

Required Forms and Notifications

B1900042, B1900043, B1900044, B1900045, B1900046, B1900047, B1900048, B1900049, B1900050

Forms that must be complete and submitted with bids:

1. CDOT Form 606, Anti-Collusion Affidavit – This form must be notarized and submitted with each bid.
2. CDOT Form 1413, Bidders List – Although the DBE goal for these bids is zero (0.0%), this form must be submitted with each bid. List all subcontractors (e.g., parts suppliers, upfitters, qualified vehicle modifiers, etc.) that will participate on the contract if awarded along with their DBE status.
3. CDOT Form 1414, Anticipated DBE Participation Plan - Although the DBE goal for these bids is zero (0.0%), this form must be submitted with each bid.
4. IRS Form W-9, Request for Taxpayer Identification Number and Certification – Return page 1.

Forms that must be submitted by the low responsible bidder by 4:30 PM on Tuesday, March 5, 2019:

Weld County staff will present the bids to the Board of County Commissioners on Monday, March 4. At that time we will establish the low responsible bidder for each bid number to complete the following forms:

1. CDOT Form 605, Contractors Performance Capability Statement
2. CDOT Form 621, Assignment of Anti-trust Claims
3. CDOT Form 1415, Commitment Confirmation
4. CDOT Form 1416, Good Faith Effort Report

Required Notifications to Bidders:

1. CDOT DBE Project Goal
2. CDOT DBE Standard Special Provision
3. CDOT On the Job Training (OJT) Special Provision
4. CDOT Davis Bacon Wage Determination
5. FHWA Form 1273, Required Contract Provisions, Federal-aid Construction Contracts
6. CDOT Contractor Insurance Notice

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note: ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or “doing business as” (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity’s name as shown on the entity’s tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a “disregarded entity.” See Regulations section 301.7701-2(c)(2)(iii). Enter the owner’s name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner’s name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity’s name on line 2, “Business name/disregarded entity name.” If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys’ fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5 ²
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.SSA.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/Businesses and clicking on Employer Identification Number (EIN) under Starting a Business. Go to www.irs.gov/Forms to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to www.irs.gov/OrderForms to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.

You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.

You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor ²
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
6. Sole proprietorship or disregarded entity owned by an individual	The owner ³
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity ⁴
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee

For this type of account:	Give name and EIN of:
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

*Note: The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at spam@uce.gov or report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.IdentityTheft.gov and Pub. 5027.

Visit www.irs.gov/IdentityTheft to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

COLORADO DEPARTMENT OF TRANSPORTATION
CONTRACTORS PERFORMANCE CAPABILITY STATEMENT

Project #

1. List names of partnerships or joint ventures none

2. List decreases in the contractors fiscal or workmanship qualifications compared to the last prequalification statement submitted to CDOT. (Attach additional sheets if necessary.)

a. Key personnel changes none

b. Key equipment changes none

c. Fiscal capability changes (legal actions, etc.) none

d. Other changes that may effect the contractors ability to perform work. none

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 CORRECT 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

**COLORADO DEPARTMENT OF TRANSPORTATION
ASSIGNMENT OF ANTITRUST CLAIMS**

PROJECT NO.

Contractor and Colorado Department of Transportation (CDOT) recognize that in actual economic practice antitrust violations ultimately impact on CDOT. Therefore, for good cause and as consideration for executing this contract and for receiving payments hereunder:

