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

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

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

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

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

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

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

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

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

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

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

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

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

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

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

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

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

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

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

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

3. Withholding for unpaid wages and liquidated damages

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

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

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

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

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

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

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

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

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

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

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

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

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

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

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

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

3. Instructions for Certification - Lower Tier Participants:

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

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

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

this transaction originated may pursue available remedies, including suspension and/or debarment.

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

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

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

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

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

* * * * *

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

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

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

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

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

XII. USE OF UNITED STATES-FLAG VESSELS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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