1. Contractor hereby irrevocably assigns to CDOT any and all claims it may now have or which may hereafter accrue to it under federal or state antitrust laws in connection with the particular project, goods or services purchased or acquired by CDOT pursuant to this contract.
2. Contractor hereby expressly agrees:
 - a. That, upon becoming aware that a third party has commenced a civil action asserting on Contractor's behalf an antitrust claim which has been assigned to CDOT hereunder, Contractor shall immediately advise in writing:
 - (1) Such third party that the antitrust claim has been assigned to CDOT, and
 - (2) CDOT that such civil action is pending and of the date on which, in accordance with subparagraph a. (1) above, Contractor notified such third party that the antitrust claim had been assigned to CDOT;
 - b. To take no action which will in any way diminish the value of the claims or rights assigned or dedicated to CDOT hereunder; and
 - c. Promptly to pay over to CDOT its proper share of any payment under an antitrust claim brought on Contractor's behalf by any third party and which claim has been assigned to CDOT hereunder.
3. Further, Contractor agrees that in the event it hires one or more subcontractors to perform any of its duties under the contract, Contractor shall require that each such subcontractor:
 - a. Irrevocably assign to CDOT (as a third party beneficiary) any and all claims that such subcontractor may have or which may thereafter accrue to the subcontractor under federal or state antitrust laws in connection with any goods or services provided by the subcontractor in carrying out the subcontractor's obligations to Contractor;
 - b. Upon becoming aware that a third party has commenced a civil action on the subcontractor's behalf asserting an antitrust claim which has been assigned to CDOT hereunder, shall immediately advise in writing:
 - (1) Such third party that the antitrust claim has been assigned to CDOT, and
 - (2) Contractor and CDOT that such civil action is pending and of the date on which, in accordance with subparagraph b. (1) above, the subcontractor notified such third party that the antitrust claim had been assigned to CDOT;
 - c. Take no action which will in any way diminish the value of the claims or rights assigned or dedicated to CDOT hereunder; and
 - d. Promptly pay over to CDOT its proper share of any payment under an antitrust claim brought on the subcontractor's behalf by any third party and which claim has been assigned or dedicated to CDOT pursuant hereto.

I, acting in my capacity as officer of a bidder (bidders if a joint venture) do agree to the above assignment of antitrust claims.

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

COLORADO DEPARTMENT OF TRANSPORTATION

COMMITMENT CONFIRMATION

SECTION 1. This section must be completed by the Contractor.

Project:		Project Code:	
Bidder/Contractor:		Phone:	
Contact:		Email:	
DBE Firm Name:		DBE Phone:	
DBE Address:		DBE Email:	

Commitment Details

Category	Work to be Performed	DBE Work Code(s)	Commitment Amount	Eligible Participation
Construction				
Trucking				
Supplies				
Services				
Total				

This section must be signed by an individual with the power to contractually bind the Bidder/Contractor. 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 complete, true and accurate to the best of your knowledge.

Bidder/Contractor Representative	Title	Signature	Date
----------------------------------	-------	-----------	------

SECTION 2. This section must be completed by the DBE. (Attach additional pages if necessary).

This document is not a contract with the Bidder/Contractor; it is an acknowledgement of the obligation that the Bidder/Contractor is making to CDOT. The amounts listed above may be less than the subcontractor or purchase order amount, but can never be more, and shall not reflect any mark up by the Bidder/Contractor. **All questions must be answered.**

Are you contracting directly with the Bidder/Contractor or with one of its subcontractors? If with a subcontractor, provide the firm name.	
Will you be purchasing supplies or materials or leasing or renting equipment from the Bidder/Contractor or its subcontractors? If so, explain.	
Do you intend to subcontract any portion of the work listed above? If yes, state to which firms, what work and the approximate amount. Include trucking subcontractors and owner-operators.	
Will you be providing trucking services on this project? If so, state how many of your own trucks and employees you will have on this project.	
Who within your firm will be supervising and responsible for your firm's work on this project?	
Will you be acting as a broker on this project? If so, state what you will be brokering and your approximate brokerage fee.	
Will you be acting as a supplier on this project? If so, please state what you will be supplying and whether you will manufacture the items.	

This section must be signed by an individual with the power to contractually bind the DBE. 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 complete, true and to the best of your knowledge. You attest that you are eligible to participate as a DBE on this contract for the work listed above and have the capacity to perform the work as stated.

DBE Representative	Title	Signature	Date

See the DBE Standard Special provision for additional information on completing and submitting this form.

Pre-award CDOT projects: Submit this form to the CDOT Civil Rights and Business Resource Center via fax to (303)757-9019. All originals must be sent to: CDOT Civil Rights and Business Resource Center, 4201 E. Arkansas Ave. Room 150, Denver, CO 80222.

Pre-award local agency projects: Submit this form to the local agency. All originals must be sent to: CDOT Civil Rights and Business Resource Center, 4201 E. Arkansas Ave. Room 150, Denver, CO 80222.

GOOD FAITH EFFORT REPORT

Section 1. Contractor and Project Information

Bidder:		Project:	
Address:		Project Code:	
Contact Name:		Proposal Amount:	
Contact Phone:		Contract Goal Percentage:	
Contact Email:		Contract Goal Dollar Value:	

Section 2. Efforts to Achieve DBE Participation. Attach a narrative that answers the questions below and complete Page 2 (Subcontractor Quote Summary). Provide any supporting documentation which demonstrates your good faith efforts.

- a. Describe your overall plan or approach to meeting the contract goal. Include how much and what work you intend to self-perform; how much and what work you intend to subcontract; what work areas were identified as subcontracting opportunities for DBEs; and the approximate number of DBEs per area.
- b. Describe your efforts to obtain DBE participation (i.e. how you attempted to execute your plan or approach to meeting the contract goal). Include direct outreach (state the DBE solicited, date(s) and method of phone, email or fax); indirect outreach such as events, publications, and/or communication with minority and other organizations that you conducted to reach DBEs (state date(s), location and audience); other efforts you made to assist DBEs in competing for or obtaining contracts (accepting quotes from DBEs that may be higher than other subcontractors, modifications to contract scopes, unbundling, mentoring, etc.); and obstacles you encountered in assisting or contracting with DBEs. Cost alone shall not be a reason to reject a DBE and will be considered in the evaluation of Page 2.
- c. If the eligible participation submitted on the Form 1414 was miscalculated, determined to be invalid, or otherwise did not meet the contract goal, provide your justification for such deficiencies and the remedies you have taken or intend to take to avoid the issue in the future. If you have obtained any additional commitments since submission of the bid, attach the Form 1415(s) and the reason why such commitments were not obtained prior to the proposal due date.

Section 3. Affidavit of Good Faith Efforts. The Bidder must show that it took all necessary and reasonable steps to achieve the DBE contract goal which by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if not fully successful. 49 CFR Part 26, Appendix A sets forth examples and guidance for good faith efforts. The contractor is not limited to the examples provided in 49 CFR Part 26, Appendix A and may provide any documentation that demonstrates good faith efforts to obtain DBE participation on this contract.

If, at any time, CDOT has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, CDOT may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice or Office of the Inspector General for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal program.

By signing below, the Bidder hereby affirms that it has made good faith efforts and has documented all such efforts in this form and the attached supporting documentation.

I, _____, am the _____ of _____.

Representative Name
Title
Company

I have the authority to make this affidavit for and on behalf of my company. All information provided herein and attached as evidence of my company's good faith efforts is true and accurate to the best of my belief.

 Signature Date

Notarization: Must be completed by a licensed notary.

County of _____ State of _____

SEAL

Subscribed and sworn before me this _____ day of _____

Notary Signature _____

Notary Address _____

CDOT projects: Submit this form and all supporting documentation to the CDOT Civil Rights and Business Resource Center via fax to (303)757-9019. All originals must be sent to: CDOT Civil Rights and Business Resource Center, 4201 E. Arkansas Ave. Room 150, Denver, CO 80222.

Local agency projects: Submit this form and all supporting documentation to the local agency. All originals must be sent to: CDOT Civil Rights and Business Resource Center, 4201 E. Arkansas Ave. Room 150, Denver, CO 80222.

Work Sheet: dbecg
12-26-2013

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:

0.0% Percent DBE participation.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

NOTICE

This is a standard special provision that revises or modifies CDOT's *Standard Specifications for Road and Bridge Construction*. It has gone through a formal review and approval process and has been issued by CDOT's Project Development Branch with formal instructions for its use on CDOT construction projects. It is to be used as written without change. Do not use modified versions of this special provision on CDOT construction projects, and do not use this special provision on CDOT projects in a manner other than that specified in the instructions unless such use is first approved by the Standards and Specifications Unit of the Project Development Branch. The instructions for use on CDOT construction projects appear below.

Other agencies which use the *Standard Specifications for Road and Bridge Construction* to administer construction projects may use this special provision as appropriate and at their own risk.

Instructions for use on CDOT construction projects:

Use this Standard Special Provision on all Federal-Aid Design-Bid-Build Projects, except Local Agency Projects. For purposes of this Standard Special Provision, Federal-Aid Design-Bid-Build Projects includes only those projects for which the construction contract will be federally funded in whole or part. This Standard Special Provision will be used only for the construction phases of CM/GC projects. Do not use on design-build or other innovative projects. For DBE provisions for these projects, contact the Civil Rights and Business Resource Center (CRBRC) at (303)757-9234.

This Standard Special Provision shall also not be used for Local Agency projects. Use the DBE Local Agency Requirements Standard Special Provision for Local Agency projects.

Use this Standard Special Provision in conjunction with the Project Special Provision Worksheet, Disadvantaged Business Enterprise (DBE) Contract Goal. The Designer will not set a DBE contract goal. The Designer will consult with the Regional Civil Rights Office (RCRO) to obtain the contract goal. A contract goal of zero still requires the use of this Standard Special Provision and Project Special Provision Worksheet.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

1. **Overview.** The Disadvantaged Business Enterprise (DBE) Program is a federally-mandated program that seeks to ensure non-discrimination in the award of U.S. Department of Transportation (DOT)-assisted contracts and to create a level playing field on which DBEs can compete fairly for DOT-assisted contracts. In order to be awarded a Contract, the lowest apparent bidder must show that it has committed to DBE participation sufficient to meet the goal or has otherwise made good faith efforts to do so.

CDOT will monitor the progress of the Contractor throughout the project to ensure that the Contractor's DBE commitments are being fulfilled. Modifications to the commitments, substitutions and terminations must be approved by CDOT. If the amount of the contract increases during the performance of the contract, the Contractor must make good faith efforts to obtain additional participation to meet the contract goal. CDOT may reduce the final payment to the Contractor if the Contractor has failed to fulfill the commitments or make good faith efforts to meet the contract goal.

For general assistance regarding the DBE program and compliance, contact CDOT's Civil Rights and Business Resource Center (CRBRC) at (303)757-9234 or the Regional Civil Rights Manager. For project specific issues, contact the Engineer or Regional Civil Rights Manager.

All forms referenced herein can be found on the CDOT website in the forms library:

<http://www.coloradodot.info/library/forms/cdot-forms-by-number>.

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

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 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.

3. **Contract Goal.** The contract goal is a percentage of the contract that the CDOT Regional Civil Rights Office has established for participation by DBEs. The contract goal is unique for each contract and is set forth in the Project Special Provision, Disadvantaged Business Enterprise Contract Goal.

(a) *Pre-award Calculation.* For pre-award, the dollar value of the contract goal is calculated by multiplying the lowest responsible bidder's proposal amount less any force account items by the percentage set forth in the Project Special Provision, Disadvantaged Business Enterprise Contract Goal.

(b) *Final Calculation.* At the end of the project, the dollar value of the contract goal is calculated by multiplying the total earnings amount by the contract goal percentage less any waiver granted to the Contractor. Total earnings amount means the amount of the Contract earned by the Contractor, including approved changes and force account work performed, but not including incentives or deductions.

4. **Good Faith Efforts.** Good faith efforts means all necessary and reasonable steps to achieve the contract goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if not fully successful. Good faith efforts of the Contractor should include, but are not limited to, reaching out to DBEs that could perform subcontracting opportunities on the project, unbundling work the prime would self-perform to create opportunities for DBEs, negotiating in good faith with DBEs and not refusing to utilize a DBE for price alone, and other efforts to obtain DBE participation on the contract. For additional guidance on making good faith efforts see 49 CFR Part 26 Appendix A.
5. **Pre-award Process.** When CDOT has established a DBE contract goal for a project, it may not award the contract until it determines the bidder has demonstrated good faith efforts to meet the contract goal. At pre-award, good faith efforts may be evidenced by either (1) documenting sufficient commitments to DBEs to

DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

meet the contract goal or (2) documenting adequate good faith efforts to meet the goal even though it did not obtain enough participation to do so. A commitment is a portion of the Contract, identified by dollar amount and work area, designated by the bidder or Contractor for participation by a particular DBE. A commitment may be made to a firm at any tier. A commitment is not a subcontract, however the Contractor must have received a quote from a DBE in order to claim a commitment to a DBE.

- (a) *Anticipated Participation Plan.* With its proposal, the bidder shall submit a Form 1414, Anticipated DBE Participation Plan listing its commitments obtained from DBEs, even if such commitments do not meet the contract goal. If the bidder has not obtained any DBE commitments, it shall still submit Form 1414 documenting zero anticipated participation. If the Contract Goal is greater than zero, failure to submit a signed Form 1414 shall result in rejection of the proposal and the bidder deemed non-responsive. The bidder shall ensure that commitments, and the estimated DBE eligible participation resulting therefrom, have been properly calculated prior to submitting its proposal. If the bidder is a DBE seeking credit for self-performance, the bidder shall include itself in Form 1414 and list the work to be self-performed and amount that the bidder intends to count for DBE credit.
- (b) *Utilization Plan.* Within five days of bid opening, the low responsible bidder shall submit a Utilization Plan (UP) to CDOT. The bidder will receive notice from CDOT to submit a Utilization Plan (UP) via B2GNow. In order to complete the UP the bidder shall obtain and upload in B2G a Form 1415, Commitment Confirmation from each DBE listed on Form 1414. If the total eligible participation submitted by the bidder on the Form 1414 did not meet the contract goal, the bidder shall also request a waiver of the goal by submitting a Form 1416, Good Faith Effort Report, in the UP in B2G.

In completing the Form 1415, the bidder shall complete Section 1 of the Form 1415 and the DBE shall complete Section 2 of Form 1415. The commitment confirmations shall be consistent with the commitment listed on Form 1414. If a commitment is made to second tier or lower DBE subcontractor, the Contractor is still ultimately responsible for the fulfillment of the commitment and shall sign the Form 1415. The bidder shall contact the CRBRC if any issues arise which may require the bidder to alter a commitment. The bidder shall not terminate a commitment listed on Form 1414 without following the procedures outlined below.

If the bidder is submitting a Form 1416, the bidder shall include any supporting documentation that the bidder would like considered by CDOT as evidence of good faith efforts. If a non-DBE was selected in lieu of a DBE, the bidder shall include all quotes from the non-DBE and DBE firms.

- (c) *Pre-award Good Faith Effort Review.* The CRBRC will evaluate the documentation submitted in the UP to ensure that each commitment is valid and all eligible participation has been properly calculated. CDOT may investigate or request additional information in order to confirm the accuracy of a commitment. If the bidder's 1414 claimed that the contract goal was met but CDOT determines that the total estimated eligible participation of the commitments does not meet the contract goal, CDOT will return the UP to the Contractor. The Contractor will be given two business days to amend the UP and return it to CDOT. CDOT may require the Contractor to complete Form 1416 and provide documentation of good faith efforts.

When required, CDOT will review Form 1416 and all supporting documentation submitted by the bidder. A bidder will be deemed to not have made good faith efforts if the bidder lists a DBE for a work area for which the DBE is not certified and the bidder cannot establish a reasonable basis for its determination. CDOT will only consider commitments made after submission of the bid if the bidder demonstrates that (1) good faith efforts were made prior to submission of the bid and (2) there is a reasonable justification for not obtaining the commitments prior to submission of the bid. If the CRBRC determines that the bidder did not demonstrate good faith efforts to meet the contract goal, it will provide the bidder with written notice of its determination and an opportunity to appeal.

- (d) *Approval.* If CDOT determines that the bidder has met the contract goal or made good faith efforts to do so, the CRBRC will approve the UP. If CDOT determines the bidder did not meet the contract goal but made good faith efforts to do so, CDOT may grant a waiver to the Contractor and amend the contract goal.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

6. **Utilization Plan Modifications.** The Contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which it is listed unless the Contractor obtains CDOT's written consent to terminate, reduce or modify the commitment. Unless CDOT grants such consent, the Contractor will not be entitled to payment for the work or materials. During the performance of the Contract, the Contractor shall use Form 1420, DBE Participation Plan Modification Request to communicate all requests for termination, reduction, substitution, and waivers to CDOT. One Form 1420 may include multiple requests and must be submitted at the time of the occurrence or, if that is not possible, within a reasonable time of the occurrence requiring termination, reduction, substitution or waiver. Failure 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 remedies established by CDOT.

(a) *Terminations and Reductions.* A termination occurs when a Contractor no longer intends to use a DBE for fulfillment of a commitment. A reduction occurs when the scope of the commitment changes and constitutes a partial termination. Terminations and reductions include, but are not limited to, instances in which a Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces, those of an affiliate, a non-DBE firm or with another DBE firm.

CDOT cannot approve a termination or reduction unless the Contractor has good cause to terminate or reduce the commitment. Good cause includes: the DBE fails or refuses to execute a written contract; the DBE fails or refuses to perform the work of its 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 its subcontractors; the DBE fails to meet reasonable, nondiscriminatory bond requirements; the DBE becomes bankrupt, insolvent, or exhibits credit unworthiness; the DBE is ineligible to work because of suspension or debarment proceedings or other state law; the DBE is not a responsible contractor; the DBE voluntarily withdraws from the project and provides written notice to CDOT, the DBE is ineligible to receive DBE credit for the work required; the DBE owner dies or becomes disabled and is unable to complete the work; the DBE ceases business operations or otherwise dissolves; or other documented good cause that compels termination. Good cause does not exist if the Contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Contractor can self-perform the work for which the DBE was engaged or so that the Contractor can substitute another DBE or non-DBE contractor after contract award.

The Contractor shall provide the DBE notice of the Contractor's intent to terminate or reduce the commitment and the reason for such termination or reduction, with a copy to the CDOT engineer and Regional Civil Rights Office (RCRO). In the notice of intent, the Contractor shall provide the DBE at least five calendar days to respond to the notice and inform CDOT and the Contractor of the reasons, if any, why it objects to the proposed termination or reduction and any reasons that it shall not be approved. The Contractor is not required to provide the five days written notice in cases where the DBE in question has provided written notice that it is withdrawing from the subcontract or purchase order. The notice period may be reduced by CDOT if required by public necessity.

Following the notice period, the contractor shall submit a Form 1420 to request approval of termination or reduction. If the RCRO determines that the Contractor had good cause for termination, the RCRO will approve the termination or reduction. If the RCRO does not agree, the RCRO may reject the termination and require the Contractor to make additional good faith efforts with the DBE.

(b) *Substitutions.* 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 shall request the addition of a new DBE and provide a Form 1415, Commitment Confirmation with the request. If the Contractor has not obtained substitute participation, the RCRO may require the Contractor to submit evidence of good faith efforts to substitute. The contractor shall have seven days to submit such information. This period may be extended at the discretion of the RCRO.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

- (c) *Commitment Modifications.* If the contractor seeks modifying the work to be performed under a DBE commitment, it shall submit a revised Form 1415 with the request for the modification. Increases in work included in the original 1415 do not need CDOT approval.
- (d) *Change Orders.* The Contractor is required to make good faith efforts to meet the goal on the total earnings amount. Therefore, if CDOT issues a change which increases or adds new work items, the Contractor shall ensure that it has obtained sufficient DBE participation to meet the Contract Goal on the increased amount or has made good faith efforts to do so. If the Contractor determines that additional DBE participation cannot be obtained, the Contractor shall request a waiver of the participation. The Contractor shall include its justification for not obtaining additional participation and, at its discretion, CDOT may require additional information regarding the efforts of the Contractor.

7. **Counting.** In order for work performed by a DBE to count as DBE credit toward the contract goal, the following criteria must be met:

- (a) *DBE Certified to Perform the Work.* The DBE must be certified by the Colorado Unified Certification Program (UCP) in the work to be performed. DBEs are certified in particular areas of work which are designated by a six digit North American Industry Classifications System code plus a descriptor. Each DBE's work codes can be found in its profile on the Colorado UCP DBE Directory at www.coloradodbe.org.

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 sublet 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 toward the contract goal. The Contractor shall terminate the DBE commitment and seek substitute DBE participation. However, a DBE's work will continue to count as eligible participation if the DBE was certified upon approval of the sublet request 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 or Verified via Form 205.* The work performed by the DBE must be reasonably construed by CDOT to be included in the work area and work code identified by the Contractor in an approved commitment or verified via Form 205. While a Form 205 is not usually required for suppliers, if no commitment has been made to the DBE, the Contractor shall submit the Form 205 and a copy of the supplier quote to CDOT. This work shall not count against the Contractor's thirty percent as required under *CDOT Standard Special Provisions for Road and Bridge Construction* subsection 108.01.

If the Contractor intends to use a DBE for work that was not listed in the original commitment, the Contractor shall submit a request for modification. Unapproved work will not count toward the contract goal. 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.

- (c) *Work Performed by DBE.* The work must be actually performed by the DBE with its own forces. For purposes of this specification, work performed by the DBE with its 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 its 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 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 toward the goal only if the subcontractor is a DBE and meets the criteria of this standard special provision. Performance by non-DBE subcontractors, including non-DBE trucking firms and owner-operators, shall be deducted from the DBE's participation.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

- (d) *Payment Received for Work.* The DBE must receive payment, including the release of its retainage, in order for the work to count.
- (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 by CDOT, based upon the actual work performed, in accordance with 49 CFR Part 26.53(e). When a DBE is deemed to be acting as a manufacturer, one hundred percent of the commitment will count as eligible participation. When a DBE is deemed to be acting as a regular dealer (i.e. non-manufacturer supplier), only sixty percent of the commitment 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) *Reasonable Service Fees.* For a DBE firm for 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 toward the contract goal, provided CDOT determines the fees to be reasonable and 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 DBE credit; the hourly fee does not count toward the contract goal unless the firm is also certified in the work to be performed.
- (g) *Joint Venture Calculation.* When a DBE is a participant in a joint venture, the DBE must apply to CDOT to determine how much of the work performed by the joint venture will count toward the contract goal. The DBE shall complete Form 893, Information for Determining DBE Participation when a Joint Venture Includes a DBE. To ensure sufficient time for review, Form 893 shall be submitted to CDOT no less than ten days before the submission of the proposal or, if requested during the contract, the point at which the DBE will begin work.
- (h) *Commercially Useful Function.* If CDOT determines that a DBE has not performed a commercially useful function (CUF) on the project, no participation by such DBE shall count toward the contract goal. CUF means responsibility for the execution of the work and carrying out such responsibilities by actually performing, managing and supervising the work. CDOT will monitor performance during the Contract to ensure each DBE is performing a CUF. If CDOT determines that a DBE is not performing a CUF, no work performed by such DBE shall count as eligible participation. The DBE, Contractor, and any other involved third parties may also be subject to additional enforcement actions.

When determining whether a DBE is performing a CUF, CDOT will consider 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. With respect to material and supplies used on the Contract, in order to perform a CUF 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.

With respect to trucking, in order to perform a CUF, the DBE trucking firm must own and operate at least one fully licensed, insured and operational truck used on the Contract. Additionally, the DBE trucking firm must be responsible for the management and supervision of the entire trucking operation for which it is responsible on the Contract. CDOT only permits a DBE trucking firm to count the work performed with trucks it owns, insures and operates using drivers it employs or with trucks it leases 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 its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of DBE participation. CDOT will evaluate similar transactions involving non-DBEs in order to determine whether a DBE is an extra participant. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work than would be expected on the basis of normal industry practice for the type of work involved, CDOT will

DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

presume that the DBE is not performing a CUF. The DBE may present evidence to rebut this presumption.

- (i) *Joint Checks.* All joint checks must be approved by CDOT before they are used in payment to a DBE. A joint check is a check issued by the Contractor or one of its subcontractors to a DBE firm and a material supplier or other third party for materials or services to be incorporated into the work. Joint checks used in payments to DBEs will be monitored closely to ensure (1) the DBE is performing a CUF and (2) 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 CDOT not counting such payment as participation by the DBE.

8. Contract Finalization

- (a) *Form 1432, Commercially Useful Function Questionnaire.* In order to finalize the project, the Contractor must submit a Form 1432, Commercially Useful Function Questionnaire for each DBE that performed work or provided supplies toward meeting the contract goal. The Form 1432 must be signed by the DBE, Contractor and Engineer.
- (b) *Payment Reduction.* The Contractor's retainage will not be released until CDOT has determined whether the Contractor will be subject to a payment reduction. The Contractor will be subject to a payment reduction for any termination or reduction which was not approved. Additionally, the Contractor will be subject to a payment reduction for the portion of the contract goal that was not met and was not waived. The contractor will not be subject to duplicate reduction for the same offense. CDOT may adjust the payment reduction wherein the Contractor demonstrates that its failure to obtain DBE participation was due to circumstances outside of its control.

- 9. **Other Enforcement.** As it determines necessary, CDOT may conduct reviews or investigations of participants. 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 (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

If CDOT determines that a Contractor or subcontractor was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE participation or any other business arrangement determined by CDOT to be unallowable, or if the Contractor engages in repeated violations, falsification or misrepresentation, CDOT may refuse to count any fraudulent or misrepresented DBE participation; withhold progress payments to the Contractor commensurate with the violation; suspend or reduce the Contractor's prequalification status; refer the matter to the Office of Inspector General of the US Department of Transportation for investigation; or seek any other available contractual remedy.

August 28, 2018

ON THE JOB TRAINING

NOTICE

This is a standard special provision that revises or modifies CDOT's *Standard Specifications for Road and Bridge Construction*. It has gone through a formal review and approval process and has been issued by CDOT's Project Development Branch with formal instructions regarding its use on CDOT construction projects. It is to be used as written without change. Do not use modified versions of this special provision on CDOT construction projects, and do not use this special provision on CDOT projects in a manner other than that specified in the instructions unless such use is first approved by the Standards and Specifications Unit of the Project Development Branch. The instructions for use on CDOT construction projects appear below.

Other agencies that use the *Standard Specifications for Road and Bridge Construction* to administer construction projects may use this special provision as appropriate and at their own risk.

INSTRUCTIONS FOR USE ON CDOT CONSTRUCTION PROJECTS:

Use this standard special provision on all Federal-aid projects, including local agency projects, except for local agency projects where the local agency will not use LCPtracker for reporting.

1
ON THE JOB TRAINING

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

1. Goal Setting

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

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

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

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

2. Training Plan Options

CDOT accepts the following training programs:

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

2
ON THE JOB TRAINING

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

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

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

3. Journey-Level Worker to Apprentice/Trainee Ratio

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

4. Trainee Selection

Two components must be considered when choosing a trainee:

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

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

5. OJT Apprentice/Trainee Approval

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

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

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

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

3
ON THE JOB TRAINING

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

6. Eligible Work Activities that Count Toward the Training Goal

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

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

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

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

7. Contractor Training and Trainee Monitoring

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

8. Wages

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

US DOL Apprenticeship Programs

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

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

Other Approved Programs

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

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

4
ON THE JOB TRAINING

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

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

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

9. Contractor Reporting

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

10. Reimbursement to Contractors

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

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

11. OJT Good Faith Efforts (GFE)

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

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

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

12. Disincentive

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

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

DAVIS-BACON WAGES, 27(II)

*THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.*

The Davis-Bacon Act as amended, requires that each contract over \$2000 to which the United States or the District of Columbia is a party for the construction, alteration, or repair of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract.

Under the provisions of the Act, contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character. The Davis-Bacon Act directs the Secretary of Labor to determine local prevailing wage rates.

Davis-Bacon wage determinations issued by the U.S. Department of Labor may be viewed at: <http://www.wdol.gov/>. Questions regarding Davis-Bacon and Related Acts may be e-mailed to: dbra-faqs@fenix2.dol-esa.gov.

Persons inquiring about Davis-Bacon Wages should contact the U.S. Department of Labor at (866) 487-9243 for more information.

WEBSITE LINKS

www.colorado.gov/cdle (Colorado Department of Labor and Employment)

www.coloradolaborlaw.gov (Colorado Division of Labor)

<http://www.wdol.gov/> (Davis-Bacon Wage Determinations)

www.dol.gov/whd/programs/dbra/index.htm (U.S. Department of Labor Davis-Bacon Information)

www.dol.gov/whd/programs/dbra/faqs.htm (Davis-Bacon Frequently Asked Questions)

<http://lmigateway.coworkforce.com/lmigateway/> (Colorado Labor Market Information, Occupational Statistics for the State)

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

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

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

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

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

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's

II. NONDISCRIMINATION

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

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

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

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

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

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or 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 there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

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

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

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

10. Assurance Required by 49 CFR 26.13(b):

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

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

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

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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 \$10,000 or more.

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt.

Contracting agencies may elect to apply these requirements to other projects.

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

1. Minimum wages

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

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

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

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

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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

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

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

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

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

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

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

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

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

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm>

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or

the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

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

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

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

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

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

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

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

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to

journeymen shall not be greater than permitted by the terms of the particular program.

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

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

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

places where it is readily available to all persons concerned with the project:

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

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

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

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

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

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

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

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

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

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

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

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

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

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering

into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

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

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

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

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

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

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

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

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

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

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.

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

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

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

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

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

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

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

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

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

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

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the

use of mineral resource materials native to the Appalachian region.

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

CDOT Contractor's Insurance Notice:

The awarded Contractor must name the Colorado Department of Transportation (CDOT) as an "additional insured" on its general liability and automobile liability policies.